

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, CTA CRIM. CASE NO. O-531
Plaintiff, (NPS Docket No. XVI-INV-12B-00105)
For: Violation of Section 255 of the 1997
NIRC, as amended.

- versus -

Members:

EAGLE'S FORTUNE,
INCORPORATION and
WHANG ZHI ZIN a.k.a. Alex
Ong,

BAUTISTA, Chairperson
FABON-VICTORINO, and
RINGPIS-LIBAN, II.

Promulgated:

Accused. JAN 29 2016

2:38 p.m.

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RESOLUTION

For resolution is the "Motion for Reconsideration" ("Motion") filed by plaintiff on December 28, 2015; with accused Wang Zhi Zin a.k.a. Alex Ong's "Comment/Opposition [To Plaintiff's Motion for Reconsideration dated 28 December 2015]" ("Comment") filed on January 14, 2016.

On August 27, 2015, the Information against the accused was filed. The Information reads:

The undersigned State Prosecutor of the Department of Justice, hereby accuses EAGLE'S FORTUNE, INCORPORATION and WHANG ZHI ZIN, a.k.a. ALEX ONG, the General Manager of said corporation, of "Failure to Supply Correct and Accurate Information" under Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

"That sometime in April 2007, in Quezon City, and within the jurisdiction of this Honorable

Court, accused Eagle's Fortune, Incorporation and Whang Zhi Zin, *a.k.a.* Alex Ong, the latter being the general manager and responsible officer of the said corporation and at the time required by law, rules and regulations to pay correct taxes for Eagle's Fortune, Incorporation, did then and there willfully, unlawfully and feloniously failed to supply correct and accurate information in the Income Tax Return by not declaring all the income of Eagle's Fortune, Incorporation for taxable year 2006, which resulted to the corporation's basic deficiency income tax in the amount of Fourteen Million Six Hundred Seven Thousand Four Hundred Sixty Six Pesos and Twenty Centavos (Php14,607,466.20), more or less, exclusive of surcharges and interest, to the damage and prejudice of the government."

CONTRARY TO LAW.

Manila for Quezon City, Philippines, June 9, 2014.¹

On September 21, 2015, accused Wang Zhi Zin filed his Urgent Motion to Quash, which was granted by the Court in its December 10, 2015 Resolution, dismissing the case without prejudice on the ground of lack of jurisdiction over the offense charged.

On December 28, 2015, plaintiff filed the present Motion praying for the Court to set aside the December 10, 2015 Resolution and for the Information in the present case be reinstated.

Plaintiff argues in its Motion that, as regards the name of the accused, the Bureau of Internal Revenue ("BIR") can only ascertain the identities of the parties based on the documents it can acquire from the agencies reporting the same; that the name indicated in the Information is not too different from the alleged stated name of the accused in his application for bail; that the certainty as to the identity of the accused was never in question; that the accused was properly known and identified by his name and *alias* duly stated in the Information; that the accused has stated his alleged true name, which should merely be inserted in the Information in order not to prejudice third persons; and that the identity of the accused is clear and

¹ Emphasis ours.

unambiguous from the beginning and, as such, the alleged true name must merely be inserted and cannot be a ground for the dismissal.

As regards the failure of the Information to indicate the exact principal taxes and fees being collected, plaintiff argues in its Motion that there was a need for further coordination with the BIR, which required further study; and that the phrase “more or less” was a mere typographical error, which should have been omitted from the Information as the same did not serve any purpose.

On the other hand, the accused argues in his Comment that there is nothing in the records that attests to the fact that efforts were taken by plaintiff to rectify the manifestly material and jurisdictional discrepancies in the Information; that it was incumbent upon the prosecution to have acted expeditiously and to take measures to correct or even explain the manifest discrepancies in the jurisdictional amount alleged in the Information as well as the identity of the accused; that it was incumbent upon the prosecution not to have filed the instant case where the name and/or the identity of the accused is not certain, or the allegations anent the actual amount of taxes involved is uncertain; that the mere amendment of the Information to replace “Whang” with “Wang” is material and will gravely prejudice accused; that there can be no amendment or change of the name of the accused in the Information without conducting a new preliminary investigation or reinvestigation as the same will give rise to a grave transgression on the rights of the accused to due process; and that the phrase “more or less” in the Information reveals that the Court’s jurisdiction over the instant case has not been established, and is non-existent. Accordingly, the accused prays that the Motion be denied.

The Motion is partially granted.

*Section 14, Rule 110 of the Revised Rules of Criminal Procedure*² allows, as a rule, the amendment of the information without leave of

² Section 14, Rule 110 of the Revised Rules of Criminal Procedure states:

Sec. 14. Amendment or substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information can be made only upon motion by the prosecutor, with notice to the

court at any time before the accused enters his plea. As regards the name of the accused, *Section 7, Rule 110 of the Revised Rules of Criminal Procedure*³ allows the insertion in the information of the true name of the accused if the same is disclosed by him or her or appears in some other manner to the court.

Meanwhile, following *Section 4, Rule 117 of the Revised Rules of Criminal Procedure*⁴ and considering the ground for granting accused Wang Zhi Zin's Urgent Motion to Quash, the Court deems it judicious to order the amendment of the Information.

WHEREFORE, premises considered, the Motion for Reconsideration filed by plaintiff is hereby **PARTIALLY GRANTED**. The Resolution dated December 10, 2015 is hereby **RECALLED** and **SET ASIDE**.

Consequently, the prosecution, through Prosecutor General Claro A. Arellano is hereby **ORDERED** to make the necessary amendment to the Information within ten (10) days from notice hereof, failing which, the Court shall be constrained to act accordingly.

In view of the pending incident, the arraignment previously scheduled on February 3, 2016 at 1:30 p.m. is hereby **CANCELLED** and **RESET** to **March 2, 2016 at 1:30 p.m.**

offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

³ Section 7, Rule 110 of the Revised Rules of Criminal Procedure states:

Sec. 7. Name of the accused. – The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

⁴ Section 4, Rule 117 of the Revised Rules of Criminal Procedure states:

Sec. 4. Amendment of complaint or information. – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice