REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PISO BANK,
Petitioner,

- versus - C.T.A. CASE NO. 4117

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

6/6/89

D E C I S I O N

This is an appeal from the respondent Commissioner of Internal Revenue's decision denying petitioner's protest against the assessment of P258,183.29 issued as deficiency fixed percentage tax for 1974 as a lending investor.

Petitioner is a domestic corporation and incorporated in 1974 as an investment house. It is provided with a privilege tax receipt as (1) contractor (2) dealer in securities and (3) as quasi-banking institution authorized by the Central Bank.

During the period from May up to December 1974 it was ascertained and verified upon investigation that petitioner placed the equity of its stockholders in money market investments which earned interest amounting to P2,866,129.95, for which respondent assessed petitioner on February 14, 1980 and demanded the payment of the total amount of P257,183.29 as fixed and percentage taxes for 1974.

Petitioner, thru a letter dated March 13, 1980, protested the tax assessment.

In a final decision dated August 11, 1986, respondent Commissioner of Internal Revenue denied the protest. Hence, petitioner appealed.

The only issue presented for determination is whether or not during the year 1974, petitioner was actually engaged in the business as a lending investor subject to fixed and percentage taxes prescribed by Section 194(U) (now Section 157)(U) of the Tax Code).

Then Section 194(U) (now Section 157(U)) of the Tax Code defines a lending investor as follows:

> "Lending investor" includes all persons who make a practice of lending money for themselves or others at interest."

For the entire period of the year 1974, that is for the three (3) quarters thereof, it made short-term money market placements for which it earned gross income for the 2nd, 3rd and 4th quarters, of P601,176.39, P928,899.10 and P1,336,054.06, respectively. Petitioner in fact admitted that on several occasion it placed in money market transactions the equity of its stockholders as shown in its letter protest dated March 13, 1980. However, it denied that it is ~~not~~ engaged in the business as a lending investor in 1974 as it "merely invested its funds for a short period of time in the money market in order to maximize the return of its idle funds. There was no 'business' of lending money with interest when the money market placements were made. There was no habituality and continuity or a practice of lending money at interest." (p. 5, Petitioner's Memo.)

We believe that petitioner had been habitually and continuously lending money for interest in 1974 and hence, could be considered and taxed as a lending investor. For practically the entire period of 1974, it did habitually engage itself in the business as a lending investor considering the number of market placements it made in 1974 of which was "for the entire period beginning the second quarter through the fourth quarter of 1974, grossing therefrom P2,866,129.95 in interest income." (p. 4, Respondent's Memo.)

Indeed, the lending activities of petitioner are "characterized as continous and habitual rather than merely occasional." (p. 4, Respondent's Memo.)

The cases of **Molo vs. Yatco**, 71 Phil. 468, which held thus -

> "Where it appears that on six occasions a person accepted mortgages to guarantee loans to be made to different persons at an interest of 12% and such person does not prove that such transactions were made accidentally or because of certain peculiar circumstances, it should be presumed that he in reality made a practice of lending money at interest, thus becoming a lending investor under the law. (Underscoring supplied)

is applicable, and **Siao Tiao Hong vs. CIR, et al.**, CTA Case No. 1755, March 13, 1970, is in point:

> "From the above transactions, it is apparent that petitioner continuously and habitually engaged in the business of lending money with interest to several entities and persons. These lending transactions were not isolated cases but they represent a series of loans showing habituality. "Habituality" in the practice of commerce presupposes the repetition and continuation of commercial

acts, in such manner that they are related to each other by reason of the commercial purpose or end which they tend to have. xxx"

WHEREFORE, the decision of the Commissioner of Internal Revenue assessing against petitioner the sum of P258,183.29 as deficiency fixed and percentage tax, plus interest, as a lending investor is hereby affirmed.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 6, 1989.

CONSTANTE C. ROAQUIN
ASSOCIATE JUDGE

WE CONCUR:

AMANTE FILLER
PRESIDING JUDGE

ALEX Z. REYES
ASSOCIATE JUDGE

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
PRESIDING JUDGE
Court of Tax Appeals