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The different acts of misconduct proven against respondent judge demonstrate his unfitness to remain in office and to continue to discharge the functions and duties of a judge, and warrant the imposition on him of the extreme sanction of dismissal from the service.

WHEREFORE, the respondent, Judge Enrique T. Jocson, is hereby DISMISSED FROM THE SERVICE, with forfeiture of all retirement benefits and pay and with prejudice to re-instatement in any branch of the government or any of its agencies or instrumentalities.

SO ORDERED.

Narvasa, C. J., Gutierrez, Jr., Cruz, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and *Melo, JJ* ., concur.

Feliciano, J., on leave.

SECOND DIVISION

[G.R. No. L-32075. September 1, 1992]

SIAO TIAO HONG, substituted by PAULA TAN SIAO, SIAO TEK SENG, LORENZA S. SEE, AGRIPINA I. ORDOÑA and the HEIRS OF THE DECEASED TOMAS I. SIAO, *petitioners, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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SYLLABUS

1. **TAXATION; LENDING INVESTOR; DEFINED; BANK DEPOSITOR NOT A LENDING INVESTOR. —** A lending investor is defined under Section 194 (u) of the Internal Revenue Code as one "who make[s] a practice of lending money for themselves or others at interest." The mere fact that petitioner had consistently reported interest income from four banks, namely the Philippine National Bank Dumaguete City branch, the Philippine National Bank Cebu City branch, the Bank of Philippine Islands, Cebu City branch and the China Banking Corporation in Manila, under the schedule "Interest on bonds, bank deposits, mortgages and all other interest," does not warrant the conclusion that the interest was due to loans extended by petitioner to said banks. It is obvious that the interest came from deposits the petitioner had with said banks. While it is admitted that bank deposits are in the nature of loans, this does not make the depositor a lending investor since the act of opening and maintaining a deposit with a bank can not be considered a business. Besides, We find it highly unlikely that an individual would extend several loans to three major banks such as the Philippine National Bank, the Bank of the Philippine Islands and the China Banking Corporation.

2. **ID.; ID.; PRESUMPTION OF BEING A LENDING INVESTOR; CASE AT BAR.—** We do not find credible petitioner's contention that the loans he extended to several individuals were isolated transactions to accommodate his friends. On this point, We agree with the Court of Tax Appeals when it observed: "Anent petitioner's allegation that the loans were made by him merely to accommodate friends without deriving profit therefrom, no other evidence was adduced by petitioner to corroborate said allegation except his own self-serving deposition. Moreover, petitioner's contention is belied by the fact that he collected interest from the borrowers and on several occasions required them to execute deeds to mortgages to guarantee payment of said loans. These interest income from loans and mortgage transactions are reflected in petitioner's income tax return." The case at bar is similar to the case of *Molo vs. Yatco*, where it was held that a person who lent money to several persons with interest, without proving that said loans were made accidentally or due to certain peculiar circumstances,

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was presumed to be a lending investor within the meaning of the law.

3. ID.; PERIOD OF LIMITATION FOR ASSESSMENT OF INTERNAL REVENUE TAXES; EXCEPTIONS; CASE AT BAR.— Petitioner argued that, even on the assumption that he is liable to pay the lending investors' tax, respondent's right to collect the same had prescribed since no assessment for lending investors' tax was made within the five-year period from the filing of petitioner's income tax returns for the years 1953 to 1959, as provided by Section 331 of the Tax Code. We do not agree. Section 331 is inapplicable to the case at bar since fixed taxes are not included in an income tax return, these not being part of the taxpayer's income; neither is it paid together with the income tax. In fact, the Tax Code provided a different date for the payment of fixed taxes, for which a separate return, B.I.R. Form No. 25015, the Business (Fixed) Tax Return, must be filed. In order for petitioner to avail of the benefits of Section 331, he must file a return for the lending investors' fixed tax; otherwise, an assessment may be made within the period provided for in Section 332 (a) of the Tax Code. Section 332 (a) of the Tax Code provides: "SEC 332. Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of a false or fraudulent return with the intent to evade tax or *of a failure to file a return*, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time with ten years after the discovery of the falsity, fraud, or omission." The petitioner's omission to file a return was discovered on June 21, 1960, when Revenue Examiner Bernardino S. Enerio submitted his report concerning his examination of petitioner's books of account. Therefore, the assessment for lending investor's tax made on June 2, 1961, was well within the period provided for in Section 332 (a).

4. ID.; PERIOD OF LIMITATION FOR COLLECTION OF INTERNAL REVENUE TAXES; CASE AT BAR.— The collection must be made within the five-year period from the assessment of the tax. The tolling of period commenced from June 2, 1961, the date the assessment was made, and was suspended on May 27, 1963 when the complaint for collection of the tax was filed with the City Court of Dumaguete. The period began to run again upon the dismissal of the case on

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July 14, 1965 and was stopped on October 27, 1966 when respondent filed his Answer to the petition filed before the Court of Tax Appeals. All in all, a total of three (3) years, three (3) months and eight (8) days had elapsed. Therefore, the right of respondent to assess and collect the lending investors' tax had not prescribed.

