thoroughly considered during the trial, there is no cogent reason to disturb its findings and conclusions — and they carry even more weight when the CA affirms its factual and legal findings.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. No costs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY AFTER FAILING IN THE BID FOR THE COURT OF TAX APPEALS (CTA) TO RECONSIDER ITS ADMISSION OF THE AMENDED INFORMATION.— 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.

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2. TAXATION; RULES OF THE COURT OF TAX APPEALS (CTA); 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; DISCUSSED.— 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 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.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AMENDMENT OF INFORMATION; DISCUSSED.— Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information: x x x 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. 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. 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 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. x x x [A]mendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); A RESIDENT CITIZEN WHO IS ENGAGED IN THE PRACTICE OF A PROFESSION WITHIN THE PHILIPPINES IS OBLIGATED TO FILE IN DUPLICATE AN INCOME TAX RETURN ON HIS INCOME FROM ALL SOURCES REGARDLESS OF THE AMOUNT OF HIS GROSS INCOME; WHERE AND WHEN TO FILE.— Under the National Internal Revenue Code (*NIRC*), a resident citizen who is engaged in the practice of a profession within the Philippines is obligated to file in duplicate an income tax return on his income from all sources, regardless of the amount of his gross income. In complying with this obligation, this type of taxpayer ought to keep only two basic things in mind: first is where to file the return; and second is when to file the return. Under Section 51 B of the NIRC, the return should "be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person *has his legal residence or principal place of business in the Philippines*." On the other hand, under Section 51 C of the NIRC, the same taxpayer is required to file his income tax return on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year. Failure to comply with this requirement would result in a violation of Section 255 of the NIRC.

5. ID.; ID.; ID.; ID.; CHANGE AND/OR ADDITION OF THE BRANCHES OF THE PETITIONER'S OPERATION IN THE INFORMATION DOES NOT CONSTITUTE SUBSTANTIAL AMENDMENT.— Since the petitioner

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operates as a sole proprietor from taxable years 2001 to 2003, the petitioner should have filed a consolidated return in his principal place of business, regardless of the number and location of his other branches. Consequently, we cannot but agree with the CTA that the change and/or addition of the branches of the petitioner's operation in the information does not constitute substantial amendment because it does not change the prosecution's theory that the petitioner failed to file his income tax return.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AMENDMENT OF INFORMATION; WHETHER DEFENDANT IS PREJUDICED BY THE AMENDMENT OF AN INFORMATION, DETERMINED BY THE AVAILABILITY OF THE SAME DEFENSE AND EVIDENCE ACCUSED PREVIOUSLY HAD UNDER THE ORIGINAL INFORMATION.— To be sure, the jurisprudential test on whether a defendant is prejudiced by the amendment of an information pertains to the availability of the same defense and evidence that the accused previously had under the original information. This test, however, must be read together with the characteristic thread of formal amendments, which is to maintain the nature of the crime or the essence of the offense charged.

APPEARANCES OF COUNSEL

Espiritu and Bandong Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

[1] Under the Rules of Court.

[2] *Rollo*, pp. 23-27 and 33-36, respectively.

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]

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[3] In CTA Crim. Case No. 0-014.

[4] Records, pp. 14-20.

[5] *Id.* at 44-45.

[6] *Id.* at 4-5.

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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 ₱1,089,439.08, exclusive of penalties, surcharges and interest.
>
> CONTRARY TO LAW.[10]

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[7] *Id.* at 44-45.

[8] Sections 254, 255, 257, and 267, in relation with Sections 51(A)(1)(a), 56(a)(1) and 74(A) of the NIRC.

[9] Dated October 10, 2005, Records, Vol. 1 p. 1. Two other informations were filed against the petitioner based on the same facts docketed as C.T.A. CRIM. NOS. 0-013 & 0-015.

[10] Records, p. 327.

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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 ₱1,089,439.08, 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:

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[11] The CTA initially dismissed without prejudice the information for lack of probable cause (*Id*. at 167-173) but on motion for reconsideration, the CTA (*id*. at 190-214) CTA reinstated the information on August 22, 2006 (*id*. at 271-273).

[12] *Id*. at 326.

[13] *Rollo*, pp. 54-56; *Id*. at 484-486.

