UNITED STATES TAX COURT
WASHINGTON, DC 20217

HARBINDER S. BRAR & BARBARA P. BRAR,	)	
Petitioner(s),	)	
v.	)	Docket No. 1297-15.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

ORDER AND DECISION

More TEFRA tohubohu.

This case and another were consolidated and tried during the Court's May 23, 2016 San Diego trial calendar. The parties announced that they had settled after trial and before posttrial briefing was to begin. That settlement resolved all issues, but the parties have been unable to agree on the resulting computation and so have also not been able to submit stipulated decisions for the Court to sign and enter.

We asked them to explain their disagreement in motions for entry of decision. Respondent did so, and petitioners' response fully explains the basis of the disagreement and lets us judge between their positions. The Court will assume both know the background facts of the settlement talks and the history of their computational dispute.

The problem arises from the mix of partnership and nonpartnership items at issue in the consolidated cases. But the rule is easy to state: Partnership items get resolved in a partnership case; nonpartnership (including certain affected) items get

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resolved in a deficiency case. *Huff v. Commissioner*, 138 T.C. 258, 263 (2012); *see also United States v. Woods*, 571 U.S. __, __, 134 S. Ct. 557, 563 (2013).

This case is the Brars' individual case. The one consolidated with it is a partnership case in which an S corporation owned by Mr. Brar was a partner. A loss from the partnership of $1,427,569 flowed through to the S corporation and onto the Brars' individual return. After the Commissioner got done auditing the partnership, however, he put only $1,079,464 in issue by disallowing it.

The dispute here is whether, in performing the computation needed to enter decision in this case, we need to ignore the larger or the smaller of these amounts.

The key case, as both parties recognize, is *Munro v. Commissioner*, 92 T.C. 71 (1989). The Brars argue that in *Munro* we said "respondent may not take his *proposed* TEFRA partnership adjustments into account in a deficiency proceeding for any purpose, including the computation of the deficiency arising out of adjustments to nonpartnership items." *Id.* at 74 (emphasis added).[1] This would suggest we ignore only the lower amount.

The Commissioner points out that we also said in *Munro* that "partnership items must be ignored in deficiency proceedings, which relate exclusively to nonpartnership items," *id.* -- note the absence of the qualifying "*proposed*" in this sentence. This would suggest we ignore the larger amount.

We recognize the source of the dispute, but when looking at the context of these competing sentences, respondent has the better reading. We held quite bluntly later in the same paragraph in *Munro* that "[d]eficiency proceedings must exclusively consider nonpartnership items." *Id.* (Note the absence of any phrase

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[1] *Munro* itself was substantially superseded by the now-repealed version of I.R.C. § 6234, which provided a method for coordinating deficiency and TEFRA proceedings where a return reports no taxable income and shows a net loss from partnership items, otherwise known as an oversheltered return. *See* Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1231(a), 111 Stat. 788, 1020-23, *amended by* Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, § 416(d)(1)(D), 116 Stat. 21, 55, *repealed by* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101(a), 129 Stat. 584, 625. The Commissioner did not invoke the provisions of this section to send the Brars a notice of adjustment instead of a notice of deficiency; we will not delve further into how it might have applied.

like "plus uncontested partnership items.") And that is how courts have read *Munro* ever since. *See, e.g.*, *Chai v. Commissioner,* 851 F.3d 190, 197 (2d Cir. 2017).

We need to sever this case to allow for entry of this decision. We urge the parties to submit a stipulated decision in the companion partnership case quickly so the Brars don't end up having to pay and then seek an overpayment refund or otherwise suffer from a failure to coordinate the two cases.

It is therefore

ORDERED that respondent's motion for entry of decision is granted. It is also

ORDERED that this case is severed from docket number 24480-14. It is also

ORDERED and DECIDED that there is a deficiency of $622,257.00 in income tax, and a penalty under I.R.C. § 6662(a) of $124,451.40, due from petitioners for the tax year 2010.

(Signed) Mark V. Holmes
Judge

ENTERED: **SEP 12 2017**