ANDRES BONIFACIO COLLEGE
Petitioner,

- versus - C.T.A. CASE NO. 2341

COMMISSIONER OF INTERNAL
REVENUE and REGIONAL DIRECTOR,
REVENUE REGION NO. 20,
Respondents.
X - - - - - - - - - - - - - - - - - X

1/26/81

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioner the total sum of ₱11,500.38 as deficiency income taxes for the years 1963, 1964, 1965 and 1969, inclusive of surcharges, interests and compromise penalties, and the sum of ₱1,476.30 as documentary stamp taxes and compromise penalties for the years 1965, 1968 and 1969, itemized as follows:

Deficiency Income Tax

1963 - - - -	₱ 3,193.84
1964 - - - -	3,849.92
1965 - - - -	4,011.92
1969 - - - -	444.70
Total	₱11,500.38

Documentary and Science Stamp Tax

1965 - - - -	₱ 154.40
1968 - - - -	852.90
1969 - - - -	469.00
Total	₱ 1,476.30

It appears that petitioner Andres Bonifacio College, located at Dipolog City, was assessed and required to pay the deficiency income taxes inclusive of penalties, in the total amount of ₱11,500.38, and documentary stamp taxes, inclusive of compromise penalties, in the total sum of ₱1,476.30. Petitioner had conceded, without qualification, its liability for the documentary stamp taxes and others in the amount of ₱1,476.30, not covered by its claim of exemption from income taxes.

On July 6, 1971, petitioner requested for reconsideration of the assessment on the ground that it is exempt from income tax under the provision of Section 27 (e) of the National Internal Revenue Code for being a domestic corporation organized and operated exclusively for educational purposes, no part of its net income inured to the benefit of any private individual. The request for reconsideration was denied by respondent Commissioner of Internal Revenue, thru his Regional Director of Region No. 20, and was received by petitioner on September 21, 1971. Hence, this appeal filed by petitioner on September 25, 1971.

During the hearing of this case, the evidence shows that petitioner Andres Bonifacio College is a non-stock corporation, a non-profit educational institution, no income of which, during the period from 1963 to 1969 inured to the benefit of the officers and members of its board of trustees, composed of Felicidad Amatong and her children.

As a matter of fact, when the school was first established in 1940 as a single proprietorship by its founder, the late Amando Amatong, it was organized for the sole purpose of promoting education and learning, and was endowed with properties and assets given or contributed by its founder. In August, 1941, the school was organized into a corporation, and was named "Andres Bonifacio Institute," presumably under the provisions of the Private School Law. (Comm. Act 180, Sec. 3) Despite its commitment to render educational service to the people, particularly in Zamboanga, it was never the recipient of any donation. (p. 31, t.s.n.) In order to be able to pursue its educational objectives, like all other school corporations, the Andres Bonifacio College depended on its capital secured from normal and usual channels, namely: (1) from fixed assets contributed by the Amatong family; (2) from loans granted to the school secured by the Amatong family (pp. 56-57, t.s.n.); (3) from profits or earned surplus, which were used to purchase its school equipments and plants. (pp. 7, 49, t.s.n.) The College operated continuously, and in accordance with its objectives and purposes, and its dedication to the pursuit of its objectives as a school was never denied nor attacked, either directly or indirectly by respondent Commissioner of Internal Revenue.(p. 14, t.s.n.).

Since its incorporation in 1941, petitioner was never required to pay income tax on its earnings until only in 1969 when, as aforesaid, it was assessed and required to pay deficiency income taxes by respondent for the years from 1963 to 1969 aforesaid.

Petitioner never declared any dividend distribution and none of its income inured to the benefit of the late founder Amando Amatong, or his widow, Felicidad Amàtong and her children (pp. 4-10, 49-50, 56, t.s.n.), the latter being the officers and members of the Board of Trustees. There were never any withdrawal of college funds in the form of dividends or profit distribution.(pp. 7, 22, 49-50, t.s.n.) The only money which Felicidad Amatong, or the members of her family received from the school were their salaries for services each of them rendered to the school.(pp. 9-10, 50, t.s.n.) The earned surplus of petitioner school were used, as aforesaid, to purchase its equipments and plants.(pp. 15, 49, t.s.n.) In 1963, out of its ₱12,748.00 net income, ₱7,705.00 was invested in the assets of the school; in 1964, out of its ₱16,422.92 net income, ₱12,986.06 was invested in its assets; in 1965, out of its ₱17,692.00 net income, ₱11,066.04 was invested in its assets; in 1966, out of its ₱16,128.00 net income, ₱11,836.12 was invested in its assets; in 1967, out of its ₱17,540.78 net income, ₱17,338.04 was invested in assets; in 1968, there was a loss due to fire, yet it still invested its funds in assets in the sum of ₱11,745.86. (pp. 8-9, t.s.n.)

