Greenberg's Express, Inc. v. Commissioner, 62 T. C. 324 (1974)

A protective order under Tax Court Rule 103(a)(10) cannot be used to compel document production that should be sought through other available discovery procedures.

Summary

In Greenberg's Express, Inc. v. Commissioner, the Tax Court addressed whether petitioners could use a protective order under Rule 103(a)(10) to impound documents related to alleged discriminatory selection for tax audits. The court denied the motion, ruling that such orders are not for compelling document production but for retaining documents already produced. The petitioners alleged discrimination due to family connections to organized crime, but the court found these allegations insufficient to justify relief, even if proven, as the audits were part of a legitimate effort to combat organized crime. The court emphasized that tax cases are tried de novo, and thus, the method of selection for audit does not affect the merits of the case.

Facts

The petitioners, including Greenberg's Express, Inc. and related parties, were subjected to second examinations of their tax returns for 1968, which they alleged were discriminatorily selected due to their connections to Carlo Gambino, a target of an organized crime investigation. They claimed the audits were initiated to shift public attention away from the movie 'The Godfather'. The petitioners sought an impounding order under Rule 103(a)(10) to access documents from the IRS, DOJ, and other agencies to prove their allegations.

Procedural History

The petitioners moved for a protective order to impound documents, which was denied by the Tax Court. They had previously challenged related summonses in district court, which were upheld. The Tax Court's decision to deny the protective order was based on the inappropriateness of using Rule 103(a)(10) for document production and the insufficiency of their allegations to justify relief.

Issue(s)

1. Whether a protective order under Tax Court Rule 103(a)(10) can be used to compel the production of documents that might be obtained through other available procedures?

2. Whether allegations of discriminatory selection for audit, if proven, would entitle petitioners to relief such as nullifying deficiency notices or shifting the burden of proof?

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Holding

1. No, because Rule 103(a)(10) is designed for impounding documents after they have been produced, not for compelling their production.

2. No, because even if the allegations were proven, they would not justify the requested relief due to the legitimate purpose of the audits in addressing organized crime and the de novo nature of Tax Court proceedings.

Court's Reasoning

The court reasoned that Rule 103(a)(10) is not a tool for document discovery but for ensuring the availability of already produced documents. The court rejected the petitioners' allegations of discriminatory selection, noting that the audits were part of a broader effort to combat organized crime, which did not constitute an unjustifiable criterion for selection. The court also emphasized that Tax Court trials are de novo, meaning the merits of the case are considered anew, regardless of the audit's origins. The court distinguished this case from others involving unconstitutional conduct, noting that the petitioners' connection to organized crime through family or business relationships did not warrant the requested relief. The court also considered the prior unsuccessful challenge to related summonses, indicating that the procedural requirements for the audits were met.

Practical Implications

This decision clarifies that Rule 103(a)(10) should not be used as a substitute for proper discovery procedures in the Tax Court. Practitioners must use other available means, such as notices to produce or subpoenas, to obtain documents. The ruling also underscores that allegations of discriminatory audit selection are generally not sufficient to alter the burden of proof or nullify deficiency notices in Tax Court, particularly when the audits are part of a legitimate government effort. This case reinforces the de novo nature of Tax Court proceedings, reminding taxpayers that their case will be decided on its merits, not on how the audit was initiated. Subsequent cases have followed this principle, maintaining the focus on the substantive issues of tax liability rather than the administrative process leading to the audit.

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