

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LYCEUM OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 3071

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

x - - - - - x

4/30/81

D E C I S I O N

This controversy questions the sufficiency of the statutory authority for an assessment based on the application of the regular corporate income tax rates of 25%-35% imposed on domestic corporations vis a vis the reduced rate of 10% specifically prescribed for the non-tax exempt private educational institutions pursuant to the provision of Section 24(a) of the National Internal Revenue Code, thus -

"Sec. 24. Rates of tax on corporations.
-(a) Tax on domestic corporations. - A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines no matter how created or organized, but not including duly registered general co-partnership (companias colectivas), general professional partnerships, private educational institutions, and building and loan associations, in accordance with the following:

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"Twenty-five per cent upon the amount by which the taxable net income does not exceed one hundred thousand pesos; and

"Thirty-five per cent upon the amount by which the taxable net income exceeds one hundred thousand pesos.

"Private educational institutions other than those exempt under Section 27(e) of this Code shall pay a tax of ten per cent of their taxable net income. x x x x"

There are no issues of fact beyond stating that the petitioner Lyceum of the Philippines is a non-exempt private educational corporation duly organized and existing under the laws of the Philippines; that it was assessed for a deficiency income tax for the fiscal year ended May 31, 1974 in the amount of ₱56,727.37 on the gain derived from the sale of its stockholdings in other corporations and interest income from placements in the money market under letter-demand issued on March 17, 1976 by the respondent Commissioner of Internal Revenue; that a reconsideration grounded on the application of the preferential corporate income tax rate of 10% for educational institutions filed on June 18, 1976 was denied and the assessment reiterated in a decision by respondent on February 5, 1980; Hence, this appeal.

Respondent in his denial stresses the appli-

cability of the doctrine laid down by this Court in the Xavier School case, *infra*, whereby the income not derived from purely educational purposes and activities such as interest and dividend income are subject to the regular rate of income tax on corporations. Thus, "It is clear, therefore, that the interest income and cash dividend realized by petitioner in 1959, 1960, and 1962 were not realized in the pursuit of its educational objectives and, therefore, they are subject to income tax within the purview of Section 27(e) of the Tax Code, as amended by Section 5 of Republic Act No. 82." (*Xavier School, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 1682, October 8, 1969). Applied to the case at bar, the gain derived by the petitioner from the sale of its stocks in other corporations as well as the interest income from investments not having been derived from purely educational purposes and activities are subject to the corporate income tax at the regular rates of 25%-35%.

Taking exception, petitioner contends that (1) Section 24(a) of the Tax Code does not differentiate nor qualify the particular type of income upon which to impose the prescribed rate

of 10% for the non exempt private educational institutions. Moreover, the questioned gain came from funds generated by its educational activity and was thereafter utilized for purposes dictated by the growing needs of the school, e.g., expansion and improvement of plants, and programs, cover contingencies for faculty and personnel retirement, support of scholarships, grants and professorial chairs, which are not extraneous but directly related and necessarily incidental to its educational activities; and (2) the doctrine enunciated in the Xavier School case, supra, is not applicable, involving as it does a tax exempt private educational institution governed by Section 27(e) of the National Internal Revenue Code, quoted 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 -

"(e) Corporations or associations organized and operated exclusively for x x x educational purposes, x x x 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"

The rule we seek to apply has none of a pedigree of precedents but the case can be simply viewed as one of statutory construction. It would not be an over-simplification to say that Section 24(a), *supra*, itself, even when most jealously read, furnishes the best means of its own exposition. As thereby decreed, private educational institutions other than those exempt under Section 27(e) of this Code shall pay a tax of ten per cent of their taxable net income "received during each taxable year from all sources." There is nothing cryptic or abstract in these words as would pose an ambiguity or obscurity in their application. As such it is not for us to fashion the governing rule of law according to our own standard. "As pointed out by the Supreme Court in the Philippine Oxygen and Acetylene Co. vs. The Central Bank of the Philippines case (L-23395, February 27, 1971, 37 SCRA 691), the first and fundamental duty of the Court is the application of the law according to its express terms, interpretation being called only when such literal application is impossible. It has to be as 'We do not assume to pass judgment upon the wisdom of the legislature. Our duty is done when we ascertain that it has kept within its power.' (Justice Holmes in Missouri,

Kansas and Texas By Co. vs. May, 194 US Rep 267, cited in Notable Opinions of Justice Cardozo). Short of uncritical leniency, we cannot say that any different conclusion ought to follow but to apply the law as we find it." (Rural Bank of Calinog, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2658, January 30, 1981). The reasoning interposed by petitioner seems little more than a statement of the obvious. We uphold.

The decision in Xavier School, Inc. vs. Commissioner of Internal Revenue, supra, relied upon as authority for the petitioner's deficiency tax assessment, is neither a controlling nor an illuminating precedent for the case before us. It dealt with a tax exempt private educational institution governed separately under Section 27(e), an exception grafted from the basic provision of Section 24 of the Tax Code, which prescribes the various rates of corporate tax for non-exempt corporations including the private educational institutions. The two-stack approach on the character or kind of income specifically required by the terms of Section 27(e) for purposes of ascertaining either the entitlement to the tax

privilege or liability for payment of the corporate tax, cannot impart a plausibility or serve much a justification for the application of such measure of the non-exempt educational institutions within the exclusive coverage of Section 24(a). The circumstances of these institutions under their respective provisions vary as to the legal and operational footing and cannot therefore be considered at par with respect to tax treatment. Section 27(e) was not meant to truncate the salutary purpose specifically extending to non-exempt educational institutions the preferred rate of 10% on their taxable net income received during each taxable year from all sources under Section 24. The cited ruling of the Xavier Case, seemingly of analytical elegance falls short of legal significance, having been stretched too far the effective range of expediency only to fit the instant case.

We therefore hold that the assessment against petitioner for deficiency income tax based on the regular corporate income tax rate of 25%-35% lacks legal basis pari ratione with respondent's withdrawal and cancellation of similar assessments against the University of the East and Manuel L. Quezon Educational Institution likewise circum-

DECISION -
CTA CASE NO. 3071

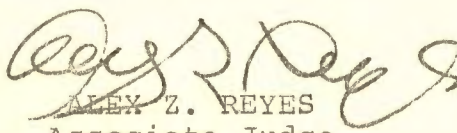
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stanced and of the same mold as petitioner's case.
(Annexes "A" and "B", Petitioner's Memorandum)

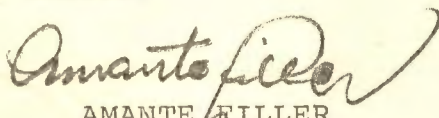
WHEREFORE, the decision appealed from is
hereby set aside without pronouncement as to costs.

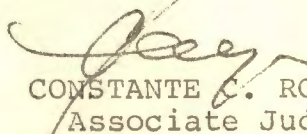
SO ORDERED.

Quezon City, April 30, 1981.


ALEX Z. REYES
Associate Judge

WE CONCUR:


AMANTE FILLER
Presiding Judge


CONSTANTE C. ROAQUIN
Associate Judge