Based upon the aforestated facts, and having conceded liability on documentary stamp tax and others, unqualifiedly, not covered by its claim for exemption, for the years 1965, 1968 and 1969, petitioner is bound to pay to respondent the sum of ₱1,476.30 as unpaid documentary stamps tax for the years 1965, 1968 and 1969.

The only issue left for resolution is whether or not petitioner is exempt from deficiency income tax liability for the years 1963, 1964, 1965 and 1969, under Section 27 (e) of the National Internal Revenue Code, which provides as follows:

> Sec. 27. Exemption from tax on corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such --
>
> x x x x x x x x x
>
> (e) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, cultural, or educational purposes, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual: Provided, however, That the income of whatever kind and character from any of its properties, real or personal,

> or from any activity conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under this Code;
>
> x x x x x x
>
> (Underlining Supplied)

The deficiency income tax assessments for the years 1963, 1964, 1965 and 1969 against petitioner were based on the findings of respondent's Examiner Acis D. Rollorata that petitioner is not exempt from income tax for the years in question because it is allegedly owned by only one person, that is by Felicidad Amatong and her children and that it was incorporated merely to comply with the requirements of law (p. 90, t.s.n.; see also Exh. 1, pp. 198-199, BIR rec.); that after the death of the late Amando Amatong, the College became an unregistered partnership between said Felicidad Amatong and her children (p. 90, t.s.n.); and that portion of income of said school were used to buy real properties under the name of the surviving spouse (Felicidad Amatong) of the late Amando Amatong (Exh. 1, supra.)

The Commissioner of Internal Revenue justified the legality of the assessment against petitioner and anchored its decision on the strength of a decision in the case of University of the Visayas vs. Comm. of Internal Revenue (G.R. No.

L-13554, Oct. 30, 1964; 12 SCRA 193), where the Supreme Court disregarded the corporate fiction of the University of the Visayas on account of the fact that there was actual diversion of the net income through their use in acquiring real properties admittedly belonging to the University but which were placed in the name of the president alone, or in the name of his wife, or both. (Ibid, at page 197.)

This Court believes that it was error to base petitioner's liability for the deficiency income tax in question upon the decision in the aforesaid case of the University of the Visayas, and is with the strongest opinion and we so hold, that the decision of the Supreme Court in the of V. G. Sinco Educational Corp. (100 Phil. 127), which is substantially similar in factual situation with this case, is more conclusive and authoritative. Note that in the University of the Visayas case, cited by respondent as its single authority, the University is a stock corporate school and the President therein and his wife are the controlling stockholders who held 85% capital stock of the university. (op. cit., pp. 196-197.) And as stated heretofore, the income of the university was diverted for the president's and his wife's personal use in acquiring properties which were placed in the name of the president, or his wife, or both. In the case of the Andres Bonifacio College, there is no evidence to point to the fact that its net incomes, particularly during the years 1963, 1964, 1965 and 1969 in question, were used by any member of the Board of Trustees, referring to Felicidad Amatong and her children, for the acquisition of their properties, or otherwise inured to their personal benefits. This factual situation alone differentiate this case diametrically from that of the case of the University of the Visayas. In disregarding the corporate fiction of petitioner college and considering the income thereof as that of the Amatong family, respondent took as basis the facts (1) that the control of petitioner school is lodged in the hands of only one family, the said Felicidad Amatong and her children; and (2) that in the decision of the Court of First Instance of Zamboanga Del Norte, in Civil Case No. 1749 entitled "Andres Bonifacio College, etc. vs. Amatong," dated February 11, 1974, it disregarded the corporate fiction of said college on the ground that this educational institution is under the absolute control of its President and his immediate family, and the case of the University of the Visayas, _op. cit._, was cited in support of that decision.

