Mishawaka Properties Co. v. Commissioner, 100 T. C. 353 (1993)

The principle of implied ratification can be applied in TEFRA partnership proceedings to validate a petition filed by an unauthorized partner.

Summary

In Mishawaka Properties Co. v. Commissioner, the Tax Court addressed whether a petition filed by a partner who was not the Tax Matters Partner (TMP) could be ratified through implied actions of the partners, including the TMP. The case involved a general partnership where Sol Finkelman, the managing partner, filed a petition within the 90-day period following the issuance of a Final Partnership Administrative Adjustment (FPAA). Despite not being the TMP, the court found that the partners' conduct, including their reliance on Finkelman for tax matters and failure to repudiate his actions, constituted implied ratification of the petition. The court upheld jurisdiction based on this implied ratification, emphasizing the principles of agency and partnership law.

Facts

Mishawaka Properties Co. was a general partnership formed to invest in a U. S. Postal Service building. Sol Finkelman, the managing partner, was responsible for all partnership business and tax matters. In 1988, the IRS issued FPAAs to Finkelman, Edmond A. Malouf (the partner with the largest interest), and the partnership itself. Finkelman filed a petition within the 90-day period, despite not being the TMP. The partners, including Malouf, were aware of the FPAAs and relied on Finkelman to handle the tax controversy with the IRS. No partner objected to Finkelman's actions until years later when they believed the assessment period had expired.

Procedural History

The IRS issued FPAAs in April and May 1988. Finkelman filed a petition within the 90-day period. In 1992, Malouf, as a participating partner, moved to dismiss for lack of jurisdiction, arguing that Finkelman was not authorized to file the petition. The Tax Court considered the motion based on fully stipulated facts and denied it, finding that the petition had been ratified by implication.

Issue(s)

1. Whether the principle of implied ratification can be applied in a TEFRA partnership proceeding to validate a petition filed by a partner other than the TMP.
2. Whether the partners, including the TMP, impliedly ratified the petition filed by Finkelman.

Holding

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1. Yes, because the principles of implied ratification apply in non-TEFRA cases and are consistent with partnership law and the TEFRA statutory provisions do not prohibit such ratification.
2. Yes, because the partners, including Malouf, were aware of Finkelman's actions and did not repudiate them, thus implying ratification.

Court's Reasoning

The court applied the principle of implied ratification established in *Kraasch v. Commissioner*, finding that it was appropriate in TEFRA proceedings. The court reasoned that the partners' knowledge of Finkelman's role and their failure to object to his filing of the petition constituted implied ratification. The court noted that the partners' conduct, including their reliance on Finkelman for over a decade and their failure to file their own petitions, demonstrated an intent to ratify his actions. The court also considered California law on ratification, which supports the concept of implied ratification based on conduct. The court emphasized that the TEFRA statutory provisions do not preclude this result and that the same principles should apply to both TEFRA and non-TEFRA cases.

Practical Implications

This decision clarifies that implied ratification can be used to validate petitions in TEFRA partnership proceedings, even if filed by an unauthorized partner. Legal practitioners should be aware that partners' conduct and knowledge can lead to implied ratification, potentially affecting jurisdiction and the statute of limitations for assessments. The ruling may encourage partners to be more vigilant in monitoring actions taken on behalf of the partnership and to formally designate a TMP to avoid similar disputes. Subsequent cases have applied this principle, reinforcing its significance in partnership tax litigation.

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