

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 18, 2017

**Elisabeth A. Shumaker
Clerk of Court**

AMANDA N. VU,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 17-9007

ORDER

Before **BRISCOE, McHUGH, and MORITZ**, Circuit Judges.

The case underlying this appeal proceeded before the United States Tax Court as a small tax case as provided in 26 U.S.C. § 7463 (I.R.C. § 7463). Upon opening of the appeal, the court directed the parties to file written responses regarding its appellate jurisdiction, which they have done. Upon consideration of those responses and the applicable law, the court concludes that it lacks jurisdiction and dismisses this appeal.

Appellant Amanda Vu (taxpayer) filed a petition with the United States Tax Court in which she: (1) requested relief from unpaid income tax liability under the “innocent spouse” provisions of 26 U.S.C. § 6015; and (2) elected to proceed under “small tax case” procedures set forth in I.R.C. § 7463 instead of regular tax case procedures. The

Tax Court dismissed the petition for lack of jurisdiction as untimely filed. *See* 26 U.S.C. § 6213.

Ms. Vu seeks to appeal the order of dismissal as well as the Tax Court's denial of her motions to reconsider and vacate the dismissal and to remove the small tax case designation. However, I.R.C. § 7463(b) provides that "[a] decision entered in any case in which the proceedings are conducted under [small tax case procedures] shall not be reviewed in any other court and shall not be treated as a precedent for any other case." *Id.*; *see Dexter v. C.I.R.*, 409 F.3d 877, 879 (7th Cir. 2005) ("Both the statutory language and legislative history demonstrate that Congress intended to preclude judicial review of all 'decisions' in small tax cases . . ."); *Green v. C.I.R.*, 201 F.3d 447 (10th Cir. 1999) (unpublished) ("Under § 7463(b), a decision in a small tax case is final, unappealable and nonprecedential.").

In her response to the jurisdictional show cause order, Ms. Vu recognizes that small tax cases are not ordinarily appealable under I.R.C. § 7463(b), but argues that "[t]he prohibition on appellate review does not apply in this case, since Ms. Vu is not seeking merits review, but review of an erroneous procedural ruling of the Tax Court that precluded the Tax Court from deciding the case on the merits (i.e., a ruling that it lacked jurisdiction." The court finds this to be a distinction without a difference: the Tax Court's decision to dismiss a small tax case on jurisdictional grounds is nonetheless a "decision" rendered in a small tax case and, as such, "shall not be reviewed in any other court." *See* I.R.C. § 7463(b); *see also Rayle v. C.I.R.*, 594 F. App'x 305, 307 (7th Cir. 2014) (unpublished) (holding that "[t]he Tax Court's dismissal of a case for lack of jurisdiction

is a ‘decision’” and dismissing appeal of that decision for lack of appellate jurisdiction); *Edge v. C.I.R.*, 552 F. App’x 255, 255 (4th Cir. 2014) (unpublished) (same). Accordingly, this court is without jurisdiction to hear Ms. Vu’s appeal.

The court denies Ms. Vu’s motion to proceed *in forma pauperis* and reminds her of her responsibility to make immediate payment of the appellate filing fee.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Lisa A. Lee".

by: Lisa A. Lee
Counsel to the Clerk