REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2312 OF 2007

COMMISSIONER OF WEALTH TAX, RAJKOT **Appellant (s)**

VERSUS

ESTATE OF LATE HMM VIKRAMSINHJI OF GONDAL **Respondent(s)**

WITH

Civil Appeal No. 329 of 2009

Civil Appeal No. 204 of 2010

Civil Appeal No. 203 of 2010

Civil Appeal No. 202 of 2010

Civil Appeal No. 201 of 2010

Civil Appeal No. 200 of 2010

Civil Appeal No. 199 of 2010

Civil Appeal No. 198 of 2010

Civil Appeal No. 2158 of 2010

Civil Appeal No. 4561 of 2014
(arising out of S.L.P. (C) No. 3755 of 2007)

Civil Appeal No. 4562 of 2014
(arising out of S.L.P. (C) No. 3756 of 2007)

Civil Appeal No. 4564 of 2014
(arising out of S.L.P. (C) No. 3757 of 2007)

Civil Appeal No. 4565 of 2014
(arising out of S.L.P. (C) No. 4623 of 2007)

Civil Appeal No. 4566 of 2014
(arising out of S.L.P. (C) No. 8115 of 2007)

Civil Appeal No. 4567 of 2014
(arising out of S.L.P. (C) No. 4980 of 2007)

Civil Appeal No. 4568 of 2014
(arising out of S.L.P. (C) No. 2415 of 2007)

J U D G M E N T

R.M. LODHA, J. :

Leave granted in the special leave petitions.

2. This is a group of 17 Appeals — 8 arising from the Income Tax Act, 1961 and 9 arising from the Wealth Tax Act, 1957. Of the 9 Wealth Tax appeals, one appeal relates to 'protective assessment' for 18 assessment years, i.e, 1970-71 to 1976-77, 1978-79 to 1979-80, 1981-82 to 1989-90. The remaining 8 Wealth Tax appeals relate to assessment years 1970-71, 1971-72, 1972-73, 1973-74, 1974-75, 1975-76, 1976-77 and 1978-79. In so far as 8 appeals arising from the assessment orders passed under the Income Tax Act, 1961 are concerned, they relate to assessment years 1984-85, 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1990-91 and 1991-92.

3. The ex-Ruler of Gondal Shri Vikramsinhji executed three deeds of settlements (trust deeds) in the United States of America on December 19, 1963 and two deeds in the United Kingdom on January 1, 1964. The three settlements executed in U.S. are in identical terms. Similarly, the two settlements executed in U.K. are similar.

4. In the course of arguments, it was conceded by the learned counsel for the Revenue that in view of the decision of this Court in *Commissioner of Income Tax, Gujarat, Ahmedabad Vs. Kamalini Khatau (Smt.)*[1], the view taken by the High Court in respect of U.S. trusts cannot be faulted and, to that extent, the Revenue accepts the judgment of the High Court.

5. Thus the dispute in these appeals – Income Tax and so also, Wealth Tax – remains about the deeds of settlements executed in U.K. The copies of the deeds of settlements executed in U.K. are on record. Perusal thereof shows that one Mr. Robert Hampton Robertson McGill was designated as the trustee, referred to in the deeds as 'the Original Trustee'. These trusts were created for the benefit of (a) the Settlor, (b) the children and remoter issue for the time being in existence of the Settlor and (c) any person for the time being in existence who is the wife or widow of the Settlor or the wife or widow or husband or widower of any of them, the children and remoter issue of the Settlor. The trust deeds define the expression "the Trustees" to mean and include the Original Trustee or the other trustees for the time being appointed in terms of the deeds of settlement.