APPEARANCES OF COUNSEL

Sycip, Salazar, Hernandez & Gatmaitan for petitioners.

D E C I S I O N

NOCON, *J*:

This is a petition for review[1] filed by petitioner Siao Tiao Hong from the decision dated March 13, 1970 of the Court of Tax Appeals in CTA Case No. 1755 which affirmed the decision of respondent Commissioner of Internal Revenue holding him liable for the payment of fixed taxes amounting to ₱2,400.00 as a lending investor for the years 1953 to 1960 inclusive. As petitioner Siao Tiao Hong died during the pendency of the case with this Court, he was substituted by his heirs.

The facts of the case are as follows: Petitioner claims to be a real estate developer whose principal income is derived from rents. In his income tax return or the year 1958, he declared the following income:

Income from rents and royalties	.....	₱9,582.00
Interest of bonds, bank deposits, mortgages, and other interest	.....	5,540.42

On May 25, 1960, the Bureau of Internal Revenue (BIR) directed Revenue Examiner Bernardino S. Enerio to examine petitioner's books of account in connection with said income tax return. Enerio conducted the examination, and thereafter submitted a report dated June 21, 1960 recommending that

[1] Under Sec. 1, of Rep. Act No. 5440.

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petitioner be assessed for (a) deficiency income tax in the amount of ₱1,068.79, and (b) fixed taxes as a lending investor at ₱300.00 each year for the years 1955 through 1959.

Protesting the fairness and accuracy of Enerio's report, petitioner wrote a letter dated January 30, 1961 to the BIR Regional Office requesting for a re-examination. The Regional Office granted his request and directed examiner Emiliano Onoan to re-examine petitioner's books of account. On November 3, 1961, Onoan submitted his report stating that, upon reinvestigation of petitioner's 1958 return, "it was ascertained there was no discrepancy on the said return."[2] Nonetheless, the Regional Office sent a letter bearing Demand No. 61-242 to petitioner on June 2, 1961, demanding that he pay the sum of ₱2,400.00 as lending investor's fixed tax for the years 1953 to 1960.

On May 30, 1962, the BIR brought an action against petitioner before the City Court of Dumaguete to collect the sum of ₱2,400.00 representing unpaid fixed taxes for the years 1953 to 1960. After trial, the city court rendered its decision on July 14, 1965 dismissing the complaint for being premature. The court found that no assessment for the sum sought to be recover had been received by petitioner, hence, the case was not one of "undisputed assessment" within the jurisdiction of the City Court. The court, however, directed petitioner to take whatever action he deems proper on the assessment made upon him within thirty (30) days from receipt of the decision; failure to take any action shall be deemed a waiver of his rights to contest said assessment, and the government shall proceed to enforce the same in accordance with law.

In compliance with the City Court's decision, petitioner formally filed his protest to the assessment on August 6, 1965, which protest was denied by the BIR Regional Office in Bacolod City by way of a letter dated March 31, 1966.

Upon receipt of the letter of denial, petitioner filed on May 16, 1996, a petition to review the decision of the Regional Director,

[2] Petitioner's brief, p. 3.

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acting in the name of respondent Commissioner of Internal Revenue, with the Court of Tax Appeals. After trial, the Court of Tax Appeals rendered its decision affirming the decision appealed from and ordered petitioner to pay the sum of ₱2,400.00, as lending investor's fixed taxes. Hence, this appeal.

Petitioner argued that he is not a lending investor subject to a fixed tax under Section 128 of the Internal Revenue Code, and that respondent Commissioner's right to assess tax for the years 1953 to 1959 had already prescribed.

We find the petition unmeritorious.

Petitioner contended that the Court of Tax Appeals erred in holding that he was a lending investor within the purview of the Internal Revenue Code since the "loans" he had given to several banks were actually bank deposits and that the loans he had extended to several individuals were isolated transactions and actually accommodations for his friends.

A lending investor is defined under Section 194 (u)[3] of the Internal Revenue Code as one "who make[s] a practice of lending money for themselves or others at interest."

The mere fact that petitioner had consistently reported interest income from four banks, namely the Philippine National Bank Dumaguete City branch, the Philippine National Bank Cebu City branch, the Bank of Philippine Islands, Cebu City branch and the China Banking Corporation in Manila, under the schedule "Interest on bonds, bank deposits, mortgages and all other interest," does not warrant the conclusion that the interest was due to loans extended by petitioner to said banks.

