# United States Tax Court

Washington, DC 20217

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| Indu Rawat, | ) | |
| | ) | |
| Petitioner | ) | |
| | ) | |
| v. | ) | Docket No. 15340-16. |
| | ) | |
| Commissioner of Internal Revenue, | ) | |
| | ) | |
| Respondent | ) | |

## **O R D E R**

By our order of July 20, 2021 (Doc. 58), we denied in part petitioner Indu Rawat's motion (Doc. 32) for summary judgment. Petitioner has filed a motion (Doc. 61) for reconsideration. We will order the Commissioner to respond.

Petitioner's Form 870-LT arguments on summary judgment

Ms. Rawat filed a motion for summary judgment (Doc. 32) and a supporting memorandum (Doc. 33) that, in pertinent part, addressed the merits of the Inventory Gain issue in this case. The Commissioner filed an opposition (Docs. 40, 51, 53), in which he disputed Ms. Rawat's position on the merits but also argued (see Doc. 53 at 19-23), among other things, that the parties had settled this issue by means of a closing agreement on Form 870-LT, with attachments.

Ms. Rawat's reply (Doc. 43 at 3, 14-17) to the Commissioner's contention as to Form 870-LT contended that--

> [B]y executing the Form 870-LT, petitioner agreed to partnership-level adjustments regarding the Inventory Gain. By its plain terms and as a matter of law, however, the Form 870-LT only binds petitioner to the *partnership-level* adjustments, and not to any *partner-level* determinations that respondent chooses to make. [Doc. 43 at 3 (italics in original, underlining added).]
>
> [T]he unsigned Form 886A * * * does not indicate that it was attached to the Form 870-LT * * *. [Doc. 43 at 8.]
>
> [T]he parties executed a Form 870-LT that resolved the Inventory Gain issue at the partnership level. [Doc. 43 at 14 (underlining added).]

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> Since no Schedule of Adjustments reflecting any partner-level determinations or any tax liability was attached to the Form 870-LT, the unsigned Form 886-A only reflected her share of partnership inventory. [Doc. 43 at 16.]

Thus, Ms. Rawat resisted the Commissioner's argument as to Form 870-LT by contending that there was no "Schedule of Adjustments" and that Ms. Rawat was bound "only * * * to the *partnership-level* adjustments, and not to any *partner-level* determinations". (The phrase "partner level" appears nine times in Ms. Rawat's reply brief.) The concept of "source" of income is not mentioned in her argument as to the Form 870-LT.

However, alongside her denials of partner-level determinations, petitioner's reply also stated: "Petitioner agreed to the partnership item adjustment and that a portion of the gain recognized by petitioner on her sale of her partnership interest was attributable to inventory, which under section 751 should be characterized as gain taxed at ordinary rates. What petitioner disagrees with are respondent's follow-on determinations of partner-level items, including (without limitation) his determination that petitioner is liable for tax on the section 751(a) gain that was the subject of the Form 870-LT." (Doc. 43 at 17.) In hindsight, illuminated by her motion for reconsideration, we now perceive that she thereby effectively admitted that in the Form 870-LT she had agreed to partner-level determinations (though she did not use that term). She indicated that in the Form 870-LT she had agreed that her portion of the Inventory Gain was attributable to her (i.e., at the partner level), but she argued in her reply that her agreed portion was not taxable to her (because of its alleged non-U.S. source, which she did not mention in that context). This argument (that the Form 870-LT determined partner-level recognition but not source) was obscured by her insistence that she was not bound to any partner-level determination.

## Our order denying summary judgment

Petitioner's contentions about the contents of the Form 870-LT and its lack of partner-level effect were not tenable under Rule 121, so we denied Ms. Rawat's motion. Our order (Doc. 58) stated that--

> First, the Form 870-LT undeniably "refer[s] to Form 886-A", and the Commissioner, though unable to present a signed copy of a Form 886-A, proffers as Exhibit 4 the Form 886-A that had previously been generated in the case and that appears in the IRS's records. If, as Rule 121 requires, we draw inferences in favor of the non-movant, then we infer that the Form 886-A that the Commissioner proffers is the one referred to in the Form 870-LT. Petitioner does not even assert affirmatively that Exhibit 4 was not the referenced Form 886-A; much less does she offer her own

> declaration or that of her representative denying that the form was associated with the agreement she signed.
>
> Second, the Form 870-LT undeniably includes a Part II ("Offer of Agreement for Affected Items * * *") that expressly recounts "agree[ment] to the determination of partner level determinations (affected items)", "agreement of the specified affected items", and "agreement with respect to affected items". (Emphasis added.)

