

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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CHUSHANRISHATHAM JECONIAH)
GOLIGHTLY,)
)
Petitioner,)
)
v.) Docket No. 11703-10 L.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER OF DISMISSAL AND DECISION

This case was commenced under Internal Revenue Code section 6330 in response to a notice of determination concerning collection action with respect to petitioner's income tax liabilities for taxable years 2001, 2002, 2004 and 2005. This case was called from the calendar for the Trial Session of the Court at Lubbock, Texas, on September 15, 2014. There was no appearance by or on behalf of petitioner, despite the Court's Orders of April 11, 2014, and September 4, 2014, reminding petitioner that his appearance was mandatory and that failure to appear might result in dismissal of the case for "failure to prosecute". Counsel for respondent appeared and filed with the Court a motion to dismiss for lack of prosecution. At the Court's request, the trial clerk called petitioner to inform him of his mandatory attendance at which time petitioner abruptly ended the call by "hanging up" the phone on the trial clerk. Subsequent to the morning calendar call, this case was recalled from the calendar of September 15, 2014. There was no appearance by or on behalf of petitioner. Counsel for respondent appeared and was heard. The Court took respondent's motion under advisement.

Background

This case has received two continuances on September 28, 2011, and October 12, 2012. By Notice served on May 23, 2012, this case was set for trial in Lubbock, Texas, on October 18, 2012. The Court also served on each party a copy of the Court's Standing Pretrial Order, which advised the parties regarding certain

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requirements for the pretrial preparation of these cases. Among other requirements, the Standing Pretrial Order required the parties to prepare and submit a stipulation of facts, to identify and exchange documents at least 14 days before the first day of the trial session, to prepare and submit a Pretrial Memorandum, and to be prepared for trial at any time during the term of the trial session. The Standing Pretrial Order contained the following warning:

The Court may impose appropriate sanctions, including dismissal, for any unexcused failure to comply with this Order. See Rule 131(b). Such failure may also be considered in relation to sanctions against and disciplinary proceedings involving counsel. See Rule 202(a).

At the calendar call on October 18, 2012, petitioner orally moved for a continuance seeking additional time to produce evidence to substantiate his claim. Further a plan was discussed for petitioner to work cooperatively with respondent and provide further substantiation documents that proved petitioner's disability and deductions, and the Court encouraged petitioner to seek advice from the pro bono clinic.

By Order dated October 18, 2012, the Court (1) granted petitioner's oral motion for continuance, (2) remanded the case to respondent's Office of Appeals for the purpose of affording petitioner an administrative hearing pursuant to I.R.C. section 6330, and (3) directed the parties to file a status report of the then present status of the case by April 16, 2013.

On April 13, 2013, respondent filed a status report. In the status report, respondent stated: (1) petitioner's supplemental CDP case was assigned to settlement officer Robert P. Wolff, (2) the settlement officer sent a letter to petitioner scheduling a CDP conference on February 20, 2013, and requested that any new evidence or information be submitted 5 days before the CDP conference, (3) petitioner provided a sworn affidavit on February 3, 2013, listing improvements purportedly made on petitioner's homes without supporting documentation, (4) the CDP telephonic conference was held between the parties wherein the settlement officer explained to petitioner that supporting documentation was needed and that an affidavit was not sufficient, and (5) petitioner did not provide any further documentation.

On March 22, 2013, respondent's Office of Appeals issued a supplemental notice of determination for petitioner's tax years 2001, 2002, 2004, and 2005.

On April 11, 2014, the Court issued its notice setting this case for trial at the session of the Court at Lubbock, Texas, commencing on September 15, 2014. The Court also served on each party a copy of the Court's Standing Pretrial Order, which again advises the parties regarding certain requirements for the pretrial preparation of this case.

By Order dated August 15, 2014, the Court directed the parties to file a status report advising the Court of the trial preparation between the parties by September 2, 2014. On September 2, 2014, respondent filed a status report apprising the Court of the status of the case. In respondent's status report, it stated that (1) respondent has had no conversations with petitioner since September 2012, and (2) respondent would be willing to offer petitioner a settlement of the underlying liabilities but petitioner has shown no inclination to settle in previous communications over the last three years. As of this date, petitioner has not filed a status report.