[14] Records, p. 485.

[15] *Id*. at 492-496, with Justice Caesar Cassanova Dissented, pp. 497-501.

[16] *Rollo*, p. 25.

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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,

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[17] *Id*. at 41.

[18] Citing in petitioner's Reply *Matalam v. The 2nd Division of the Sandiganbayan*, 495 Phil. 664, 675 (2005).

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.

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[19] Citing in his Reply, *People v. Labatete*, 107 Phil. 697 (1960).

[20] Memorandum; *rollo*, p. 133.

[21] Citing *People v. Casey* (1958).

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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

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[22] This provision reads:

SEC. 9. *Appeal; period to appeal.* — xxx

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

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.
>
> 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

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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 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

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[23] *Almeda v. Judge Villaluz,* 160 Phil. 750, 757 (1975).

[24] See *People v. Hon. Montenegro,* 242 Phil. 655, 661 (1988).

[25] 160 Phil. 750 (1975).

[26] G.R. No. 103102, March 6, 1992, 207 SCRA 134.

the amended information without the conduct of a new preliminary investigation. In sustaining the admission of the amended information, the Court reasoned that the additional allegation, that is, the supervening fact of the death of the victim was merely supplied to aid the trial court in determining the proper penalty for the crime. Again, there is no change in the nature of offense charged; nor is there a change in the prosecution's theory that the accused committed a felonious act with intent to kill the victim; nor does the amendment affect whatever defense the accused originally may have.

In short, amendments that do not charge another offense different from that charged in the original one;[27] or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments.

In the present case, the amendments sought by the prosecution pertains to (i) the alleged change in the date in the commission of the crime from 2001 to 2002; (ii) the addition of the phrase "doing business under the name and style of Mendez Medical Group;" (iii) the change and/or addition of the branches of petitioner's operation; and (iv) the addition of the phrase "for income earned." We cannot see how these amendments would adversely affect any substantial right of the petitioner as accused.

The "change" in the date from 2001 to 2002 and the addition of the phrase "for income earned"

At the outset we note that the actual year of the commission of the offense has escaped both the petitioner and prosecution. In its Motion to Amend the Information, the prosecution mistakenly stated that the information it originally filed alleged the commission of the offense as "on or about the 15th day of April, **2001**" — even if the record is clear that that the actual year of commission alleged is **2002**. The petitioner makes a similar erroneous allegation in its petition before the Court.

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[27] *Guinto v. Veluz*, 77 Phil. 801 (1946).

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Interestingly, in its August 13, 2007 resolution, denying the petitioner's motion for reconsideration, the CTA implicitly ruled that there was in fact no amendment of the date in the information by correctly citing what the original information alleges. This, notwithstanding, ***the petitioner still baselessly belaboured the point in its present petition by citing the erroneous content of the prosecution's motion to amend instead of the original information itself.***[28] ***This kind of legal advocacy obviously added nothing but confusion to what is otherwise a simple case and another docket to the High Court's overwhelming caseload***.

That the actual date of the commission of the offense pertains to the year 2002 is only consistent with the allegation in the information on the taxable year it covers, *i.e.*, for the taxable year 2001. Since the information alleges that petitioner failed to file his income tax return for the taxable year 2001, then the offense could only possibly be committed when petitioner failed to file his income tax return before the due date of filing, which is on April of the succeeding year, 2002.

Accordingly, the addition of the phrase "for the income earned" before the phrase "for the taxable year 2001" cannot but be a mere formal amendment since the added phrase merely states with additional precision something that is already contained in the original information, *i.e.*, the income tax return is required to be filed precisely for the income earned for the preceding taxable year.

The nature of the remaining two items of amendment would be better understood, not only in the context of the nature of the offense charged under the amended information, but likewise in the context of the legal status of the "Mendez Medical Group."

