***Orr Mills, Inc. v. Commissioner*, 30 T.C. 163 (1958)**

When a corporation purchases the stock of another corporation with the primary intent of acquiring its assets, and subsequently liquidates the acquired corporation, the transaction may be treated as a direct purchase of assets for tax purposes, allowing the acquiring corporation to use the cost of the stock as the basis for depreciation.

Summary

Orr Mills, Inc. (petitioner) acquired Orr Cotton Mills by first purchasing its stock and then liquidating it. The IRS determined the basis of the assets for depreciation purposes should be based on the transferor's basis (Orr Cotton Mills) due to the corporate liquidation rules. Petitioner argued that the substance of the transaction was an asset purchase, not a stock acquisition, and thus, the basis should be the purchase price of the stock. The Tax Court sided with the taxpayer, finding the substance of the transaction was an asset purchase because the acquiring corporation's intent was to obtain the assets, and the stock purchase/liquidation was merely a means to that end. The court focused on the intent of Lowenstein, petitioner's parent, in determining that the substance of the transaction was an asset purchase.

Facts

Lowenstein & Sons, Inc. (Lowenstein), a textile converter, wanted to acquire the assets of Orr Cotton Mills, a manufacturer of grey goods, but the Orr Cotton Mills' shareholders were only willing to sell stock. Lowenstein first offered to purchase the assets, but the offer was rejected. Lowenstein then purchased all of the common stock of Orr Cotton Mills. Lowenstein formed Orr Mills, Inc. (petitioner) and transferred the Orr Cotton Mills stock to it in exchange for petitioner's stock. Petitioner then acquired all of Orr Cotton Mills' assets and liquidated Orr Cotton Mills. Petitioner claimed depreciation based on the cost of the Orr Cotton Mills stock. The IRS contended that the basis should be the same as it was for Orr Cotton Mills.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Orr Mills, Inc.'s income tax. The Tax Court heard the case to determine the proper basis for depreciation of the acquired assets, ruling in favor of the taxpayer.

Issue(s)

1. Whether the basis of the assets acquired by petitioner from Orr Cotton Mills is determined by the cost of the stock of Orr Cotton Mills or by the basis of the assets in the hands of the transferor, Orr Cotton Mills.

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Holding

1. Yes, because the substance of the transaction was a purchase of assets by petitioner, the basis of the acquired assets is the cost of the stock of Orr Cotton Mills.

Court’s Reasoning

The court applied the

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