1. **1994 (4) SCC 308**

6. Clauses 3 and 4 of the Trust Deeds are relevant. They read as under:-

> **"3. THE Settlor hereby directs that the Trustees shall and accordingly the Trustees shall stand possessed of the Trust Fund and the income thereof upon the trusts following that is to say :-**
>
> **(1) UPON TRUST to raise and pay out of the capital thereof any further estate duty which may still be payable thereon in respect of the death of the Settlor's father His Late Highness Shri Bhojrajji Maharaja Saheb of Gondal who died on the Thirty-first day of July One thousand nine hundred and fifty-two and any interest payable on such duty and any costs incurred in connection with the ascertainment or payment of such duty and interest.**
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> **(2) Subject as aforesaid UPON TRUST for all or such one or more exclusively of the others or other of the Beneficiaries at such age or time or respective ages or times if more than one in such shares and with such trusts for their respective benefit and such provisions for their respective advancement and maintenance and education at the discretion of the Trustees or of any other person or persons as the person who for the time being is the Maharaja or (if the title is abolished) would have been the Maharaja had the title not been abolished shall at any time during the specified period by any deed or deeds revocable or irrevocable appoint AND in default of any subject to any such appointment UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same PROVIDED ALWAYS that the foregoing power of appointment shall not be capable of being exercised:-**
>
> > **(a) by anyone other than the Settlor or the Elder Son or the Younger Son; or**
> >
> > **(b) in favour of the person making the appointment save with the consent of the Trustees (being at least two in**

number or a trust corporation) such consent to be testified by their being parties to the deed of appointment and executing the same.

4. SUBJECT as aforesaid the Trustees shall stand possessed of the Trust Fund and the income thereof upon the trusts following that is to say:-

(1) The income of the Trust Fund accruing during the life of the Settlor shall belong and be paid to the Settlor.

(2) Subject as aforesaid the income of the Trust Fund accruing during the life of the Elder Son shall belong and be paid to the Elder Son.

(3) Subject as aforesaid the Trust Fund shall be held in Trust for the person who (being a descendant of the Elder Son) first during the specified period (a) becomes the Maharaja or would become the Maharaja if his title had not been abolished and (b) attains the age of eighteen years.

(4) Subject as aforesaid the income of the Trust Fund accruing during the life of the Younger Son shall belong and be paid to the Younger Son.

(5) Subject as aforesaid the Trust Fund shall be held in trust for the person who (being a descendant of the Younger Son) first during the specified period (a) becomes the Maharaja or would become the Maharaja if his title had not been abolished and (b) attains the age of eighteen years.

(6) Subject as aforesaid the Trust Fund shall be held in trust for the person who (being a son of the Settlor younger than the Younger Son or being a descendant of such a Son of the Settlor) first during the specified period (a) becomes the Maharaja or would become the Maharaja if his title had not been abolished and (b) attains the age of eighteen years."

7. It appears that during his life time, the settlor, Shri Vikramsinhji, was including the whole of the income arising from these trusts in his returns of income. The said income was also included in the two returns filed by his son Jyotendrasinhiji for the assessment year 1970-71. Thereafter, it appears that the assessee – Jyotendrasinhiji took the stand that the income from these trusts is not includible in his income. Jyotendrasinhiji also took the stand that inclusion of the said income in the returns submitted by his father for the assessment years 1964-65 to 1969-70 and by himself for the assessment year 1970-71 was under a mistake.

8. Bereft of unnecessary details, suffice it to say that Jyotendrasinhiji approached the Settlement Commission with an application for settlement relating to income from U.K. trusts just as he made application for settlement relating to U.S. trusts. As regards U.K. trusts, the Settlement Commission observed as follows:-

> **"So far as the U.K. trusts are concerned, clause (3) did never come into operation inasmuch as no additional trustees were appointed as contemplated by it. If so, clause (4) sprang into operation whereunder the entire income under the settlements flowed to the settlor during his lifetime and on his death, to his elder son, the appellant herein. In other words, these settlements are in the nature of specific trusts. In any event, the entire income from these trusts was received by the settlor during his lifetime and after**

> **the settlor's death, by the appellant. Therefore, the said income was rightly included in the total income of the settlor and the assessee during the respective assessment years."**

9. The Settlement Commission, accordingly, computed the taxable income of the Settlor under both the sets of trusts – U.S. and U.K. – for the assessment years 1964-65 to 1970-71 (up to the date of the death of the Settlor) as also the income of Jyotendrasinhiji for the assessment years 1970-71 to 1982-83.

