Allen v. Commissioner, 71 T. C. 577 (1979)

Fraud allegations in tax deficiency cases cannot be struck from pleadings unless clearly immaterial, frivolous, or unsupported by law.

Summary

In Allen v. Commissioner, the U. S. Tax Court rejected Lewis H. Allen's motion to strike fraud allegations from the Commissioner's answer. Allen had refused to provide income information on his 1974 and 1975 tax returns, citing the Fifth Amendment. The Commissioner used the bank deposits method to determine a deficiency and alleged fraud. The court held that fraud allegations are permissible in tax deficiency cases and cannot be struck unless they are clearly immaterial or frivolous. The court emphasized that the sufficiency of fraud allegations is a matter for trial, not a motion to strike.

Facts

Lewis H. Allen filed his 1974 and 1975 federal income tax returns but refused to provide any information about his income, invoking his Fifth Amendment privilege against self-incrimination. He also made various constitutional arguments. The Commissioner of Internal Revenue used the bank deposits method to determine deficiencies for those years and alleged in the notice of deficiency that part of the underpayment was due to fraud. Allen denied the fraud allegations in his petition and moved to strike them from the Commissioner's answer.

Procedural History

Allen filed his petition in the U. S. Tax Court on July 5, 1978, challenging the Commissioner's deficiency determination. The Commissioner filed an answer on September 7, 1978, alleging fraud. Allen moved to strike the fraud allegations on October 10, 1978. The Tax Court heard oral arguments on December 4, 1978, and denied Allen's motion on January 16, 1979.

Issue(s)

1. Whether the fraud allegations in the Commissioner's answer should be struck as immaterial, frivolous, or unsupported by law.

Holding

1. No, because fraud allegations are permissible in tax deficiency cases and cannot be struck unless they are clearly immaterial, frivolous, or unsupported by law.

Court's Reasoning

The court applied Rule 52 of the Tax Court Rules of Practice and Procedure, which allows striking pleadings only if they are insufficient or contain redundant, immaterial, impertinent, frivolous, or scandalous matter. The court noted that motions to strike are generally disfavored by federal courts unless the matter has no possible bearing on the litigation. The court emphasized that the Commissioner is permitted under section 6653(b) of the Internal Revenue Code to impose an addition to tax for fraud, and the Tax Court's rules require the Commissioner to affirmatively plead fraud in the answer. The court rejected Allen's argument that the fraud allegation was frivolous, stating that the sufficiency of the fraud claim is a factual issue to be determined at trial. The court noted that the Commissioner must prove fraud by clear and convincing evidence, and Allen would have the opportunity to present evidence at trial to rebut the fraud allegation.

Practical Implications

This decision clarifies that fraud allegations in tax deficiency cases cannot be easily dismissed through a motion to strike. Taxpayers and their attorneys should be prepared to challenge fraud allegations at trial rather than relying on pre-trial motions. The decision reinforces the principle that the sufficiency of fraud allegations is a factual issue that must be proven at trial. Practitioners should be aware that the Commissioner has a right to plead fraud in tax deficiency cases, and the burden of proof remains with the Commissioner to establish fraud by clear and convincing evidence. This case may be cited in future tax litigation to support the denial of motions to strike fraud allegations from pleadings.