Journal-Tribune Publishing Co. v. Commissioner, 20 T.C. 688 (1953)

When determining excess profits tax relief under Section 722 of the Internal Revenue Code, the Tax Court must calculate a "fair and just amount" of constructive average base period net income, considering the taxpayer's business and the changes from pre-merger to post-merger operations.

Summary

The case involved a newspaper publisher seeking excess profits tax relief under Section 722 of the Internal Revenue Code. The publisher, Journal-Tribune, was formed by merging two newspapers after the statutory base period for calculating taxes. The court had to determine the "constructive average base period net income" as if the merger occurred before the base period. Both the publisher and the Commissioner submitted competing calculations. The court found that the methodologies and assumptions of both were flawed, and it used its judgment to arrive at a more equitable figure, considering circulation, advertising rates, and operational expenses before and after the merger, to determine a fair tax relief amount.

Facts

The Journal-Tribune Publishing Co. merged two newspapers. The publisher sought excess profits tax relief for the years ending October 31, 1942-1945. The parties agreed that invested capital was an inadequate standard for determining excess profits. The core issue was determining the publisher's constructive average base period net income under Section 722(c) of the Internal Revenue Code. The court considered data from the predecessor newspapers and the publisher's operations after the merger. The publisher's operations reached the level of normalcy about January 1, 1943. There was a shrinkage in circulation but increases in subscription and advertising rates after the merger. The merger resulted in savings in operating expenses. Both the publisher and the Commissioner submitted their own reconstructions of the base period income which differed substantially.

Procedural History

The case began as a dispute over the amount of excess profits tax relief under Section 722 of the Internal Revenue Code. The Commissioner made a partial allowance of the claims. The publisher contested the Commissioner's determination regarding the amount of relief. The Tax Court was tasked with determining the constructive average base period net income. The Tax Court reviewed the evidence, the reconstruction proposals of both parties, and the applicable law.

Issue(s)

1. Whether the Commissioner's calculation of the constructive average base period net income was adequate.

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2. Whether the publisher’s proposed reconstruction of base period income provides a “fair and just amount” of constructive average base period net income for excess profits tax relief purposes.

Holding

1. No, because the Commissioner’s reconstruction was determined to be too low.
2. No, because the publisher’s proposed reconstruction was found to be too high. The court determined its own constructive average base period net income to determine the tax liability.

Court’s Reasoning

The court recognized the difficulty in precisely calculating constructive base period income, emphasizing that the statute required a

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