UNIVERSITY OF THE VISAYAS,
Plaintiff,

- versus -

CEBU CIVIL
CASE NO. R-3434

COLLECTOR OF INTERNAL
REVENUE,
Defendant.

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

Jan. 27/58

D E C I S I O N

This is an appeal interposed by the plaintiff, University of the Visayas, for the review of the income tax assessments made by the defendant Collector of Internal Revenue in the total amount of ₱46,592.03 plus surcharges and interests covering the years 1946 to 1950, and for the refund of the total sum of ₱14,811.31 which the plaintiff claims to have been erroneously or illegally collected by the defendant based on the assessments in question. The plaintiff however, in open court, admitted that with regard to the sum of ₱1,000.00 which it had paid on December 17, 1951, its action for refund of the same had already prescribed because more than two years had elapsed from the date of payment. Hence, the present action is limited to the refund of the sum of ₱13,811.31.

The complaint was originally filed by the plaintiff in the Court of First Instance of Cebu on March 1, 1954, but on June 16, 1954, this Court was created by the enactment of Republic Act No. 1125, and pursuant to Section 22 thereof, this case was certified and remanded to this Court for final disposition.

In 1919, Vicente Gullas, incumbent president of the University of the Visayas, founded an educational institution in Cebu City known as the Visayan Institute, and for three years was the sole owner thereof. However, on October 21, 1921, he formally organized the Visayan Institute into a non-stock corporation, capitalized at ₱20,000.00, the same to be obtained by issuing 200 bonds with a par value of ₱100.00 each. (Exhs. 1 and 1-B) The bonds, however, were not sold to the public but instead Vicente Gullas put in his own money.

On August 29, 1930, the Visayan Institute amended its articles of incorporation (Exh. 2; also Exh. E). It was changed from a non-stock corporation to a stock corporation capitalized at ₱50,000.00 which was divided into 500 shares all of which were subscribed and distributed among its members.

In March, 1948, the Visayan Institute became a university and was renamed as the University of the Visayas.

According to its amended articles of incorporation, Exhibit E-1, the purpose for which the plaintiff corporation was organized is:

> "That the purpose for which such corporation is formed is to give to the Filipino youth such training and instruction which may make them well-prepared to honorably exercise the rights and to perform and discharge the duties and obligations of a good, patriotic and useful citizen, the corpora-

tion will direct its efforts to the symmetrical development of their character, mind and body."

In 1951, the Bureau of Internal Revenue conducted an investigation with regard to the income tax liability of the plaintiff for the years 1946 to 1950. Finding the plaintiff not entitled to the income tax exemption under Section 27 (e) of the Tax Code on the ground that it was allegedly organized primarily for profit and that its earnings inure to the benefit of its president, Vicente Gullas, the defendant assessed against, and demanded from the plaintiff, the following income taxes, plus surcharges and interest:

Year	Income Tax Assessed
1946	₱ 4,194.90
1947	9,179.63
1948	8,604.77
1949	13,098.73
1950	11,514.00
TOTAL	₱46,592.03

And the plaintiff made the following payments:

Official Receipt Number	Date Paid	Amount Paid
357822	December 17, 1951	₱ 1,000.00
357952 (Exh. A)	February 29, 1952	4,603.77
357972 (Exh. B)	April 3, 1952	4,603.77
357982 (Exh. C)	May 5, 1952	4,603.77
	TOTAL	₱14,811.31

Believing that it is exempt from the payment of income tax, the plaintiff, on March 1, 1954, filed with the defendant a request for refund of the total amount it paid as stated above. On the same day, the plaintiff also filed the present action against the defendant for the recovery of the same amount, and to enjoin the defendant from collecting the balance of the income tax assessments in question.

The principal question to be decided in this case is whether or not the plaintiff is exempt from the payment of income tax under Section 27 (e) of the National Internal Revenue Code. However, before resolving the same, we shall first determine whether or not plaintiff's right of action for refund as regards the amount of ₱4,603.77 which was paid to the defendant on February 29, 1952 (Exh. A) has already prescribed by virtue of Section 306 of the Tax Code which reads as follows:

> "Sec. 306. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

The defendant contends that inasmuch as the payment in question was made on February 29, 1952 and the request for refund and the judicial action for the recovery thereof were both filed only on March 1, 1954, or one day after the expiration of the two-year period prescribed in Section 306 of the Tax Code, plaintiff's right of action has already prescribed as regards the said amount of ₱4,603.77 and therefore this Court has no jurisdiction over the same.

On the other hand, the plaintiff maintains that the 28th day of February, 1954, which was the last day of the two-year period within which to file the request for refund and the suit for recovery of the tax paid was a Sunday, hence, it was legally justified in filing its request and judicial action for refund on the next succeeding business day - March 1, 1954.

We agree with the contention of the plaintiff. In this jurisdiction, our law expressly provides that "where the day, or the last day, for doing <u>any act</u> required or <u>permitted by law</u> falls on a holiday, the act may be done on the next succeeding business day." (Sec. 31, Rev. Adm. Code; underscoring supplied.) In the instant case, the last day for the filing of the request for refund and the institution of the judicial action for the recovery of the sum of ₱4,603.77 which was paid on February 29, 1952 was on February 28, 1954. However, inasmuch as that day was

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a Sunday and therefore a legal holiday, we are of the opinion and so hold that the plaintiff has satisfactorily complied with the requirements of Section 306 of the Tax Code when it filed its administrative request for refund and the present action for recovery thereof on the next succeeding business day, i.e., Monday, March 1, 1954. Hence, this Court has jurisdiction to hear and determine plaintiff's action for refund of the sum of ₱4,603.77 which was paid on February 29, 1952.

We shall now proceed to determine whether or not the plaintiff herein is exempt from the payment of income tax under Section 27 (e) of the National Internal Revenue Code which provides as follows:

> "Sec. 27. Exemptions from tax on corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such -
>
> "(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;"

The plaintiff contends that under Section 27 (e) of the Tax Code which is quoted above, it is exempt from the payment of the income tax because it is a corporation organized and operated exclusively for educational purposes and no part of its net income inures to the benefit of any private stockholder or individual. On the contrary, the defendant claims that the plaintiff was organized for profit and its earnings inure to the benefit of its president, Vicente Gullas. Hence, the defendant maintains that the plaintiff is not exempt from the payment of income tax.

In support of his claim that the plaintiff was organized for profit, the defendant points out the fact that in plaintiff's articles of incorporation there is no provision to the effect that it is a non-profit organization, and that although the plaintiff was first organized as a non-stock corporation, it became a stock corporation when it was reorganized in 1930, and accordingly it issued shares of stock to subscribers who were all membems of the corporation.

We find the claim of the defendant without merit. The mere absence in the articles of incorporation of a clause that the corporation is a non-profit organization does not <u>per se</u> convert it into a profit making corporation. The determinative factors as to whether or not a corporation should be classified as a profit or non-profit organization are its purposes which are required by law to be stated in its articles of incorporation, (Jesus Sacred Heart College vs. Collector, G. R. No. L-6807, May 24, 1954) and its actual activities, i.e., whether it is engaging in business for profit for distribution among its stockholders. (Collector vs. V. G. Sinco Educational Corporation, 53 OG 2470). In the instant case, a cursory perusal of the articles of incorporation of the plaintiff corporation would readily show that it was organized for educational purposes - and for no other purpose. And more over, the plaintiff since its organization has never declared any cash or stock dividend which fact is admitted by the defendant (pp. 8-9, Memorandum for the Defendant).

And as to the change of the plaintiff in 1930 from a non-stock corporation to a stock corporation, we are of the opinion that this change is immaterial to the enjoyment of the income tax exemption. Section 27 (e) of the National Internal Revenue Code does not make any distinction between stock and non-stock corporations, and it is not for this Court to make the distinction. Ubi lex non distinguit, nec nos distinguere debemus. Furthermore, the distribution of stocks at the time of the reorganization of the plaintiff corporation in 1930 did not materially benefit its stockholders. Each of the certificates of stock represent the interest of the stockholders in the increased capital of the corporation which interest would have been the same even if no certificates were issued.

The attention of this Court has been drawn by the defendant to the plaintiff's alleged receipt of rental income from the Gullas Coliseum and its investments in other schools located in Danao, Sogod, Colon, Sibonga and Cebu City as an indication of plaintiff's profit making purposes. However, Vicente Gullas has satisfactorily explained that the Gullas Coliseum is not owned by the plaintiff and what ever rent was paid for its use went to the owner thereof. And as to the alleged investments in other schools, it appears that the plaintiff does not own any interest in them but the same are merely supervised and/or owned by witness Vicente Gullas (t.s.n. pp. 45-48).

Another argument raised by the defendant is that all the profits, surpluses and properties of the plaintiff will eventually go to its president, Vicente Gullas, who practically owns the university, upon the expiration of its corporate existence in August 29, 1971.

This argument has already been answered by the Supreme Court in the case of Collector of Internal Revenue vs. V. G. Sinco Educational Corporation, 53 OG 2470, wherein it was held:

> "This claim is too speculative. While the acquisition of additional facilities may redound to the benefit of the institution itself, it cannot be positively asserted that the same will redound to the benefit of its stockholders, for no one can predict the financial condition of the institution upon its dissolution. At any rate, it has been held by several authorities that the mere provision for the distribution of its assets to the stockholders upon dissolution does not remove the right of an educational institution from tax exemption. Thus, in the case of U.S. v. Pickwick Electric Membership Corp., 158 F. 2d. 272, 277, it was held - 'The fact that the members may receive some benefit on dissolution upon distribution of the assets is a contingency too remote to have any material bearing upon the question where the association is admittedly not a scheme to avoid taxation and its good faith

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and honesty of purpose is not challenged."

WHEREFORE, in view of the foregoing considerations, the plaintiff is hereby declared exempt from the payment of income tax under Section 27 (e) of the National Internal Revenue Code, and the defendant is ordered to refund to the plaintiff the sum of ₱13,811.31 representing income tax erroneously collected by the defendant. The income tax assessments issued by the defendant against the plaintiff for the years 1946 to 1950 in the total amount of ₱46,592.03 exclusive of surcharges and interest are hereby declared null and void, without pronouncement as to the costs.

SO ORDERED.

Manila, Philippines, January 22, 1958.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

Reversed in S.C. resolution of motion for reconsideration, setting aside its decision in G.R. No. L-13554, Oct. 30, 1964. x of Feb. 28, 1961