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No

Proceedings of the Madras Government, Revenue Department, 25th March 1861.

No. 454. Read the following Opinion from THOMAS SYDNEY SMYTH, Esq., Advocate General, to C. G. MASTER, Esq., Deputy Secretary to Government, Revenue Department, Fort Saint George, dated 15th March 1861 :—

SIR,

1. The case put by the Commissioners appears to me to admit of considerable doubt.

2. On the one hand there can be no doubt that it was the policy of Act 32 of 1860 to obtain the uttermost farthing of four per cent. upon all incomes coming under its operation ; and the word "modify" seems to me, *per se*, to embrace the case of an increase, as well as of an abatement of a surcharge.

3. On the other hand, the word "modify" admits of various interpretations, none of which would be an increase of the surcharge ; and while the Act specifies that the Collector or Commissioners shall "modify, abate, or confirm" the surcharge, it no where, in terms, authorizes them to increase it ; and this, it appears to me, may be well accounted for, if it be the intention of the Act, as I think it is, that whenever a person either makes no return, or makes one with which the Collector or Commissioners were dissatisfied, they shall *sur*charge him in such a sum as will be *sure* not to be an *under*charge, leaving it to him, in such cases, to get the surcharge reduced, if really too high.

4. Cases of fraud are of course exceptions, and are separately provided for ; but in their present query the Commissioners speak expressly of cases where "no fraud" has been proved. In such cases then I am of opinion (though not without doubts upon the point) that as the power to increase a surcharge is not given in express terms, and as it appears to me not to be *necessary* to carrying out the intentions of the Act, that in cases where no fraud is proved, a surcharge ought not to be increased under Section LVI, Clause 1 of Act XXXII of 1860.

5. I would advise Government to refer the point to the Government of India so as to obtain a uniform working of the Act throughout the three Presidencies.

No. 455. ORDER THEREON, 25th March 1861, No. 695.

1. In the foregoing paper the Advocate General expresses his opinion on the point in connection with the Income Tax Act referred for his report with the Order of 12th instant, No. 870.

2. Adverting to paragraph 5 the Governor in Council resolves to refer the question for the final decision of the Government of India.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

Ordered that the followiug letter be despatched.

No. 456. From J. D. BOURDILLON, Esq., Secretary to the Government of Fort Saint George, to the Secretary to the Government of India, Financial Department, dated 25th March 1861, No. 696.

SIR,

1. I am directed to submit for the decision of the Government of India a question relating to the provisions contained in Clause 1, Section 56 of Act XXXII of 1860, on which a difference of opinion exists among the Members of the Income Tax Commission at Madras.

2. The point at issue is stated at length in the accompanying copy of a letter* from the Secretary to the Commission, and forms the subject of the enclosed "Opinion" by the Advocate General, dated 15th instant.

** Dated 7th March* 1861, *No.* 45.

3. Mr. Smyth expresses considerable doubt as to the intention of the Legislature, and advises a reference to the Government of India ; and this reference is made accordingly.

R. D. 3

No. 696.

To

The Secretary to the Govt. of India
Financial Deptt.

Sir,

I am directed to submit for the decision of the Govt. of India a question relating to the provisions contained in clause 1. Section 56 of Act XXXII of 1860 on which a difference of opinion exists among the Members of the Income Tax Commission at Madras.

2. The points at issue is stated at length in the accompanying copy of a letter from the Secretary to the Commission, and embodies the subject of the enclosed "opinion" by the Advocate General, ~~the Acting~~ dated 15th Instant.

I have &c.

dated 7th March 1861 No. 115.

Revenue 1861 Sept. 20
Dpt. of Govt. Secretariat.
No. 693.

From

The Chairman Income Tax Commissioners
Madras
dated 15th March
Rec'd 16th "
1861.

Stating his opinion on the question involved in the course of hearing the appeals against assessments to Income Tax preferred by Messrs. Arbuthnot & Co. and requesting to be favored with the Orders of Government thereon.

Rec'd 20th March 1861 No. 693.

Am the foregoing Paper the Advocate General expresses his opinion on the Merits in connection with the Income Tax cases referred for his opinion and requests to be favored with the Orders of Government thereon.

2 Adverting to Para 6 the Commissioners request to be favored with the decision of the Government of India

Written answer
No 695. 25. March

3.

Mr. Smyth expresses
~~The latter officer~~
~~having expressed~~ considerable
doubt as to ~~what was~~ the intention
of the Legislature, and
~~Government think it desirable~~
advises a reference to the Govt of
~~that the question should be finally~~
India; and this reference is made
~~by him to the Lieutenant~~
accordingly.

C.J.M.

F.D.H.

~~Peter George~~
25th March 1867

Certain Point relating to the Income Tax Act.

Revenue 1861 Deptt.
Pros: of Govt for March.

No. 696.

To the Secretary to the
Govt of India.
Dt 25th March 61.

Referring a
question regarding
Income Tax for the
opinion of the Govt of
India.

No. 456.