

Political (1896) Department.

ORDINARY MS.

G.O., No. 572

Dated 8 Aug. 1896

INDEXED.

[Despatch Abstract.]

INCOME-TAX PAYABLE BY UNIVERSITY AND OTHER EXAMINERS
RESIDENT IN THE TRAVANCORE STATE.

Communicating to the Resident in Travancore and Cochin
proceedings, Revenue Department, on the subject of---on fees received
by them.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

CURRENT No. 1064

No. 335, REVENUE, 16TH JULY 1896.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again the following G.O., R. No. 1084, Revenue, dated 27th May 1896 :—

Read—the following letter from J. THOMSON, Esq., Resident in Travancore and Cochin, to the Chief Secretary to Government, dated Peermaad, 30th April 1896, Ref. on C. No. 349-A. :—

I have the honour to address Government on the subject of income-tax payable by University and other Examiners resident in and serving the Travancore State on moneys received by them for examinations held under the Madras Government.

2. Soon after the Income-tax Act II of 1886 came into force in British India, Dr. Harvey of the Trivandrum College and other University Examiners residing in the State raised the question whether they were liable to the tax in respect of the remuneration received by them ; and in his letter, No. 1399, dated 23rd May 1887, the Accountant-General ruled that as these gentlemen did not reside in British India and were employed under and paid by the Travancore Sarkar, their case fell under clause 2, column 1, Part I of the second schedule of the Act, the tax being calculated only on the payments made by the British Government. In accordance with this ruling the officer in charge of my treasury used to recover the tax in making payments, but he used to take into consideration the Travancore income also of these gentlemen in fixing the rate.

3. In the Accountant-General's Circular No. XXVIII of the 21st December 1893, however, it was decided that the remuneration to Examiners and others for conducting examinations should be treated as taxable under Part IV, Schedule II of the Act and not under Part I. The duty of assessing and collecting the tax has thus been transferred from the Treasury officer to the Collector of Income-tax and the former has simply to pay the bills countersigned by the controlling authority and report the fact to the latter. Reports have accordingly now reached me in my capacity as Income-tax Collector (*vide* Revenue notification No. II, dated 15th January 1894) that the payments noted in the accompanying list have been made. I have to add that this is the first time since the issue of the circular above quoted that such reports have been sent to the Resident, the Treasury officer having by oversight recovered the tax himself in the previous two years.

4. The following questions now arise in connection with the levy of the tax by me :—

- What persons are to be regarded as liable to the tax ?
- What income should be taken into consideration in assessing it ?
- By what agency is the collection to be made ? and
- In case payment is refused by the person taxed, how is the demand to be enforced ?

5. In regard to (i) according to section 3 (5) of the Act "income" means income and profits accruing and arising or received in British India and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf. Under this definition, taken as a whole, apparently only such of the Examiners as are British subjects are liable. Whether the honoraria they receive out of my treasury which is in Travancore territory can be held to be

"income accruing and arising in British India" when the work done to earn it is the setting and examination of papers and is performed in Travancore territory is matter for argument. I should note here that I believe some at least of the gentlemen concerned sit in Madras on Boards passing the question papers. I have further to observe in this connection that there are other persons, viz., British pensioners, paid here and employés of my office, who are Travancore subjects and who will claim as such to be exempt from the Act's provisions on a proper reading of section 7 with Part I of the second schedule.

I beg therefore that Government will be pleased to give orders on these points.

6. As regards question (ii) it is obvious that in fixing the rate, Travancore income is not to be taken into consideration.

7. On question (iii) if tax is to be levied and Part I of Schedule II does not govern the collection it must be made by me under Part IV. But the income is of an unsettled character and must be so, and may not recur yearly; it is not "other sources of income" as between the assessee and the British Government, while it is plainly a gratuity or salary. Therefore and for the reason set forth in the next paragraph, deduction of tax on it would most fittingly, and in my view conformably to the Act, be made when payments are made from the treasury.

8. *Question (iv).*—No legal steps can be taken for enforced collection. Under section 30, an order passed by the Collector has the force of a decree of a civil court, but it has been decided, after reference to the Government* Pleader, that such a decree cannot be given effect to by the Travancore courts. The other powers conferred on Collectors for the collection of the tax do not apply in Travancore.

9. I propose therefore that so far as this office at least is concerned, the practice in force prior to the issue of the Accountant-General's Circular of 1893 may be reverted to and the duty of collection left to the Treasury officer when payments are made, the assessment being made under Part I of the Schedule.

ANNEXURE.

Names.	Bill counter- signed by	Payment made by	Amount.
Mr. W. T. A. Cosby	Commissioner for Government Exa- minations.	Officer in charge, Resident's Treas- ury.	Rs. 499
Dr. A. C. Mitchell	The Registrar, Madras Univer- sity.	Do.	50
" A. W. Bishop	Do.	Do.	25
Mr. J. A. Duthie	Do.	Do.	25
" M. LaBouchardiere	Do.	Do.	25
M.R.Ry. A. Valliananda Mudaliyar	Do.	Do.	20
" N. Krishnaswamy Aiyar	Do.	Do.	10
" S. Srinivasa Aiyar	Do.	Do.	10
" R. Krishnaswamy Aiyar	Do.	Do.	10
" T. Marthandan Tampi	Do.	Do.	10
Dr. A. C. Mitchell	Do.	Do.	1,418
" A. W. Bishop	Do.	Do.	1,063
Mr. C. S. Boyle	Do.	Do.	1,278
M.R.Ry. P. Sundaram Pillai	Do.	Accountant-Gener- al.	1,115

Endorsement No. 1047.

Transferred to the Revenue Department.

OOTACAMUND,
19th May 1896.

(Signed) J. F. PRICE,
Chief Secretary.

Order—R. No. 1084, Revenue, dated 27th May 1896.

Referred to the Board of Revenue for remarks.

(True Extract.)

(Signed) LIONEL DAVIDSON,
Ag. Under Secretary to Govt.

To the Board of Revenue (Separate Revenue).

Read—also the following Proceedings of the Board of Revenue (Separate Revenue),
Mis. No. 2617, dated 23rd June 1896 :—

Read—G.O., R. No. 1084, Revenue, dated 27th May 1896.

Resolution—Mis. No. 2617, dated 23rd June 1896.

With reference to the Government endorsement read above, the Board begs leave to submit the following remarks on the questions raised and the suggestions offered by the Resident in Travancore and Cochin.

2. *Question (i) and the Resident's remarks in paragraph 5 of his letter.*—The Board considers that examination fees paid in Travancore to Residents of Travancore on behalf of the British Indian Government are assessable to income-tax if the work is done in British India but should not be assessed if the work is done in Travancore.

With reference to the Resident's remark that apparently only such of the Examiners as are British subjects are liable under the definition of the word "income" given in section 3 (5) of Act II of 1886, taken as a whole, it has to be observed that the latter part of the section applies only to salaries, annuities, pensions and gratuities payable by Government, not to examination fees which fall under "other sources of income."

As regards the further observations made by the Resident on the question of the liability of British pensioners paid in Travancore and employés of his office who are Travancore subjects, the Board considers that the salaries of the latter are not liable to be assessed to income-tax, and that the pensions of British pensioners paid in Travancore are liable to be taxed only if the pensioners are British subjects and not if they are Travancore subjects.

3. *Question (ii).*—The Board agrees with the Resident in considering that the Travancore income should not be taken into account.

4. *Questions (iii) and (iv) and the Resident's remarks in paragraphs 7, 8 and 9.*—The Government of India has ruled in its decision communicated with G.O., No. 243, Revenue, dated 9th June 1896, that the fees in question are liable to be taxed under Part IV and not under Part I. The Resident's suggestion that the fees may be taxed under Part I cannot therefore be approved. If the assessee refuses to pay the tax it can be collected only if he has property in British India, as decided in Board's Proceedings, No. 702 (Land Revenue), dated 3rd November 1887.

(True Extract.)

(Signed) EDMUND MILLETT,
Assistant Secretary.

To the Secretary to Government, Revenue Department,
with the Resident's letter returned.

ORDER—No. 335, Revenue, dated 16th July 1896.

Separate Revenue No. 51.

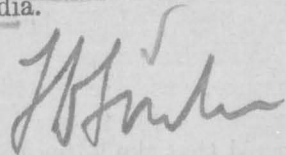
The Government agrees with the Board in the opinions expressed in paragraphs 3 and 4 of the Proceedings read above, namely (1) that income accruing and arising in Travancore should not be

taken into account in assessing a resident in Travancore who is taxable under Act II of 1886, (2) that Examiners' fees or stipends are liable to be taxed under Part IV Schedule 2 to the Act and not under Part I, and (3) that, if an assessee resident in Travancore refuses to pay the tax, the demand can be enforced only if he has property in British India against which proceedings can be taken.

2. With reference to paragraph 1 of the Board's Resolution, while agreeing that fees derived by residents in Travancore as Examiners appointed by the University or by the Commissioner for Government Examinations are assessable to income-tax and that it makes no difference whether such Examiners are British or Travancore subjects, the Government considers that it is immaterial whether the Examiner performs his work in British India or in Travancore. In either case the income accrues in Madras and is liable to assessment.

3. As to the liability to assessment of British pensioners paid in Travancore and employes in the Resident's office who are Travancore subjects, the Government concurs with the Board in the view that the salaries of the latter are not liable to be assessed to income-tax, the reason being that the income does not accrue in British India. Pensions payable to British pensioners who are British subjects are taxable, but the Government cannot agree with the Board in considering that a British pension paid to a Travancore subject is necessarily not liable to assessment. The latter part of the definition in section 3 (5) of Act II of 1886 is not exclusive and if a Travancore subject earned a pension or gratuity in British territory for work performed for the British Government such pension or gratuity would in the opinion of Government be taxable by reason of the fact of its accrual in British India.

(True Extract.)



for Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).

„ the Resident in Travancore and Cochin, through the Political Department.

Copy to the Accountant-General.

Exd. C. M. Brisson.

CURRENT No. 1064

Gobt. of {1896} Madras.

REVENUE.

Political Dept

Issued

Recd. 6" } Aug 5. 96.
Regd 7" }

Encl. --

G.O., No. 335, 16th July 1896.

CHIEF SECRETARY
JULY 6. AUG. 1896
GOVERNMENT OF MADRAS

Income-tax.

Passing orders on the subject of "— payable by University and other Examiners resident in the Travancore State on the fees received by them.

667: 11. 10. 95.
378: 14. 6. 95.

[G.]
128
500-6-3-96.



Political DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:—

Cus 1064/96

Proceedings of the *Revenue*
1896.

Department, No. 335, dated 16th July

ORDER, R. No. ⁵¹²~~812~~, dated 8th August 1896.

Communicated to the Resident in Travancore Cochin

(True Extract.)

Cus 8
no 18
8. 9. 96.

for Chief Secretary.

To the Resd in Trav (with S.C.)
Copy to the Pr. Dep. P. Resd in Trav (with S.C.)
Desp. 14/8/96

Govt. of {189 } Madras.

To

THE

Dated

Recd.

Encl.

G.O., Mis. No. , 189 .
R.

SUBJECT.

Communicating proceedings of the

Department regarding

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189

READ AGAIN G.O., No.

189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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