NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAUL S. JACOBS, as Executor of the Estate of Daniel S. Jacobs,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

No. 25-195
Tax Ct. No. 7118-19

MEMORANDUM*

Appeal from a Decision of the United States Tax Court

Submitted August 13, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Appellant Paul S. Jacobs, Executor of the Estate of Daniel S. Jacobs, appeals the Tax Court's denial of his motion for litigation costs under 26 U.S.C. § 7430, denial of sanctions under 26 U.S.C. § 6673 and the court's inherent authority, and exclusion of his proposed expert testimony. We have jurisdiction under 26 U.S.C. § 7482(a)(1), and we affirm.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We review the Tax Court's determination that the Commissioner's litigation position was substantially justified for abuse of discretion. *Huffman v. Comm'r*, 978 F.2d 1139, 1143 (9th Cir. 1992). We likewise review the denial of sanctions and evidentiary rulings for abuse of discretion. *See Liti v. Comm'r*, 289 F.3d 1103, 1105 (9th Cir. 2002).

In the initial appeal of this case, *Jacobs v. Comm'r of Internal Revenue*, No. 21-71211, 2022 WL 16707186 (9th Cir. Nov. 4, 2022) [hereinafter *Jacobs I*], we vacated the Tax Court's denial of litigation costs because it was unclear whether the court had adequately considered whether, in light of the administrative record, the Commissioner's Answer was reasonable based on what the Commissioner learned, or should have learned, before filing it. We therefore remanded for reconsideration under that standard.

On remand, the Tax Court conducted a two-day evidentiary hearing, supplemented the record, and undertook an extensive review of the administrative proceedings. Accordingly, we find that the Tax Court properly applied our mandate. The court examined the information available to the Commissioner when the Answer was filed and determined that Appellant had not yet provided sufficient explanation connecting many of his claimed expenses to his asserted business activities. The court found that the "material (indeed, determinative to the [Internal Revenue Service ("IRS")]) portion of that proof" came only *after* Jacobs' six-and-a-half-hour presentation before the IRS Appeals unit, during which he explained how his various activities related to one another; why the expenditures were ordinary and necessary; and provided follow-up documentation. Because Appellant only provided the IRS this clarifying, contextual documentation and information after the Commissioner filed its Answer, the court concluded that the Commissioner neither learned, nor should have learned, before filing the Answer that the deductions were allowable. Those factual findings are supported by the record, and the Tax Court did not abuse its discretion in concluding that the Commissioner's litigation position was substantially justified.

Appellant principally argues that the Commissioner possessed sufficient documentation *before* filing the Answer and therefore should have immediately conceded the case. The Tax Court reasonably rejected that contention. As it explained, documentation establishing that expenditures were incurred does not necessarily establish that they were ordinary and necessary expenses related to his business, I.R.C. § 162(a); 26 C.F.R. § 1.162-1(a), or satisfy the heightened substantiation requirements applicable to many of the deductions at issue *see* I.R.C. § 274(d) (setting the standard for substantiation as to various traveling expenses). The Commissioner was entitled by statute to require adequate substantiation from Appellant before conceding the case, particularly where Appellant's claimed business activities generated no income during the relevant years and involved expenses susceptible to abuse, including travel, meals, and home-office deductions. *See Sparkman v. Comm'r*, 509 F.3d 1149, 1159 (9th Cir. 2007) ("[A]n income tax deduction is a matter of legislative grace and . . . the burden of clearly showing the right to the claimed deduction is on the taxpayer." (quoting *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934)). The Tax Court therefore did not abuse its discretion in concluding that the Commissioner reasonably maintained the litigation position.[1]

Nor do Jacobs' remaining § 7430 arguments warrant reversal. The Tax Court did not err in rejecting Appellant's contention that Tax Court Rule 33(b) imposed an independent and affirmative duty requiring the Commissioner to meet with Appellant and concede the case before filing the Answer. The court also did not err in declining to evaluate the reasonableness of the Commissioner's position based on post-Answer developments and meetings. As *Jacobs I* recognized, the relevant inquiry is whether the Answer was substantially justified in light of what the Commissioner learned or should have learned from the administrative proceedings *before* filing it. 2022 WL 16707186, at *2 ("The 'reasonableness' of

[1] Appellant relies heavily on *Morreale v. Commissioner*, 122 T.C.M. (CCH) 80, at 21 (2021) to support his argument that the IRS' position in an Answer inherently lacks a basis in law and fact when its Appeals Office later reviews and reverses that position. But Morreale did not go as far as creating such a universal rule. And unlike *Morreale*, here we have evidence of a critical meeting that further contextualized Appellant's deductions, which occurred only after the Answer was filed.

the CIR's answer here depends on what the CIR learned, or should have learned, from the preceding administrative proceedings."). The Tax Court permissibly concluded that subsequent developments (including the Commissioner's ultimate concession) did not retroactively render the original litigation position unreasonable.

The Tax Court likewise did not abuse its discretion in declining to impose sanctions under § 6673 or its inherent authority. After considering the testimony and documentary evidence developed on remand, the Tax Court found that the record did not support Appellant's allegations that government counsel acted in bad faith, improperly excluded the Taxpayer Advocate Service from the Appeals conference, or intentionally withheld evidence or misrepresented the record. Although the court acknowledged that the administrative proceedings were lengthy and not without imperfections, it reasonably concluded that the record reflected, at most, administrative missteps rather than sanctionable litigation misconduct. Appellant has not shown those findings to be an abuse of discretion.

Finally, the Tax Court acted within its discretion in excluding Appellant's proposed expert report. The court reasonably determined that the report would not be "helpful to understanding the evidence, determining a fact at issue, or otherwise resolving the issues before [it]" and largely agreed with the government's argument that the report primarily offered impermissible legal conclusions about whether the Commissioner's litigation position was substantially justified. Because the court's reasonable findings were permissible grounds for excluding the report, the court did not abuse its discretion. *See Tigers Eye Trading, LLC v. Comm'r*, T.C. Memo 2009-1212 at 22-23 (excluding expert report containing "legal conclusions" and "advocacy" because it did not assist the tier of fact in understanding the evidence or determining a fact at issue).

AFFIRMED.