Campana Corp. v. Commissioner, 19 T.C. 82 (1952)

A deduction is not considered abnormal for excess profits tax purposes simply because a taxpayer chooses to deduct protested excise taxes rather than offset them against income, nor is it abnormal when the government assesses a manufacturer's excise tax, as such taxes are reasonably expected in the normal course of business.

Summary

Campana Corporation disputed the Commissioner's determination of its excess profits tax credit for 1943 and 1944, arguing that deductions for excise taxes paid in 1937 and 1938 were abnormal. The company had paid additional excise taxes based on its distributor's selling price and initially protested these taxes. The Tax Court held that the excise tax deductions were not abnormal under Section 711(b)(1)(H) or (b)(1)(J)(i) of the Internal Revenue Code. The court also found that the excise taxes were not properly accruable as income in 1937 and 1938. The court reasoned that the company's actions, including not accruing the taxes on its books and filing suit for a refund, were inconsistent with a claim of accruable income.

Facts

Campana Corporation manufactured cosmetics and toilet preparations. From 1932 to July 1, 1933, it sold its products directly, paying excise tax based on its selling price. On June 9, 1933, Campana contracted with a distributor to sell its entire output. After this agreement, Campana computed and paid excise tax based on its lower selling price to the distributor. In 1935, the Commissioner assessed additional excise taxes based on the distributor's higher selling price to the trade. Campana paid these protested taxes and deducted them on its returns for the years 1934-1938. Campana later sued to recover the additional taxes, winning a partial victory before dismissing the suit after an adverse Supreme Court ruling. In 1945, the distributor reimbursed Campana for the additional excise taxes paid from 1933-1939; Campana included this reimbursement in its 1945 income.

Procedural History

The Commissioner determined that the deductions for excise taxes paid in 1937 and 1938 were not abnormal deductions and thus did not qualify for adjustment of the excess profits tax credit under Section 711(b)(1)(H) or (b)(1)(J)(i) of the Internal Revenue Code. Campana petitioned the Tax Court for review. The Tax Court upheld the Commissioner's determination.

Issue(s)

1. Whether the additional excise taxes paid by Campana in 1937 and 1938 constituted abnormal deductions within the meaning of Section 711(b)(1)(H) or (b)(1)(J)(i) of the Internal Revenue Code for the purpose of computing its excess profits tax credit for 1943 and 1944.

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2. Whether the additional excise taxes that Campana could pass on to its distributing agent were properly accruable as income in the fiscal years 1937 and 1938, thus increasing its base period net income and excess profits tax credit.

Holding

1. No, because the excise taxes were of the same class as those levied since 1933, and the company's choice to deduct protested taxes rather than offset them against income does not make the deductions abnormal. Also, the assessment of a manufacturer's excise tax is not unexpected in the normal course of business.

2. No, because Campana's actions, including its bookkeeping treatment and suits for refund, indicated that it did not consider the taxes as accrued income in 1937 and 1938.

Court's Reasoning

The court reasoned that Campana's claim rested on the premise that the manufacturing and distribution entities were separate and operating at arm's length. However, the court found that the entities had identical stockholders with shared economic interests, negating the arm's-length argument. The court emphasized that to qualify as an abnormal deduction, the deduction must be unusual in type for the taxpayer. Citing *Frank H. Fleer Corporation, 10 T. C. 191*, the court found that the excise taxes were of the same type levied since 1933. The court stated that "Internal bookkeeping procedure in itself can not make a deduction abnormal under section 711(b) (1) (J) (i)." Regarding the accrual of income, the court cited *Spring City Foundry Co. v. Commissioner, 292 U. S. 182, 184*, noting that "it is the right to revenue and not the actual receipt that determines the inclusion of the amount in gross income." However, the court found Campana's bookkeeping records and its suits for a refund inconsistent with the claim that the taxes were accrued income. The court also quoted *Jamaica Water Supply Co., 42 B. T. A. 359, 365*, stating "Petitioner's own treatment of the disputed items in failing to accrue them on its books, or to include them in its return, is persuasive evidence of the correctness of respondent's position…"

Practical Implications

This case clarifies the requirements for establishing abnormal deductions under Section 711(b)(1)(H) and (b)(1)(J)(i) for excess profits tax credit purposes. It highlights that merely protesting a tax or adopting a particular bookkeeping treatment does not automatically render a deduction abnormal. Taxpayers must demonstrate that the nature of the deduction itself is unusual for their business. Furthermore, the case reinforces the principle that accrual of income depends on a taxpayer's clear right to receive it, and that a taxpayer's actions must be consistent with a claim of accrued income. This decision informs how tax professionals evaluate potential adjustments to excess profits tax credits and underscores the importance

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of consistent accounting practices and legal positions.

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