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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ESTEFANIA VDA. DE ALDABA,
Petitioner,

- versus - C.T.A. CASE NO. 198

SILVERIO BLAQUERA, as
Collector of Internal Revenue,
Respondent.

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Feb. 27, 1956

DECISION

This is an action contesting the legality of respondent Collector of Internal Revenue's decision assessing and demanding from the petitioner herein the amount of ₱3,271.41, representing amusement tax, inclusive of surcharge, allegedly due on the receipts of an opera performance of "Madame Butterfly", held under the auspices of the National Opera Company on January 18, 1952 at the Far Eastern University Auditorium.

It appears that the petitioner herein, Estefania Vda. de Aldaba, is the mother of Dalisay Aldaba who played the stellar role of "Cio-Cio-San" in the opera performance of "Madame Butterfly" shown to the public on January 18, 1952 at the Far Eastern University Auditorium. This opera presentation was held under the auspices of the National Opera Company for the purpose of raising funds for the victims of the Hibok-Hibok volcano debacle. The petitioner herein supplied the funds which the National Opera Company used in its presentation of said opera show. It appearing that the aforementioned opera presentation was sponsored, managed and presented by the National Opera Company, the respondent Collector of Internal Revenue on August 30, 1952 pursuant to section 260 of our Tax Code assessed against Juan Javier, president of the National Opera Company, the sum of ₱3,271.41 as amusement tax and surcharge on the receipts derived from said opera presentation. Mr. Juan Javier, however, contested said assessment and disclaimed responsibility for the payment of the amusement tax. Instead, he pointed to Estefania Vda. de Aldaba as the person liable on said tax by virtue of a contract entered into on December 17, 1951 by and between said Mrs. Aldaba and Manuel Javier, manager of the National Opera Company and son of Juan Javier, the company's president.

On the strength of said contract (Exh. "3" resp. p. 15 BIR record) and upon the recommendation of Senior BIR Agent Moises San Agustin, who investigated the case, the Collector of Internal Revenue on March 27, 1953 assessed and demanded payment of amusement tax and surcharge from the petitioner herein as financier and capitalist of the opera show, in the amount of ₱3,271.41 computed as follows:

PRICES	TICKETS SOLD	RATE OF TAX	AMOUNT DUE
₱25.00	117	₱5.65	₱ 661.05
20.00	205	4.50	922.50
15.00	166	3.38	561.08
10.00	210	2.25	472.50
		TOTAL ----------	₱2,617.13
		25% SURCHARGE --	654.28
		TOTAL AMOUNT DUE --	₱3,271.41

The petitioner in her answer to respondent on April 15, 1953 denied responsibility for said amusement tax and surcharge. However, on July 13, 1953, the petitioner offered as a compromise settlement the amount of ₱500.00 and requested that the case be referred to the Conference Staff of the Bureau of Internal Revenue. The Conference Staff rejected the offer of compromise and affirmed the decision of the respondent, holding the petitioner liable for the amusement tax and surcharge mentioned earlier. The petitioner then requested for a reconsideration and a formal hearing of the case before the Conference Staff which was granted.

In the formal hearing before the Conference Staff, petitioner claimed that she merely loaned Manuel Javier, manager of the National Opera Company, the capital which was used by the said company in its presentation of the opera "Madame Butterfly" with the understanding that the same would be repaid as soon as the company were with funds. Petitioner, through counsel filed a memorandum with the Conference Staff maintaining that she was not liable for the amusement tax and surcharge assessed against her because (1)The admission fees to the opera presentation of "Madame Butterfly" were not taxable; (2) Granting that they were taxable, only 50% of the receipts should be taxed; (3) Petitioner is neither a proprietor, lessee, nor operator of a place of amusement within the purview of section 260 of the Tax Code; and (4) If there is anyone liable for the amusement tax, it is the National Opera Company which sponsored, managed and presented the opera "Madame Butterfly" shown to the public on January 18, 1952.

The Conference Staff on July 10, 1955 made a finding against the petitioner and held her liable for the aforementioned amusement tax and surcharge. On October 11, 1955, the petitioner received a letter-demand from respondent Collector of Internal Revenue informing her of the adverse decision of the Conference Staff and reiterating the demand for payment of the abovementioned amusement tax and surcharge. On October 19, 1955, petitioner filed with the Court this petition for review. The petitioner on December 5, 1955, also filed with the Court an urgent petition to suspend the collection of the tax with an offer to post a bond in double the amount of the tax sought to be collected to guarantee payment of said liability. In view of the acceptance by the respondent Collector of Internal Revenue of the bond offered to answer for the tax liabilities that might be determined and the fact that the respondent agreed to hold in abeyance the collection of the tax, the Court found it unnecessary to resolve the aforesaid urgent petition.