10. The above order of the Settlement Commission reached this Court in a group of appeals. This Court, by its judgment dated April 2, 1993, *Jyotendrasinhji Vs. S.I. Tripathi & Others*[2], with regard to U.K. trusts did not consider the arguments advanced on behalf of the assessee on merits. The arguments advanced on behalf of the assessee with regard to these trusts are recorded in para 37 of the report which reads as under:-

> **"37. The first contention urged with respect to U.K. trusts is that the Commission has wrongly construed clause (3) which we have extracted hereinbefore. Shri Desai argues that the trust had already come into existence with the appointment of the sole trustee, Mr. McGill, and that the coming into existence of the trust did not depend upon the appointment of additional trustees. The Commission was wrong in holding that until and unless the additional trustees are appointed, the trust in clause (3) does not come into existence. Properly construed, says Shri Desai, clause**

2. **1993 Supp. (3) SCC 389**

> **(3) creates a discretionary trust. Inasmuch as the sub-clause does not prescribe any time limit within which the trustees must decide to distribute the income among the beneficiaries, says the counsel, clause (4) has not and had never come into operation. In this case the trustees never did decide not to exercise their discretion under clause (3). If so, no income ever arose or accrued to the settlor or the appellant under clause (4). If the trustees fail to exercise their discretion under clause (3), the only remedy for the beneficiaries is to approach the court to compel the trustees to exercise their discretion one way or the other, but they cannot say that the trust income has accrued to them. Clause (4) comes into operation, says the counsel, only where the trustees decide not to distribute the income among the specified beneficiaries; only then does the trust income belong to and has to be paid over to the settlor – and after the death of the settlor to his elder son, the appellant. Accordingly, the counsel says, the Commission was wrong in law in treating these trusts as specific trusts."**

11. This Court, however, observed that the question urged on behalf of the assessee was academic in the facts and circumstances of the case. In para 38 of the Report, this Court stated:-

> **"38. ... As a matter of fact, both the settlor and the appellant have been receiving the income from these trusts during the several assessment years concerned herein. Shri Vikramsinhji had voluntarily included the entire income from the U.K. trusts in his income in the returns filed by him for the assessment years 1964-65 to 1969-70. It is unlikely that he would have so included unless he really received it. The Commission treated those declarations as proof of the settlor's real intention. The Commission also relied upon certain other circumstances including the manner in which the accounts of these trusts were maintained in support of their opinion**

that all concerned with the trusts, acted on the basis that the trust income was flowing to the settlor, and after his death to the appellant. The Commission also referred specifically to similar declarations made by the appellant in his returns. It referred to his statements made in the two returns filed for the assessment year 1970-71, one relating to the income received by his father till his death and the other with respect to the income received by him during the accounting year after the death of his father. Even subsequent to the death of Shri Vikramsinhji, the Commission pointed out, the appellant has been making similar declarations from time to time. For instance, in the letter dated March 3, 1975 written by the appellant to the I.T.O., A-Ward, Rajkot relating to the A.Y. 1972-73, he had stated, "as per statement of U.K. sent herewith, the trustees have arrived at income of 13,027 pounds for the benefit of Shri Jyotendrasinhji. According to our opinion, this income is not taxable as U.K. trust is discretionary. However, as it has been taken last, the income may be included in the hands of Shri Jyotendrasinhji subject to our appeal". It is significant to notice the ground of non-taxability put forward in the said letter. The appellant did not say that he did not receive the income. All he said was, since it is a discretionary trust, its income is not taxable in his hands. If he had not received the income, he would have put forward that fact in the forefront. But he did not. Similarly, in the return relating to the A.Y. 1973-74, a note was appended by the appellant to the following effect: "Late H.H. Maharaja Vikramsinhji of Gondal has created trusts in U.K. The assessee has been informed that *income falling in the hands of the assessee is 12,627 pounds*. This is, therefore, shown as income in his return." (emphasis supplied). It is true that the appellant had argued before the Commission that the settlor as well as himself had included the said income in their returns out of ignorance and on the basis of wrong legal advice but the said explanation has not been accepted by the Commission — and we must go by the findings of the Commission. It is not brought to our notice that during any of the years concerned herein, did the appellant ever say that he did not receive the income from these trusts. If so, the question

of law urged is of mere academic interest and need not be dealt with by us. Section 5 of the Act is wide enough to bring all such income to tax."

