May 23, 1962

LILIA DE JESUS SEVILLA,
Petitioner,

- versus -

C.T.A. CASE No. 344

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - -x

DECISION

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue assessing against and demanding from petitioner Lilia de Jesus Sevilla the sum of ₱111,056.84, as amusement tax and surcharge on the gross proceeds from bullfight exhibitions held in Manila during the period from December 31, 1954 to February 6, 1955, plus ₱600.00 as compromise penalty.

The petitioner is a lawyer and a businesswoman, who, sometime in June, 1954, was introduced by one Rene Nieto to Jesus Sto. Tomas Cortes (Jes Cortes for short), now deceased, a well known operator and promoter of sports exhibitions and other entertainments in the Philippines. On this meeting, Jes Cortes broached the subject of promoting the first bullfight exhibitions in the Philippines and pictured to her its financial success. Because the staging of bullfights requires a considerable amount of money, and not being in a position to raise the capital, he proposed that petitioner undertake the raising of working capital for the venture to which proposal the latter agreed.

On August 20, 1954, the petitioner gave Jes Cortes a special power to enter into a contract with the representatives of the bullfight troupe from Lisbon, Portugal (Exh. 1, p. 166, Vol. III, BIR rec.). On August 26, 1954, Jes Cortes concluded personally and in his own name a bullfight contract with David Rodriguez Barrote, representing Alfredo Da Silva Ovelha, Empresario and Manager of the Portuguese Bullfight Troupe (Exh. A, pp. 51-56, CTA rec.).

On October 10, 1954, Jes Cortes and the petitioner entered into a "Contract of Management," wherein the former was denominated as promoter and the latter as general manager of the bullfight. Among others, the contract provided:

> "That the said AGENT, as General Manager, shall arrange and provide a working capital for the operations of the PROMOTER, by means of an overdraft or overdrafts in one or more of the banking institutions of the City of Manila, in such sums as maybe, from time to time, necessary and proper not to exceed in the sum total at any one time, the sum of ONE HUNDRED THOUSAND (₱100,000.00) PESOS, and does hereby warrant that said working capital shall be available in the said requisite sums, promising and agreeing, whenever

> necessary, to guarantee the repayment of the said overdrafts unto the interested banking institutions the pledge of the faith and credit of the said Agent, to the entire satisfaction of the interested banking institutions, or other creditors, if any." (Par. II, Exh. D, pp. 59, 60 CTA rec.).

Subsequently, the petitioner entered into contracts (Exh. 5, pp. 156-157, Vol. III, BIR rec.) with the Tabacalera granting the latter "exclusive right to use for the advertisement of its products the bullfights which shall be held in Manila," and with Harry Lyons, Inc. for the construction by the latter of the bullfight arena.

On December 3, 1954, Jes Cortes secured from the Director of Lands a permit to occupy and construct a bullfight arena in the Sunken Garden (Exh. H-7, p. 74, CTA rec.).

There were actually seven (7) bullfight exhibitions held between December 31, 1954 to February 6, 1955. Before, during and after the exhibitions were held, the petitioner kept the books of accounts; caused the printing of handbills and tickets and the sale of the latter; and employed the personnel needed for the operation of the bullfight venture. She also provided the venture with a working capital in the total amount of ₱170,000.00.

On the basis of the gross proceeds derived from the bullfight exhibitions, respondent assessed and demanded from petitioner the amount of ₱111,056.84, as amusement tax and surcharge, plus ₱600.00 as compromise penalty for failure to register the books of accounts with the Bureau of Internal Revenue (Exh. 23, pp. 250-251, Vol. I, BIR rec.).

Her request for reconsideration of the assessment and demand having been denied by respondent (Exh. R, p. 88 CTA rec.), petitioner appealed to this Court.

There is no question as to the correctness of the amount of amusement tax sought to be collected by the respondent. The only issue presented to us for determination is whether or not petitioner Lilia de Jesus Sevilla is the proprietor or operator of the bullfight exhibitions as to be subject to amusement tax under Section 260 of the Tax Code.

The petitioner contends that Jes Cortes is the operator and promoter of the bullfight exhibitions, and that she is merely the financier and capitalist thereof. Consequently, citing Blaquera vs. Estefania Vda. de Aldaba, G.R. No. L - 10534, petitioner suggests that she is not liable for the payment of amusement tax in question.

The contention of petitioner is belied by circumstances attending the bullfight exhibitions. Firstly, there is the special power of attorney, Exhibit 1, whereby the petitioner authorized Jesus Sto. Tomas Cortes " to enter into contract with David Rodriguez representing Empresario Alfredo Da Silva Ovelha for the exhibition of the bullfights in Manila." This special power of attorney has never been revoked. Considered with the other circumstances hereafter discussed, it is conclusive of the status of the petitioner as operator of the bullfight exhibitions.

Instead of buttressing petitioner's contention that she was not the operator of the exhibitions, the contract, Exhibit D, executed between Cortes and the petitioner, contradicts the same. By the stipulation contained in this contract, the petitioner "shall arrange and provide a working capital for the operations of the promoter x x x x not to exceed in the sum total at any one time, the sum of ONE HUNDRED THOUSAND (₱100,000.00) PESOS," for the repayment of which the promoter shall mortgage or hypothecate his assets and properties. From this stipulation, it is evident that the petitioner is likewise the capitalist or financier of the undertaking. While it is true that merely being the capitalist or financier thereof does not necessarily subject her to the amusement tax, yet this circumstance may be considered with others in determining such tax liability. In the case at bar, we find the abovementioned monetary provision as furnishing basis to petitioner's liability for the amusement tax in question as the operator.

Furthermore, the contract entered into by the petitioner with Harry Lyons, Inc. for the construction by the latter of the bullfight arena (Exh. 2, pp. 147-150, Vol. III, BIR rec.), and that one whereby, for the sum of ₱7,500.00, she granted to Tabacalera the exclusive right to use for the advertisements of its products the bullfights which shall be held in Manila (Exh. 5, pp. 156-157, Vol. III, BIR rec.) bolster our finding that the petitioner is the operator of the bullfights.

Finally, the various acts of the petitioner consisting of the taking over the disbursements and the receipts from the gate during the bullfight exhibitions; the keeping of the books of accounts; causing the printing of tickets and handbills; and the appointment of a manager, employees and laborers therein likewise establish to our satisfaction that she is the operator of the bullfight exhibitions, and therefore, is liable for the payment of amusement tax in pursuance of Section 260 of the Tax Code.

The case of Blaquera vs. Estefania Vda. de Aldaba, et al., supra, is distinguishable from and inapplicable to the case at bar. In the former, almost all of the details of the opera presentation was taken care of by the National Opera Company, not by Vda. de Aldaba. All that she did in connection with the presentation was to furnish funds as advances and to take steps to assure the reimbursement of the same by the company. In the instant case, the petitioner, in addition to financing the bullfight exhibitions, empowered Jes Cortes to engage the services of the Portuguese bullfight troupe and performed many details of the bullfight exhibitions.

With respect to the sum of ₱600.00 sought to be collected for failure to register her books of accounts, petitioner can not be compelled to pay the said amount in the absence of a compromise agreement between her and respondent. (Central Azucarera de Tarlac vs. Coll. of Int. Rev., G.R.

No. L-11760 & L-11761, July 31, 1958; Western Mindanao Dev. Co., Inc. vs. Coll. of Int. Rev., G.R. No. L-11710, June 30, 1958).

WHEREFORE, the decision appealed from is hereby affirmed, except with respect to the sum of ₱600.00 sought to be collected as compromise penalty. With costs against petitioner.

SO ORDERED.

Manila, May 23, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge