

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BIDYUT BHATTACHARYYA, DIANA
BHATTACHARYYA;

Petitioners,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 07-73470

CIR No. 015024-04

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Bidyut and Diana Bhattacharyya petition pro se for review of tax court's
decision, following a bench trial, upholding the Internal Revenue Service

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

Commissioner's determination of a deficiency for tax year 2000 and of additions to tax. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review the tax court's findings of fact for clear error and its conclusions of law de novo. *Hardy v. Comm'r*, 181 F.3d 1002, 1004 (9th Cir. 1999). We deny the petition for review.

The tax court correctly determined the Bhattacharyyas' income, deductions, and subsequent tax deficiency based on party stipulations and other evidence submitted during trial, which the Bhattacharyyas' failed to rebut. *See id.*, 181 F.3d at 1004 ("If the Commissioner introduces some evidence that the taxpayer received unreported income, the burden shifts to the taxpayer to show by a preponderance of the evidence that the deficiency was arbitrary or erroneous.").

Contrary to the Bhattacharyyas' contentions, opposing counsel's remarks were routine statements made in the course of litigation and did not provide a basis for the tax court to remove the attorney from the proceedings.

The Bhattacharyyas' remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED.