Kovens v. Commissioner, 91 T. C. 74 (1988)

The Tax Court clarified the strict criteria for certifying an interlocutory order under section 7482(a)(2), emphasizing that such orders should be granted only in exceptional cases.

Summary

In Kovens v. Commissioner, the petitioners sought certification for an interlocutory appeal after their motion to dismiss for lack of jurisdiction was denied. The Tax Court had previously ruled that the IRS did not breach its obligation to provide Form 872-T. The court denied the certification request, stating that the order did not meet the requirements of section 7482(a)(2) for interlocutory appeals. The decision emphasized that such appeals should be reserved for exceptional cases involving serious legal issues and that the court's familiarity with the record is crucial in making this determination.

Facts

The petitioners, Calvin and Roz M. Kovens, sought an interlocutory appeal under section 7482(a)(2) after the Tax Court denied their motion to dismiss for lack of jurisdiction. They argued that the IRS failed to provide them with Form 872-T, which is necessary to terminate a Form 872-A agreement extending the statute of limitations for tax assessments. The court had previously found that the IRS did not intentionally or negligently breach its obligation to provide the form. The notice of deficiency involved substantial amounts and multiple tax years.

Procedural History

The Tax Court initially denied the petitioners' motion to dismiss for lack of jurisdiction in Kovens v. Commissioner, 90 T. C. 452 (1988). Following this decision, the petitioners moved for certification of an interlocutory appeal under section 7482(a)(2). The court then issued the opinion in question, denying the certification.

Issue(s)

1. Whether the Tax Court's order denying the motion to dismiss for lack of jurisdiction involved a controlling question of law as to which there was a substantial ground for difference of opinion.
2. Whether an immediate appeal from the order could materially advance the ultimate termination of the litigation.

Holding

1. No, because the court found that the order did not involve a controlling question of law and there was no substantial ground for difference of opinion.
2. No, because the court determined that an immediate appeal would not materially

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advance the termination of the litigation.

Court’s Reasoning

The court applied the criteria from section 7482(a)(2) and 28 U. S. C. sec. 1292(b), which require that the order involve a controlling question of law, present a substantial ground for difference of opinion, and materially advance the termination of the litigation. The court found that the issue was not a controlling question of law because it involved the application of facts to existing law, not a serious legal issue. The court also noted that contract principles do not govern Form 872-A agreements, which are considered unilateral waivers. The court emphasized its familiarity with the record and the need to reserve interlocutory appeals for exceptional cases to avoid piecemeal litigation and dilatory appeals.

Practical Implications

This decision reinforces the strict criteria for granting interlocutory appeals in Tax Court, emphasizing that such appeals should be reserved for exceptional cases with serious legal issues. Practitioners should be aware that factual determinations by the trial court are generally not subject to interlocutory appeal. The decision also underscores the importance of the trial court’s role in assessing the necessity of an interlocutory appeal based on its familiarity with the record. This ruling may influence how similar cases are approached, particularly in terms of the strategic use of interlocutory appeals to avoid litigation on the merits.

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