

14-3428

Humboldt Shelby Holding Corporation, And Subsidiaries v. Commissioner of Internal Revenue

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of June, two thousand fifteen.

PRESENT: RICHARD C. WESLEY,
PETER W. HALL,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

HUMBOLDT SHELBY HOLDING CORPORATION AND SUBSIDIARIES,

Petitioner-Appellant,

-v.-

No. 14-3428

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

FOR APPELLANT: JASPER G. TAYLOR III (Richard L. Hunn, *on the brief*),
Norton Rose Fulbright US LLP, Houston, TX.

FOR APPELLEE: JUDITH A. HAGLEY (Gilbert S. Rothenberg and
Richard Farber, *on the brief*), Attorneys, Tax Division,
Department of Justice, *for* Caroline D. Ciruolo, Acting
Assistant Attorney General, Washington, D.C.

Appeal from the Tax Court (Joseph R. Goeke, *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED** that the decision of the Tax Court is **AFFIRMED**.

Petitioner-Appellant Humboldt Shelby Holding Corporation
("Humboldt/Shelby") appeals from the tax court's March 19, 2014, decision
sustaining in full the tax deficiency and penalties against Humboldt/Shelby
determined by the Commissioner of Internal Revenue and the July 15, 2014,
decision denying Humboldt/Shelby's motion for reconsideration. The tax court
upheld the Commissioner's disallowance, applying the test articulated in this
Circuit for determining whether a transaction is a sham for want of economic
substance. *See Gilman v. Commissioner*, 933 F.2d 143, 147 (2d Cir. 1991). The tax
court found that the investment was devoid of economic substance and was
entered into solely for income tax benefits. We affirm substantially for the

reasons set forth in Judge Goeke's comprehensive opinion. *See Humboldt Shelby Holding Corp. v. Comm'r*, 107 T.C.M. (CCH) 1242 (2014).

We have considered Humboldt/Shelby's remaining arguments and find them to be without merit. For the reasons stated above, the judgment of the tax court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk