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of suffrage likewise under this name. There is therefore ample justification to grant fully her petition which is not whimsical but on the contrary is based on a solid and reasonable ground, *i.e.* to avoid confusion.

WHEREFORE, the Order appealed from is hereby modified in that the petitioner is allowed to change not only her first name but also her surname so as to be known as ESTRELLA S. ALFON. No costs.

SO ORDERED.

Barredo (Chairman), Aquino, Concepcion Jr., and *De Castro, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. L-41919-24. May 30, 1980]

QUIRICO P. UNGAB, *petitioner, vs.* **HON. VICENTE N. CUSI, JR., in his capacity as Judge of the Court of First Instance, Branch 1, 16th Judicial District, Davao City, THE COMMISSIONER OF INTERNAL REVENUE, and JESUS N. ACEBES, in his capacity as State Prosecutor,** *respondents.*

SYLLABUS

1. TAXATION LAW; NATIONAL INTERNAL REVENUE CODE; CRIMINAL PROSECUTION; WITHIN THE JURISDICTION OF THE COURT OF FIRST INSTANCE.— What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. While there can be no civil action

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to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.

2. ID.; ID.; ID.; PROTEST OF PETITIONER IN CASE AT BAR AGAINST THE ASSESSMENT OF THE DISTRICT REVENUE OFFICER CANNOT STOP HIS PROSECUTION FOR VIOLATION OF THE NATIONAL INTERNAL REVENUE CODE.— It has been ruled that a petition for reconsideration of an assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period of a criminal action for violation of law. Obviously, the protest of the petitioner against the assessment of the District Revenue Officer cannot stop his prosecution for violation of the National Internal Revenue Code.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* and prohibition with preliminary injunction and restraining order to annul and set aside the informations filed in Criminal Case Nos. 1960, 1961, 1962, 1963, 1964, and 1965 of the Court of First Instance of Davao, all entitled: "*People of the Philippines, plaintiff, versus Quirico Ungab, accused*"; and to restrain the respondent Judge from further proceeding with the hearing and trial of the said cases.

It is not disputed that sometime in July, 1974, BIR Examiner Ben Garcia examined the income tax returns filed by the herein petitioner, Quirico P. Ungab, for the calendar year ending December 31, 1973. In the course of his examination, he discovered that the petitioner failed to report his income derived from sales of banana saplings. As a result, the BIR District Revenue Officer at Davao City sent a "Notice of Taxpayer" to the petitioner informing him that there is due from him (petitioner) the amount of ₱104,980.81, representing income, business tax and forest charges for the year 1973 and inviting petitioner to an informal conference where the petitioner, duly assisted by counsel, may present his objections to the findings

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of the BIR Examiner.[1] Upon receipt of the notice, the petitioner wrote the BIR District Revenue Officer protesting the assessment, claiming that he was only a dealer or agent on commission basis in the banana sapling business and that his income, as reported in his income tax returns for the said year, was accurately stated. BIR Examiner Ben Garcia, however, was fully convinced that the petitioner had filed a fraudulent income tax return so that he submitted a "Fraud Referral Report," to the Tax Fraud Unit of the Bureau of Internal Revenue. After examining the records of the case, the Special Investigation Division of the Bureau of Internal Revenue found sufficient proof that the herein petitioner is guilty of tax evasion for the taxable year 1973 and recommended his prosecution:

(1) For having filed a false or fraudulent income tax return for 1973 with intent to evade his just taxes due the government under Section 45 in relation to Section 72 of the National Internal Revenue Code;

(2) For failure to pay a fixed annual tax of ₱50.00 a year in 1973 and 1974, or a total of unpaid fixed taxes of ₱100.00 plus penalties of ₱75.00 or a total of ₱175.00, in accordance with Section 183 of the National Internal Revenue Code;

(3) For failure to pay the 7% percentage tax, as a producer of banana poles or saplings, on the total sales of ₱129,580.35 to the Davao Fruit Corporation, depriving thereby the government of its due revenue in the amount of ₱15,872.59, inclusive of surcharge.[2]

In a second indorsement to the Chief of the Prosecution Division, dated December 12, 1974, the Commissioner of Internal Revenue approved the prosecution of the petitioner.[3]

Thereafter, State Prosecutor Jesus Acebes, who had been designated to assist all Provincial and City Fiscals throughout the Philippines in the investigation and prosecution, if the evidence warrants, of all violations of the National Internal Revenue

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[1] *Rollo*, p. 134.