At the hearing of this case on the merits, no witnesses were presented to bolster the stand of either party. Instead, they agreed to submit for the consideration of the Court, the records of the hearing before the Conference Staff of the Bureau of Internal Revenue, and all the records of the Bureau of Internal Revenue exclusively pertaining to this tax case. The parties also submitted additional documentary evidence for the appraisal of the Court.

We would like to emphasize that the correctness of respondent's assessment has not been impugned by petitioner. The only issues raised by petitioner for resolution by this Court are as follows:- (1) Are the receipts to the opera performance of "Madame Butterfly" presented to the public on January 18, 1952 taxable under the provisions of section 260 of our Tax Code? (2) In the event they are taxable, should they not be extended the benefit of 50% exemption found in section 261 of the same Code? and (3) Who comes within the purview of "proprietor, lessee or operator of a place of amusement" as contemplated by section 260 of the Tax Code, Mrs. Estefania Vda. de Aldaba or the National Opera Company?

As to the first issue, petitioner claims that the admission fees to the opera performance of "Madame Butterfly" are not taxable under the provisions of section 260 of the Tax Code inasmuch as said presentation was but one, single, isolated performance or showing. We do not see any merit to this contention of the petitioner as the law involved makes no such distinction.

The amusement tax contemplated in section 260 of the Tax Code is not a tax on the right or privilege to hold or stage a show or performance. Neither is it a tax on the theater or place of amusement. The tax in said section of our Tax Code is one imposed on the admission to theaters or places of amusement. It is therefore a tax on the right or privilege to enter the places of amusement enumerated in said section 260 of the Tax Code. Whether or not there was but a single, isolated presentation or whether it is a regularly run or managed show staged in a place of amusement is not a determinative factor in determining the obligation to collect the tax. The amusement tax will always attach and be collectible whenever and wherever admission prices are charged for the privilege to enter any place of amusement coming within the purview of those enumerated in section 260 of the Tax Code, unless there is an express statutory exemption on the same.

As to the second issue, petitioner claims that in the event the admission fees on said opera in question is taxable, the benefits of the 50% exemption allowed by section 261 of the Tax Code should be extended to the opera performance of January 18, 1952, because the same was held for the purpose of raising funds to help the hapless victims of the Hibok-Hibok volcano disaster.

Section 261 of the Tax Code as amended by Republic Act No. 586 which petitioner invokes to be applied reads:

> "Sec. 261. Admission tax payable by charitable institutions:- Where the admission fees or charges are collected by or for and in behalf of a duly registered charitable institution or association, the tax on such admission fees or charges shall be 50% of the rates provided in section 260 of this Code." (Underscoring supplied)

We find the aforecited law clear and precise. Before the amendment of section 261 by Republic Act No. 586, admission fees to theaters and other places of amusement were totally exempt from amusement tax whenever they were held for and by religious, charitable, educational or scientific associations or institutions. But motivated perhaps by the government's desire for increased revenues and aware that so many benefit shows or performances were being held for pseudo-religious, scientific, charitable or educational groups, our legislators deemed it wise to limit this grant of exemption. After the amendment introduced by Republic Act No. 586, the exemption was limited to only 50% of the taxable receipts, and only when there is a showing that the exhibition is being held by or for and in behalf of a duly registered charitable association or institution. From this Act of the legislature we can deduce that they did not intend to grant the 50% exemption to every show or performance the object of which is fund-raising for charitable purposes. One of the requisites to be fulfilled in order that this provision of law may be availed of is that the admission fees or charges must be collected by or for and in behalf of a duly registered charitable association or institution. It is not enough that the organization or association was formed for charitable purposes, it is also essential that such association or institution be duly registered, and the petitioner is admittedly not.

