Nibur Building Corporation, and its Wholly Owned Subsidiary, Ralston Steel Corporation, Petitioners v. Commissioner of Internal Revenue, Respondent, 54 T. C. 835; 1970 U. S. Tax Ct. LEXIS 156

A subsidiary's portion of a consolidated net operating loss cannot be carried back to offset the parent's income in a separate return year prior to the subsidiary's incorporation.

Summary

In Nibur Bldg. Corp. v. Commissioner, the Tax Court ruled that a subsidiary's portion of a consolidated net operating loss cannot be carried back to offset the parent corporation's income in years before the subsidiary existed. Nibur Building Corp. (formerly Ralston Steel Corp.) had filed separate returns in 1959 and 1960, but then filed consolidated returns with its newly formed subsidiary, Ralston Steel Corp. , from 1961 onwards. When both companies incurred net operating losses in 1962, Nibur attempted to carry these losses back to offset its income in 1959 and 1960. The court, adhering to IRS regulations, disallowed this carryback for the subsidiary's portion of the loss, emphasizing the necessity of apportionment of losses according to the regulations in effect at the time.

Facts

Ralston Steel Corp. (Ralston No. 1) filed separate tax returns for the years 1959 and 1960. On March 7, 1961, it changed its name to Nibur Building Corp. and created a wholly owned subsidiary, Ralston Steel Corp. (Ralston No. 2), transferring certain assets to it. From 1961 to 1963, Nibur and Ralston No. 2 filed consolidated returns. In 1962, both companies incurred net operating losses, which Nibur attempted to carry back to offset its income in 1959 and 1960, prior to Ralston No. 2's existence.

Procedural History

The Commissioner of Internal Revenue issued a notice of deficiency disallowing Nibur's attempt to carry back the 1962 consolidated net operating loss to offset income from 1959 and 1960. Nibur petitioned the Tax Court, which upheld the Commissioner's position, ruling that the regulations in effect at the time did not allow for such a carryback.

Issue(s)

1. Whether the portion of a consolidated net operating loss attributable to a subsidiary can be carried back to offset the income of the parent corporation in a separate return year prior to the incorporation of the subsidiary.

Holding

1. No, because IRS regulations require the apportionment of consolidated net

© 2025 SCOTUSreports.com. All rights reserved.

operating losses and only allow carrybacks to the extent attributable to corporations that previously filed separate returns or were part of another affiliated group, which did not apply to Ralston No. 2 in the years before its incorporation.

Court’s Reasoning

The Tax Court relied on IRS regulations that mandate the apportionment of consolidated net operating losses among group members who previously filed separate returns or were part of another affiliated group. Specifically, Section 1. 1502-31(d)(1) of the regulations in effect at the time did not permit the carryback of losses from a subsidiary to offset income from a parent in years before the subsidiary’s existence. The court emphasized that filing a consolidated return signifies consent to these regulations under Section 1501 of the Internal Revenue Code. The decision was supported by prior cases like Trinco Industries, Inc. and American Trans-Ocean N. Corp. , which also disallowed similar carrybacks. The court found Revenue Ruling 64-93 inapplicable because it pertained to carrybacks to consolidated return years, not separate return years as in the case at bar.

Practical Implications

This ruling clarifies that net operating losses from a subsidiary cannot be used to reduce a parent’s tax liability in years before the subsidiary was incorporated. Legal practitioners must carefully apportion losses according to IRS regulations when dealing with consolidated returns, especially when considering carrybacks to separate return years. This decision impacts corporate tax planning, particularly in the structuring of new subsidiaries and the timing of their incorporation relative to loss years. Subsequent cases have generally followed this precedent, reinforcing the importance of adhering to the specific regulations governing consolidated net operating loss carrybacks.

© 2025 SCOTUSreports.com. All rights reserved.