***Greenwald v. Commissioner, 142 T. C. 308 (U. S. Tax Ct. 2014)***

In Greenwald v. Commissioner, the U. S. Tax Court ruled it had jurisdiction over deficiency proceedings involving affected items from TEFRA partnership proceedings, emphasizing the need for partner-level determinations. The case clarified that outside basis, when affected by partner-level facts, is an affected item necessitating deficiency procedures rather than automatic assessment, impacting how partnership liquidations and subsequent tax assessments are handled.

**Parties**

Israel Greenwald and Ruth Greenwald, et al. , as petitioners, versus the Commissioner of Internal Revenue as respondent. The case consolidated with other petitioners including Brian Auchter, Nancy Auchter, Paul H. Hildebrandt, Judith A. Hildebrandt, Michael Cohen, Susan Cohen, Bernard J. Sachs, Joan K. Sachs, David Kraus, Susan Kraus, Jonathan L. Levine, Sarah S. Levine, John A. Hildebrandt, Jean E. Hildebrandt, David S. Marsden, and Rosemary Marsden.

**Facts**

Israel Greenwald was a limited partner in Regency Plaza Associates of New Jersey (Regency Plaza), a partnership subject to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) audit and litigation procedures. Regency Plaza made a section 754 election in 1995 following the transfer of a partnership interest, which remained in effect. In 1996, Regency Plaza filed for bankruptcy under chapter 11, and its property was foreclosed upon in 1997, leading to the partnership's termination on July 31, 1997. The Internal Revenue Service (IRS) issued a notice of final partnership administrative adjustment (FPAA) to Regency Plaza for its 1996 and 1997 taxable years, which was challenged and later settled in partnership-level proceedings. Subsequent to this, the IRS issued notices of deficiency to the partners, including the Greenwalds, adjusting their long-term capital gains for 1997. The partners moved to dismiss for lack of jurisdiction, arguing that outside basis, which affected their gains, was a partnership item that should have been determined at the partnership level.

**Procedural History**

The IRS issued an FPAA to Regency Plaza for the taxable years ending December 31, 1996, and July 31, 1997. The partners, including Greenwald, participated in the resulting TEFRA proceedings, which were consolidated and settled. Following the settlement, the IRS issued notices of deficiency to the partners for their 1997 taxable year, adjusting their long-term capital gains based on the partnership-level determinations. The partners filed petitions in response to these notices and later moved to dismiss the case for lack of jurisdiction, asserting that outside basis was a partnership item that should have been determined in the TEFRA proceedings. The Tax Court denied the motion to dismiss, asserting jurisdiction over the affected

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items requiring partner-level determinations.

**Issue(s)**

Whether the Tax Court has jurisdiction over deficiency proceedings involving affected items, such as outside basis, that require partner-level determinations following TEFRA partnership-level proceedings?

**Rule(s) of Law**

The Tax Court has jurisdiction to redetermine deficiencies involving affected items that require partner-level determinations, as per 26 U. S. C. § 6230(a)(2)(A)(i). A partner's outside basis is an affected item to the extent it is not a partnership item, and partner-level determinations are required when such items affect the amount of gain or loss on the disposition of a partnership interest. The critical element is whether the determination is required to be made by the partnership, as defined in 26 U. S. C. § 6231(a)(3) and 26 C. F. R. § 301. 6231(a)(3)-1(c)(1).

**Holding**

The Tax Court held that it has jurisdiction over the deficiency proceedings involving affected items, specifically outside basis, that require partner-level determinations. The court determined that outside basis, in the context of this case, was an affected item necessitating partner-level factual determinations, and thus the IRS was required to follow deficiency procedures as per 26 U. S. C. § 6230(a)(2)(A)(i).

**Reasoning**

The court's reasoning centered on the distinction between partnership items and affected items. Partnership items are determined at the partnership level and are conclusive, whereas affected items require partner-level determinations if they impact the partner's tax liability. The court cited the case of *Tigers Eye Trading, LLC v. Commissioner* and *United States v. Woods*, which clarified that outside basis can be a partnership item when the partnership is a sham, but in this case, Regency Plaza was treated as a bona fide partnership. The court emphasized that even if some components of the partner's basis may have been determined at the partnership level, partner-level determinations were still necessary to accurately calculate any deficiency, particularly in relation to the gain or loss on the disposition of the partnership interest. The court also addressed the argument that no partner-level determinations were necessary due to the discharge of partnership liabilities, stating that such an assertion was mistaken. The court concluded that the IRS must follow deficiency procedures when partner-level determinations are required to determine the correct amount of tax, thus preserving the partners' right to a prepayment forum.

**Disposition**

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The Tax Court denied the petitioners' motion to dismiss for lack of jurisdiction and retained jurisdiction over the deficiency proceedings involving affected items that required partner-level determinations.

**Significance/Impact**

The decision in *Greenwald v. Commissioner* has significant implications for the application of TEFRA audit and litigation procedures, particularly in the context of partnership liquidations and the determination of affected items such as outside basis. The ruling clarifies that the Tax Court has jurisdiction over deficiency proceedings when partner-level determinations are necessary, ensuring that partners have a prepayment forum to contest assessments based on affected items. This case also reinforces the distinction between partnership items, which are conclusively determined at the partnership level, and affected items, which may require additional partner-level factual determinations. Subsequent courts have relied on this decision to uphold jurisdiction in similar cases, and it has practical implications for tax practitioners and partners in navigating TEFRA proceedings and subsequent deficiency assessments.

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