

A COMMISSIONER OF WEALTH TAX, GUJARAT

v.

LOV. S. KINARIWALA

DECEMBER 11, 2002

B [SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

Wealth Tax Act, 1957:

C s.27 (1) and 27(3)—Assessee, a beneficiary of Trust assigned to the trust his share of income received from partnership firm—The same alongwith other income distributed to assessee—Assessee assigned his interest in favour of Body of Individuals (BOIs) and claimed that it should be assessed as asset of BOIs—Claim rejected by Assessing Officer holding that creation of BOIs and assignment was a sham and bogus—Commissioner (Appeals) reversed the findings and his decision affirmed by Tribunal—High Court declined to direct the Tribunal to state and refer the question holding that decision of Tribunal was on the question of fact and no question of law arose—Held, once it is found as a fact that creation of BOIs and assignment of interest was not sham and bogus activity, the question sought to be referred would not arise and Tribunal u/s. 27(1) and High Court u/s. 27(3) were right in rejecting the application of Revenue.

E *Sunil J. Kinariwala v. Commissioner of Income Tax, (1955) 211 I.T.R 127 and Commissioner of Income Tax v. Sunil J. Kinariwala, [2003] 1 SCC 660, distinguished.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1858 of 2002.

From the Judgment and Order dated 13.4.99 of the Gujarat High Court in W.T.A. No. 52 of 1998.

G WITH

C.A. Nos. 1847-48, 1865, 1869-71, 1873-76, 1877-1881, 1886, 1890, 1893-98 of 2002 and 2339 of 2001.

H Preetesh Kapur, Ranbir Chandra, K.C. Kaushik, Ms. Lakshmi Iyengar,

Ms. Sunita Sharma, Ms. Neera Gupta, B.V.B. Das and Ms. Sushma Suri for the Appellant. A

U.U. Lalit, H.A. Raichura and S. H. Raichura for the Respondents.

The following order of the Court was delivered:

Civil Appeal No. 1858 of 2002: B

This appeal, by the Revenue, arises from the common order passed by the High Court of Gujarat on an application under Section 27(3) of the Wealth Tax Act declining to direct the Income Tax Appellate Tribunal (for short, 'the Tribunal') to state the case and refer to it the following question of law: C

"Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Wealth-tax (Appeals) directing the Assessing Officer to exclude the value of the assets transferred to B.O.Is. from the wealth of the assessee?" D

In the order under challenge, the High Court mentioned two grounds for rejection of the application under Section 27(3) of the Wealth Tax Act, namely, (1) the decision of the Tribunal is on the question of fact emanating from the record and no question of law arises out of it; and (2) relied upon the judgement of the Gujarat High Court in *Sunil J. Kinariwala v. Commissioner of Income Tax*, [1995] 211 I.T.R. 127. E

Mr. Ranbir Chandra, learned counsel for the Revenue, contends that as this Court has reversed the judgement of the High Court of Gujarat in *Sunil J. Kinariwala* (supra), this appeal has to be allowed. We are afraid, we cannot accede to the submission of the learned counsel. F

It would be useful to refer to the facts giving rise to this appeal.

The respondent-assessee is a beneficiary of the main Trust. The sum (being the share income of the assessee from the partnership firm) was assigned to the Trust by the assessee. The same, along with other income of the Trust, was distributed among all the beneficiaries, including the assessee. They, in turn, assigned their respective interest in favour of Body of Individuals (B.O.Is.) and claimed that the beneficial interest derived from the firm should be assessed as assets of the B.O.Is. for purposes of valuation and not the assets of the respondent-assessee. The Assessing Officer of the Wealth Tax H

A rejected the claim of the assessee taking the view that creation of B.O.Is. and assignment was a sham and bogus transaction. That finding was reversed, on appeal, by the Commissioner (Appeals) and the same was upheld by the Tribunal.

B Once it is found, as a fact, that the creation of the B.O.Is. and assignment of assets was not sham and bogus activity, the question sought to be referred would not arise and, therefore, the Tribunal under Section 27(1) of the Wealth Tax Act and the High Court under Section 27(3) of the Wealth Tax Act were right in rejecting the application of the Revenue.

C But then the question remains whether the fact that the High Court relied upon the judgement in *Sunil J. Kinariwala* (supra), which was reversed by this Court in Civil Appeal No. 1899 of 2002 *Commissioner of Income Tax v. Sunil J. Kinariwala* dated December 10, 2002 would make any difference to the result of this appeal. In our view, it does not as on the facts of the present case, that judgement is clearly distinguishable. The point in that case
D was whether there was diversion of income of the assessee to the Trust by over-riding title created in favour of the Trust, whereas in the present case, the question is whether the B.O.Is. and assignment of assets to it was sham and bogus. In our view, the High Court has erroneously relied on that judgement. Be that as it may, we have held above that on the findings recorded
E both by the Commissioner (Appeals) as well as by the Tribunal, the High Court was right in rejecting the application under Section 27(3) of the Wealth Tax Act.

We find no merit in the appeal. It is accordingly dismissed.

F No costs.

Civil Appeal Nos. 1847-48/2002, 1865/2002, 1869-71/2002, 1873-76/2002, 1877-1881/2002, 1886/2002, 1890/2002, 1893-98/2002 and 2339/2001.

G In view of the order passed in Civil Appeal No. 1858 of 2002 *Commissioner of Wealth Tax, Gujarat v. LOV S. Kinariwala*, these appeals are dismissed.

No costs.

R.P.

Appeals dismissed.