

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, CTA CRIM. CASE NO. O-533
Plaintiff, For: Violation of Section 255 of
the NIRC of 1997, as
amended

- versus -

Members:

EAGLE’S FORTUNE,
INCORPORATION and
WHANG ZHI ZIN *a.k.a.* ALEX
ONG,

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
COTANGCO-MANALASTAS, JJ.

Promulgated:

Accused.

FEB 15 2016

X ----- X
f 3:30 p.m.

RESOLUTION

For resolution are the following:

1. **Urgent Joint Motion to Quash**, filed by accused Wang Zhi Zin *a.k.a.* Alex Ong (“accused Zin” for brevity) on September 21, 2015, without the prosecution’s comment as per Records Verification dated October 15, 2015;
2. plaintiff’s **Manifestation with Motion for Extension to File Comment/Opposition**, filed on December 11, 2015, with accused Zin’s **Comment/Opposition [To Plaintiff’s Manifestation with Motion for Extension of Time to File Comment/Opposition dated 11 December 2015]**, filed through registered mail on December 23, 2015 and received by the Court on January 6, 2016; and

3. plaintiff's **Compliance (On the Resolution dated 24 November 2015)**, filed on December 28, 2015, with accused Zin's **Comment/Manifestation [Re: Plaintiff's Compliance on the Resolution dated 24 November 2015]**, filed on January 11, 2016.

In the Urgent Joint Motion to Quash, accused prays that the Information be quashed, vacated and annulled on the grounds that the Court has no jurisdiction over this case and over the person of the accused. Accused Zin posits that the jurisdiction of a court over a criminal case is determined by the allegations in the Information.

At the outset, during the hearing on September 23, 2015, the arraignment of accused Zin was deferred because of the pending Urgent Joint Motion to Quash and upon the prosecution's manifestation that it would file an Amended Information. The prosecution was given a period of fifteen (15) days from September 23, 2015, within which to file its Comment to the accused's Urgent Joint Motion to Quash.

In a Resolution dated November 24, 2015, despite the failure of the prosecution to file the aforesaid comment, the Court gave the prosecution a period of ten (10) days from notice to comply with the latter's earlier manifestation to amend the Information while the resolution of the Urgent Joint Motion to Quash was held in abeyance. In another hearing held on December 7, 2015, the prosecution was given, in the interest of justice, a fresh period of five (5) days within which to file comment.

Instead of amending the Information and complying with the submission of its comment, the prosecution filed a *Manifestation with Motion for Extension to File Comment/Opposition and Compliance*. In the prosecution's Compliance, it alleges that the identity of the accused was ascertained through the various documents gathered from the government agencies. Allegedly, the name "Whang" reflected in the Information is not really too different from the name stated in the application for bail as "Wang". The prosecution insists that the accused was also properly known and identified by the alias "Alex Ong" stated in the Information. The alleged true name of the accused should merely be inserted in the Information pursuant to Section 7, Rule 110 of the Rules of Court.

The prosecution further argues that the delay in the filing of the comment was due to the need to ascertain the meaning of the phrase "more or less", which was placed by Senior State Prosecutor (SSP) Valenzuela who was already dead. According to the prosecution, in view of the death of SSP Valenzuela, a further coordination with the BIR is needed. It would appear that allegedly the phrase "more or less" was a mere typographical error and should have been omitted from the Information as the same do not serve any purpose.

However, despite the submission of Compliance, the prosecution failed to comply with its manifestation that it would amend the Information in order to clarify the jurisdictional amount and to state the real name of the accused.

We find the accused's Urgent Joint Motion to Quash meritorious for lack of jurisdiction over the offense charged.

Section 1, Rule 117 of the Rules of Court and Section 3(b),(c), in relation to Section 4 of the same rule, provide that a Motion to Quash the Information may be filed before the accused enters a plea on the grounds that the court trying the case has no jurisdiction over the offense charged or over the person of the accused, *viz.*

SECTION 1. *Time to move to quash.* – At any time before entering his plea, the accused may move to quash the complaint or information.