[2] *Id.*, pp. 136; 140.

[3] *Id.*, p. 141.

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Code, as amended, and other related laws, in Administrative Order No. 116 dated December 5, 1974, and to whom the case was assigned, conducted a preliminary investigation of the case, and finding probable cause, filed six (6) informations against the petitioner with the Court of First Instance of Davao City, to wit:

(1) Criminal Case No. 1960 — Violation of Sec. 45, in relation to Sec. 72 of the National Internal Revenue Code, for filing a fraudulent income tax return for the calendar year ending December 31, 1973;[4]

(2) Criminal Case No. 1961 — Violation of Sec. 182 (a), in relation to Secs. 178, 186, and 208 of the National Internal Revenue Code, for engaging in business as producer of saplings, from January, 1973 to December, 1973, without first paying the annual fixed or privilege tax thereof;[5]

(3) Criminal Case No. 1962 — Violation of Sec. 183 (a), in relation to Secs. 186 and 209 of the National Internal Revenue Code, for failure to render a true and complete return on the gross quarterly sales, receipts and earnings in his business as producer of banana saplings and to pay the percentage tax due thereon, for the quarter ending December 31, 1973;[6]

(4) Criminal Case No. 1963 — Violation of Sec. 183 (a), in relation to Secs. 186 and 209 of the National Internal Revenue Code, for failure to render a true and complete return on the gross quarterly sales receipts and earnings in his business as producer of saplings, and to pay the percentage tax due thereon, for the quarter ending on March 31, 1973;[7]

(5) Criminal Case No. 1964 — Violation of Sec. 183 (a), in relation to Secs. 186 and 209 of the National Internal Revenue Code, for failure to render a true and complete return on the gross quarterly sales, receipts and earnings in his business as producer of banana saplings for the quarter ending on June 30, 1973, and to pay the percentage tax due thereon;[8]

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[4] *Id.*, p. 11.

[5] *Id.*, p. 13.

[6] *Id.*, p. 15.

[7] *Id.*, p. 17.

[8] *Id.*, p. 19.

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(6) Criminal Case No. 1965 — Violation of Sec. 183 (a), in relation to Secs. 186 and 209 of the National Internal Revenue Code, for failure to render a true and complete return on the gross quarterly sales, receipts and earnings as producer of banana saplings, for the quarter ending on September 30, 1973, and to pay the percentage tax due thereon.[9]

On September 16, 1975, the petitioner filed a motion to quash the informations upon the grounds that: (1) the informations are null and void for want of authority on the part of the State Prosecutor to initiate and prosecute the said cages; and (2) the trial court has no jurisdiction to take cognizance of the above-entitled cases in view of his pending protest against the assessment made by the BIR Examiner.[10] However, the trial court denied the motion on October 22, 1975.[11] Whereupon, the petitioner filed the instant recourse. As prayed for, a temporary restraining order was issued by the Court, ordering the respondent Judge from further proceeding with the trial and hearing of Criminal Case Nos. 1960, 1961, 1962, 1963, 1964, and 1965 of the Court of First Instance of Davao, all entitled: "*People of the Philippines, plaintiff, versus Quirico Ungab*, accused."

The petitioner seeks the annulment of the informations filed against him on the ground that the respondent State Prosecutor is allegedly without authority to do so. The petitioner argues that while the respondent State Prosecutor may initiate the investigation of and prosecute crimes and violations of penal laws when duly authorized, certain requisites, enumerated by this Court in its decision in the case of *Estrella vs. Orendain*,[12] should be observed before such authority may be exercised; otherwise, the provisions of the Charter of Davao City on the functions and powers of the City Fiscal will be meaningless because according to said charter he has charge of the prosecution of all crimes committed within his jurisdiction; and since

[9] *Id.*, p. 21.

