***Merkra v. Commissioner*, 11 T.C. 789 (1948)**

A corporation's sale of assets is not attributed to the corporation for tax purposes if the corporation did not negotiate a sale prior to liquidation, even if a subsequent sale by the shareholders occurs shortly after liquidation.

Summary

Merkra Corporation leased a building with an option for the lessee to purchase. Merkra dissolved, distributing the building to its shareholders who then sold it to the lessee. The Commissioner of Internal Revenue argued the sale should be attributed to Merkra, making it liable for capital gains taxes. The Tax Court disagreed, distinguishing this case from *Commissioner v. Court Holding Co.* because Merkra had not engaged in any pre-liquidation negotiations for the sale of the property. The court held that since the shareholders, not the corporation, conducted the sale after liquidation, they are liable for the taxes, not the corporation.

Facts

Merkra Corporation leased a property with an option to purchase to Marex Realty Corporation. Marex was later reorganized into 80 Broad Street, Inc., which took over the lease. Merkra dissolved, distributing its assets, including the property, to its four shareholders. After the distribution, 80 Broad Street, Inc., exercised the purchase option, and the shareholders of Merkra sold the property to 80 Broad Street, Inc. The Kramers, who held title to the property, admitted liability as transferees if the gain was taxable to Merkra.

Procedural History

The Commissioner of Internal Revenue determined that the gain from the sale of the property was taxable to Merkra Corporation. The Tax Court reviewed the case to determine if the sale should be attributed to the corporation or to its shareholders after liquidation.

Issue(s)

1. Whether the gain from the sale of the property by the shareholders of Merkra Corporation after liquidation should be attributed to the corporation for tax purposes.

Holding

1. No, because Merkra Corporation did not negotiate the sale before its liquidation.

Court's Reasoning

The court distinguished this case from *Commissioner v. Court Holding Co.*, where the Supreme Court held a corporation liable for tax on a sale conducted by its shareholders after liquidation. The court emphasized the critical fact in *Court Holding Co.* was the existence of a pre-liquidation agreement. The court cited *United States v. Cumberland Public Service Co.*, which states, “While the distinction between sales by a corporation as compared with distribution in kind followed by shareholder sales may be particularly shadowy and artificial when the corporation is closely held, Congress has chosen to recognize such a distinction for tax purposes.” The court also referred to *Steubenville Bridge Co.*, where the “basic question” was “as to who made the sale.” The court found that Merkra merely gave an option as part of the lease and there were no negotiations for a sale before liquidation. The court emphasized: “the sale cannot be attributed to the corporation unless the corporation has, while still the owner of the property, carried on negotiations looking toward a sale of the property, and in most cases the negotiations must have culminated in some sort of sales agreement or understanding so it can be said the later transfer by the stockholders was actually pursuant to the earlier bargain struck by the corporation — and the dissolution and distribution in kind was merely a device employed to carry out the corporation’s agreement or understanding.”

Practical Implications

This case clarifies that the timing and substance of negotiations are crucial in determining tax liability in corporate liquidations. The principle is that if a corporation negotiates a sale, even if the formal transfer occurs after liquidation, the corporation is typically taxed on the gain. However, if the corporation merely owns the property and distributes it to shareholders, who then independently negotiate and conduct the sale, the tax liability falls on the shareholders. This influences how attorneys advise clients on structuring corporate liquidations and asset sales. The case emphasizes the need to document the steps taken by the corporation before the transfer, specifically the lack of pre-liquidation sales negotiations. Future cases would likely follow this principle, emphasizing that the corporation must have engaged in sale negotiations before liquidation for the sale to be attributed to the corporation.