While it may be conceded that the herein petitioner college, a non-stock corporate school, is under the control of Felicidad Amatong and her family, who compose the membership of the Board of Trustees, the control, however, of one family by itself, will not, we believe, be sufficient ground and basis to disregard the corporate personality and consider its net income as those of the controlling members. This fact alone will not suffice to disregard the corporate personality of the school and view the income of said corporation as those of its members so long as its educational purpose and objectives were followed. In the University of the Visayas case, upon which the Court of First Instance of Zamboanga had based its decision in holding and disregarding Andres Bonifacio College's corporate fiction, the Supreme Court therein disregarded the corporate fiction of the University of the Visayas and held the income of the school as those of the controlling stockholders - that is President Cullas and his wife, firstly, because the evidence in that case showed clearly that the University's income were used in purchasing real properties owned by the University but which were later actually registered in the names of President Gullas or his wife, or both; and secondly, because President Gullas, by his own admission, among others, openly stated that the University of the Visayas belongs to and is naturally his. By the acts of President and Mrs. Gullas of using corporate income to purchase properties in their names and by the admission that the University is actually theirs, they have, by their own acts of using the income of the school to buy properties in their names, made possible by their control of 85% of the capital stock of the corporation, disregarded the University of the Visayas independent corporate personality, and the corporate school, by these same acts, had therefore shed itself of its corporate fiction. These facts and circumstances were the ground upon which the Supreme Court disregarded the corporate fiction of the University of the Visayas and considering the net incomes of the University as that of the controlling stockholders, and held the University not exempt from income tax under the provision of Section 27 (e) of the Tax Code. The facts of the University of the Visayas case are in reality distinctly dissimilar to the facts of the instant case of Andres Bonifacio College in that the latter was never used to buy properties of the controlling members - the Amatong family; that it neither abandoned its form and substance as a non-stock, non-profit corporate educational institution; that none ofits income inured to the benefit of its members, or had failed in the accomplishment of its purposes and objectives of catering to the educational needs of the people in the area in which located; and that its net income for the years 1963, 1964, 1965, 1966, 1967 and 1969 in question were used to acquire fixed assets, equipments, and facilities for its educational use; which facts give no ground to pierce its corporate veil and to hold the incomes of the College as those of the Amatong family.

With respect to the decision of the Court of First Instance of Zamboanga which is one of the basis which the assessment of the Commissioner of Internal Revenue in question is anchored, which ruled in effect that petitioner educational institution is under the absolute control of its President and his immediate family which would warrant the conclusion that the corporate entity is an <u>alter ego</u> or a business conduit of the controlling members and justifying the disregard of its corporate fiction, the decision of the Court of First Instance, left alone, will not be such authority, which this Court will follow and hold, in similar vein, that the incomes of the College are also the incomes of the controlling members - Felicidad Amatong and her immediate family. In the first place, the decision of the CFI adverted to is pending decision on appeal in the Court of Appeals docketed as Amatong vs. Amatong, G. R. No. L-56879-R. In the case where a decision of a lower Court is on appeal, the decision on appeal is stayed or suspended and is well-settled that the judgment appealed from cannot be used as evidence or used as estoppel, in any other Court, as long as that decision appealed from remains undetermined. (4 Am. Jur. 2d., Sec. 358, p. 836, citing Di Nola v. Allison, 143 Cal 106, 76 P. 976.) Hence, the decision of the Court of First Instance of Zamboanga del Norte does not have any evidentiary value. It proves nothing. Secondly, to our mind, assuming even only for the sake of argument that the decision is of evidentiary value, the conclusion that the corporate entity is an alter ego or business conduit and, therefore, warrants the disregard of corporate fiction is to our mind obiter dictum as the Court's conclusion was not necessary or germane to the disposition of the issue in that case as to who owns the properties subject of dispute therein, the Andres Bonifacio College, or Felicidad Amatong, in which the CFI of Zamboanga held that the properties subject to the dispute were owned by Felicidad Amatong and acquired from her own funds and not from the funds of the college.