SEC. 3. *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:

xxx xxx xxx

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

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.

We shall first discuss the alleged lack of jurisdiction over the person of the accused.

Accused Zin claims that the Court has no jurisdiction over his person since his real name is Wang Zhi Zin and not Whang Zhi Zin as stated in the Information. Accused Zin points out the Resolutions of the First Division of the Court of Tax Appeals (CTA) observing that the former's name is different from the person named in the Information; thus, the two are different persons. Accused Zin manifests that upon learning that a criminal case had been filed against one Alex Ong, he appeared before this Court. He further alleges that the prosecution has not yet clarified nor confirmed the real name of the person charged in the Information.

For reference, the accusatory portion of the Information is reproduced as follows:

"That sometime in April 2005, 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 the said corporation, did then and there willfully, unlawfully and feloniously failed to supply correct and accurate information in the VAT Return by simulating purchases and by not declaring the true sales made by the corporation for taxable year 2004, which resulted to

the corporation's basic VAT deficiency in the amount of Six Million Eight Hundred Ninety Two Thousand Seventeen Pesos and Eighty Six Centavos (Php6,892,017.86), more or less, exclusive of surcharges, interest and penalties, to the damage and prejudice of the government."

The Information charged a certain Whang Zhi Zin, a.k.a Alex Ong, known as the general manager of the Eagle's Fortune, Incorporation, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. Notably, accused Zin voluntarily surrendered and posted bail when he learned that one Alex Ong was being charged with a criminal case before the CTA.

It is settled that "jurisdiction over the person of the accused may be acquired through compulsory process such as a warrant of arrest or through his voluntary appearance, such as when he surrenders to the police or to the court"¹. Considering that accused Zin voluntarily surrendered, posted bail and submitted himself to the jurisdiction of this Court on September 3, 2015, the Court acquires jurisdiction over the person of the accused. In addition, the Information sufficiently states the name of the accused, in accordance with Section 7, Rule 110 of the Rules of Court.²

On the second ground, accused Zin asserts that the allegations on the Information show that the Court has no jurisdiction over the offense charged. Allegedly, the phrase "more or less, exclusive of surcharges, interest and penalties..." does not reflect the exact principal amount of taxes and fees being claimed for which reason the jurisdiction of this Court cannot be established.

¹ *People of the Philippines vs. Arturo Lara y Orbista*, G.R. No. 199877, August 13, 2012, 678 SCRA 332.

² 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 in 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.

Section 7(b)(1) of Republic Act No. 1125, as amended, and Section 3(b)(1), Rule 4 of the Revised Rules of the CTA provide that the CTA Division shall exercise exclusive original jurisdiction over all criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more.

Thus, "in order to determine the jurisdiction of the court in criminal cases, the information must be examined for the purpose of ascertaining whether or not the facts alleged therein and the penalty provided by law for such acts fall within the jurisdiction of the court. If in the information facts are alleged sufficient to show that the court in which the information is filed has jurisdiction, then the court shall have jurisdiction."³

Since the Information did not accurately state the principal amount claimed, the jurisdiction of the Court over the offense charged cannot be established. Considering further that the prosecution failed to amend the Information despite its manifestation, and despite the opportunities given, the Court is now constrained to grant the above-stated motion for lack of jurisdiction over this case.

WHEREFORE, premises considered, accused Zin's **Urgent Joint Motion to Quash** is **GRANTED**. Accordingly, the instant case is **DISMISSED** without prejudice. The prosecution's **Manifestation with Motion for Extension to File Comment/Opposition and Compliance (On the Resolution dated 24 November 2015)** are **NOTED WITHOUT ACTION**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

³ *The United States vs. Jose Montañez*, No. 16394, September 25, 1920, 41 Phil. 91 citing *U.S. vs. Mallari and Cueson*, 24 Phil. 366.



CAESAR A. CASANOVA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice