19 T.C. 663 (1953)

To qualify for income averaging under Section 107(b) of the Internal Revenue Code for income derived from artistic works, a taxpayer must receive at least 80% of the gross income from the work in the taxable year, and the doctrine of constructive receipt does not apply to royalties not subject to the author's unrestricted right of demand.

Summary

James Gould Cozzens, an author, sought to utilize Section 107(b) of the Internal Revenue Code to reduce his 1942 tax liability related to royalties from his book, "The Just and the Unjust." He argued that he constructively received over 80% of the book's income in 1942. The Tax Court disagreed, finding that he did not actually or constructively receive the required 80% because the publishing contract did not guarantee such payment, and he had no unrestricted right to demand additional royalties beyond what was actually paid. Therefore, he could not average his income over multiple years for tax purposes.

Facts

Cozzens spent several years researching and writing "The Just and the Unjust," completing it in April 1942 and publishing it in July 1942. His contract with Harcourt, Brace and Company, Inc., dated March 24, 1942, provided for a $1,000 advance and royalty payments to be settled semi-annually. Cozzens's wife, acting as his agent, requested advance royalty payments to meet the 80% threshold for favorable tax treatment under Section 107(b). While the publisher was willing to make advancements from accrued sales proceeds, no firm agreement was reached. Cozzens actually received $31,700 in royalties in 1942. Total royalties through 1943 were $40,944.28. The IRS determined a deficiency, arguing Cozzens did not meet the 80% requirement in 1942.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Cozzens's 1943 income tax. Cozzens petitioned the Tax Court, contesting the deficiency. The Tax Court addressed whether Cozzens was entitled to the benefits of Section 107(b) of the Internal Revenue Code.

Issue(s)

1. Whether Cozzens received at least 80% of the gross income from "The Just and the Unjust" in 1942, thus qualifying for income averaging under Section 107(b) of the Internal Revenue Code.

2. Whether Cozzens constructively received additional royalty income in 1942, even though it was not actually paid, based on the publisher's willingness to make

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advance payments.

Holding

1. No, because Cozzens did not actually receive 80% of the gross income from the book in 1942, as required by Section 107(b).

2. No, because the doctrine of constructive receipt did not apply, as Cozzens lacked an unrestricted right to demand the additional royalties in 1942.

Court's Reasoning

The court reasoned that Section 107(b) explicitly requires the taxpayer to receive at least 80% of the gross income from the artistic work in the taxable year. Since Cozzens only received $31,700 in 1942, while 80% of the total income through 1943 was $32,755.42, he failed to meet this threshold. Regarding constructive receipt, the court emphasized that income must be credited to the taxpayer's account without restriction or set aside for their use under their unrestricted control. The court found that the contract gave Cozzens no right to royalties in excess of the initial advance, and it was neither abrogated nor amended. The publisher's willingness to make advances was a "purely gratuitous arrangement," not an obligation, and Cozzens "could not have demanded them as a matter of right." The court cited *Avery v. Commissioner, 292 U.S. 210*, emphasizing that a mere willingness to pay is insufficient; the taxpayer must have the unqualified right to demand the funds.

Practical Implications

This case clarifies the strict requirements for utilizing Section 107(b) (and similar income averaging provisions). Authors and other creators must ensure they actually receive at least 80% of the income from their work in a single tax year to qualify. The case underscores that a mere offer or willingness to pay additional amounts is insufficient to trigger constructive receipt; the taxpayer must have an unqualified, legal right to demand those funds. Tax planning is critical for authors who anticipate significant royalty income, as simply arranging for a publisher's willingness to advance payments is not enough to secure favorable tax treatment. Later cases would cite Cozzens for the principal that to apply the doctrine of constructive receipt, income must be credited to the taxpayer's account or set aside for their use without restriction.

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