736 Phil. 181

SECOND DIVISION

[G.R. No. 179962, June 11, 2014]

DR. JOEL C. MENDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF TAX APPEALS, RESPONDENTS.

DECISION

BRION, J.:

Before the Court is a petition for *certiorari* and prohibition under Rule 65[1] filed by Dr. Joel C. Mendez (*petitioner*) assailing the June 12, 2007 and August 13, 2007 resolutions[2] of the Court of Tax Appeals (*CTA*).[3] The assailed resolutions granted the prosecution's Motion to Amend Information with Leave of Court and denied the petitioner's motion for reconsideration.

ANTECEDENTS

The Bureau of Internal Revenue (*BIR*) filed a complaint-affidavit[4] with the Department of Justice against the petitioner. The BIR alleged that the petitioner had been operating as a single proprietor doing business and/or exercising his profession for taxable years 2001 to 2003 under the following trade names and registration addresses:[5]

1. Mendez Body and Face Salon and Spa
   Registered with Revenue District Office (RDO) No. 39 – South Quezon City

2. Mendez Body and Face Salon and Spa
   Registered with RDO No. 39 – South Quezon City

3. Mendez Body and Face Salon and Spa
   Registered with RDO No. 40 – Cubao

4. Mendez Body and Face Skin Clinic
   Registered with RDO No. 47 – East Makati

5. Weigh Less Center
   Registered with RDO No. 21

6. Mendez Weigh Less Center
   Registered with RDO No. 4 – Calasiao Pangasinan

Based on these operations, the BIR alleged that petitioner failed to file his income tax returns for taxable years 2001 to 2003 and, consequently evaded his obligation to pay the correct amount of taxes due the government.[6]

In his defense, the petitioner admitted that he has been operating as a single proprietor under these trade names in Quezon City, Makati, Dagupan and San Fernando. However, he countered that he did not file his income tax returns in these places because his business establishments were registered only in 2003 at the earliest; thus, these business establishments were not yet in existence at the time of his alleged failure to file his income tax return.[7]

After a preliminary investigation, State Prosecutor Juan Pedro Navera found probable cause against petitioner for non-filing of income tax returns for taxable years 2001 and 2002 and for failure to supply correct and accurate information as to his true income for taxable year 2003, in violation of the National Internal Revenue Code.[8] Accordingly an Information[9] was filed with the CTA charging the petitioner with violation of Section 255 of Republic Act No. 8424 (Tax Reform Act of 1997). The Information reads:

> That on or about the 15th day of April, 2002, at Quezon City, and within the jurisdiction of [the CTA] the above named accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center" with principal office at No. 31 Roces Avenue, Quezon City, and with several branches in Quezon City, Makati, San Fernando and Dagupan City, did then and there, wilfully, unlawfully and feloniously fail to file his Income Tax Return (ITR) with the Bureau of Internal Revenue for the taxable year 2001, to the damage and prejudice of the Government in the estimated amount of P1,089,439.08, exclusive of penalties, surcharges and interest.
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> CONTRARY TO LAW.[10]

The accused was arraigned[11] and pleaded not guilty on March 5, 2007.[12] On May 4, 2007, the prosecution filed a "Motion to Amend Information with Leave of Court." [13] The amended information reads:

> That on or about the 15th day of April, **2002**, at Quezon City, and within the jurisdiction of [the CTA] the above named accused, **doing business under the name and style of** "Weigh Less Center"/**Mendez Medical Group**", with several branches in Quezon City, **Muntinlupa City, Mandaluyong City and Makati City**, did then and there, wilfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau of Internal Revenue **for income earned** for the taxable year 2001, to the damage and prejudice of the Government in the estimated amount of P1,089,439.08, exclusive of penalties, surcharges and interest (underscoring and boldfacing in the original).[14]

The petitioner failed to file his comment to the motion within the required period; thus on June 12, 2007, the CTA First Division granted the prosecution's motion.[15] The CTA ruled that the prosecution's amendment is merely a formal one as it "merely states with additional precision something already contained in the original information."[16] The petitioner failed to show that the defenses applicable under the original information can no longer be used under the amended information since both the original and the amended information charges the petitioner with the same offense (violation of Section 255). The CTA observed:

> the change in the name of his business to include the phrase "Mendez Medical Group" does not alter the fact the [petitioner] is being charged with failure to file his Income Tax Return... The change in the branches of his business, likewise did not relieve [the petitioner] of his duty to file an ITR. In addition, the places where the accused conducts business does not affect the Court's jurisdiction... nor ... change the nature of the offense charged, as only one [ITR] is demanded of every taxpayer. We likewise see no substantial difference on the information with the insertion of the phrase 'for income earned' for it merely stated the normal subject matter found in every income tax return.

