

**SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL REVENUE,
PETITIONER, VS. ESTEPANIA VDA. DE ALDABA AND THE COURT OF
TAX APPEALS, RESPONDENTS.***G.R. No. 10534. March 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is an appeal from a decision of the Court of Tax Appeals exempting respondent Estefania Vda. de Aldaba from the payment of the amusement tax and surcharge due on the gross receipts from the presentation of the opera "Madame Butterfly" on January 18, 1952 at the Far Eastern University (FEU) Auditorium. The decision was rendered without prejudice to the Collector of Internal Revenue taking the necessary steps to enforce the collection of the said tax and surcharge from the party or parties properly liable thereto.

The opera performance aforementioned, which featured Dalisay Aldaba, daughter of herein respondent Estefania Vda. de Aldaba, in the female leading role; was presented for the benefit of the victims of the Hibok-Hibok volcano eruptions. No rental appears to have been paid for the use of the FEU Auditorium. The opera presentation, however, having been sponsored, managed and presented by the National Opera Company, the Collector of Internal Revenue, on August 30, 1952, pursuant to section 260 of the Internal Revenue Code, assessed against Juan Javier, president of the company, the sum of P3,271.41 as amusement tax and surcharge on the receipts derived therefrom. Mr. Juan Javier contested the assessment, alleging that the opera performance was for a charitable organization. As requested by him, he was given time to present the necessary papers in support of his allegation, but the time granted expired without any evidence having been submitted by him. However, Manuel Javier, his son and manager of the National Opera Company, wrote to the Collector of Internal Revenue, pointing to respondent Estefania Vda. de Aldaba as the person liable on said tax by virtue of a contract entered into between him and Mrs. Aldaba on December 17, 1951.

On the strength of said contract, and upon the recommendation of a BIR agent, who investigated the case, the Collector of Internal Revenue in his letter dated March 27, 1953, assessed and demanded payment of the amusement tax and surcharge aforementioned from the respondent Estefania Vda. de Aldaba as the "financier and capitalist" of the opera show.

Answering the letter, Mrs. Aldaba denied responsibility for said tax and submitted supporting papers to disprove her liability. Thereafter, upon her request the case was referred to the Conference Staff of the Bureau of Internal Revenue. The Conference Staff having sustained the decision of the Collector holding her liable for the tax in question, Mrs. Aldaba requested for a reconsideration and a formal hearing of the case, which was granted. In that hearing, Mrs. Aldaba testified that she merely loaned Manuel Javier, Manager of the National Opera Company, the funds which were used for the presentation of the opera, with the understanding that the same would be returned as soon as the company was with funds. She also, through counsel, filed a memorandum, contending, among other things, that she is neither a proprietor, lessee, nor operator of a place of amusement within the

purview of section 260 of the Tax Code; and that if there is anyone liable for the amusement tax, it is the National Opera Company which sponsored, managed and presented the opera in question.

The Conference Staff, however, refused to reconsider its finding as to Mrs. Aldaba's liability. And as the Collector of Internal Revenue reiterated the demand for the payment of the amusement tax and surcharge in question, Mrs. Aldaba on October 19, 1955 filed a petition for review with the Court of Tax Appeals.

At the hearing of the case on the merits in that court, no oral evidence was presented. Instead the parties agreed to submit the record of the Bureau of Internal Revenue pertaining to the case and certain documentary evidence.

Petitioner Aldaba now herein respondent, maintained as she did before the Conference Staff—that she was not the proprietor, lessee, or operator of an amusement place within the purview of section 260 of the Internal Revenue 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 was 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 and, therefore, it is the one liable to the amusement tax and surcharge sought to be collected.

The Collector of Internal Revenue on the other hand, claimed that by virtue of the contract entered into between Mrs. Aldaba and Manuel Javier, the latter, as well as the National Opera Company represented by Juan Javier were but employees of the said Mrs. Aldaba. She was, according to the Collector, the "moving power behind the presentation of the opera" and, therefore, the person liable for the amusement tax and surcharge assessed on the receipts therefrom.