While it appears in the present case that the funds were raised for the victims of the Hibok-Hibok disaster and given through the Social Welfare Administration, it has not been shown that the admission fees to the opera performance in question have been collected by or for and in behalf of a 'duly registered charitable organization or institution'. Inasmuch as the beneficiary for whom and in whose behalf the admission fees were collected is not a duly registered charitable institution or association, the benefits of section 261 of the Tax Code can not be availed of. It is an oft-repeated principle in taxation that tax exemptions must be strictly construed against the person claiming such exemption. Hence, this Court is constrained to hold that the 50% exemption found in section 261 of the Tax Code is not applicable to the case at bar.

As to the third and last issue, petitioner claims that she is not the proprietor, lessee, or operator of an amusement place within the purview of section 260 of our Tax Code; that at most, she merely advanced the funds to finance the show by way of a loan to the National Opera Company thru Manuel Javier with the understanding that the same would be repaid as soon as the company is in a position to do so; that it was the National Opera Company which sponsored, managed, produced and presented to the public the opera presentation "Madame Butterfly" on January 18, 1952; and that the National Opera Company, therefore, is the entity liable to the amusement tax and surcharge sought to be collected.

On the other hand, the respondent maintains that by virtue of the contract, Exhibit "3" resp. (pp. 14 and 15 BIR records) entered into by and between petitioner and Manuel Javier, the latter, as well as the National Opera Company represented by Juan Javier were but employees of the petitioner. Respondent further argues that the "moving power behind the presentation of the opera "Madame Butterfly" was the petitioner, and therefore she is the person liable for the amusement tax and surcharge assessed by the respondent on the admission receipts to the presentation of January 18, 1952.

The person liable under said section 261 is the "proprietor, lessee, or operator" of the place of amusement. Hence, the crux of the present question is whether the petitioner falls within the definition of any of the terms employed by the law. As defined by lexicographers:

> "A proprietor is one who has the legal right of exclusive title to anything, whether in possession or not; an owner, sometimes, especially in statutory construction, in a wider sense, a person having interest less than absolute and exclusive right, as the usufruct, present control and use, of property" (Vol. II Merriam-Webster 2d ed. p. 1986).

> "An operator - (1) in general, one who or that which operates; as (a) one who produces and effect or does something; an agent; (b) one who does appropriate practical operations, as in business, art, or science; a professional or official performer of such work." (II Merriam-Webster 2d ed. p. 1707).

We believe that the respondent failed miserably in his attempt to make Mrs. Estefania Vda. de Aldaba fall within the purview of the terms "proprietor, lessee, or operator of a place of amusement." Respondent mainly relied on the contract (Exhibit "3", respondent, pp. 14 and 15 BIR records) dated December 17, 1951, executed by and between the petitioner, and the letter of Manuel Javier to the respondent Collector (Exhibit "2" respondent, p. 16 BIR records) as well as the indorsements of Revenue Agents Moises San Agustin and Jaime Mejia (Exhibit "4", respondent pp. 18 & 19, BIR records and Exhibit "8", respondent, p. 34 BIR records). Respondent did not in any way present extraneous and independent corroborative evidence, testimonial or documentary, to support his conclusion that:

"The moving force who put 'activity, managed, conducted or carried out or through' the presentation Madame Butterfly was the petitioner, employer of Manuel Javier and Juan Javier and/or the National Opera Company. It was she who financed and superintended the affair as is evident from the specifications of the contract. As the capitalist of the show, she, (the petitioner) had had an absolute control over the presentation to the extent that it was she who named the members of the cast to be hired at fixed compensation which she herself set and paid. Moreover, the 'balance of proceeds of the advertisements' was turned to petitioner and the receipts from the sales of the tickets were likewise received by her. All these unmistakably show that the petitioner, in so far as 'Madame Butterfly' is concerned, was more than an operator; in fact, she was the owner or proprietor of the presentation. This observation is strengthened by the fact that the alleged loan granted by petitioner to Manuel Javier was never secured at all. Obviously, every centavo spent for the venture was for her own account just as the profits realized therefrom inured to her benefits---an operation which only an owner or proprietor or operator could have carried out."

There are so many vital links missing in the presentation of respondent's case that make us seriously doubt the correctness of respondent's decision. On the other hand, several established facts convinces the Court that the respondent has erred in his decision holding the petitioner liable for the amusement tax and surcharge in question.

