Odend'hal v. Commissioner, 75 T. C. 400 (1980)

Parties must attempt informal consultation or communication before using formal discovery procedures such as requests for admissions.

Summary

In Odend'hal v. Commissioner, the U. S. Tax Court addressed the requirement for informal consultation before formal discovery requests. Petitioners sought to consolidate multiple cases and review the Commissioner's response to their second request for admissions. The court granted consolidation but denied the motion to review the admissions response, holding that the petitioners failed to comply with Rule 90(a), which mandates informal consultation before formal requests for admissions. The ruling clarified that the court's prior stance in Pearsall v. Commissioner was no longer valid, emphasizing the importance of informal communication to streamline legal proceedings and reduce unnecessary litigation.

Facts

The petitioners, tenants in common of a warehouse property in Cincinnati, Ohio, sought to consolidate their cases against the Commissioner of Internal Revenue to determine if the acquisition and rental of the property were for profit or a sham transaction. On April 10, 1980, the petitioners served a second request for admissions on the respondent without attempting informal consultation first, over 11 months after the effective date of the revised Rule 90(a), which required such consultation before formal requests.

Procedural History

The cases were assigned to a Special Trial Judge for hearing and ruling on motions to consolidate and the petitioners' motion to review the Commissioner's response to their second request for admissions. After the hearing, the Tax Court agreed with and adopted the Special Trial Judge's opinion, granting the consolidation motion and denying the motion to review the admissions response.

Issue(s)

1. Whether the court should consolidate the petitioners' cases for trial, briefing, and opinion.
2. Whether the petitioners' second request for admissions was effective given their failure to attempt informal consultation before serving the request.

Holding

1. Yes, because the cases involved common questions of law and fact, consolidation would avoid unnecessary costs, delay, and duplication.
2. No, because the petitioners did not attempt informal consultation or

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communication before serving the second request for admissions, as required by Rule 90(a).

Court’s Reasoning

The court applied Rule 141(a) to justify consolidating the cases, noting the common legal and factual issues and the potential for increased efficiency. Regarding the second request for admissions, the court emphasized that Rule 90(a), revised effective May 1, 1979, explicitly requires parties to attempt informal consultation before resorting to formal discovery procedures. The court cited previous cases like Branerton Corp. v. Commissioner and International Air Conditioning Corp. v. Commissioner to support its interpretation that informal efforts must be made to obtain needed information voluntarily before formal requests. The court overruled its prior statement in Pearsall v. Commissioner, which had suggested that the informal consultation requirement did not apply to requests for admissions. The court justified the Commissioner’s refusal to respond to the petitioners’ admissions request due to their noncompliance with Rule 90(a).

Practical Implications

This decision reinforces the importance of informal consultation before engaging in formal discovery procedures in Tax Court cases. Attorneys must ensure compliance with Rule 90(a) by attempting informal communication before serving requests for admissions. The ruling streamlines legal proceedings by encouraging parties to resolve discovery issues informally, reducing the burden on the court and potentially expediting case resolution. Subsequent cases have followed this ruling, further solidifying the requirement for informal consultation in discovery processes. Practitioners should be mindful of this requirement to avoid similar denials of discovery motions.

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