

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

JOHN K. LUKE & MAUREEN O. LUKE,)
)
 Petitioner(s),)
)
 v.) Docket No. 32208-15.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

Pending before the Court are petitioners’ Motion to Restrain Assessment or Collection or to Order Refund of Amount Collected as amended, filed March 10, 2016 (petitioners’ motion), and respondent’s Motion to Dismiss for Lack of Jurisdiction as to Penalties, filed April 7, 2016 (respondent’s motion).

Both these motions relate to petitioners’ interest in LVI Investors, LLC (LVI), a partnership subject to the unified partnership audit and litigation procedures of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). In March 2007 the IRS issued a notice of final partnership administrative adjustment (FPAA) to the partners of LVI for its tax year 1999. The LVI tax matters partner filed a petition in this Court and a decision was entered determining adjustments to the partnership items of LVI for tax year 1999 on December 17, 2014. That decision became final in March 2015 under sections 6230(g) and 7480(a). All the adjustments and the section 6662 penalty in the notice of deficiency which underlie the present case flow from the partnership decision.

Petitioners allege it was premature for respondent to assess any of the items in the notice of deficiency. Respondent offers no argument relating to the tax deficiency but maintains this Court has no jurisdiction over the penalty.

The following quotation from Thompson v. Commissioner, T.C. Memo. 2014-154, at *3, aptly describes the law as it applies to this case:

Our final decision in the partnership-level proceeding applied the gross valuation misstatement penalty. The penalty may be directly assessed as a computational adjustment, notwithstanding any need for [*9] partner-level determinations. Petitioners may raise partner-level defenses, if any, only in a postpayment refund suit. See sec. 6230(c)(1)(C); sec. 301.6221-1(c), *Proced. & Admin. Regs.*

Any question as to the validity of this analysis has been settled by United States v. Woods, 571 U.S. ___, 134 S.Ct. 557 (2013).

Accordingly, it is

ORDERED that that so much of petitioners' motion as relates to the deficiency in income tax is granted and that in all other respects it is denied. It is further

ORDERED that respondent's motion is granted.

**(Signed) Joseph Robert Goeke
Judge**

Dated: Washington, D.C.
January 5, 2017