On September 3, 2014, the Court initiated a telephone conference with the parties to discuss the current status of the case. During the telephone conference, Mr. Golightly stated that he did not want to speak with the undersigned judge, and further stated that the Court was part of the IRS. Petitioner abruptly ended the call by "hanging up" the phone with the Court. Because Mr. Golightly ended the conference call with the Court, we concluded that the telephone conference was not the best circumstance for giving additional information and instructions that we often give during a telephone conference. The Court's order dated September 4, 2014, reminded petitioner of the requirements of the Court's Standing Pretrial Order and his responsibilities in prosecuting his case. Subsequently, Mr. Golightly failed to adhere to the Court's orders and rules.

Discussion

The Court may dismiss a case at any time and enter a decision against the taxpayer for failure to prosecute his or her case, failure to comply with the Rules of the Court or any Order of the Court, or for any cause which the Court deems sufficient. Rule 123(b) of the Tax Court Rules of Practice and Procedure provides as follows:

(b) **Dismissal:** For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner.

In addition, Rule 149 of the Tax Court Rules of Practice and Procedure, which is entitled “Failure to Appear or to Adduce Evidence”, provides that the Court may dismiss a case for failure to produce evidence in support of an issue of fact to which a party has the burden of proof. See Rule 149(b).

Mr. Golightly has been given more than adequate opportunity to present evidence necessary to support his claim. While it is unfortunate that petitioner is suffering ill health, petitioner was granted two continuances and was afforded another opportunity in respondent’s Office of Appeals to narrow the issues and/or resolve this case. The Court directed petitioner to produce his substantiation that showed petitioner’s disability and deductions for the 2001, 2002, 2004, and 2005 tax years. Subsequently, petitioner failed to produce his substantiation documents. Petitioner has not cooperated with respondent despite diligent efforts by respondent to either produce a settlement or prepare for the September 15, 2014, trial session. Petitioner had five months from the issuance of the standing pretrial orders served on January 12, 2012, and April 11, 2014, to diligently resolve the case but apparently failed to do so.

Petitioner has failed properly to prosecute this case. Petitioner failed to appear for trial on September 15, 2014, despite the Court’s orders dated April 11, 2014, and September 4, 2014. The Notice Setting Case for Trial warned that “Your failure to appear may result in dismissal of the case and entry of decision against you.” Petitioner failed to exchange substantiation documents in violation of the Court’s Standing Pretrial Orders. Petitioner failed to file a status report pursuant to the Court’s order dated August 15, 2014.

The Court may dismiss a case at any time and enter a decision against the taxpayer for failure properly to prosecute his case, failure to comply with the Rules of this Court or any order of the Court, or for any cause which the Court deems sufficient. Rule 123(b); Edelson v. Commissioner, 829 F.2d 828, 831 (9th Cir. 1983); Tipton v. Commissioner, 127 T.C. 214, 217 (2006). The Court may also dismiss a case for lack of prosecution if the taxpayer inexcusably fails to appear at trial and does not otherwise participate in the resolution of his claim. Rule 149(a); Tipton v. Commissioner, 127 T.C. at 217; Brooks v. Commissioner, 82 T.C. 413 (1984), aff’d without published opinion, 772 F.2d 910 (9th Cir. 1985). The Court is satisfied that petitioner’s conduct is not the result of inability or inadvertence, but rather that his failure to comply with orders, notices, and directions of the Court is due to willful and deliberate conduct. Thus, this case is subject to dismissal under Rule 123, Tax Court Rules of Practice and Procedure.

Conclusion

Upon review of the entire record, we conclude that this case is subject to dismissal under Rule 123, Tax Court Rules of Practice and Procedure, by reason of petitioner's failure to appear for trial or otherwise properly to prosecute. Upon due consideration and for cause, it is

ORDERED that respondent's motion is granted, and this case is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that respondent's notice of determination concerning collection action(s) under section 6320 and/or 6330 issued to petitioner on April 12, 2010, for petitioner's income tax liabilities for taxable years 2001, 2002, 2004, and 2005, as revised and supplemented by the supplemental notice of determination issued to petitioner on March 22, 2013, and upon which this case is based, is sustained in full.

**(Signed) Joseph W. Nega
Judge**

ENTERED: **OCT 21 2014**