 ALS

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ABDUL M. MUHAMMAD,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 23891-15.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER TO SHOW CAUSE

This case concerns the Federal income tax liability of petitioner Abdul M. Muhammad for the years 2012 and 2013. This case is now before us on the Commissioner's unopposed computation for entry of decision pursuant to Rule 155 (Doc. 22). Petitioner Abdul M. Muhammad has filed no response. We will order the Commissioner to show cause why he should not be required to file a supplemental computation for 2013.

Background

The pertinent facts for the 2013 year are as follows.

Original tax return

Mr. Muhammad filed a tax return for the year 2013. (Ex. 15-R.) To that return he attached a Schedule A ("Itemized Deductions") on which he claimed deductions totaling $14,819, of which $7,743 consisted of claimed cash gifts to charity.

Notice of Deficiency

The Internal Revenue Service ("IRS") examined the return; and on June 12, 2015, the IRS issued to Mr. Muhammad the statutory notice of deficiency

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("SNOD"; Ex. 2-J), which determined a tax deficiency for 2013, based in part on disallowance of deduction for "Cash Contributions" in the amount of $7,743. Mr. Muhammad timely mailed his petition to this Court on September 10, 2015, asking us to redetermine that deficiency. (Doc. 1.)

Amended return

In March 2017 Mr. Muhammad submitted to the IRS an amended return on Form 1040X (Ex. 3-P). On an attached Schedule A (Ex. 8-P) Mr. Muhammad reported gifts to charity totaling $4,377 (i.e., cash gifts of $3,877 and gifts in-kind of $500), and not the similar number of $7,743 that had appeared on the Schedule A submitted with his original return. Evidently the IRS did not process the amended return.

Trial and bench opinion

Trial was conducted September 18, 2017. At the beginning of trial, the parties submitted a joint stipulation of facts, with attached exhibits. (Doc 17.) The stipulation included a one-page Exhibit 8-P, which was the Schedule A from the unprocessed amended return, on which gifts to charity totaled $4,377. Exhibit 8-P was not identified as being part of the amended return, and in describing it the stipulation stated simply, "Attached as Exhibit 8-P is a copy of a Schedule A, Itemized Deductions, for taxable year 2013." (Doc. 17, ¶9.) We inferred (mistakenly, it appears) that Exhibit 8-P was the Schedule A from the original return on which the notice of deficiency had been based.

Toward the end of trial, the Commissioner's counsel stated that "unfortunately, the returns for 2012 and 2013 were accidentally not included in the stipulation of facts", and he offered the 2013 return into evidence as Exhibit 15-R. (Doc. 23, Tr. at 49.) But counsel apologized, "These are, unfortunately, the only copies that are available today. So we'd like to admit them into evidence and then have copies made so we can return the originals to you." (Doc. 23, Tr. at 49-50.) We permitted him to retain Exhibit 15-R temporarily.

The next day, September 19, 2017, we read in open court a bench opinion that, inter alia, addressed the disallowance of the charitable contribution deduction for 2013. The bench opinion (Doc. 19, Tr. at 10) stated:

> Mr. Muhammad provided no substantiation, and his contribution deduction must be disallowed.

> However, on his 2013 return, Mr. Muhammad claimed charitable contribution deductions of only $4,377 (see Ex. 8-P, line 19), whereas the SNOD reflects an apparent transposition of numbers and disallows $7,743 (see Ex. 2-J, "Explanation of Items", "Cash Contributions"). The disallowance was therefore excessive by $3,366, and that error should be corrected in the recomputation performed pursuant to Rule 155.

It appears that we erred in so holding. Rather, as we have since then learned, on his original 2013 return Mr. Muhammad evidently did deduct $7,743 (not just $4,437), and the SNOD's $7,743 adjustment was evidently the correct means for disallowing the unsubstantiated deduction. But we did not so hold in the bench opinion. We directed instead that the disallowance should be reduced by $3,366. On October 5, 2017, the transcript of the Court's bench opinion was served on the parties in accordance with Rule 152(b). (Doc. 19.) Neither party has ever pointed out this apparent error.

Rule 155 proceedings

On November 29, 2017, the Commissioner submitted his proposed computation. Mr. Muhammad's objection or an alternative computation was due by December 26, 2017, but he has never submitted an objection or an alternative computation. Expecting to enter decision without the benefit of Mr. Muhammad's views, we reviewed the computation and discovered that it seems to reflect no reduction--by $3,366 or any other amount--of the charitable contribution disallowance for 2013. That is, the computation does not comply with our bench opinion; but that non-compliance is not easy to discern.

The Commissioner's Rule 155 submission, like most such submissions, is a document with very little narrative. It consists of a cover page, a case caption and short preamble, a signature page, a proposed "Decision" document, and a 23-page "Computation Statement" consisting of terms and numbers. The Commissioner's Rule 155 submission does not state that it corrects an error in the Court's opinion, nor does it mention explicitly that it is not reducing the disallowance. Rather, one can infer this fact only by comparing the relevant entries in the Rule 155 computation to the entries on the equivalent documents in the SNOD and seeing that the disallowance for "Itemized deductions" is unchanged.