The records show, and it has been admitted by respondent, both through his memorandum and the decision of the Conference Staff dated July 10, 1955, that the "preparations for the presentation of 'Madame Butterfly' was not undertaken by petitioner but by the National Opera Company. Thus -

"It appears that almost all of the details of the performance was taken care of by the National Opera Company, thru either

> Manuel or Juan Javier. Thus, the application for solicitation permit granted the National Opera Company by the Social Welfare Administration was signed by Manuel Javier; the orders for the printing of the souvenir programs and tickets, wherein was indicated the performance was under the spônsorship of the National Opera Company, were undertaken under the name of said company by Manuel Javier; the contracts for the services of the cast and conductor of the performance were signed by Manuel Javier; the contributions to the Social Welfare Administration was made in the name of the National Opera Company." (p. 8 decision of the Conference Staff, dated July 10, 1955, p. 102 BIR records).

The profit and loss statement of the opera presentation was likewise certified to the Bureau of Internal Revenue by the National Opera Company signed by Juan Javier. Furthermore, Manuel Javier in his letter to the Bureau of Internal Revenue (Exhibit "2" respondent p. 16 BIR records) admitted that Juan Javier owned "the score of the opera, costumes, settings, complete with furniture and other things needed on the stage on the date set for the performance."

In fact, in dealing with the public in general, and the government in particular, before and after the presentation, the National Opera Company appeared to be the sole sponsor, manager and producer of the performance shown to the public on January 18, 1952. Nowhere did the National Opera Company give even so much as a hint that Mrs. Estefania de Aldaba was the financier or capitalist of the whole show. Not even in the acknowledgment in the souvenir program (Exhibit "M-1" pet. p. 28 BIR records) was the name of petitioner Mrs. Estefania de Aldaba mentioned. If it were true that the petitioner was the moving spirit behind the whole show, surely the National Opera Company with its years of experience in opera presentation could not have made such a glaring omission, by acknowledging the help of persons who contributed less than the alleged "prime mover" of the show without so much as a word of thanks for the latter.

Respondent however, insists, that notwithstanding all the evidence showing that the National Opera Company was the one who sponsored, managed and presented the opera performance in question, yet the contract exhibit "3" between Mrs. Estefania de Aldaba and Manuel Javier made the National Opera Company thru Juan and Manuel Javier mere employees of the petitioner. Granting for the sake of argument that this were so, still the contract referred to being a contract, between private parties, only they were privy thereto and bound by it. In fact the respondent Collector of Internal Revenue would have no authority or basis to shift the burdens of taxation from one party who is called upon by law to answer for taxes to another person who is not so liable. If the petitioner under the contract, Exhibit "3", undertook to answer for any such tax liability, the same is a private one between petitioner and the National Opera Company and do not affect the burdens of taxation provided by law. (See La Insular vs. Machuca GO-Tanco 39 Phil. 567). The existence of a private contract should not in any manner shift the burden of responsibility of paying the tax from the person legally liable to pay the tax. Parties cannot by agreement "remove their transaction from the reach of dominant constitutional power" -- the power of taxation -- "by making contracts about them". (Norman v. Baltimore, 294 U.S. 240). As petitioner rightly observes, "such a practice would make it very easy for persons who should be legally liable to pay the tax to evade payment by merely entering into a contract with any other person not in a financial position to pay the tax."

All the acts established and proven to have been performed in presenting to the public the opera performance "Madame Butterfly" unmistakably show that it was not made by petitioner nor could she be deemed the "operator" of the same within the purview of said term as contemplated by section 260 of the Tax Code.

> "To operate-- means to manage or to conduct; to act or to control or to manage authoritatively; to operate means to direct or superintend--" (State vs. Thomas, Iowa 276 N.W. 619, 620 cited in 29 Words and Phrases, Permanent edition, pp. 537, 538.)

Our conclusion is now obvious: we are of the opinion and so hold that the petitioner, Mrs. Estefania Vda. de Aldaba is not and should not be held liable for the amusement tax and surcharge sought to be collected by the respondent.

PREMISES CONSIDERED, Estefania Vda. de Aldaba is hereby declared not liable for the payment of the amusement tax and surcharge assessed against her in the amount of ₱3,271.41. The decision of the respondent Collector of Internal Revenue should be as it is hereby modified in this respect, without prejudice to his taking the necessary steps to enforce the collection of the amusement tax and surcharge due on the receipts of the opera performance of "Madame Butterfly" held on

January 18, 1952, at the Far Eastern University Auditorium from the party or parties properly liable thereto. The bond filed by petitioner in this case is hereby cancelled and declared without force and effect.

Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, February 27, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge