

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1269	<u>Press</u> <u>Mis.</u>
284. 285	
Dated	27-6-1861.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
27th June 1861.*

No. 234. Read the following letter from R. S. ELLIS, Esq., c.B., Income Tax Special Commissioner, to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 20th April 1861. No. 79 :—

SIR,

1. I have the honor to request the instructions of the Government on the following case.
2. Messrs. G. H. & Co. are partners in a firm; they have returned their profits for 1859 as Nil under Schedule II., and on satisfying the Special Commissioner as to the truth of this statement, they pay no Income Tax under Schedule II. for the year 1860.
3. The firm of Messrs. G. H. & Co. have also returned under Schedule I. certain lands and houses, their joint property as a firm, and under ordinary circumstances this property under Schedule I. would be liable to the payment of Income Tax.
4. But as Messrs. G. H. & Co. have not only made no profits during 1859 under Schedule II., but have sustained large losses in their trade, they claim to set off the excess of loss under Schedule II. against any profits under Schedule I., and in support of this claim quote No. 115, Financial Department, Fort William, 6th November 1860.
5. Further, Messrs. G. H. & Co. claim to set off excess loss under Schedule II. against profits under Schedule III., viz., profits arising from interest on Government securities, the property of the firm of G. H. & Co., and to be exempted from the payment of Income Tax for the year 1860-61 upon the interest of their Government securities under Schedule III.
6. The claim to set off the excess of loss under Schedule II. against the profits of Schedule I. may be admitted under the ruling quoted No. 115, Financial Department, Fort William, 6th November 1860, but I am not aware that the Act or any subsequent ruling authorizes losses under Schedules I. and II. being set off against profits derived under Schedule III., and it is more particularly on this point that I request the instructions of Government.
7. In the case under reference to which the enclosed correspondence refers it will be seen that the losses on which these claims are made occurred in 1859, and that Messrs. G. H. & Co. in making their Income Tax Return under Schedule III. have entered the interest derived from Government securities during 1859 as representing their profits under Schedule III. for 1860-61. They now claim to pay no Income Tax during 1860-61 on profits derived under Schedule III., on the ground that as by the ruling quoted they are exempted from the payment of Income Tax during 1860-61 under Schedules I. and II., they should equally be exempted as regards Schedule III.
8. I should mention that Messrs. G. H. & Co. are anxious that the correspondence between them and myself should be laid before Government, but they request that their letters may not be printed.

No. 235. ORDER THEREON, 27th June 1861, No. 1,269.

The Government have carefully considered the claim put forward in paragraphs 5, 6 and 7 of the foregoing letter from the Special Commissioner, and have come to the conclusion that it is wholly inadmissible.

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

Madras 23 March 1861.

To
The Special Commissioner for Sums &c.
Sir,

With reference to the return of
Profits made by us under date 1st Nov^r
last for the year 1859, we have now the
honour to submit herewith a Statement
of the "Official Interest" if we may so
describe it assumed by us for that year
and aggregating

- On Indian Government Securities Rs. 48633.10

- On Shares of the Madras Bank 4220.0.0

and we request you will be pleased to fur-

- nish us with such certificates as may
be required to enable us to recover.

- In respect of the 1st item Rs. 1745.5.2

- In respect of the 2nd item 154.2.0

being Sums &c. at the rate of 4 per cent
or that you will in such other manner
as may be convenient put us in the

way of receiving the money.

We feel it to be unnecessary to adduce any arguments in support of our claim. The Commissioners decided long ago that in establishing the Assessment for the 1st year of the Tax the official interest appertaining to 1859 might at the option of the party assessed, be deducted from the Return of Income or Profits; and as regards the fact of there being no profits the principle is clearly laid down that when such is the case there can be no taxation.

We would refer you especially to the orders of the Government of India in the case of *Major Irwin & Co* re-published in the Port-Saint-George Gazette of the 11th December 1860 page 110 - where the question of setting off losses against profits occurring under the Rules of another Schedule is discussed.

discussed and determined in favor of the Tax payer, and where as we mentioned above the important but obviously just principle of, no profits no taxation, is distinctly affirmed.

It is of course unnecessary for us to point out to you that unless the reference be made to us that principle is infringed.

We have further to claim exemption in respect of the amount for which we have ~~been assessed~~ under Schedule I viz Rs. 460. 5. 0. the first instalment of which Rs. 115. 1. 3 was paid by us under protest, pending the official reference which we are now submitting to you.

Our Office building upon the rack rent of which the above sum of Rupees 460. 5. 0 is computed are used

were for no other than the purposes of
our Business and we claim to set off
such "rack rent" against losses under
the rules of Schedule 2.

Wm. V.
(Signed) _____

No 77.

From.

R. S. Ellis Esquire

Income Tax Special Comr.

To.

Madras.

Sirs,

I will endeavor by entering
into greater detail to explain the questions
contained in my letter of yesterday.

2. - you claim to pay ^{Income Tax} no for the current
Income Tax year (31st July 1860 to
31st July 1861) in respect of profits
arising from your dividends on Gov^t
Securities and in respect of the profits
derived

derived from the dividends on your
Bank Shares. This claim is based
on the fact that the profits of your
Firm under Sch: II were Nil for
the year 1859, during which you experi-
enced heavy losses greatly exceeding the
Amount of Profits.

3. In order to determine the exact
nature of your claim on account of
Government securities and Bank Shares
I wish to be informed, 1st whether the
interest on these Government securities
accrued prior to 31st December 1859 or
subsequent to that date and whether the
dividends on the Bank Shares in question
were due prior to 31st December 1859 or
subsequent to that date, 2^{ndly} whether
the interest on the Government securi-
ties and the dividends on the Bank
Shares have been actually received by
you

you or not, and if received what amount of Income Tax has been deducted

4. As it is probable that a legal opinion may be necessary to determine this part of your claim it is necessary that it should be clearly understood whether the interest and dividends for which exemption of Income Tax is claimed became due in the year 1859 or later in the years 1860-61. ^{and} how what dates this interest and dividends were actually received by you, as it is possible that though due ⁱⁿ 1859 they may not have been received by you during the whole of that year, or until subsequent to the 31st July 1860.

5. This distinction may be im-
-portant

-portant in determining of what years Income they are to be considered a part.

I have the honor to be Sir

^{Yours} ^{Yours}
Signed R. S. Ellis
Special Commissioner for Income Tax.

Madras.
28th March 1861.

Madras 16 April 1861.

To The Special Commissioner
Income Tax

Sir,

We have the honor to acknowledge the receipt of your letter of the 28th Ultimo.

In Para 2, you state the nature of the claims preferred by us and you do so correctly - only you make no reference to the point noticed in our letter of the 23rd March viz the decision of the Commissioners that for the Assessment of the 1st year of the ~~the~~ Tax the Official interest ap-

pertaining to the year 1859 was to be taken.
This decision if not officially notified, was
communicated to the Chamber of Commerce
at one of their meetings by Mr. Nelson
in his capacity of an official Commis-
sioner as a message from the Board as
is well remembered by those who were
present and in every quarter in which we
have inquired, we have ascertained that
it was acted upon.

In pursuance of your letter you put
2 questions - You enquire 1st whether the
Interest on Government securities and
Dividends on Bank shares accrued
prior to 31st December 1859, or subsequent
to that date, and 2^{ndly} whether the said
Interest and Dividends have been actually
received by us or not, and if received by us
what

what Amount of Income Tax has been
deducted. - To your first query we reply
that some portion of the Interest accrued
due prior to the 31st December, some on
that particular date (altho' being holi-
-day time we could of course not receive
it until later) and some after that
date. To prevent misunderstandings we
must explain that we attach a different
meaning to the term "accrued due" from
that which we attach to the term
"accrued". By "accrued due" we mean
became payable at the Treasury -
By the term "accrued" when applied
to the Interest on Gov^t Securities we
would designate the Amount of Interest
borne upon any Government security
up to any particular day.

You are doubtless aware that in
all sales or purchases of Government
securities it is the seller who virtually
pays the Income Tax up to the
date on which the sale takes
place

place. The interest is calculated for the number of months or days for which it may be borne upon the security, and the purchaser accounts to the seller for that amount less Income Tax. The principle upon which our Statement of Interest has been prepared is not liable to be affected by any element of a doubtful or hap-hazard character. We do not exhibit to you figures showing merely the amount drawn by us from the Treasury in the form of interest and which amount might be much larger or might on the contrary be much smaller than that shown by us. It stands to reason we think that figures based on any such data would afford no correct criterion of the amount fairly claimable under the circumstances of the present or any analogous

analogous case. A person might for example invest a large amount in Government securities the day before the interest accrued due. It would surely not be fair that such person should be allowed to set off the six months interest which would be payable on the following day against Income Tax chargeable under Schedule D.

We would only, it appears to us, be entitled to set off the interest for one day. We exhibit to you then the interest actually due and received by us for the number of days commencing 1st January and ending 31st December 1859. that such "invested" Capital was held by us, as our property. If there be reasons rendering necessary the abandonment of the sound principle for which we contend and the adoption of another of a much more uncertain character (but to which we think your letter points) we are unacquainted with them.

With regard to the South Sea Co. the dividends being payable for the half year ending 31st June & 31st December 1859 were drawn by us in the next ensuing months of July and January. We drew dividends also in January 1859, but those we do not exhibit drawing them to appertain not to 1859 but to 1858.

We have thus answered your 1st question as a part of your account.

In reply to the other part of it viz "What Amount of Income Tax has been deducted" we would observe that as the Income Tax Act only became Law in July 1860, it is not to be supposed that any thing whatever was deducted by way of Income Tax. We do not see however that that circumstance is in any way to be considered as a bar to our claim. The first years Assessment was established upon the basis of 1859. and

and we believe it was never intended that there should be any difference in the incidence of the Tax as between any one of the schedules and another. Were there however any room for doubt under that head the decision of the Board of Commissioners to which we have before adverted, acting as we do not doubt strictly within the scope of their authority, must be considered to have decided it, and we do not see how you can now decline to recognize the justice of our claim with a due regard to that suggestion. Had there been any profits under Schedule II we should undoubtedly have set off the Official Interest appertaining to that year and paid Tax on the difference as was done by all the other Firms. The fact of there having been no Profits does not alter the principle, although it puts us in the position of having to call upon you for a refund instead of recovering the amount ourselves by the process of deduction.

W

We have virtually paid our first year of
taxation under Schedule III by the
deductions made from our Government
securities since the tax came into operation
and we claim that we shall not be placed
in a worse position, because the losses to
which we have referred, occurred in 1839
than if they had occurred in 1860, 1861,
or any other of the five years for which
the tax has been imposed.

We have &c.

/Signed/

Thos. Coffey

Wm. Ellis

Special Commissioners

Q. 982/6.

Dec. 27th 1861

1861

No. 87.

Official Memorandum.

The Special Commissioner for Income Tax has the honor to acknowledge the receipt of the Deputy Secretary's Memorandum dated 29 April 1861, and in reply to explain that the decision of the Commissioners that for the assessment of the 1st year of the tax the official interest, appertaining to the year 1859, was to be taken, was not recorded, ^{but} was an answer given by the Commissioners to a question verbally asked of them, at a Board meeting, by the Hon. Official Commissioner Mr. Nelson.

2. At the introduction of the Income Tax the questions asked by the Mercantile Community, with reference to the filling up of Income Tax Returns, were exceedingly numerous, and were generally brought forward by

by Mr. Nelson, who, as Chairman of the Chamber of Commerce, was the medium of communication between the merchants and the Income Tax Board.

3. Unless the Commissioners felt doubtful as to the interpretation of the Act, when a reference to Government became necessary, no record was, at first, kept of these numerous queries which were not usually put formally.

4. The Special Commissioner had taken down the information, said to have been given by Mr. Nelson, on the subject of "Official Interest" as detailed to the Special Commissioner by Messrs. G. H. & Co. They state, that Mr. Nelson informed the Chamber of Commerce, that the Commissioners were of opinion that in making their returns of profit for 1860, it is

it is allowable for parties in business to return the interest, annuities, or dividends received in 1859 out of the public Revenue of India, as representing their profits derived under Schedule III for the year 1860.

This communication was made before the Special Commissioner had joined the Board of Commissioners, but the President, to whom the Special Commissioner has referred, on the subject, believes that the above is substantially the answer made by the Board to Mr. Nelson's enquiry as to the manner in which parties should return Official Interest.

6. There was a difficulty in ascertaining the Official interest which would be drawn by a house of business for the current year, and the preceding year 1859, was therefore taken as giving the average of profits, under Schedule III, in the same manner as under Schedule I and II.

Mount Road
Inc. Tax Sp. Comm. Office
1st May 1861.

