*31 T.C. 211 (1958)*

Under the doctrine of constructive receipt, income is only taxable in the year it is available to the taxpayer without substantial limitations or restrictions on their access to it.

**Summary**

The case of *Gann v. Commissioner* involved a tax dispute over royalty income for a novelist. The IRS argued that Gann constructively received certain royalties in 1954, even though he did not have immediate access to them due to contractual agreements. The Tax Court sided with Gann, ruling that the royalties were not constructively received because his access was limited by a contract. The court emphasized that constructive receipt requires income to be unqualifiedly available, not merely potentially available. The decision clarified when income is considered constructively received, particularly concerning the impact of contractual restrictions. Additionally, the court addressed the application of Section 107(b) of the Internal Revenue Code of 1939, concerning income received from artistic works.

**Facts**

Ernest K. Gann, a novelist, entered into a contract with a publisher, Sloane, for the novel "The High and the Mighty" in 1952, with royalties accruing after the book's publication in 1953. In March 1954, Gann contracted with Sloane for another novel, "Soldier of Fortune," which included a provision that Sloane would withhold royalties from "The High and the Mighty" and another book, "Fiddler's Green," until royalties from "Soldier of Fortune" reached $40,000 to secure guaranteed monthly payments to Gann. In May 1954, Gann received a check that included royalties earned on "The High and the Mighty" from February 1 to May 5, 1954. Sloane later informed Gann that this payment was in error and should have been withheld according to the new contract. Sloane adjusted their accounting to reflect the royalties as advances on "Soldier of Fortune." Gann kept his books and filed his tax returns on a cash basis, meaning he reported income when he received it.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Gann's income tax for 1953 and 1954. The Commissioner argued that Gann constructively received royalties from "The High and the Mighty" and "Fiddler's Green" in 1954. The Tax Court heard the case, including the issue of whether Gann constructively received income that he did not actually have access to, and the application of Section 107(b) of the Internal Revenue Code.

**Issue(s)**

1. Whether Gann constructively received certain royalties from "The High and the Mighty" in 1954, even though his access to the royalties was restricted by his

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contract with Sloane.

2. Whether Gann constructively received royalties from “Fiddler’s Green” in 1954, which were withheld under the same contract.

3. Whether Gann was entitled to the benefit of Section 107(b) of the Internal Revenue Code of 1939 in the determination of his tax liabilities for the year 1953.

**Holding**

1. No, because Gann did not have unqualified access to the royalties in 1954 due to the contractual restrictions.

2. No, because Gann did not have access to the royalties from “Fiddler’s Green” in 1954 due to the contractual agreement.

3. Yes, because Gann’s gross income in 1953 from “The High and the Mighty” met the requirements of Section 107(b).

**Court’s Reasoning**

The court applied the doctrine of constructive receipt, which states that income is taxable when it is unqualifiedly available to the taxpayer, even if not physically in hand. The court cited *Ross v. Commissioner*, emphasizing that the purpose of the doctrine is to prevent taxpayers from controlling the timing of their income for tax avoidance. The court determined that the contractual agreement with Sloane, which withheld royalties from “The High and the Mighty” and “Fiddler’s Green” until earnings from “Soldier of Fortune” reached a certain amount, imposed a substantial restriction on Gann’s access to the income. The court distinguished the case from instances where taxpayers assigned income rights because Gann merely agreed to a postponement of payments, not an assignment. The court also referenced *James F. Oates*, in which the court found that an agreement to defer receipt of renewal commissions did not trigger constructive receipt. Because Gann’s access was contractually restricted, the court held that the royalties were not constructively received in 1954. The court also held that, under the facts, the advance payment on “Soldier of Fortune” correctly included the royalties and the Commissioner erred in including them again as royalties from “The High and the Mighty.” Finally, the court found that Gann met the requirements to claim the benefit of Section 107(b) regarding income from artistic works.

**Practical Implications**

This case provides clear guidance on when the doctrine of constructive receipt applies, especially concerning the impact of contractual limitations. Attorneys and tax advisors should analyze contractual terms carefully when determining income recognition for cash-basis taxpayers. The case illustrates that mere potential for income is insufficient; the taxpayer must have the unfettered right to control the

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funds. Furthermore, the case underlines the importance of properly accounting for income that is subject to restrictions. In practice, the decision supports the use of agreements that postpone income in order to time income strategically. The case also informs tax planning for artists or other creative professionals, particularly concerning Section 107(b).

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