UNITED STATES TAX COURT

Lowry v. Commissioner

49 T.C.M. 1246 (1985) · No. 15761-84 · Decided April 16, 1985

SUMMARY

The United States Tax Court dismissed petitioners' challenges to federal income tax deficiencies after they and their counsel failed to appear at scheduled trial dates and failed to respond to an order to show cause. The court held that Roy W. Lowry was collaterally estopped from denying fraud based on his conviction for income tax evasion and entered decisions for the deficiencies and fraud additions against him, while conceding the additions as to Ruth E. Lowry.

CASE DETAILS

COURT	United States Tax Court
WRITING FOR THE COURT	Cohen
JURISDICTION	USA
DECIDED	April 16, 1985
DOCKET	15761-84
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioners sought review of federal income-tax deficiencies and additions to tax. After petitioners and their counsel failed to appear for trial and failed to respond to an order to show cause, the Commissioner moved to dismiss for failure to properly prosecute.
PRECEDENTIAL VALUE	Unpublished Tax Court memorandum opinion; limited precedential value.
PARTIES	Roy W. Lowry, Ruth E. Lowry v. Commissioner of Internal Revenue

TOPICS

tax deficiency · tax fraud · tax penalties · tax court procedure · default

PRACTICE AREAS

federal income taxation · Tax Court procedure · tax fraud · tax litigation

QUESTIONS PRESENTED

1. Whether the deficiency issues should be dismissed because petitioners failed to appear for trial and failed to prosecute the case.
2. Whether Roy W. Lowry was collaterally estopped by his criminal conviction from denying fraud for purposes of the additions to tax under section 6653(b).

HOLDINGS

1. A taxpayer's failure to appear at scheduled trials and failure to respond to an order to show cause justified dismissal of the issues concerning the correctness of the determined deficiencies.
2. Roy W. Lowry was collaterally estopped from denying fraud for the tax years at issue.

KEY QUOTATIONS

> *"By reason of their failure to appear, issues relating to the correctness of the deficiency will be decided against them, and respondent's motion to dismiss as to those issues is granted."* (at *448)

> *"Petitioner Roy W. Lowry is collaterally estopped from denying fraud as to the years in issue."* (at *448-*449)

FACTUAL BACKGROUND

The Commissioner determined that petitioners had failed to report income from Cal-Quad, Inc., a corporation of which Roy W. Lowry was majority shareholder and president. The deficiencies concerned tax years 1976, 1977, and 1978, and the Commissioner also determined fraud additions against Roy. Roy had been convicted under Internal Revenue Code section 7201 for income-tax evasion for the years at issue.

PROCEDURAL HISTORY

The Commissioner determined deficiencies for 1976 through 1978 and additions to tax against Roy W. Lowry under section 6653(b). The case was set for trial twice, but neither petitioners nor their counsel appeared. The Tax Court issued an order to show cause, received no response, granted the Commissioner's motion to dismiss as to the deficiency issues, and entered decision for the Commissioner; the Commissioner conceded the additions against Ruth E. Lowry.

DISPOSITION

dismissed

CASES CITED

- Amos v. Commissioner, 43 T.C. 50 (1964), aff'd, 360 F.2d 358 (4th Cir. 1965)

OPINION

PER CURIAM.

ROY W. LOWRY and RUTH E. LOWRY, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, RespondentLowry v. CommissionerDocket No. 15761-84.United States Tax CourtT.C. Memo 1985-185; 1985 Tax Ct. Memo LEXIS 446; 49 T.C.M. 1246; T.C.M. (RIA) 85185; April 16, 1985. William H. Quealy, for the respondent. COHENMEMORANDUM OPINION COHEN, Judge: Respondent determined deficiencies in and additions to petitioners' Federal income taxes as follows: Addition to TaxYearAmountSec.

6653(b) 11976$1,633.00$816.50197733,428.0016,714.0019784,031.002,015.50The deficiency resulted from respondent's determination that petitioners had not reported income from Cal-Quad. Inc., a corporation of which petitioner Roy W. Lowry was a majority shareholder and president. Petitioners were residents of Yorba Linda, California, at the time they filed their petition herein.

1985 Tax Ct. Memo LEXIS 446">*447 By notice sent November 19, 1984, the case was set for trial in San Diego, California, on February 4, 1985. On January 18, 1985, respondent filed a Motion for Leave to File Amendment to Answer, which amendment alleged that petitioner Roy W. Lowry was collateral estopped from denying fraud in this proceeding by reason of his conviction under section 7201 of income tax evasion for the years in issue.

When the case was called for trial on February 4, 1984, neither petitioners nor their counsel appeared. The case was set for trial on February 7, 1985, and petitioners and their counsel again failed to appear. Respondent moved for dismissal of the case for petitioners' failure to properly prosecute, indicating that he would rely on the conviction of petitioner Roy W. Lowry to sustain his burden of proof as to fraud under sections 6653(b), 7454(a), and Rule 142(b), Tax Court Rules of Practice and Procedure.

Respondent also stated that, if the motion were granted, respondent would concede the additions to tax as to petitioner Ruth E. Lowry. Because of the failure of petitioners' counsel to appear on either of the dates set for trial, the Court issued an Order to Show Cause, to be1985 Tax Ct. Memo LEXIS 446">*448 served directly on petitioners, giving them another opportunity to provide any reason why a decision should not be entered against each of them for the deficiencies and against Roy W. Lowry for the additions to tax.

No response to the Order to Show Cause was received. By reason of their failure to appear, issues relating to the correctness of the deficiency will be decided against them, and respondent's motion to dismiss as to those issues is granted. See Rules 149(a) and 123, Tax Court Rules of Practice and Procedure.2Petitioner Roy W. Lowry is collaterally estopped from denying fraud as to the years in issue.

Amos v. Commissioner,43 T.C. 50">43 T.C. 50 (1964), affd. 360 F.2d 358">360 F.2d 358 (4th Cir. 1965). Decision will be entered in favor of respondent and against both petitioners for the amount of deficiencies for each year and against petitioner Roy W. Lowry as to the additions to tax under1985 Tax Ct. Memo LEXIS 446">*449 section 6653(b).Footnotes1. Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954, as amended and in effect during the years in issue.↩2.

Appropriate disciplinary action may also be taken against petitioners' counsel. See Rules 201(a) and 202, Tax Court Rules of Practice and Procedure↩; Tax Court Press Release issued January 29, 1985, reported in the Wall Street Journal, page 1, February 6, 1985.