American Manufacturing Company, Inc. (Successor by Merger to Safety Industries, Inc. ; Successor by Liquidation to Pintsch Compressing Corp.), Petitioner v. Commissioner of Internal Revenue, Respondent; American Manufacturing Company, Inc. (Successor by Merger to Safety Industries, Inc.), Petitioner v. Commissioner of Internal Revenue, Respondent, 55 T. C. 204; 1970 U. S. Tax Ct. LEXIS 37 (U. S. Tax Court, Oct. 29, 1970)

A subsidiary's liquidation into its parent can be treated as part of a reorganization if it involves a transfer of assets to another subsidiary, potentially resulting in taxable dividend treatment for the parent under section 356(a)(2).

Summary

American Manufacturing Co. owned two subsidiaries, Pintsch and ISI. Pintsch sold its operating assets to ISI for cash and then liquidated, distributing its remaining assets to American. The court held that this series of transactions constituted a reorganization under section 368(a)(1)(D), not a liquidation under section 332. Consequently, the distribution to American was taxable as a dividend under section 356(a)(2) to the extent of Pintsch's earnings and profits. The court also ruled that Pintsch had to recognize gains from the asset sale to ISI, but not losses, due to the application of section 367.

Facts

American Manufacturing Co. (American) owned 100% of Pintsch Compressing Corp. (Pintsch), a domestic subsidiary, and Interprovincial Safety Industries, Ltd. (ISI), a Canadian subsidiary. In 1958, Pintsch transferred all its operating assets to ISI for cash and subsequently liquidated, distributing its remaining cash and receivables to American. The transfer to ISI was part of a plan to continue Pintsch's business under ISI while minimizing Canadian tax liabilities. No section 367 clearance was obtained for this transfer involving a foreign subsidiary.

Procedural History

The Commissioner determined deficiencies in American's taxes for 1955 and 1958, asserting that the liquidation was taxable as a dividend. American contested these determinations in the U. S. Tax Court. The court considered whether the transactions qualified as a liquidation under section 332 or as part of a reorganization under section 368(a)(1)(D). The court also addressed the tax treatment of Pintsch's gains and losses from the asset sale to ISI.

Issue(s)

1. Whether the distribution from Pintsch to American, following the transfer of Pintsch's assets to ISI, qualifies as a liquidation under section 332 or as part of a reorganization under section 368(a)(1)(D).
2. Whether the distribution from Pintsch to American is taxable under section 301 as

a dividend or under section 356(a)(2) as part of a reorganization.
3. Whether Pintsch must recognize gains and losses from the sale of assets to ISI under sections 361 and 367.

Holding

1. No, because the liquidation was a step in a reorganization under section 368(a)(1)(D), not a standalone liquidation under section 332.
2. Yes, the distribution is taxable as a dividend under section 356(a)(2) because it was part of a reorganization and had the effect of a dividend, to the extent of Pintsch’s earnings and profits.
3. Yes, Pintsch must recognize gains from the asset sale to ISI because section 367 precludes nonrecognition under section 361(b)(1)(A), but losses are not recognized under section 361(b)(2).

Court’s Reasoning

The court reasoned that the transfer of Pintsch’s assets to ISI and subsequent liquidation into American constituted a reorganization under section 368(a)(1)(D) because it met the statutory requirements for a “D” reorganization, including the transfer of substantially all assets and control by the same shareholder (American) post-transfer. The court rejected American’s argument that section 332 should apply, emphasizing that the reorganization provisions take precedence when a series of transactions is part of an overall plan. The court also determined that the distribution to American was taxable as a dividend under section 356(a)(2) because it had the effect of a dividend and was part of the reorganization. Regarding Pintsch’s gains and losses, the court held that gains must be recognized due to the lack of section 367 clearance, but losses were not recognized under section 361(b)(2). The court’s decision was supported by the legislative history of the relevant tax code sections and prior case law.

Practical Implications

This decision clarifies that liquidations involving transfers to other subsidiaries can be treated as reorganizations, affecting how similar cases are analyzed. Taxpayers must be aware that such transactions may trigger dividend taxation under section 356(a)(2) and require careful planning to avoid unexpected tax liabilities. The case also highlights the importance of obtaining section 367 clearance when transferring assets to foreign subsidiaries to ensure nonrecognition of gains. Later cases have cited American Mfg. Co. v. Commissioner to support the principle that the reorganization provisions can override liquidation provisions when transactions are part of a broader plan.