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[28] Even the Dissenting Opinion of Justice Cassanova (which the petitioner relies upon) correctly cited the alleged date of commission of offense as "15th day of April 2002..." and yet the petitioner insists that "this [referring to the year 2002] should have been 2001." (Records, p. 547; *rollo*, p. 12)

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The addition of the phrase "doing business under the name and style of Mendez Medical Group and the change and/or addition of the branches of petitioner's operation"

Under the National Internal Revenue Code (*NIRC*), a resident citizen who is engaged in the practice of a profession within the Philippines is obligated to file in duplicate an income tax return on his income from all sources, regardless of the amount of his gross income.[29] In complying with this obligation, this type of taxpayer ought to keep only two basic things in mind: first is where to file the return; and second is when to file the return. Under Section 51 B of the NIRC, the return should "be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person *has his legal residence or principal place of business in the Philippines*."

On the other hand, under Section 51 C of the NIRC, the same taxpayer is required to file his income tax return on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.[30] Failure to comply with this requirement would result in a violation of Section 255 of the NIRC which reads:

Section 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation*.— Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply any correct and accurate information, **who wilfully fails to pay such tax, make such return**, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of

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[29] Section 51 A 1(a), 2(a) and 4(a).

[30] Section 51 C.

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not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. [emphasis supplied]

Since the petitioner operates as a sole proprietor from taxable years 2001 to 2003, the petitioner should have filed a consolidated return in his principal place of business, regardless of the number and location of his other branches. Consequently, we cannot but agree with the CTA that the change and/or addition of the branches of the petitioner's operation in the information does not constitute substantial amendment because it does not change the prosecution's theory that the petitioner failed to file his income tax return.

Still, the petitioner cites the case of *Matalam v. Sandiganbayan, Second Division*[31] in claiming that the deletion of San Fernando (Pampanga City) and Dagupan City deprives him of the defenses he raised in his counter-affidavit.

In *Matalam*, the prosecution charged the accused with violation of RA No. 3019 for "[c]ausing undue injury to several [government employees] thru evident bad faith xxx by illegally and unjustifiably refusing to pay [their] monetary claims xxx in the nature of unpaid salaries during the period when they have been illegally terminated, including salary differentials and other benefits." After a reinvestigation, the prosecution sought to amend the information to allege that the accused —

> [c]ause[d] undue injury by illegally dismissing from the service [several government] employees, xxx to their damage and prejudice amounting to ₱1,606,788.50 by way of unpaid salaries during the period when they have been illegally terminated including salary differentials and other benefits.[32]

The accused moved to dismiss the amended information for charging an entirely new cause of action and asked for preliminary investigation on this new charge of illegal dismissal.

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[31] G.R. No. 165751, April 12, 2005, 455 SCRA 736.

[32] *Id*. at 740.

The Sandiganbayan observed that (i) there is a clear change in the cause of action (from refusal to pay to illegal dismissal); and (ii) the main defense of all the accused in the original information – the lack of a corresponding appropriation for the payment of the monetary claims of the complaining witnesses — would no longer be available under the amendment. After finding, however, that the complainants' demand for monetary claim actually arose from their alleged illegal dismissal, the Sandiganbayan allowed the amendment because an "inquiry to the allegations in the original information will certainly and necessarily elicit substantially the same facts to the inquiry of the allegations in the Amended Information."[33]

As to when the rights of an accused are prejudiced by an amendment made after he had pleaded to the original information, *Montenegro* ruled[34] that prejudice exists when a defense under the original information would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the Information as amended.[35] Applying this test, the Court disallowed the amendment for being substantial in nature as the recital of facts constituting the offense charged was altered.[36]

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[33] *Id*. at 749.

[34] Citing 2 CJS Sec. 240, pp. 1249-1250.

[35] In *Montenegro*, the accused were charged with "robbery" as accessories after the fact. The prosecution sought to amend the information to (i) charge "robbery in an uninhabited place" instead; and (ii) delete all items and articles allegedly stolen in the original information and substituting them with a different set of items. The Court disallowed the amendment for being substantial. The Court said that changing the items affects the essence of the imputed crime, and would deprive the accused of the opportunity to meet all the allegations in the amended information, in the preparation of their defenses to the charge filed against them. In this case, in fact, the principal in the crime of robbery had been earlier convicted for taking the same items alleged in the information against the accused.