[10] *Id.*, p. 23.

[11] *Id.*, p. 40.

[12] G.R. No. L-19611, February 27, 1971; 37 SCRA 640.

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"appropriate circumstances are not extant to warrant the intervention of the State Prosecution to initiate the investigation, sign the informations and prosecute these cases, said informations are null and void." The ruling adverted to by the petitioner reads, as follows:

"In view of all the foregoing considerations, it is the ruling of this Court that under Sections 1679 and 1686 of the Revised Administrative Code, in any instance where a provincial or city fiscal fails, refuses or is unable, for any reason, to investigate or prosecute a case and, in the opinion of the Secretary of Justice it is advisable in the public interest to take a different course of action, the Secretary of Justice may either appoint as acting provincial or city fiscal, to handle the investigation or prosecution exclusively and only of such case, any practicing attorney or some competent officer of the Department of Justice or office of any city or provincial fiscal, with complete authority to act therein in all respects as if he were the provincial or city fiscal himself, or appoint any lawyer in the government service, temporarily to assist such city of provincial fiscal in the discharge of his duties, with the same complete authority to act independently of and for such city or provincial fiscal, provided that no such appointment may be made without first hearing the fiscal concerned and never after the corresponding information has already been filed with the court by the corresponding city or provincial fiscal without the conformity of the latter, except when it can be patently shown to the court having cognizance of the case that said fiscal is intent on prejudicing the interests of justice. The same sphere of authority is true with the prosecutor directed and authorized under Section 3 of Republic Act 3783, as amended and/or inserted by Republic Act 5184. The observation in *Salcedo vs. Liwag, supra,* regarding the nature of the power of the Secretary of Justice over fiscals as being purely over administrative matters only was not really necessary, as indicated in the above relation of the facts and discussion of the legal issues of said case, for the resolution thereof. In any event, to any extent that the opinion therein may be inconsistent herewith, the same is hereby modified."

The contention is without merit. Contrary to the petitioner's claim, the rule therein established had not been violated. The respondent State Prosecutor, although believing that he can proceed independently of the City Fiscal in the investigation and prosecution of these cases, first sought permission from

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the City Fiscal of Davao City before he started the preliminary investigation of these cases, and the City Fiscal, after being shown Administrative Order No. 116, dated December 5, 1974, designating the said State Prosecutor to assist all Provincial and City fiscals throughout the Philippines in the investigation and prosecution of all violations of the National Internal Revenue Code, as amended, and other related laws, graciously allowed the respondent State Prosecutor to conduct the investigation of said cases, and in fact, said investigation was conducted in the office of the City Fiscal.[13]

The petitioner also claims that the filing of the informations was precipitate and premature since the Commissioner of Internal Revenue has not yet resolved his protests against the assessment of the Revenue District Officer; and that he was denied recourse to the Court of Tax Appeals.

The contention is without merit. What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the National Internal Revenue Code which is within the cognizance of courts of first instance. While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code.

"The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax."[14]

"An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully

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[13] *Rollo*, p. 35.

[14] *Guzik vs. U.S.*, 54 F2d 618.

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filed a fraudulent return with intent to evade and defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime."[15]

Besides, it has been ruled that a petition for reconsideration of an assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period of a criminal action for violation of law.[16] Obviously, the protest of the petitioner against the assessment of the District Revenue Officer cannot stop his prosecution for violation of the National Internal Revenue Code. Accordingly, the respondent Judge did not abuse his discretion in denying the motion to quash filed by the petitioner.

WHEREFORE, the petition should be, as it is hereby dismissed. The temporary restraining order heretofore issued is hereby set aside. With costs against the petitioner.

SO ORDERED.

Barredo (Chairman), Aquino, Abad Santos, and *De Castro, JJ.,* concur.

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[15] Merten's *Law of Federal Income Taxation*, Vol. 10, Sec. 55A.05, p. 21.

[16] *People vs. Ching Lak alias Ang You Chu*, L-10609, May 23, 1958.