91 T.C. 947 (1988)

Based on principles of comity and judicial economy, the Tax Court will generally not review a valid Rule 6(e) order issued by a District Court regarding the disclosure of grand jury materials, especially when the District Court is the supervisory court of the grand jury.

Summary

Arc Electrical Construction Co. was under grand jury investigation for tax offenses and pleaded guilty to conspiracy to commit tax evasion. The Commissioner of Internal Revenue (respondent) sought access to grand jury materials for a civil tax fraud case against Arc and obtained a Rule 6(e) order from the District Court for the Southern District of New York. In Tax Court, Arc moved to suppress evidence derived from these grand jury materials, arguing that the Rule 6(e) order was improperly granted because the government failed to demonstrate a "particularized need" and misled the District Court. The Tax Court denied Arc's motion, holding that principles of comity and judicial economy dictated that it should respect the valid order of the District Court, which was the supervisory court of the grand jury, especially in the absence of clear evidence of misleading information and given the availability of alternative remedies to Arc.

Facts

Arc Electrical Construction Co. (Arc) and its officers were under grand jury investigation in the Southern District of New York for tax offenses. The IRS conducted a joint civil and criminal investigation of Arc. Arc was later charged in a 4-count information, including conspiracy to commit tax evasion and defraud the government. Arc pleaded guilty to conspiracy. To pursue a civil tax fraud case against Arc, the IRS sought a Rule 6(e) order from the District Court for the Southern District of New York to access grand jury materials, including documents and testimony. Assistant U.S. Attorney Briccetti submitted an affidavit to the District Court in support of the motion, outlining the need for the grand jury materials to prove civil tax fraud in Tax Court. The District Court granted the Rule 6(e) order, allowing the IRS access to the grand jury materials.

Procedural History

The District Court for the Southern District of New York granted the government's motion for a Rule 6(e) order, permitting disclosure of grand jury materials to the IRS for a civil tax case. Subsequently, the civil tax case proceeded in the United States Tax Court. In Tax Court, Arc filed a motion to suppress evidence, specifically the testimony of witnesses who had testified before the grand jury, arguing that the Rule 6(e) order was improperly issued and that the government had not demonstrated a "particularized need" as required by Supreme Court precedent.

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Issue(s)

1. Whether the Tax Court should review de novo a valid Rule 6(e) order issued by a District Court, acting as the supervisory court of the grand jury, regarding the disclosure of grand jury materials for use in a civil tax proceeding before the Tax Court.

2. Whether Arc demonstrated that the government misled the District Court in its application for the Rule 6(e) order, thereby justifying the Tax Court's intervention.

Holding

1. No. The Tax Court held that principles of comity and judicial economy dictate that it should not review the valid Rule 6(e) order issued by the District Court, particularly since the District Court was the supervisory court of the grand jury and applied the correct legal standard.

2. No. Arc failed to prove that the District Court was misled by the government in its motion for disclosure of grand jury materials. The Tax Court found no compelling reason to second-guess the District Court's determination.

Court's Reasoning

The Tax Court based its decision primarily on the doctrine of comity, which it described, quoting *Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 488-489 (1900)*, as "not a rule of law, but one of practice, convenience, and expediency" that "persuades; but it does not command." The court reasoned that the District Court for the Southern District of New York, as the supervisory court of the grand jury, was in the best position to determine the propriety of the Rule 6(e) order, citing *Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211 (1979)*. While acknowledging its authority to review decisions of other courts in certain circumstances (citing *Kluger v. Commissioner, 83 T.C. 309, 316 (1984)*), the Tax Court found no sufficient reason to second-guess the District Court's order in this case. The court rejected Arc's argument that the government misled the District Court, finding no evidence to support this claim and noting that the District Judge had access to the criminal information. Furthermore, the Tax Court pointed out that Arc had alternative remedies, such as seeking to vacate the Rule 6(e) order in the District Court itself or appealing the order directly, but strategically chose to wait until the Tax Court trial to raise its objection. The court concluded that it would not undermine the principles of comity and judicial economy by conducting a de novo review of the District Court's valid Rule 6(e) order.

Practical Implications

Arc Electrical Construction Co. v. Commissioner establishes the principle of comity between the Tax Court and District Courts in the context of Rule 6(e) orders. It clarifies that the Tax Court will generally defer to a District Court's decision

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regarding the disclosure of grand jury materials, especially when that District Court is the supervisory court of the grand jury. This case highlights that challenges to Rule 6(e) orders should typically be addressed directly to the issuing District Court or through appeals within the criminal proceeding framework, rather than as collateral attacks in subsequent civil proceedings in the Tax Court. The decision underscores the importance of respecting the rulings of coordinate tribunals to promote judicial efficiency and prevent duplicative litigation. It also serves as a reminder to litigants to promptly address concerns about Rule 6(e) orders in the appropriate forum and to avoid strategic delays that may undermine their challenges.

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