Nussdorf v. Comm'r, 129 T. C. 30 (U. S. Tax Court 2007)

In *Nussdorf v. Comm'r*, the U. S. Tax Court ruled it lacked jurisdiction over partnership items and affected items related to the contributions of Euro options to Evergreen Trading, LLC. The court clarified that such items must be addressed in partnership-level proceedings, not individual deficiency proceedings, emphasizing the significance of the Tax Equity and Fiscal Responsibility Act (TEFRA) procedures in tax disputes involving partnerships.

Parties

Plaintiffs: Arlene Nussdorf, Glenn Nussdorf, Stephen Nussdorf, Claudine Strum, and Alicia Nussdorf. They were petitioners in the U. S. Tax Court.
Defendant: Commissioner of Internal Revenue, the respondent in the case.

Facts

The petitioners, through certain flowthrough entities, were members of Evergreen Trading, LLC. In November 1999, these entities purportedly entered into two offsetting Euro option trades with AIG International, Inc. , involving the purchase and sale of options for Euros. On November 30, 1999, these entities contributed the Euro options and cash to Evergreen Trading in exchange for partnership interests. Evergreen Trading executed offsetting currency options in December 1999, resulting in reported gains and losses. In 2002 and 2003, the Commissioner issued notices of beginning of administrative proceedings with respect to Evergreen Trading for the taxable years 1999 and 2000. On September 26, 2005, the Commissioner issued a notice of Final Partnership Administrative Adjustment (FPAA) regarding Evergreen Trading and notices of deficiency to the petitioners for the taxable years 1999 and 2000. The petitioners filed a complaint in the U. S. Court of Federal Claims regarding the FPAA adjustments.

Procedural History

The Commissioner moved to dismiss the case for lack of jurisdiction, arguing that the notices of deficiency contained determinations that were partnership items or affected items, which should be addressed in a partnership proceeding. The petitioners moved to dismiss the partnership and affected items, contending that one specific determination in the notices of deficiency was a nonpartnership item that should be considered in the individual proceeding. The Tax Court granted the Commissioner's motion and denied the petitioners' motion, dismissing the case for lack of jurisdiction.

Issue(s)

Whether the Tax Court has jurisdiction over the determination set forth in paragraph 8 of the notices of deficiency issued to the petitioners, which relates to the purported contributions of Euro options to Evergreen Trading, LLC?

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Rule(s) of Law

Under 26 U. S. C. § 6231(a)(3), "partnership item" means any item required to be taken into account for the partnership's taxable year under any provision of subtitle A, to the extent regulations provide that such item is more appropriately determined at the partnership level than at the partner level. 26 U. S. C. § 723 provides that the basis of property contributed to a partnership by a partner is the adjusted basis of such property to the contributing partner at the time of contribution. Treasury Regulation § 301. 6231(a)(3)-1(a)(4) lists items required to be taken into account under subtitle A of the Code that are more appropriately determined at the partnership level, including items relating to contributions to the partnership.

Holding

The Tax Court held that it lacked jurisdiction over the determination in paragraph 8 of the notices of deficiency, which related to certain partnership items involving the purported contributions of Euro options to Evergreen Trading by its members. The court also held that it lacked jurisdiction over the remaining determinations in the notices of deficiency because they related to partnership items or affected items.

Reasoning

The court reasoned that under § 723, Evergreen Trading was required to determine its basis in the contributed Euro options, which included determining the basis of the contributing partners in such property. This determination falls within the definition of partnership items under § 6231(a)(3) and Treasury Regulation § 301. 6231(a)(3)-1(a)(4), as it relates to contributions to the partnership and is more appropriately determined at the partnership level. The court rejected the petitioners' argument that the determination of the cost basis of the purchased Euro option in their hands was a nonpartnership item, stating that the partnership's determination of its basis in the contributed property inherently involved determining the contributing partners' bases. The court emphasized the importance of the TEFRA procedures, which require partnership items to be resolved in partnership-level proceedings. The court's reasoning was guided by precedent such as *Trost v. Commissioner* and *Maxwell v. Commissioner*, which established that the Tax Court lacks jurisdiction over partnership items in individual deficiency proceedings.

Disposition

The Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction and denied the petitioners' motion to dismiss partnership items and affected items, dismissing the case.

Significance/Impact

Nussdorf v. Comm'r reinforces the jurisdictional boundaries established by TEFRA,

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clarifying that partnership items, including those related to contributions and basis determinations, must be resolved in partnership-level proceedings. This decision has significant implications for tax disputes involving partnerships, as it underscores the necessity of following TEFRA procedures to ensure proper adjudication of partnership-related tax issues. Subsequent cases have cited *Nussdorf* to support the principle that individual deficiency proceedings cannot be used to challenge determinations that fall within the scope of partnership items.

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