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4/3/2019

IN THE UNITED STATES TAX COURT

In the Matter of:)
MOHAMED A. HADID,) Docket No. 14213-18L
Petitioner,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Pages: 1 through 8

Place: Los Angeles, California

Date: March 28, 2019



IN THE UNITED STATES TAX COURT

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In the Matter of:)
MOHAMED A. HADID,) Docket No. 14213-18L
Petitioner,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

Edward R. Roybal Center & Fed. Bldg.
255 East Temple Street
Room 1167, 11th Floor
Los Angeles, California 90012

March 28, 2019

The above-entitled matter came on for bench opinion,
pursuant to notice at 9:16 a.m.

BEFORE: HONORABLE LEWIS R. CARLUZZO
Special Trial Judge

APPEARANCES:

For the Petitioner:

No Appearance

For the Respondent:

No Appearance



P R O C E E D I N G S

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(9:16 a.m.)

THE CLERK: Recalling docket number 14213-18L,
Mohamed A. Hadid.

(Whereupon, a bench opinion was rendered.)

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 March 28, 2019
3 Mohamed A. Hadid v. Commissioner of Internal Revenue
4 Docket No. 14213-18L

5 Bench Opinion

6 THE COURT: The Court has decided to render oral
7 findings of fact and opinion in this case, and the
8 following represents the Court's oral findings of fact and
9 opinion (bench opinion). Section references made in this
10 bench opinion are to the Internal Revenue Code of 1986, as
11 amended, in effect for the relevant period, and Rule
12 references are to the Tax Court Rules of Practice and
13 Procedure. This bench opinion is made pursuant to the
14 authority granted by section 7459(b) and Rule 152. The
15 decision to be entered in this case shall not be treated
16 as precedent for any other case, and except as provided in
17 Rule 152(c), this bench opinion shall not be cited as
18 authority.

19 By Order dated February 1, 2019, this section
20 6330(d) case was assigned to me for disposition. See sec.
21 7443A(b)(4), (c); Rules 180, 181 and 182.

22 Murray Greiff appeared on behalf of petitioner.
23 Halvor R. Melom appeared on behalf of respondent.

24 All of the facts have been stipulated and are so
25 found. At the time the petition was filed, petitioner

1 lived in California.

2 In a notice of determination dated July 12, 2018
3 (notice), respondent determined that a levy is an
4 appropriate collection action with respect to petitioner's
5 outstanding 2010, 2011, and 2013 Federal income tax
6 liabilities (underlying liabilities), which total more
7 than four million dollars. Because petitioner does not
8 dispute the underlying liabilities, we review respondent's
9 determination for abuse of discretion. See Goza v.
10 Commissioner, 114 T.C. 176 (2000). For the reasons
11 summarized below, we hold that it was not.

12 1. The parties agree that respondent's determination is
13 reviewed on the basis of the administrative record, see
14 Keller v. Commissioner, 568 F. 3d 710 (9th Cir. 2009)
15 affirming T.C. Memo. 2006-166, but they disagree on the
16 extent of that record. According to respondent, the
17 administrative record consists of stipulated exhibits 1-J
18 through 19-J, inclusive. Petitioner agrees that those
19 exhibits are properly included in the administrative
20 record, but proposes that exhibits 20-P through 23-P,
21 inclusive, also attached to the stipulation of facts, but
22 objected to by respondent, should be included in the
23 administrative file as well. Little would be gained by
24 resolving the dispute between the parties by technical
25 analysis because it matters not whether the administrative

1 record is as respondent contends or as petitioner claims.
2 Either way, our above-stated holding would be the same.
3 Consequently, we proceed by assuming, without finding,
4 that the administrative record is as petitioner describes
5 it, and exhibits 20-P through 23-P will be received and
6 admitted into evidence.

7 2. As a collection alternative to the proposed levy,
8 petitioner requested an installment agreement and offered
9 to pay \$30,000 per month towards the underlying
10 liabilities. In support of his request for the
11 installment agreement, petitioner provided a financial
12 statement showing that he had \$5,000 of monthly income and
13 more than \$200,000 of monthly expenses. Petitioner's
14 offer was conditioned upon respondent's agreement that a
15 Notice of Federal Tax Lien (NFTL) would not be filed with
16 respect to the underlying liabilities.

17 3. A revenue officer who reviewed the proposed
18 installment agreement at the request of the settlement
19 officer recommended that the proposal be rejected, and
20 respondent's settlement officer, in turn, rejected it.

21 4. One reason given for the rejection of the proposed
22 installment agreement was the improbability that
23 petitioner would be able to honor an agreement to pay
24 \$30,000 per month given his claimed monthly income of
25 \$5,000 per month. At trial petitioner's attorney

1 acknowledged the obvious mathematical implications, but
2 suggested that the money would come from somewhere. As we
3 view the matter, given the lack of an identifiable source
4 of funds available to petitioner to honor the proposed
5 installment agreement, the rejection of an otherwise
6 obviously unworkable installment agreement as proposed by
7 petitioner is hardly an abuse of discretion. That
8 determination is supported in law, that is, the settlement
9 officer clearly had the authority to consider and reject
10 the proposal, and the determination is supported in fact,
11 as the critical fact relied upon by the settlement
12 officer, namely the information shown on the financial
13 statement offered in support of the installment agreement,
14 is not in dispute.

15 5. Petitioner also argues that petitioner's situation not
16 only allowed for an installment agreement, but for an
17 installment agreement that would preclude respondent's
18 filing of a NFTL. A taxpayer's eligibility for such an
19 installment agreement, if at all, presupposes that the
20 underlying installment agreement was otherwise acceptable.
21 Petitioner's was not, so we need not address petitioner's
22 complaint about respondent's failure to take into account
23 the effects that the filing of a NFTL might have on
24 petitioner's business. Furthermore, because we find that
25 the rejection of petitioner's proposed installment

1 agreement was justified if only because of the financial
2 statement he submitted in support of it, we need not
3 consider petitioner's claim that some of the other reasons
4 given by respondent for the rejection of the proposed
5 installment agreement are not supported by the facts.

6 In all other respects, the evidence shows that
7 respondent proceeded as required under section 6330, and
8 petitioner does not suggest otherwise. That being so, to
9 reflect the foregoing, decision will be entered for
10 respondent. This concludes the Court's bench opinion in
11 this matter.

12 (Whereupon, at 9:25 a.m., the above-entitled
13 matter was concluded.)

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CERTIFICATE OF TRANSCRIBER AND PROOFREADER

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CASE NAME: Mohamed A. Hadid v. Commissioner
DOCKET NO.: 14213-18L

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 8 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Troy Ray on March 28, 2019 before the United States Tax Court at its session in Los Angeles, CA, in accordance with the applicable provisions of the current verbatim reporting contract of the Court and have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording.

Lori Rahtes

Lori Rahtes, CDLT-108 3/29/19
Transcriber Date

Jessica Hernandez

Jessica Hernandez 3/29/19
Proofreader Date