As we have stated, heretofore, while it is true that the petitioner college is owned by or under the control of, Felicidad Amatong and her family, who also compose the Board of Trustees, it is also well to bear always in mind, the settled legal doctrine that a corporation is distinct although the majority stock (or shares) is owned by a single individual or corporation, and that it is separate even if it is a family or close corporation. (18 Am.Jur. 2d. 588-589.) The doctrine that a corporation is a legal entity existing separate and distinct from the persons comprising it is a legal theory introduced for the purpose of convenience and is subservient to the ends of justice. The corporation and the individuals that own all of its stocks or shares and assets thereof are treated as identical, but courts tend to disregard corporate entity and treat the stockholders or shareholders as an association of individuals only when justice is not served (Metropolitan Holding Co. v. Snyder, CCA, 8th, 79 F (2d) 263, 103 ALR, 912, 13 Am. Jur. 161) and corporate entity will be disregarded only where the corporation is "used as a cloak or cover for fraud or illegality" (13 Am. Jur., pp. 160-161) or used to "commit an injustice, evade the payment of taxes, or violate the law". (Carmelino Alvendia, Handbook on the Corporations, Insurance, and Negotiable Instruments, 1967 Ed., pp. 4-5.) It may be insisted by respondent Commissioner of Internal Revenue that where a corporation is controlled by one family or a few individuals, the distinct personality thereof is lost. This is not so since the distinct personality of the corporation is maintained notwithstanding that it is controlled by one family. (18 Am. Jur. 2d., pp. 558-559). The mere fact that the Andres Bonifacio College is owned or controlled by one family - the Amatong family - will not give rise to the loss of its corporate personality and the piercing of its corporate veil. It is well known principle of law that the disregard of the independent personality of a corporation can not be made whenever those in control thereof had truly and deliberately adopted the corporate organization to secure the advantage of continued management thereof so as to attain and accomplish its objectives and purposes. (See Schenley Distillers Corp. vs. U.S., 326 U.S. 432, 90 L Ed. 181.) In the case of petitioner in this instant case, there was no showing that the members - the Amatong family - have used the college for their financial advantage or that the incomes of the school were used for their personal purposes or ends, like the use of the income of the school to acquire properties in their names, or otherwise use the money of the college for their personal benefits. On the contrary, there are ample and undisputed evidence that this school was managed and directed according to its primary purpose or objectives of serving the community by providing for their educational needs of the people in Zamboanga del Norte and adjacent areas.

Moreover, we must always remember that the piercing of the veil of corporate fiction should not be applied precipitately but with great caution.(18 Am. Jur., 2d., 560; Klein vs. Tax Supervisors, 282 US 19, 75 L Ed. 140.) It not having been shown, therefore, based on the foregoing principles,(1) that petitioner Andres Bonifacio College was used by the members for the commission of fraud or illegality, such as the act of using its incomes or money to buy properties for the members and placing them in their names and not in the name of the school (University of the Visayas vs. Comm. of Int. Rev., op cit); that petitioner was used as a means to evade the payment of taxes, or violate a law (Carmelino Alvendia, op. cit.); that petitioner abandoned its form and substance as a non-stock, non-profit corporate school, such that none of its income inured to the benefit of the members under any guise, or failed to accomplish its purpose and objectives by its continued management as a non-stock corporate school by catering to the educational needs of the people in the area, or otherwise sought to obtain its educational purposes and objectives, (Schenley Distillers Corp. vs. U.S. op. cit.; pp. 9-10, 49, 56, t.s.n.), its personality cannot be disregarded. On the contrary, the net incomes of the petitioner for the years 1963, 1964, 1965, 1966, 1967 and 1969, were as aforesaid used by the school to acquire its fixed assests, equipment, buildings and facilities for its educational use.

Finally, if only as word of caution, the doctrine of the piercing of the veil of corporate fiction, in order to be applicable, must essentially have to depend, in the first instance, upon the existence of fraud, which act may be exemplified by the act of diverting the income of the corporation (a supposedly independent entity), and using it to purchase real properties for the personal interest or needs of the stockholders or members (an equally independent legal personality from that of the corporation), like in the case of the University of the Visayas, cited heretofore. The fraudulent act, ostensibly a pure question of fact, must first exist, or be committed before there can be judicial disregard of a corporate personality. In other words, the disregard of corporate fiction takes place only after a clear existence, occurrence or perpetration of fraudulent, illegal or criminal acts. And these acts must be clear and convincing to justify the piercing of the corporate veil, and can not prosper on the basis of mere speculation, since fraud, illegality or crime is never presumed (Yutivo & Sons Hardware Co. vs. CTA, G.R. L-13203, Jan. 28, 1961, 110 Phil. 751, 759), or depend on circumstances which, at most, create suspicion. (Haywood Lumber & Mining Co. vs. Commissioner, 178 F 2d. 769; Dalone v. Commissioner, 100 F 2d., 507, cited in Yutivo Sons Hardware Co. vs. CTA, op. cit.)