Elaborating on the partner-level character of the closing agreement, we stated:

> The Form 886-A twice states that Ms. Rawat "must recognize" the Inventory Gain; and "the word 'recognized' means 'taken into account in computing taxable income'". Venture Funding, Ltd. v. Commissioner, 110 T.C. 236, 241 (1998), aff'd, 198 F.3d 248 (6th Cir. 1999) (quoting Bittker & McMahon, Federal Income Taxation of Individuals, par. 28.2, at 28–2 (2d ed.1995)).

Petitioner's motion for reconsideration

On August 18, 2021, Ms. Rawat filed a motion for reconsideration (Doc. 61). The phrase "partner level" does not appear in the motion, but the motion states:

> Even assuming *arguendo* that the Form 886-A was attached, and that the Form 870-LT binds Petitioner, what they bind Petitioner to is "recognizing" approximately $6.5 million of inventory-related gain as ordinary income -- which Petitioner has never disputed. [Doc. 61 at 3.]
>
> The issue of fact identified by the Court – whether the Form 870-LT binds Petitioner to recognize ordinary income in the amount of approximately $6.5 million--is conceded by Petitioner. [Doc. 61 at 4.]

That is, Ms. Rawat now evidently abandons her critique of the Commissioner's documents and now agrees (though only arguendo) that the Form 870-LT includes both parts I and II, the Form 886-A, and its "Schedule of Adjustments"; and she now abandons her contention that she is "not [bound] to any *partner-level* determinations".

Rather, in her motion for reconsideration, Ms. Rawat instead argues only that, because of the "sourcing" rules, she is not liable for any tax arising from the (partner-level) determination that she "must", as Form 886-A twice states, "recognize ordinary income in the amount of $6,523,176." In that connection, she disputes (Doc. 61 at 5-16) our statement that "the word 'recognized' means 'taken into account in computing taxable income'". (Emphasis added.) She contends:

> [E]ven assuming the issue(s) of fact that the Court identified in the Order -- that the Form 886-A was enclosed with the Form 870-LT; and that Petitioner is bound by the agreements they embody -- Petitioner never agreed to the *source* of that income. What Petitioner agreed to is that a portion of the gain arising from the sale or exchange of her partnership interest, to the extent that portion is attributable to the partnership's inventory items, would be recognized and treated as ordinary income under section 751 of the Code. But as Petitioner previously argued * * *, that is all section 751(a) does: it determines the character of the recognized gain, it does not determine its source. [Doc. 61 at 14.]

Thus, she asks us to reconsider the meaning and effect of the Form 870-LT in requiring her to "recognize ordinary income in the amount of $6,523,176." She contends that this "recogni[tion]" provision in the closing agreement does not determine "taxable income" and does not preclude her contention that the sourcing rules relieve her from taxation on that amount. We think that this contention was unclear in her reply, but we acknowledge that she made the contention and that we gave it insufficient attention. It is therefore

ORDERED that, no later than September 23, 2021, the Commissioner shall file a response to the motion for reconsideration (Doc. 61). In that response, the Commissioner (1) shall include a response to Ms. Rawat's contention that this "recogni[tion]" provision in the closing agreement does not determine "taxable income" and does not preclude her contention that the sourcing rules relieve her from taxation on that amount (Doc. 61 at 5-16), (2) may include any response that the Commissioner wishes to make to part II of Ms. Rawat's reply (Doc. 43 at 18-24), and (3) may include any update that the Commissioner wishes to give as to his argument in part I of his response to the motion for summary judgment (Doc. 53 at 13). It is further

ORDERED that, no later than October 22, 2021, Ms. Rawat shall file a reply to the Commissioner's response to the motion for reconsideration. It is further

ORDERED that, no later than September 7, 2021, counsel for Ms. Rawat shall contact opposing counsel for the purpose of scheduling a conference between counsel (preferably in person, but if that is not expedient then by video conference, or if that is not expedient then by telephone) to assure that all possibilities of settling this case have been exhausted.

**(Signed) David Gustafson**
**Judge**