It is obvious that the interest came from deposits the petitioner had with said banks. While it is admitted that bank deposits are in the nature of loans, this does not make the depositor a lending investor since the act of opening and maintaining a deposit with a bank can not be considered a business. Besides, We find it highly unlikely that an individual would extend several loans to

[3] Now Sec 157 (u).

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three major banks such as the Philippine National Bank, the Bank of the Philippine Islands and the China Banking Corporation.

However, We do not find credible petitioner's contention that the loans he extended to several individuals were isolated transactions to accommodate his friends. On this point, We agree with the Court of Tax Appeals when it observed:

"Anent petitioner's allegation that the loans were made by him merely to accommodate friends without deriving profit therefrom, no other evidence was adduced by petitioner to corroborate said allegation except his own self-serving deposition. Moreover, petitioner's contention is belied by the fact that he collected interest from the borrowers and on several occasions required them to execute deeds to mortgages to guarantee payment of said loans. These interest income from loans and mortgage transactions are reflected in petitioner's income tax return."[4]

The case at bar is similar to the case of *Molo vs. Yatco*,[5] where it was held that a person who lent money to several persons with interest, without proving that said loans were made accidentally or due to certain peculiar circumstances, was presumed to be a lending investor within the meaning of the law.

But petitioner argued that, even on the assumption that he is liable to pay the lending investors' tax, respondent's right to collect the same had prescribed since no assessment for lending investors' tax was made within the five-year period from the filing of petitioner's income tax returns for the years 1953 to 1959, as provided by Section 331[6] of the Tax Code.

We do not agree. Section 331 is inapplicable to the case at bar since fixed taxes are not included in an income tax return, these not being part of the taxpayer's income; neither is it paid

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[4] Decision of the Court of Tax Appeals, pp. 5-6.

[5] 71 Phil. 465 (1941).

[6] Now Sec. 268. Under said section, the prescriptive period within which to assess internal revenue taxes is now three years from the last day prescribed by law to file a return.

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together with the income tax. In fact, the Tax Code provided a different date for the payment of fixed taxes,[7] for which a separate return, B.I.R. Form No. 25015, the Business (Fixed) Tax Return,[8] must be filed.

In order for petitioner to avail of the benefits of Section 331, he must file a return for the lending investors' fixed tax; otherwise, an assessment may be made within the period provided for in Section 332 (a) of the Tax Code.[9] Section 332 (a)[10] of the Tax Code provides:

"SEC 332. Exceptions as to period of limitation of assessment and collection of taxes. — (a) In the case of a false or fraudulent return with the intent to evade tax or *of a failure to file a return*, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time with ten years after the discovery of the falsity, fraud, or omission."[11]

The petitioner's omission to file a return was discovered on June 21, 1960, when Revenue Examiner Bernardino S. Enerio submitted his report concerning his examination of petitioner's books of account. Therefore, the assessment for lending investor's tax made on June 2, 1961, was well within the period provided for in Section 332 (a).

The collection must be made within the five-year period from the assessment of the tax.[12] The tolling of period commenced

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[7] Sec. 180, presently Sec. 160. Sec. 180 provided that all fixed taxes shall be payable, at the option of the taxpayer, annually, on or before the twentieth of January, or semi-annually, on or before the twentieth of January or July" Sec. 160 provides that "[a]ll fixed taxes shall be payable annually, or on or before the last day of the first month of the taxable year adopted by the taxpayer for income tax purposes."

[8] Annex "A", Respondent's Brief.

[9] *Butuan Sawmill, Inc. vs. Court of Tax Appeals*, L-20601, 16 SCRA 277 (1966).

[10] Now Sec. 269 (a).

[11] Italics supplied.

[12] Sec. 332 (c), presently Sec. 268 (c). Sec. 268 (c) now provides that any internal revenue tax assessed within the period of limitation may be collected

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from June 2, 1961, the date the assessment was made, and was suspended on May 27, 1963 when the complaint for collection of the tax was filed with the City Court of Dumaguete. The period began to run again upon the dismissal of the case on July 14, 1965 and was stopped on October 27, 1966 when respondent filed his Answer to the petition filed before the Court of Tax Appeals. All in all, a total of three (3) years, three (3) months and eight (8) days had elapsed. Therefore, the right of respondent to assess and collect the lending investors' tax had not prescribed.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed *in toto*. Costs against petitioner.

SO ORDERED.

Narvasa, C. J. (Chairperson), Padilla, and *Regalado, JJ.*, concur.

Melo, J., no part.

SECOND DIVISION

[G.R. No. L-32657. September 1, 1992]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. JOSE S. RODRIGUEZ, NICASIO YATCO and ANDRES O. REYES, as Associate Justices of the Court of Appeals and members of a composite Special Division of Five Justices, with Justices SALVADOR V. ESGUERRA and JOSE S. MENDOZA, and CESAR DEAN,** *respondents*.

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by distraint or levy or by a proceeding in court within three years following the assessment.