It may be insisted that the Andres Bonifacio College is an alter ego or conduit of Felicidad Amatong and her children. In order to apply the alter ego or conduit doctrine, it must be shown that the members of the Amatong family have, by themselves or by their own personal acts, disregarded the personality of their non-stock corporate school or make their corporation mere conduit or agency for the transaction of their own personal and private interests, or by their own personal acts or admission, the school is theirs, like the admission made by President Gullas, in the University of the Visayas case, to the effect that the University of the Visayas belongs to and is actually his and that the incomes of the University were used to purchase real properties which were placed in its President's name or his wife or both, the separate and independent personality of the corporation and members, thereof, is lost and ceased to exist. (Seftan vs. San Diego Trust & Savings Bank, Cal. App. 106, P. 2d., 974, 984.) But the disregard of corporate identity can not be done whenever the corporation, as in this instant case, had carried on its true business activity and the fact that the owners have retained direction of its affairs down to its minute details will make no difference tax-wise. (National Carbide Corp. vs. Commissioner, 10 ALR 573.)

Finally, in order to hold a corporation an <u>alter ego</u> of another personality and, hence, disregard its corporate existence, it is not enough to show that it is in fact an <u>alter ego</u> or conduit of another person, but its existence as such alter ego or conduit must also be shown to promote fraud, defeat justice, or produce inequitable results. (Imperial Paper & Color Corp. vs. Saxsell, 114 Fed. Rep. 2d., 49, 52.) In the University of the Visayas case, by the interlocking of the properties and incomes of the University and its owners, it gave the Supreme Court cause to disregard the separate personality of the University and strip it of its exemption under Section 27(e) of the National Internal Revenue Code.

In the case at bar, the Andres Bonifacio College, by reason of its nature as a non-stock corporate school, derived its capital contributions from the Amatong family, and from donations or gifts, legacies, bequeaths and endowment. The sources of this capital neither expected to recover their capital contribution, nor receive any share in the pecuniary benefit or earnings which it realize. And as a non-profit corporate school, it never declared, as aforesaid, dividends. (pp. 7, 49, t.s.n.) As a matter of fact, the earned surplus for the College during the years in question were used to purchase and acquire its fixed assets for its use. This educational institution was incorporated under the Corporation Law but in compliance with the mandatory provision of Section 3 of Commonwealth Act 180 of the Private School law to the effect that all private schools under sole proprietorship should be registered as a corporation, but it was a condition *sine qua non* for the granting to it by the Government of the recognition of its courses. Its incorporation under Act 1459, as required under Section 3, Commonwealth Act No. 180 is to assure its continued and uninterrupted educational service to the people. There are no longer any school or educational institution today, regulated by the Department (now Ministry) of Education, that has not incorporated. In the case of a non-stock, non-profit corporate school, such as the Andres Bonifacio College, its important feature as a non-stock corporate school is its ability to provide a firmer or solid financial base upon which to operate because it can secure for its support and maintenance, contributions, loans, donations, and others. In the case of a non-stock, non-profit corporate school, it is less motivated to the pursuit of profit or income. The profit, gain or income motivation of the school is ideally absent. Of course, the members, owners or officers of the non-stock, non-profit school may receive, just like the President, teachers and officers in the Dartmouth College case, continuously as long as the school continues to exist, their salaries and emoluments for their effective management and direction over the non-stock, non-profit corporate school. (Trustees of Dartmouth College v. Woodward, 4 Wheat 518, 4 Led. 629, 638; see also V.G. Sinco Educational Corporation, 100 Phil. 127.)