In attempting to confirm or correct this impression, and to learn why there was no $3,366 correction, we discovered our apparent error in assuming that the amended return's Schedule A (Ex. 8-P) was the original return's Schedule A.

Discussion

I. Motions for reconsideration under Rule 161

The undersigned judge is manifestly capable of error, and happily the remedies for such errors include not only an appeal to the Court of Appeals but also the local remedy of a motion under Tax Court Rule 161 ("Motion for Reconsideration of Findings or Opinion"). If the Commissioner wished to remedy the Court's apparent mistake concerning Mr. Muhammad's Schedule A, then he could have filed a motion for reconsideration and requested that the Court make the appropriate correction. Rule 161 provides:

> Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, shall be filed within 30 days after a written opinion or the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof) have been served, unless the Court shall otherwise permit.

Admittedly, the 30-day deadline for a motion for reconsideration may be difficult to meet where the opinion is a bench opinion "stated orally" for which a transcript is served before the trial transcript is even available to the parties. In that circumstance, the Court might well "otherwise permit" a later motion, if leave were requested.

II. Computations under Rule 155

In many Tax Court deficiency cases, the final resolution is divided--with one party prevailing on some issues and the other party prevailing on others. In such instances, the Commissioner's deficiency determination set out in the SNOD cannot be unqualifiedly sustained, and the Tax Court must "redetermine the correct amount of the deficiency". Sec. 6214(a). To facilitate those redeterminations, Rule 155 sets forth procedures for resolving computational matters after the Court has decided the issues.

However, Rule 155 is decidedly not a remedy for correcting errors in a Tax Court opinion. Rule 155(c) explicitly provides:

> (c) Limit on Argument: Any argument under this Rule will be confined strictly to consideration of the correct computation of the amount to be included in the decision resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration. [Emphasis added.]

III. Analysis

If while doing a Rule 155 computation a party spots an error in the Court's opinion--even a glaring error that cries out for a simple correction--the Rule 155 computation is most certainly not the means for making that correction. The only remedy is a motion for reconsideration under Rule 161; and if such a motion would otherwise be untimely, then it should be filed under a motion for leave to file out of time. The Court has discretion to grant or deny such a motion, but not an unlimited discretion, and the Court of Appeals would review for an abuse of discretion this Court's ruling on such a motion. In the almost two months between the date of service of the bench opinion transcript (October 5, 2017) to the date that the Commissioner filed the Rule 155 computation (November 29, 2017), the Commissioner did not file a motion for reconsideration (and still has not filed such a motion).

A Rule 155 submission is out of bounds for attempting reconsideration not only because such an attempt is forbidden by the text of Rule 155 but also for the following interrelated reasons:

1. The Rule 155 submission is, by its nature, not an argumentative and explanatory document. Neither one's opponent nor the Court expects to look to such a submission for controversy or correction. It should be an arithmetical exercise.

2. The Rule 155 computation may be hard to track and follow--even for a Tax Court judge, who one might suppose would be expert in such things, and doubly so for the great majority of Tax Court petitioners who represent themselves. As a result,

3. The Rule 155 submission may--as it did here--conceal a correction rather than revealing it. We confidently assume that concealment for partisan advantage was not the aim of the Commissioner's counsel here, since the Rule 155 submission also reflects the Commissioner's (unannounced) concession of penalty for 2012 (as we explain in our order dated August 23, 2018), which concession naturally benefitted petitioner. But even in the instance of a concession benefitting the other party, best practice would certainly be to make the concession explicit and clear, so that neither the Court nor one's opponent will need to take the time (as we did) to try to figure out whether a concession was really being made and, if so, why. And where the Rule 155 computation embodies, without notice and explanation, a party's intended correction in his own favor of the Court's supposed error, it is a most serious violation of Rule 155.

It is possible that we misunderstand the Commissioner counsel's intention and submission. It is possible that his non-reduction of the disallowance was a mere oversight and that our apparent error involving Exhibit 8-P, recently discovered by us, had nothing to do with his computation. If so, he can explain the situation in his response to this order. But if he did use the Rule 155 computation in a misguided attempt to fix an error in our decision, then we must disallow that attempt. Counsel appearing before this Court should understand that we rely on them to perform their Rule 155 computations without making any corrections to our holdings, whatever might be the motivation and justification for such corrections. Requests for reconsideration must be filed as such.

Although we would regret leaving any apparent error uncorrected, the Commissioner has not moved for reconsideration (nor sought leave to file such a motion out of time). To the extent we have discretion to reconsider our opinion sua sponte, we decline to exercise that discretion, on the procedural facts of this case. It is therefore

ORDERED that, no later than September 21, 2018, the Commissioner shall file a response to this order in which he shall show cause why we should not order him to file a supplement to his computation, in which supplement he would recompute Mr. Muhammad's 2013 liability by reducing to $4,377 (rather than $7,743) the disallowance of charitable contributions. It is further

ORDERED that, no later than October 12, 2018, Mr. Muhammad shall file a reply to the Commissioner's response to this order.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
August 24, 2018