R. W. Ellis
Special Commissioner

12

On agent's card
 near the papers
 is manifest to
 the printer in
 and that the
 in question do not
 have got a very much
 which was never
 made by me

Received 1861, 23 Sept
 from R. J. Ellsworth
 Special Commr
 of Maine Dep.
 to R. G. Houghton
 of Dept of
 23 May 1861.
 No 81.
 With reference to
 Memo: No 139, dated
 29th April 1861, explaining
 that the decision
 the Commission
 recommended for has
 not recorded.

These are the things
I have put down
degree of familiarity
with the subject
I have found a
few extra points
in the text
under some of
the numbers

13
I have also seen
I have been led
to a new
study - which is
a new study
has been done
in this case
I have been
to the
to the

to make more
of the same
than that of a
single item
and I am

The report should
be refused in the
name of justice
only W. M. -
H. A.

note

I beg orders on Mr. Mather
men: of this case.

By the Act, the income
of the year preceding the year
of assessment is taken as the
basis of taxation and an ad-
justment is made in the per-
centage if the income of the
actual year of assessment is
less than the income of the
preceding year.

This firm, since they
returned their income for 1859
to be taxed in 1860.

The Trade Union has
so heavy that they shall not
up all their other property and
they claim exemption from
taxation - which is perfectly
as regards 1859 as in 1860.

But they have before the

See reply to a Dutch question
 from Mr. Ellis, they said that
 they sought to be exempted
 from taxation in the current
 year / 31 July 1860 to 31 July 1861 /
 on their first securities & Banks
 shares of Sch. III - Is this the
 audited account - their
 profits from that source will
 form the income of a different
 year & will appear in their
 next return & be taxed or
 exempted according to cir-
 cumstances. But they have
 a trust for this year on the
 profits of 1859 which cannot
 draw in income belonging
 to 1860.

v. parts of
 encl marked
 A & C.

v. parts
 marked B.
 1.
 I do not
 think Mr
 Master's view
 is quite right -
 I think they
 are not is
 not payment
 by 1860.

Wollen

Mr Master however thinks that
 what the firm really seek is
 a payment of 10 per cent on
 the interest of the securities &
 which they held in 1859 - &
 I think this is correct - though
 the firm also told Mr Ellis that
 his view was right! It does
 not much matter which view
 is correct. As regards securities
 the income tax by Rule 1 last
 year right - 99. Sched. III is levied by the
 special assessors on all in-
 terest payable "on or after the
 1st day of August 1860" - Clearly
 therefore no tax could have
 been paid by the firm on
 the securities which they
 held in 1859 and which ap-

Call May

appeared in their return. In fact they then believe declare that "it is not to be supposed that any thing & interest was deducted by way of Income Tax". The firm are in reality asking for a refund that never was paid by them or received by post.

The claim - whichever view may be correct - seems quite untenable.

If post. concurs it will suffice to tell the Sp. Com. that post. considers the claim wholly inadmissible - and to leave him to dispose of the other points raised by Mr. Master, under his own power.

J. D. S.

Call May

(2)
vide post marked
I venture in rejecting the claim - setting aside the reasons. It seems to me clear that the firm do not see the argument of "no profits to tax" rightly. Their own savings will not be taxed if it yields no return but profits which have actually accrued under the protection of Govt. bonds, land, but shares Govt. securities are not to be taxed because the money is spent on Govt. securities. The money is not lost or stolen. The

Memorandum No. 52.

The requests of Messrs. G. H. & Co. referred to in this letter from the Special Commissioners for Income Tax are three.

(1) That they may set off against the heavy loss sustained by them under Schedule 2, the profits derived under Schedule 1, and pay no Income Tax on the latter.

Further
(2) That ~~further~~ they may set off excess loss under Schedule 2 against profits under Schedule 3.

(3) That the exemption from Income Tax (which they thus claim in their second request) in their Govt. securities, may be accorded, not upon the interest actually taxed by the ex-officio assessor during the year 1850-51 (or first year of the Income Tax, but upon the interest derived during 1859, as representing their profits under Schedule 3 for 1850-51.

Messrs. G. H. & Co. having lost heavily in their business during 1859, want to escape the payment of Income Tax altogether, on the principle of "no profits, no taxation".

(1). On the first request Mr Ellis does not specially ask for order in amount because such a claim may be ad- claimed. Is 400-5-0. settled at his discretion under the order of the Govt of India quoted by him viz. 6 November 1850. No. 115. & published at page 1110 of the Fort St George Gazette for last year.

(2) Messrs G. & Co. argue in favor of the second exemption claimed by them that as the order of the G. of I. quoted above, determines in favor of the taxpayer the question of setting off losses against profits occurring under the Rules of another Schedule; to grant them the exemption they claim would be merely carrying out the obviously just principle of no profits no taxation. To refuse it them would be to infringe that principle.

Mr Ellis is unaware of any ruling authorizing losses under Schedule 1 and 2 to be set off against profits derived under Schedule 2. & requests the order of Govt on the point.

In speaking of excess ~~losses~~ on landed property, the Govt of India observe, that when ~~it does~~ occur, there can be no doubt that it is an ~~unavoidable~~ and act of ~~the~~ against

profits under the Rules of Schedule 2 and vice versa "the Income Tax not being intended to be paid on any sum beyond the actual profits of the year after deducting such losses"

Recorded
in G.O.
28745/51
No. 464
R.D.

The Calcutta Advocate General, also, in an opinion which was forwarded to the Govt for information and guidance, states that where a house of business established before the commencement of the past year has satisfied the Commissioners that its profits during the past year were "nil", the Commissioners ought not to assess such house at all upon the profits of the current year.

Messrs G. & Co. therefore seem to have right on their side. Perhaps the question should be referred to Calcutta.

(3) The third request presupposes the grant of the second. Messrs G. & Co. had, in common with other merchants, and in consequence of a semi-official verbal communication from the Board of Commissioners through the Chamber of Commerce, giving an opinion that in making their returns of profit for 1850, it is allowable for parties in business to return the interest, annuities, or dividends, received in 1850 out of the Public Revenue of India, as representing their profits derived under Schedule 3 for the year 1850, made their re-

turn accordingly. The "Official interest" received by them in 1859; they now state, amounted to Rs. 52553-1-0, and in the ordinary course of things they would have paid an income tax thereon, Rs. 2999-7-2. But having now established (presumably) their right to exemption from income tax on their profits under Schedule 3, they claim a refund of that money (though they never actually paid it) on the ground that they have virtually paid their first year's taxation under schedule 3 by the deductions made from their Govt securities since the tax came into operation. The whole gist of their argument is to prove that as Govt accepted the profits of 1859 as long as payments of tax were in question, so they sh^d still adhere to the same year, though the tables are turned and no tax is to be levied but on the contrary exemption granted.

In acquiescence in the proposal would involve (in addition to the loss sustained by the entire exemption of the S. & Co. from taxation) in fact the actual loss of some sum under or up to Rs. 2000. The amount which Messrs S. & Co. claim to be refunded is, I think, only Rs. 2000. It is rather a curious coincidence between the

sums they have actually paid in 1860-61 on the interest from their Govt securities and the sums which they will have paid, provided ^{their original return had been correct} they had not proved heavy losses. That the sum thus paid by them, ^{as a tax} does not come up to the sum which would have been paid, is clear. Their pertinacious demand for the 1859 estimate proves it. It might be uncharitable to say that they had no Govt securities this year. but they might have sold every one. and in that case they w^d be demanding a refund from Govt of Rs. 2000, of which they had in reality never paid one rupee. and the principle is the same, even if they sold but half or a quarter of their Paper.

Such proceedings I hardly have been contemplated by the Act. and such morality is hardly deserving of Govt support by the payment of the sum demanded.

ed. If it is ruled that a refund is to be made, Messrs S. & Co. can easily show the sums actually deducted from the interest on their Govt securities, if any, & c^d be returned to them

CJH

Chap. 3: # 100

No 1269

P. D.

P. of the Madras Cash
 27th June 1861.
 Sent the following:

Letter from N. S. Ellis Esq.
C. B. Special Commissioner
for Income Tax.

Here entered 20 April
1864. No 43

The Government have carefully considered the claim put forward in paras 5, 6 and 7 of the foregoing letter from the Special Commissioner, and have come to the conclusion that it is wholly inadmissible.

2. Mr Ellis, will,
under his own power,
dispose of the point
referred to in para
4 of his letter.

3 Copies
To the Special Commissioner
of the Income Tax.
Pp 27

CS/11/12

Messrs. S. H. & Co's claim
for a refund of
Income Tax

Revenue 1861 Depar't.
Pro: of Govt for June.

N. 7269.

Pro: of the Madras Govt.
27th June 1861

The Claims of a Firm
respecting the levy of Income
Tax on the Income from landed
property and Government securities when it is proved to have
sustained a loss in trade is
determined to be inadmissible

N. 284 & 285