Distinguished from a stock corporation, a non-stock corporation, which is frequently referred to as eleemosynary corporation, if not created for charity, is organized for educational purposes. /‾Frederick C. Fisher, The Philippine Law of Stock Corporations, 1929 Ed. (The Lawyers Cooperative Publishing Co., Manila, 1929, p.)_7

This corporation by its objects and purposes, is not created for gain or profit. It is organized to render service to the people in areas where the Government is not fully capable in subsidizing the educational services in those areas. The Andres Bonifacio College falls under this category of corporation. Its distinctive mark is the absence of shares of stocks to benefit the members in the form of distributable dividends. But this does not mean that the members cannot take pay for the actual services they actually render to the corporation. The true test of this kind of institution is its origin, form and its objectives. A college or university without shares of stocks, founded for the purpose of disseminating knowledge and erected at the expense of private individuals, is regarded as "eleemosynary corporation." /‾William Mead Fletcher, Cyclopedia of the Law of Private Corporations, 1931 Ed., (Callaghan & Co., Chicago, USA, pp. 189-191).7

The origin, form, objectives and actual operations of this non-stock, non-profit educational institution - the Andres Bonifacio College - shows that it was organized originally in 1940 as a single proprietorship for the promotion of education and learning and is endowed with properties and assets contributed by its founder, Amando Amatong. It was never recipient of any donation. (p. 31, t.s.n.) The College derived its capital and which were used to acquire fixed assets of the school contributed by the Amatong family secured from loans and from the profits of the school a feature attendant in non-profit, non-stock corporations, (See National Carbide Corp. vs. Comm. 10 ALR 2d., 573.) The college was operated along its desired educational purposes and objectives and this was not denied or disputed by respondent directly or indirectly. (p. 14, t.s.n.) Since 1941, the said petitioner has not paid income tax until in 1969 when it was assessed by respondent. (p. 55, t.s.n.) The petitioner never declared any dividend and since its founding, no income of the same had inured to the benefit of the founder or his wife, Felicidad Amatong, or her children.(pp. 9-10, 49-56, t.s.n.) There were no withdrawals made of the college funds which can be taken in the form of dividend or profit distribution,(pp. 7, 22, 49-50, t.s.n.) The only money received by Felicidad Amatong or the members of her family, after the death of her husband in 1943, who were and still the officers or members of the Board of Trustees were their salaries for services rendered by them to the school.(pp. 9-10, 50, t.s.n.)

The profits of the school from 1963 to 1969, except in 1968 where there was a loss, were all invested in the assets of the school or otherwise used to purchase equipment and plants.(pp. 8-9, 14, 15, 49, t.s.n.)

On the basis of the immediately foregoing paragraphs showing summarily the form, objectives, and operations of the school, this case is clearly unlike that of the case of the University of the Visayas and, hence, the decision in the latter is inapplicable. This is so because there is no single evidence in this case pointing to the fact that the Andres Bonifacio College's net income, during the years 1963 to 1969, except in 1968 where there was a loss, was diverted to the use of any member of the Amatong family who constitute the membership of the Board of Trustees, or had-in fact inured to their personal financial benefit, acts akin to profit distribution. Moreover, the facts in the Andres Bonifacio College is very different from the facts in the University of the Visayas case. The Andres Bonifacio College, being a non-stock corporate institution, is akin to and more closely resembles that of the V. G. Sinco Educational Corporation, op. cit., which is a non-stock corporate school and no income of which was shown to have inured to the benefit of its President, V. G. Sinco, or his family, and which was held by the Supreme Court as an exempt entity from the payment of income tax under Section 27 (e) of the Tax Code. The decision in the case of Sinco Educational Institution is the authority which squarely applies to the facts in the case of herein petitioner Andres Bonifacio College. A close scrutiny of the decision in the Sinco Educational Institution's case shows that it is owned and controlled by President V.G. Sinco and his family, but none of the income of the school was shown to have been used for the personal benefit of the Sinco family with the exception only of the salaries paid to the officers and employees, who belongs to his family. As there was no income of the Sinco Educational Corporation which had inured to the benefit of President V.G. Sinco and his family, the corporate personality of the V.G. Sinco Educational Corporation was not disregarded and its income, therefore, was not viewed by the Supreme Court as that of the V.G. Sinco family, and as such, the High Court held it exempt from income tax under the provisions of Section 27 (e) of the National Internal Revenue Code.

A more detailed view of the V.G. Sinco Educational Institution's case shows that it was organized on September 21, 1951 as a non-stock corporation and capitalized by President V. G. Sinco and members of his immediate family. It earned profits from 1949 to 1953. In 1949, it had a net income of ₱3,098.86; in 1950, ₱17,038.59; in 1951, ₱26,868.60; in 1953, ₱223.56 and in 1952, it suffered a loss. The Collector of Internal Revenue assessed V.G. Sinco Educational Institution's income tax from 1950 to 1951 in the sum of ₱5,364.77, which was paid by the college. But within two years from payment, the school commenced action in the Court of First Instance for the refund of income tax paid, which was later transmitted to this Court for judicial disposition. In that case, the V.G. Sinco Educational Corporation claimed itself to be exempt from payment of income tax because it is a non-stock , non-profit corporation maintained exclusively for educational purposes and no part of its net income had inured to the benefit of V.G. Sinco, President and founder, under the provisions of Section 27 (e) of the Tax Code.

