

**Controller of Estate Duty Vs. T.R. Nagoji Rao**

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**Court :** Chennai

**Decided On :** Nov-10-1998

**Reported in :** [2000]243ITR480(Mad)

**Judge :** R. Jayasimha Babu and ;A. Subbulakshmy, JJ.

**Acts :** [Estate Duty Act, 1953](#) - Sections 50B

**Appeal No. :** Tax Case No. 423 of 1997

**Appellant :** Controller of Estate Duty

**Respondent :** T.R. Nagoji Rao

**Advocate for Def. :** P.P.S. Janarthana Raja, Adv.

**Advocate for Pet/Ap. :** S.V. Subramaniam, Adv. for;C.V. Rajan and;Chitra Venkataraman, Advs.

**Judgement :**

R. Jayasimha Babu, J.

1. The Estate Duty Act is no longer in the statute book. The amount in respect of which much argument was advanced was also comparatively trivial. The Estate Duty Officer had engaged in a complex exercise for the purpose of ascertaining the exact amount of relief to which the accountable person was entitled under Section 50B of the [Estate Duty Act, 1953](#). The Tribunal having held in favour of the accountable person, these references have been brought up before us.

2. The three questions referred to us are :

'1. Whether, on the facts and circumstances of the case, the expression 'tax paid in respect of capital gains' under Section 50B of the Estate Duty Act relates to difference between the tax payable on the total income including the capital gains and the tax payable on the total income excluding the capital gains or the tax attributable to the capital gains by applying the average rate of income-tax to the amount of capital gains ?

2. Whether, on the facts and circumstances of the case, the expression 'estate duty payable' under Section 50B of the Estate Duty Act relates to the estate duty assessed under Section 58 before any deduction under Section 50 of the Estate Duty Act and

3. Whether, on the facts and circumstances of the case, the amount paid towards estate duty under Section 50B of the Act includes payment financed directly or indirectly by the sale of properties and not just chronologically sequential payments after the sale ?'

3. The answers to these questions have to be provided by construing the relevant Sections of the Act. Even a cursory reading of the sections does not admit of any doubt. The given area if it can be termed as such has

already been dealt with by the Supreme Court in the case of CED v. Roshan Jahangir Gandhi : [1994]205ITR428(SC) .

4. The first question has been posed because of the anxiety of the Estate Duty Officer to get more revenue for the State by regarding the burden of tax against the assessee on the capital gain only as the average burden against him, having regard to the total taxable income. But that approach fails to take note of the fact that the higher rate of tax on which tax was collected came to be applied solely by reason of the addition of the capital gains to the other income and had there been no capital gains, the burden of tax would have been very much smaller. The figure of the total income including the capital gain was Rs. 16,645, while the tax on the total income including the capital gain was only Rs. 2,115. The tax paid on the capital gains is therefore to be computed on the difference, viz., Rs. 14,530 and not by computing the average rate of tax and taking into account the burden on the capital gains at Rs. 10,420. It is the burden of tax imposed on the assessee by reason of capital gains that is required to be taken into account and that can be done properly only if the tax on the total income excluding capital gains is worked out from the total income paid. The first question is answered in favour of the assessee and against the Revenue.

5. The expression estate duty payable under Section 50B of the Act is also the expression that is used in several other sections of the Act. They must bear uniform meaning. Section 50B of the Estate Duty Act refers to the amount of duty as assessed and it does not refer to the amount that may be outstanding, if a part payment had been made. What is payable as estate duty is a constant figure which is determined after the assessment. The payments made towards that account may go to reduce the outstanding. But that will not alter the gross liability which is referred to as the estate duty payable. The second question is answered in favour of the Revenue and against the assessee.

6. As regards the third question, the answer thereto also must be in favour of the assessee in the light of the decision of the Supreme Court in CED v. Roshan Jahangir Gandhi : [1994]205ITR428(SC) . The Supreme Court therein approved the view of the High Court which had held that amounts borrowed for paying the estate duty and discharged from and out of the sale proceeds of the sale from which capital gains had been derived is part of the capital gain required to be computed for the purpose of Section 50B of the Estate Duty Act. The Supreme Court held that the view of the High Court cannot be said to be one which would not advance the cause of justice.

7. We are also of the view that the cause of justice is better advanced by enabling the accountable person to treat the repayment of borrowals from and out of the capital gains derived from the sale of the property of the deceased as part of the payment made towards the estate duty payable.

8. The third question is answered in favour of the assessee and against the Revenue.

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