Resolving the issues raised by the parties, the Court of Tax Appeals, on February 27, 1956, rendered its decision, which, as already stated, exonerated Mrs. Aldaba from the payment of amusement tax and surcharge. From that decision, the Collector of Internal Revenue filed the present petition for review.

The only question for determination as raised by the parties is whether or not respondent Estefania Vda. de Aldaba falls under any of the terms "proprietor, lessee, or operator of an amusement place" within the purview of section 260 of the Internal Revenue Code, which reads in part as follows:

"SEC. 260. Amusement Taxes.—There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement the following taxes:

"In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided * * *."

After going over the record, we agree with the court below that the question must be resolved in the negative.^[1] We quote with favor pertinent portions of the decision of that court:

"The person liable under said section 260 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 senses 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 an 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 (herein petitioner Collector of Internal Revenue) failed 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 Majia (Exhibit '4', respondent pp. 18 and 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, insofar 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 account just as the profits realized therefrom inured to her benefit—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 convince 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, 1956, 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 sponsorship 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 National Opera Company.¹' (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 given 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 'H-1 pet. 28, BIR records) was the name of petitioner Mrs. Estefania Vda. 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."

In the face of the above findings of the Court of Tax Appeals, which are all borne out by the record, petitioners claim that Manuel Javier, as manager of the National Opera Company, acted merely as herein respondent's employee or agent by virtue of the agreement signed by them, must be rejected. Indeed, there are strong reasons to believe that the agreement referred to was actually a contract of loan. As sworn to by Mrs. Aldaba before the Conference Staff, she agreed to furnish the funds needed for the presentation of the opera upon representations made by Manuel Javier that the said funds would be regarded merely as "advances" on her part to be reimbursed later as soon as the company would obtain funds of its own. She averred that she was, in a way, forced to do this after seeing that the National Opera Company, or Mr. Javier, did not have the necessary funds to go ahead with the performance of the opera "Madame Butterfly", because her daughter, Dalisay Aldaba, who had to come here from abroad, had already publicly announced that she was going to appear therein.

There are, to be sure, provisions in the contract in question purporting to show that Mrs. Aldaba undertook to pay the members of the cast in the opera show and certain personnel whose services shall be engaged by Manuel Javier. We believe, however, that these provisions were inserted in the contract for the purpose of assuring Mrs. Aldaba that the money she advanced to Mr. Javier would be used solely for the opera performance. The contract was, as pointed out by respondent in her brief, more of a budget plan showing how the amounts she had agreed to advance were to be used. Thus, the members of the cast and other personnel are specifically mentioned therein with their fixed corresponding pay. It is significant to note that the various contracts with the players and other personnel in the opera show were entered into and signed by Manuel Javier himself, with the express stipulation that he shall make the payment to them for their participation.

It was also provided in the contract that the "balance of the proceeds of the advertisements," after deducting therefrom the cost of printing the programs and tickets, shall be turned over to respondent Mrs. Aldaba. The stipulation, however, as stated by respondent in her brief, was made with the understanding that the said balance would be applied to the partial payment of the loan. No security having been given for the said loan, the stipulation, apparently, was intended to guarantee its payment.

It should here be stated that as the "financier and capitalist" of the stage presentation—to borrow petitioner's own words—herein respondent cannot be held liable for the amusement tax in question. Under section 260 of the Internal Revenue Code, the tax is imposed on the proprietor, lessee, or operator of the place of amusement and not on any person to whom the gross receipts are destined and eventually paid. (*Wong & Lee vs. Collector of Internal Revenue, et al.*, 104 Phil., 469; 55 Off. Gaz. [51] 10539.)

In view of the foregoing, the decision of the Court of Tax Appeals sought to be reviewed is hereby affirmed in toto, without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, and Barrera, JJ., concur.

Concepcion, J., reserves his vote.

Reyes, J.B.L., J., did not take part.

[1] Under Rep. Act. 722, an opera is exempt from the payment of any amusement tax on the receipts therefrom.

The law, however, took effect only June 6, 1952 and is therefrom not applicable to the opera here in question which was presented on January 18, 1952.

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