Respondent Collector of Internal Revenue, however, claimed that, based upon the personal withdrawals (accounts payable) made by V.G. Sinco, among others, "great portions of the profits realized by the V.G. Sinco Educational Corporation were channeled and refunded to the personal benefit of V.G. Sinco, who was the founder." (Ibid, at p. 131.) The issue in the V.G. Sinco case was: "Is it really correct to say that Appellee (V.G. Sinco Educational Corporation) is an educational institution in which part of its income inured to the benefit of one of its stockholders x x x ?" (Ibid, p. 132.)

The Supreme Court in its decision in the case of V.G. Sinco Educational Institution, held that the personal withdrawals, among others, made by President V.G. Sinco were amounts actually drawn from salaries which were not collected and had stood in the books as accrued expenses. The personal withdrawals of money by President V.G. Sinco were, therefore, actually his own money or funds. (Ibid.)

The Supreme Court also stated that, on that basis, it is "too sweeping if not unfair to conclude that part of the income of the appellee as an institution inured to the benefit of one of its stockholders simply because part of the income was carried in its books as accumulated salaries as president and teacher."

The fact is that the V.G. Sinco Educational Corporation is a non-profit institution, and since its organization it never distributed dividends or profits to its members. Of course, part of its income went to pay its teachers or professors and other incidental expenses of the school, but none of the income has ever been channeled to the benefit of any individual member.

The authorities cited in the Sinco case are very clear in their pronouncements that whatever payment is made to those who work for a school or college as a renumeration for their services is not considered as distribution of profit as would make the school one conducted for profit. Thus, in the case cited therein where the principal officer of a school was formerly its owner, and such principal was given a salary for his services, it was held that the school is not conducted for profit merely because moderate salaries were paid to the principal and to the teachers.

The Court also said that there are, or had always been, very few educational enterprises in the Philippines which are supported by donations and these organizations usually have precarious existence. It also stated that the precise objective of granting exemption from payment of income tax under Section 27 (e) of the Tax Code is to encourage the establishment of schools in the Philippines citing the case of Jesus Sacred Heart College vs. Coll. of Int. Revenue, 95 Phil. 16.

In another point raised by the Collector of Internal Revenue in the V.G. Sinco case, he asserted that by the acquisition of buildings and equipments with the use of the income of the school, the properties were enhanced and the profits inured or redounded to the benefit of the stockholders or members since the properties of the corporation may be sold at any time and the profits divided among the stockholders or members. On this score, the Supreme Court held that this claim of respondent was speculative. It stated further that the acquisition of the facilities redounded to the benefit, not of

President V.G. Sinco or his family, but the institution itself. It also stated that it cannot be positively asserted that the properties and equipments will redound to the benefit of its stockholders, for no one can predict the financial condition of the institution upon its dissolution, and the mere provision for the later distribution of its assets does not remove the right of an educational institution to tax exemption, and the fact that the members may receive some benefits on dissolution upon distribution of the assets is a contingency too remote to have any material bearing upon the question whether or not there was a scheme to avoid taxation and its honesty of purpose as an educational institution was not challenged.

Accordingly, in the light of the decision in the case of V.G. Sinco Educational Institution, we are of the opinion and so hold that petitioner Andres Bonifacio College is exempt under Section 27 (e) of the Tax Code from the payment of the deficiency income tax, inclusive of surcharge, interest and compromise penalties in the total sum of ₱11,500.38 covering the years 1963, 1964, 1965 and 1969.

WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from, insofar as it holds petitioner liable for deficiency income tax, inclusive of surcharge, interest and compromise penalties in the total sum of ₱11,500.38 for the years 1963, 1964, 1965 and 1969, is hereby set aside. However, petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue the sum of ₱1,476.30 as documentary stamp taxes for the years 1965, 1968 and 1969 within 30 days from receipt of this decision.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, January 26, 1981.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Did not take part

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge