

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 93	Press <u>Mis.</u>
183-184	
Dated 12-1-1861.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
12th January 1861:*

No. 183. Read the following Endorsement from the Under Secretary to the Government of India, on the letter from the Secretary to the Government of Fort Saint George, dated 30th October 1860, No. 1,998, asking for an exposition of the meaning of the Act on a point specified.

No. 2,518.

Forwarded to the Financial Department for consideration and orders.

(By Order.)

HOME DEPARTMENT,
The 14th November 1860.

(Signed) H. U. BROWNE,
Under Secretary to the Government of India.

No. 11,912.

FORT WILLIAM,
FINANCIAL DEPARTMENT,
The 1st December 1860.

1. The Honorable the President in Council desires that the opinion of the Advocate General on the point referred to in the above letter from the Government of Madras, No. 1,998, dated 30th October last, be acted on.

2. Ordered that a copy of the above Resolution, together with a copy of the Advocate General's opinion, be forwarded to the Home Department for information and for communication to the Government of Madras.

No. 142.—Ordered also that a copy of the above correspondence be published in the Calcutta Gazette for general information.

By order of the Honorable the President in Council.

(Signed) C. HUGH LUSHINGTON,
Secretary to the Government of India.

OPINION:

1. I am clearly of opinion that the falling short of profits which under Section 139 of the Income Tax Act will entitle a person assessed to claim an abatement of the duties assessed on him refers to the year for which the assessment is made and in which it is or ought to be made: and not to the preceding year, upon the profits of which the income to be assessed for the current year is estimated.

2. The words of the 139th Section appear to me to admit of no other legal construction, as it is upon proof that the "interest or profits during the year for which the assessment is made fall short of the sum on which the assessment is made" that the person assessed is entitled to have his assessment amended. Now the assessment in each year is made for the current year (in all cases in which it is not accidentally delayed till after the expiration of the year for which it ought to have been made, when it is under Section 5 to be deemed to have been made for that year), and although the return upon which the profits for the year of assessment are assessed gives the profits of the previous year as the estimate of the profits of the current year, the assessment is not made for the previous year upon the profits of the previous year as such: but upon the profits of the current year of assessment, estimated according to the profits of the past year. If it be discovered before or at the end of the current year that that estimate was too high, by reason of the profits of the current year falling short of those of the previous year, the person assessed is entitled to have the assessment amended according to the actual outturn of the profits for the year of assessment.

3. It is quite true on the other hand that if the profits of the year of assessment exceed those of the preceding year upon which the profits assessed were estimated, the Government cannot derive any benefit upon the assessment of the current year from such excess. But the Government probably thought it more politic to abandon any claim to surcharge upon an excess

*Proceedings of the Madras Government, Revenue Department,
12th January 1861.*

of profits thus realized than to compel the persons so assessed to submit to the extreme inconvenience of making a second return at the end of the year of assessment; while on the other hand, an abatement in the case of persons who had been assessed upon an approximate valuation of their earnings for the year which had turned out to be too high, was one so obviously equitable to the subject, that the Government could not well have refused to accord it, whether it thought it worth its while to enforce a revision of the assessment in the case of an excess of profits during the current year or not.

4. The 139th Section is taken from the 133rd Section of the English Act of 1842, amended by the 48th Section of the Act of 1853, and the practice above stated is that which has always prevailed under the English Act.—See the evidence of Mr. Offen before the Select Committee on the Income Tax in the House of Commons, First Report p. p. 317, 318. A reference to the English Act shows clearly that the diminution of profits referred to cannot be a diminution in the *preceding* year (upon the profits of which the return was made); for, under the English Act of 1842, the profits on trades were to be estimated generally according to the *average* of the *preceding* three years, while those on professions were to be estimated according to the profits of the preceding year, though in some exceptional cases the computation was to be made upon the profits of the current year. The 133rd Section of the English Act, therefore, provides that whether the person assessed shall have computed his profits or gains on the amount in the *PRECEDING*, or *current* year, or on an *average* of *years*, if he shall prove that his profits and gains for the year for which the computation was made (which must mean the year of assessment, though this is not very clearly expressed, and cannot possibly mean the *preceding* year where the computation was made on an average of three years) fell short of the sum so computed, the Commissioners may cause the assessment for the *current* year to be amended in respect of such source of profits, and Section 30 of the 16 and 17 Vict. Chap. 34; which amends the provisions of Section 133 of the first Act (in order to meet a vexatious interpretation put upon it by the Commissioners of Revenue) instead of the ambiguous expression "the year for which the computation was made" above quoted uses the expression "the income for the year for which such assessment was made," which is the expression used in the Indian Act.

21st November 1860.

(Signed) W. RITCHIE.

Forwarded together with the opinion of the Advocate General to the Government of Fort Saint George for information and guidance.

2,757.

HOME DEPARTMENT,
The 7th December 1860.

(By Order.)

(Signed) H. U. BROWNE,
Under Secretary to the Government of India.

No. 184.

ORDER THEREON, 12th January 1861, No. 93.
Ordered to be communicated to the President of the Income Tax Commission, Madras, with reference to his letter of the 23rd October last, No. 17.

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

REVENUE DEPARTMENT.
FORT SAINT GEORGE,
30th October 1860.

No. 1,998.

From

J. D. BOURDILLON, Esq.,
Secretary to the Government of Fort Saint George,

To

The Secretary to the Government of India, Financial Department.

SIR,

1. I am directed to forward for the orders of the Government of India copy of a letter from the President of the Madras Income Tax Commission, asking for an exposition of the meaning of the Act on a point specified.

2. The duties under Schedule 2 are assessed on the profits of the year preceding that in which the assessment is made. The point now referred is whether the falling short of profits spoken of in Section 139, refers to the year in which the assessment is made, or to that on the profits of which it is made. It appears to this Government that the former can hardly be intended, because such a provision would put the Government under a constant disadvantage; inasmuch as while assessment would be reduced when the current year's income fell below that of the preceding year, it would never be raised in the contrary case.

3. The intention, however, is not plain from the terms of the Act; and as the same case has probably arisen in Calcutta, and as uniformity of practice is desirable, I am directed to solicit the orders of the Government of India on the point.

I have the honor to be,

Sir,

Your most obedient Servant,

J. D. Bourdillon

Secretary to Government.

*No 11918
Fort William
Financial Department
The 1st December 1860*

*The Honble the President in Council
desires that the opinion of the Advocate General on the
point referred to in the above letter from the Govt of Madras
No 1998 - dated 30th October last, be acted on. —
Exd. S. T. Augustin.*

*Ordered that a copy of the above Resolution,
together with a copy of the Advocate General's opinion,
be forwarded to the Home Department for information and
for communication to the Government of Madras*

Ordered

No 142 Ordered also that a Copy of the above
Correspondence be published in the Calcutta Gazette
for general information.

By Order of the Honble the
President in Council

Xpp

Wm W. Webb
Secy to the Govt of India 4/2

Forwarded together with the opinion of the
Advocate General to the Govt of St George
for information & guidance

Home Dep^y }
The 7th Dec 1860 }

By Order of
W. W. Webb
Under Secy to the Govt of India

Revenue
~~At the~~ 1860 Report
 made for the year 1860
 June 12 1861
 The funds dec 1860
 in the amount of \$17
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19/83d 184.
 President of the Dutch East India Company
 Madras, with reference to his letter
 of the 23^d October last, No. 17 -
 Great St. George
 12th June 1863
 G. M. A. C. C.

[illegible]