The petitioner filed the present petition after the CTA denied his motion for reconsideration.[17]

THE PETITION

The petitioner claims in his petition that the prosecution's amendment is a substantial amendment prohibited under Section 14, Rule 110 of the Revised Rules of Criminal Procedure. It is substantial in nature because its additional allegations alter the prosecution's theory of the case so as to cause surprise to him and affect the form of his defense.[18] Thus, he was not properly informed of the nature and cause of the accusation against him.

Adopting the observation of a dissenting CTA justice, he claims that to change the allegation on the locations of his business from San Fernando, Pampanga and Dagupan City to Muntinlupa and Mandaluyong cities would cause surprise to him on the form of defense he would have to assume.

The petitioner adds that the change in the date of the commission of the crime from 2001 to 2002 would also alter his defense considering that the difference in taxable years would mean requiring a different set of defense evidence. The same is true with the new allegation of "Mendez Medical Group" since it deprived him of the right, during the preliminary investigation, to present evidence against the alleged operation and or existence of this entity.[19] In sum, the amendments sought change the subject of the offense and thus substantial.[20]

RESPONDENTS' COMMENT

The respondents claim that the petitioner availed of the wrong remedy in questioning the CTA resolutions. Under Rule 9, Section 9 of the Revised Rules of CTA, the remedy of appeal to the CTA *en banc* is the proper remedy, to be availed of within fifteen days from receipt of the assailed resolution. The filing of the present petition was clearly a substitute for a lost appeal.

Even assuming that *certiorari* is the proper remedy, the CTA did not commit an error of jurisdiction or act with grave abuse of discretion. On the contrary, the assailed resolutions were in accord with jurisprudence. The amended information could not have caused surprise to the petitioner since the amendments do not change the nature and cause of accusation against him. The offense the petitioner probably committed and the acts or omissions involved remain the same under the original and the amended information, *i.e.*, his failure to file his ITR in 2002 for income

earned in 2001 from the operation of his businesses.[21]

Neither would the change in the date of the commission of the crime nor the inclusion of the phrase "Mendez Medical Group" cause surprise to the petitioner since he was fully apprised of these facts during the preliminary investigation. Likewise, the original information already alleged that the petitioner's failure to file an ITR refers to "taxable year 2001."

Contrary to the petitioner's contention, the preparation of the defense contemplated in the law does not strictly include the presentation of evidence during the preliminary investigation because this stage is not the occasion for the full and exhaustive display of the parties' evidence.

ISSUES:

1. Is the remedy of *certiorari* proper?

2. Whether the prosecution's amendments made after the petitioner's arraignment are substantial in nature and must perforce be denied?

COURT'S RULING

We resolve to **dismiss** the petition.

Preliminary consideration

The petitioner correctly availed of the remedy of *certiorari*. Under Rule 65 of the Rules of Court, *certiorari* is available when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. After failing in his bid for the CTA to reconsider its admission of the amended information, the only remedy left to the petitioner is to file a petition for *certiorari* with this Court.

Contrary to the prosecution's argument, the remedy of appeal to the CTA *en banc* is not available to the petitioner. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail. What Section 9 Rule 9[22] of the Rules of the CTA provides is that appeal to the CTA *en banc* may be taken from a decision or resolution of the CTA division in criminal cases by filing a petition for review under Rule 43 of the Rules of Court. Under Section 1, Rule 43, the remedy of a petition for review is available only against a judgments or a final order.

A judgment or order is considered final if it disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, as in the present case, the order is interlocutory and the aggrieved party's only remedy after failing to obtain a reconsideration of the ruling is a petition for *certiorari* under Rule 65.

Nonetheless, while we rule that the petitioner availed of the correct remedy, we resolve to **dismiss** the petition for failure to establish that the CTA abused its

discretion, much less gravely abused its discretion.

Amendment of information

Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information:

> *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.
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> 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 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.

There is no precise definition of what constitutes a substantial amendment. According to jurisprudence, substantial matters in the complaint or information consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.[23] Under Section 14, however, the prosecution is given the right to amend the information, regardless of the nature of the amendment, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph of Section 14.

Once the accused is arraigned and enters his plea, however, Section 14 prohibits the prosecution from seeking a substantial amendment, particularly mentioning those that may prejudice the rights of the accused.[24] One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused of the charge of against him. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.

To illustrate these points, in *Almeda v. Judge Villaluz*,[25] the prosecution wanted to additionally alleged recidivism and habitual delinquency in the original information. In allowing the amendment, the Court observed that the amendment sought relate only to the range of the penalty that the court might impose in the event of conviction. Since they do not have the effect of charging an offense different from the one charged (qualified theft of a motor vehicle) in the information, nor do they tend to correct any defect in the trial court's jurisdiction over the subject-matter, the amendment sought is merely formal.

In *Teehankee, Jr. v. Madayag*,[26] the prosecution sought during trial to amend the information from frustrated to consummated murder since the victim died after the information for frustrated murder was filed. The accused refused to be arraigned under the amended information without the conduct of a new preliminary investigation. In sustaining the admission of the amended information, the Court