[36] The Court took into account the fact that the first cause of action is related to, and arose from, the second cause of action as this circumstance would ordinarily negate the need for a new preliminary investigation. However, since it was not shown that the accused had already touched the

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The inapplicability of *Matalam* to the present case is obvious. Here, the prosecution's theory of the case, *i.e.*, that petitioner failed to file his income tax return for the taxable year 2001 **did not change**. The prosecution's cause for filing an information remained the same as the cause in the original and in the amended information. For emphasis, the prosecution's evidence during the preliminary investigation of the case shows that petitioner did not file his income tax return in his place of legal residence[37] or principal place of business in Quezon City or with the Commissioner. In short, the amendment sought did not alter the crime charged.

At first, a change in the location of branches alleged in the information may appear to deprive the petitioner of his defense in the original information, *i.e.*, the petitioner's branches in Dagupan and San Fernando were registered only in 2003 and were therefore "inexistent" in 2001. However, this is not the kind of defense contemplated under the Rules of Criminal Procedure, and broadly under the due process of law.

Contrary to the petitioner's claim, the opportunity given to the accused to present his defense evidence during the preliminary investigation is not exhaustive. In the same manner that the complainant's evidence during preliminary investigation is only required to establish the minimal evidentiary threshold of probable cause, the evidence that the respondent may present during trial is not limited to what he had presented during the preliminary investigation, so long as the evidence for both parties supports or negates the elements of the offense charged.

To be sure, the jurisprudential test on whether a defendant is prejudiced by the amendment of an information pertains to the availability of the same defense and evidence that the accused

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issue of evident bad faith or manifest partiality in the preliminary investigation *as to the alleged illegal dismissal*, the Court ordered that the accused be given opportunity to thoroughly adduce evidence on the matter.

[37] Per petitioner's own petition, he indicated his address as follows: No. 31-G Roces Avenue, Quezon City.

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previously had under the original information. This test, however, must be read together with the characteristic thread of formal amendments, which is to maintain the nature of the crime or the essence of the offense charged.[38]

In the present case, this thread remained consistently under the amended information, alleging the petitioner's failure to file his return and consequently to pay the correct amount of taxes. Accordingly, the petitioner could not have been surprised at all.

We also reject for lack of merit petitioner's claim that the inclusion of the phrase "doing business under the name and style of Mendez Medical Group" after his preliminary investigation and arraignment deprives him of the right to question the existence of this "entity."

The petitioner however has not drawn our attention to any of his related operations that actually possesses its own juridical personality. In the original information, petitioner is described as "sole proprietor of Weigh Less Center." A sole proprietorship is a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof, like the petitioner-accused, to secure licenses and permits, register the business name, and pay taxes to the national government *without acquiring juridical or legal personality of its own*.[39]

In the amended information, the prosecution additionally alleged that petitioner is "doing business under the name and style of 'Weigh Less Center'/Mendez Medical Group.'" Given the nature of a sole proprietorship, the addition of the phrase "doing business under the name and style" is merely descriptive of the nature of the business organization established by the petitioner as a way to carry out the practice of his profession. As a phrase descriptive of a sole proprietorship, the petitioner cannot feign ignorance of the "entity" "Mendez Medical Group"

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[38] *People v. Casey*, No. L-30146, February 24, 1981, 103 SCRA 21.

[39] *Juasing Hardware v. Hon. Mendoza, etc., et al.*, 201 Phil. 369 (1982); and *Mangila v. Court of Appeals*, 435 Phil. 870 (2002).

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because this entity is nothing more than the shadow of its business owner — petitioner himself.

At any rate, we agree with the prosecution that petitioner has no reason to complain for the inclusion of the phrase "Mendez Medical Group." In the Reply-Affidavit it submitted during the preliminary investigation, the prosecution has attached copies of petitioner's paid advertisements making express reference to "Mendez Medical Group."[40]

WHEREFORE, premises considered, we **DISMISS** the petition for lack of merit, with costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *del Castillo,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 181676. June 11, 2014]

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **SANNAEDLE CO., LTD.,** *respondent.*

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[40] Records, Volume 1, pp. 144-149. In fact, in the certification issued by the Philippine Star in connection with petitioner's paid advertisements, it confirmed the prosecution's position when it stated that petitioner requested it "to advertise his businesses in the names of Weighless Center/Body and Face by Mendez/Mendez Medical Group" (*Id.* at 219).

[*] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe per Raffle dated June 9, 2014.