12. Insofar as these appeals are concerned, as observed above, 8 appeals relate to income tax assessment years 1984-85 to 1991-92. The copies of the returns and balance sheets relating to above assessment years have been placed on record. It transpires therefrom that there is an endorsement at the bottom of the statement of funds ending on 31st March of each previous year, "Net Income for the year retained".

13. Clause 3 of the deeds of settlement executed in U.K. leaves at the discretion of the trustees to disburse benefits to the beneficiaries. The endorsement made in the returns, as noted above, shows that income was retained by the trustees and not disbursed.

14. The Income Tax Appellate Tribunal (for short, 'Tribunal'), while considering clause 3(2) and Clause 4 of the U.K. Trust Deeds referred to the findings of the Settlement Commission and observed that if the trusts were really intended to be discretionary, the trustees had a duty cast on them to ascertain the relative needs and personal circumstances of all the beneficiaries and to allocate the income of the trusts, among them from time to time, according to the objects of the trusts, however, the tell tale facts bring out the intention of the settlor to treat the trust property as his own. The

settlor and after his death his son have been showing the income of foreign trusts in the returns of income filed from time to time. Had the trust deeds been really understood by the trustees and the beneficiaries as discretionary by virtue of the operation of clause 3, one would have expected the state of affairs to have been different. Consequently, the Tribunal held that due to failure on the part of the Maharaja to appoint discretion exercisers as per clause 3(2), clause 4 has become operative and the U.K. trusts have to be held to be specific trusts.

15. The High court, however, did not agree with the Tribunal's view on consideration of the relevant clauses of the U.K. Trust Deeds and various judgments of this Court as well as some High Courts and held that there were distinguishing features for assessment years under appeal and the previous order of the Settlement Commission and the earlier judgment of this Court.

16. For the assessment years under consideration in these appeals, the High Court noted the following distinguishing features, viz., (i) the assessee has not admitted having received the income, (ii) the assessee has not received the said income and (iii) the assessee has not shown as taxable income in the returns of all the years under appeal.

17. Having observed the above distinguishing features, the High Court was also of the view that on

interpretation of the relevant clauses of the deeds of settlement executed in U.K., character of the trusts appears to be discretionary and not specific.

18. A discretionary trust is one which gives a beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit. The trustees must exercise their discretion as and when the income becomes available, but if they fail to distribute in due time, the power is not extinguished so that they can distribute later. They have no power to bind themselves for the future. The beneficiary thus has no more than a hope that the discretion will be exercised in his favour.[3]

19. Having regard to the above legal position about the discretionary trust which is also applied by by this Court in the earlier judgment[2] and the fact that the income has been retained and not disbursed to the beneficiaries, the view taken by the High Court cannot be said to be legally flawed. Merely because the Settlor and after his death, his son did not exercise their power to appoint the discretion exercisers, the character of the subject trusts does not get altered. In view of the facts noted above, in

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3. **Snell's Principles of Equity, 28th Edition, Page 138**
2. **1993 Supp. (3) SCC 389**

our opinion, the two U.K. trusts continued to be 'discretionary trust' for the subject assessment years.

20. The above position with regard to the discretionary trust is equally applicable to the controversy in appeals under the Wealth Tax Act. The High Court has taken a correct view that the value of the assets cannot be assessed on the estate of the deceased Settlor.

21. 16 Civil Appeals arising from substantive assessment under the Income Tax and Wealth Tax, accordingly, have no substance and are dismissed with no order as to costs.

22. Since the Appeals arising from the substantive assessments have no merit and have been dismissed, obviously nothing remains in Civil Appeal No. 2312 of 2007 under the Wealth Tax Act arising from 'protective assessment' for 18 assessment years, i.e, 1970-71 to 1976-77, 1978-79 to 1979-80, 1981-82 to 1989-90 and it is dismissed as well.

23. All 17 Civil Appeals are, accordingly, dismissed with no order as to costs.

.....J.
(R.M. LODHA)

NEW DELHI; **.....J.**
APRIL 16, 2014 **(SHIVA KIRTI SINGH)**