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C.A.No. 1858 OF 2002

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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ITEM NO. 102

COURT No. 4

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 1858 of 2002@@
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Commissioner of Wealth Tax, Gujarat

Appellant(s)

VERSUS

LOV S. Kinariwala

Respondent(s)~

With

Civil Appeal No. 1848 of 2002 - With office report
Civil Appeal No. 1847 of 2002 - With office report
Civil Appeal No. 1865 of 2002 - With office report
Civil Appeal No. 1869 of 2002 - With office report
Civil Appeal No. 1870 of 2002 - With office report
Civil Appeal No. 1871 of 2002 - With office report
Civil Appeal No. 1873 of 2002 - With office report
Civil Appeal No. 1874 of 2002 - With office report
Civil Appeal No. 1875 of 2002 - With office report
Civil Appeal No. 1876 of 2002 - With office report
Civil Appeal Nos.1877-1881 of 2002 - With office report
Civil Appeal No. 1886 of 2002 - With office report
Civil Appeal No. 1890 of 2002 - With office report
Civil Appeal No. 1893 of 2002 - With office report
Civil Appeal No. 1894 of 2002 - With office report
Civil Appeal No. 1895 of 2002 - With office report
Civil Appeal No. 1896 of 2002 - With office report
Civil Appeal No. 1897 of 2002 - With office report
Civil Appeal No. 1898 of 2002 - With office report
Civil Appeal No. 2339 of 2001 - With office report

Date : 11/12/2002 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)

Mr. Ranbir Chandra,Adv.
Mr. Preetesh Kapur,Adv.
Mr. K.C. Kaushik,Adv.
Ms. Lakshmi Iyengar,Adv.
Ms. Neera Gupta,Adv.
Ms. Sunita Sharma,Adv.
Mr. B.V.B. Das,Adv.
Ms. Sushma Suri,Adv.

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.PA

- 2 -

For Respondent(s)

Mr. U.U. Lalit,Adv.

Mr. H.A. Raichura, Adv.
Mr. S.H. Raichura, Adv.
Mr. P.K. Bajaj, Adv.

Ex-parte

The Court made the following
O R D E R

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
Heard Mr. Ranbir Chandra, learned counsel for the
Revenue, for a while.

The civil appeals are dismissed.

No costs.

REPORTABLE.@@
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(T.I. Rajput)
Court Master

(Kanwal Singh)
Court Master

(Signed judgement is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1858 of 2002@@
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Commissioner of Wealth Tax, Gujarat ...Appellant (s)

Versus~

LOV S. KinariwalaRespondent (s)

W I T H@@
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Civil Appeal Nos.1847-48/2002,1865/2002,1869-71/2002,@@
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1873-76/2002, 1877-1881/2002, 1886/2002, 1890/2002,@@
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1893-98/2002 and 2339/2001.@@
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O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....T.....J

.SP2

Civil Appeal No. 1858 of 2002:@@
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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:

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.SP1

"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?"

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.SP2

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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.@@

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Kinariwala vs. Commissioner of Income Tax [(1995) 211 I.T.R.@@
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127].

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@@
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appeal has to be allowed. We are afraid, we cannot accede to the submission of the learned counsel.

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

...3/-

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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 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.

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.

But then the question remains whether the fact that the High Court relied upon the judgement in Sunil J. Kinariwala@@
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(supra), which was reversed by this Court in Civil Appeal No. 1899 of 2002 [Commissioner of Income Tax vs. Sunil J.@@
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Kinariwala] dated December 10, 2002, would make any difference@@
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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 was whether there was diversion of income of the assessee to the Trust by
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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 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.
No costs.

.SP1
Civil Appeal Nos.1847-48/2002,1865/2002,1869-71/2002,@@
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1873-76/2002, 1877-1881/2002, 1886/2002, 1890/2002,@@
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1893-98/2002 and 2339/2001.@@
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.SP2
In view of the order passed in Civil Appeal No. 1858 of 2002 (Commissioner of Wealth Tax, Gujarat vs. LOV S.@@
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Kinariwala), these appeals are dismissed.@@
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No costs.

.SP1
.....J.@@
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(Syed Shah Mohammed Quadri)@@
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.....J.@@
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(Arijit Pasayat)@@
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New Delhi,
December 11, 2002.