Greenwald v. Commissioner, 142 T. C. No. 18 (U. S. Tax Court 2014)

In *Greenwald v. Commissioner*, the U. S. Tax Court affirmed its jurisdiction over deficiency proceedings involving affected items in partnership taxation. The case clarified that outside basis in a bona fide partnership is an affected item requiring partner-level determinations, not a partnership item determinable at the partnership level. This ruling impacts how tax deficiencies are assessed following partnership-level proceedings, ensuring partners have a pre-payment forum to contest such determinations.

Parties

Israel Greenwald and Ruth Greenwald, et al. , were the petitioners, representing multiple consolidated cases. The respondent was the Commissioner of Internal Revenue.

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 liquidated in 1997 following a foreclosure. The IRS issued a notice of final partnership administrative adjustment (FPAA) for 1996 and 1997, which was settled in a TEFRA proceeding. Subsequently, the IRS issued notices of deficiency to the Greenwalds and other partners for 1997, adjusting their long-term capital gains based on partnership items determined in the TEFRA proceeding. The Greenwalds moved to dismiss these deficiency proceedings for lack of jurisdiction, arguing that outside basis was a partnership item that should have been determined at the partnership level.

Procedural History

Following the TEFRA partnership-level proceeding, the IRS issued notices of deficiency to the Greenwalds and other partners for the taxable year 1997. The Greenwalds filed petitions in the U. S. Tax Court contesting these deficiencies and later moved to dismiss for lack of jurisdiction, asserting that outside basis was a partnership item that should have been addressed in the partnership-level proceeding. The Tax Court denied the motion to dismiss, asserting jurisdiction over the case.

Issue(s)

Whether the Tax Court has jurisdiction to hear deficiency proceedings involving affected items, specifically the partners' outside basis, which requires partner-level determinations following a TEFRA partnership-level proceeding?

Rule(s) of Law

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Under section 6230(a)(2)(A)(i) of the Internal Revenue Code, if an adjustment to an affected item requires partner-level determinations, the IRS must follow deficiency procedures. Section 6231(a)(3) defines partnership items as those more appropriately determined at the partnership level, while section 301. 6231(a)(5)-1T(b) of the Temporary Procedure and Administration Regulations clarifies that a partner's basis in his partnership interest is an affected item to the extent it is not a partnership item.

Holding

The Tax Court held that it had jurisdiction over the deficiency proceedings because the partners' outside basis was an affected item requiring partner-level determinations, not a partnership item determinable at the partnership level.

Reasoning

The Court's reasoning focused on the distinction between partnership items and affected items under TEFRA. The Court cited the regulations that define outside basis as an affected item unless it is a partnership item due to specific circumstances like a section 754 election. The Court rejected the petitioners' reliance on cases like *Tigers Eye Trading, LLC v. Commissioner* and *United States v. Woods*, noting that those cases involved partnerships deemed shams, a situation not present here. The Court emphasized that, in the absence of a sham, partner-level determinations are necessary to calculate deficiencies accurately, particularly when the outside basis could be affected by partner-specific facts such as litigation costs. The Court also highlighted that the statutory framework of TEFRA requires deficiency procedures for affected items needing partner-level determinations to ensure partners have a pre-payment forum to contest assessments. This reasoning aligns with the legislative intent of TEFRA to streamline partnership audits while preserving partners' rights to contest affected items at the partner level.

Disposition

The Tax Court denied the petitioners' motion to dismiss, affirming its jurisdiction over the deficiency proceedings.

Significance/Impact

Greenwald v. Commissioner clarifies the distinction between partnership items and affected items in TEFRA proceedings, particularly regarding outside basis. The decision ensures that partners have the opportunity to contest deficiencies at the partner level when affected items are involved, reinforcing the procedural protections under TEFRA. The ruling has been influential in subsequent cases involving partnership taxation, emphasizing the need for partner-level determinations in certain contexts. It also highlights the Tax Court's role in resolving disputes over affected items, thereby affecting how the IRS assesses and

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litigates partnership-related tax deficiencies.

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