SUPREME COURT OF THE UNITED STATES

Commissioner of Internal Revenue v. Fink

483 U.S. 89 (1987) · No. No. 86-511 · Decided June 22, 1987

SUMMARY

The Supreme Court held that a dominant shareholder who voluntarily surrenders part of the corporation's shares while retaining control does not sustain an immediately deductible loss. Instead, the shareholder must reallocate the basis of the surrendered shares to the shares retained, with any loss recognized upon later disposition. The Court reversed the judgment of the United States Court of Appeals for the Sixth Circuit.

CASE DETAILS

COURT	Supreme Court of the United States
WRITING FOR THE COURT	Justice Powell; Justice Blackmun; Justice Brennan; Justice Marshall; Justice Rehnquist; Justice Scalia; Justice Stevens; Justice White
JURISDICTION	Federal
DECIDED	June 22, 1987
DOCKET	No. 86-511
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court granted certiorari to review the Sixth Circuit's reversal of a Tax Court decision sustaining the Commissioner's disallowance of ordinary loss deductions claimed by controlling shareholders who voluntarily surrendered shares to their corporation.
STANDARD OF REVIEW	De novo review of the legal question concerning the federal income-tax treatment of a voluntary non pro rata stock surrender.
PRECEDENTIAL VALUE	binding
PARTIES	Commissioner of Internal Revenue v. Peter Fink, Karla Fink

TOPICS

corporate tax · income tax · tax deductions · tax basis · statutory interpretation

PRACTICE AREAS

federal income taxation · corporate taxation · shareholder taxation

QUESTIONS PRESENTED

1. Whether a dominant shareholder who voluntarily surrenders part of the shareholder's stock to the corporation, but retains control, sustains an immediately deductible loss.
2. Whether the basis of voluntarily surrendered shares must instead be reallocated to the shareholder's remaining shares.

HOLDINGS

1. A dominant shareholder who voluntarily surrenders a portion of the shareholder's shares to the corporation, but retains control, does not sustain an immediate loss deductible from taxable income.
2. The shareholder must reallocate the basis of the surrendered shares to the shares retained, with any loss recognized when the remaining shares are later disposed of.

KEY QUOTATIONS

> *"We therefore hold that a dominant shareholder who voluntarily surrenders a portion of his shares to the corporation, but retains control, does not sustain an immediate loss deductible from taxable income."* (99)

> *"We conclude only that a controlling shareholder's voluntary surrender of shares, like contributions of other forms of property to the corporation, is not an appropriate occasion for the recognition of gain or loss."* (100)

FACTUAL BACKGROUND

Peter and Karla Fink were the principal shareholders of Travco Corporation, owning a combined 72.5 percent of its shares. To attract outside investment during Travco's financial difficulties, they voluntarily surrendered shares without consideration, reducing their combined ownership to 68.5 percent while retaining control. They claimed ordinary loss deductions totaling $389,040, but the Commissioner treated the surrender as a capital contribution and required the basis in the surrendered shares to be added to the basis of their remaining shares.

PROCEDURAL HISTORY

The Tax Court sustained the Commissioner's determination in an unpublished opinion, relying on Frantz v. Commissioner. The Sixth Circuit reversed and remanded for a determination of whether the surrender increased the value of the Finks' remaining shares. The Supreme Court granted certiorari to resolve a conflict among the Circuits and reversed the Sixth Circuit.

DISPOSITION

reversed

CASES CITED

- Frantz v. Commissioner, 83 T.C. 162, 174-182 (1984), aff'd, 784 F.2d 119 (2d Cir. 1986)
- Deputy v. Du Pont, 308 U.S. 488 (1940)
- Eskimo Pie Corp. v. Commissioner, 4 T.C. 669, 676 (1945), aff'd, 153 F.2d 301 (3d Cir. 1946)

- Sackstein v. Commissioner, 14 T.C. 566, 569 (1950)
- Koshland v. Helvering, 298 U.S. 441, 445 (1936)
- Tilford v. Commissioner, 705 F.2d 828 (6th Cir. 1983)
- Schleppy v. Commissioner, 601 F.2d 196 (5th Cir. 1979)
- Eisner v. Macomber, 252 U.S. 189 (1920)
- Downer v. Commissioner, 48 T.C. 86 (1967)
- Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)
- Shearson/American Express Inc. v. McMahon, 482 U.S. 220, 268 (1987)
- Herman & MacLean v. Huddleston, 459 U.S. 375, 380 (1983)
- Square D Co. v. Niagara Frontier Tariff Bureau, Inc., 476 U.S. 409, 424 (1986)
- Dickman v. Commissioner, 465 U.S. 330 (1984)