18 T.C. 122 (1952)

Income from the sale of crops is taxable to a corporation, not its sole stockholder, when the corporation, in its ordinary course of business, delivers those crops to a marketing cooperative before the corporation's effective dissolution, even if the proceeds are paid directly to the corporation's creditor.

Summary

E.D. Gensinger, as transferee of Columbia River Orchards, Inc. (the corporation), challenged the Commissioner's assessment of tax deficiencies against him, arguing the income from fruit sales should be taxed to him individually, not to the dissolving corporation. The Tax Court held that the income from cherry and apricot sales, delivered to a cooperative marketing association (Skookum) before the corporation's effective dissolution, was taxable to the corporation. However, the court estimated a portion of peach sale proceeds was attributable to Gensinger's individual orchard, and thus not taxable to the corporation. The court also determined penalties for failure to file an excess profits tax return were not warranted due to confusion surrounding the proper taxable period.

Facts

E.D. Gensinger owned all the stock of Columbia River Orchards, Inc. He decided to liquidate the corporation in 1943 to avoid corporate taxes. The corporation delivered cherry and apricot crops to Skookum, a cooperative, before its purported dissolution. Skookum mixed the fruit with that of other growers and sold it. Gensinger notified Skookum that he had "disincorporated" and that proceeds should be handled for his individual account. However, fruit from the corporation continued to be accounted for under the corporation's name. Proceeds from the fruit sales were paid directly to Regional Agricultural Credit Corporation (RACC), a creditor of the corporation, to pay off corporate debts.

Procedural History

The Commissioner determined deficiencies in income and excess profits taxes against Columbia River Orchards, Inc. for the calendar year 1943, and asserted transferee liability against Gensinger. Gensinger petitioned the Tax Court, challenging the Commissioner's determination. A prior Tax Court case, *Columbia River Orchards, Inc., 15 T.C. 253*, established the corporation's correct tax period as the calendar year 1943.

Issue(s)

1. Whether the income from the sale of cherry and apricot crops delivered to Skookum prior to July 20, 1943, is taxable to the corporation or to Gensinger individually.

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2. Whether the income from the sale of peach crops delivered to Skookum after July 20, 1943, is taxable to the corporation or to Gensinger individually.

3. Whether the notice of transferee liability was mailed at a time when assessment against and collection from the petitioner was barred by the statute of limitations.

4. Whether penalties for failure to file an excess profits tax return and for negligence are applicable.

Holding

1. No, because the cherry and apricot crops were delivered to Skookum by the corporation in the ordinary course of its business before the effective date of dissolution, and the corporation retained control over the disposition of the proceeds.

2. No, in part. The court estimated based on the record that $20,000 of the proceeds of the sales of the 1943 crop of peaches was income of the corporation and the remainder was not income of the corporation.

3. No, because the corporation did not file a valid tax return for the calendar year 1943, thus the statute of limitations did not begin to run.

4. No, because the failure to file was due to reasonable cause, given the confusion surrounding the proper taxable period and the Commissioner's own initial determination of deficiencies for an incorrect period.

Court's Reasoning

The court emphasized that the corporation continued operating in its usual manner until July 20, 1943. The fruit had already been delivered to Skookum, mixed with other growers' fruit, and was subject to Skookum's marketing process. Gensinger's instructions to Skookum to handle the proceeds for his personal account were ineffective because the corporation still owned the fruit at the time of delivery. The court cited *Commissioner v. Court Holding Co., 324 U.S. 331*, emphasizing that a corporation cannot casually put on and take off its corporate cloak for tax purposes. Since the corporation incurred the expenses of raising the crops, and the proceeds were used to pay off the corporation's debts, the income was properly attributed to the corporation. Regarding the peach crop, the court applied the principle of *Cohan v. Commissioner, 39 F.2d 540*, to estimate the portion of peach sales attributable to the corporation's orchard versus Gensinger's individual orchard.

Practical Implications

This case clarifies that merely intending to dissolve a corporation does not automatically shift tax liability to the individual stockholder. The key is whether the corporation continues to operate in its ordinary course of business and controls the

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disposition of assets before a valid dissolution occurs. Attorneys should advise clients liquidating businesses to adhere strictly to state corporate dissolution procedures and to carefully document any transfer of assets to avoid disputes with the IRS. It also illustrates the importance of clear and convincing evidence when attempting to allocate income between a corporation and its owner, particularly when relying on factual approximations. This case serves as a reminder that courts will scrutinize transactions to ensure they reflect economic reality and are not merely tax avoidance schemes. The application of *Cohan* provides guidance, albeit subjective, where precise records are lacking.

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