UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Anand v. Commissioner

No. 20-2408, United States Court of Appeals for the Second Circuit (April 16, 2021)

SUMMARY

The Second Circuit affirmed the Tax Court's decision, holding that the Tax Court lacked jurisdiction over claims to amend the U.S.-India Double Taxation Abatement Treaty and over FBAR penalties, as those are not tax deficiencies. The court also held that res judicata barred relitigation of the taxpayer's underlying tax liability for 2004–2011 due to a prior stipulated Tax Court decision. Finally, the Tax Court did not abuse its discretion in limiting interest abatement under 26 U.S.C. § 6404(e) to a period of IRS delay not attributable to the taxpayer, excluding delays from personnel changes caused by the taxpayer or time spent obtaining legal advice on complex tax provisions.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Debra Ann Livingston; Richard C. Wesley; Susan L. Carney
JURISDICTION	Federal
DECIDED	April 16, 2021
DOCKET	20-2408
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a decision of the United States Tax Court (Goeke, J.).
STANDARD OF REVIEW	De novo for summary judgment; abuse of discretion for interest abatement denial.
PRECEDENTIAL VALUE	unpublished
PARTIES	Davendra Anand v. Commissioner of Internal Revenue

TOPICS

tax · summary judgment · res judicata · subject matter jurisdiction · appellate jurisdiction

PRACTICE AREAS

Tax Law

QUESTIONS PRESENTED

1. Whether the Tax Court properly dismissed for lack of jurisdiction Anand's claims regarding amendment of the DTAA and FBAR penalties.
2. Whether the Tax Court properly granted summary judgment to the Commissioner on Anand's underlying tax liability based on res judicata from the 2016 Tax Court decision.
3. Whether the Tax Court properly granted summary judgment to the Commissioner on the denial of interest abatement.

HOLDINGS

1. The Tax Court lacked jurisdiction to alter the DTAA because there is no statutory provision permitting such action, and it lacked jurisdiction over FBAR penalties because they are not tax deficiencies.
2. The 2016 Tax Court decision based on the parties' stipulation has preclusive effect, barring relitigation of tax liabilities for 2004-2011.
3. The Commissioner did not abuse his discretion in denying interest abatement except for the period September 26, 2013 to February 11, 2014, which was already abated.

KEY QUOTATIONS

> *"We review the Tax Court's grant of summary judgment de novo. Sunik v. Comm'r, 321 F.3d 335, 337 (2d Cir. 2003); Eisenberg v. Comm'r, 155 F.3d 50, 53 (2d Cir. 1998); 26 U.S.C. § 7482(a)(1) (providing that tax court decisions reviewed in same manner as district court decisions in civil cases tried without a jury)."* (at 3)

> *"In general, the IRS may abate interest when the interest is "attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act[.]" 26 U.S.C. § 6404(e)(1)(A)."* (at 3)

> *"The doctrine of res judicata (claim preclusion) prevents parties from relitigating issues that were, or could have been, decided on the merits in a previous action. Brown Media Corp. v. K&L Gates, LLP, 854 F.3d 150, 157 (2d Cir. 2017). "To determine whether the doctrine of res judicata bars a subsequent action, [this Court] consider[s] whether 1) the prior decision was a final judgment on the merits, 2) the litigants [or their privies] were the same parties, 3) the prior court was of competent jurisdiction, and 4) the causes of action were the same." Id. (internal quotation marks and citation omitted)."* (at 4)

> *"Finally, we cannot address any of Anand's claims concerning amendment of the DTAA or his FBAR penalties because we lack jurisdiction "to grant relief that is beyond the powers of the Tax Court itself." Maier v. Comm'r, 360 F.3d 361, 363 (2d Cir. 2004) (internal quotation marks and citation omitted)."* (at 5)

FACTUAL BACKGROUND

Anand filed a petition in the Tax Court seeking abatement of interest, refunds of taxes and FBAR penalties, and amendment of the Double Taxation Abatement Agreement between the U.S. and India. He had previously entered into a settlement agreement with the IRS regarding his tax liability for tax years 2004 to 2011, which was incorporated into a 2016 Tax Court decision. The IRS denied Anand's request for interest abatement except for a period from September 26, 2013 to February 11, 2014, when the IRS stopped working on his case to work on his brother's audit.

PROCEDURAL HISTORY

The Tax Court dismissed for lack of jurisdiction Anand's claims regarding amendment of the DTAA and FBAR penalties. It granted partial summary judgment to the Commissioner on Anand's challenge to underlying tax liability, finding it precluded by res judicata from a prior 2016 Tax Court decision. It also granted partial summary judgment on the denial of interest abatement, holding that Anand was only entitled to abatement for a limited period.

DISPOSITION

affirmed

CASES CITED

- Sunik v. Comm'r, 321 F.3d 335 (2d Cir. 2003)
- Eisenberg v. Comm'r, 155 F.3d 50 (2d Cir. 1998)
- Banat v. Comm'r, T.C. Mem. 2000-141, aff'd, 5 Fed. App'x 36 (2d Cir. 2001)
- Brown Media Corp. v. K&L Gates, LLP, 854 F.3d 150 (2d Cir. 2017)
- United States v. Int'l Bldg. Co., 345 U.S. 502 (1953)
- Maier v. Comm'r, 360 F.3d 361 (2d Cir. 2004)
- Williams v. Comm'r, 131 T.C. 54 (2008)

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