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MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1775-76	Press / Mis.
55-61	
Dated 6-9-	18 61.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 6th September 1861.

No. 59. Read the following letter from F. WALTHEW, Esq., Secretary to the Income Tax Commission, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 2nd August 1861, No. 64:—

SIR,

1. I am instructed by the Commissioners to state that they have reason to believe that during the current year numerous claims will arise to set off losses under Schedules I and II against income derived from property described in Schedule III.

2. The claim to set off the excess of loss under Schedule II against the profits under Schedule I and *vice versâ* is admitted by the Orders of the Governor General contained in the ruling No. 115, Financial Department, Fort William, dated 6th November 1860.

3. The Governor General further lays down the broad principle that "the Income Tax "is not intended to be paid on any sum beyond the *actual profits* of the year after deduction of "losses."

4. The Commissioners are informed that in one instance referred to Government by the Special Commissioner, the decision arrived at was, that losses under Schedule I or II cannot be set off against profits derived under Schedule III from interest on Government Securities; but the Commissioners, with a view of being able to dispose of any cases which may be brought before them during the current year (1861-62) are desirous to be in possession of an authoritative ruling on the point under reference which may guide them in their future decisions, and beg to suggest that the point be referred to the Law-Officers of the Government.

No. 60. ORDER THEREON, 6th September 1861, No. 1,775.

1. The question proposed by the Commissioners will be referred for the decision of the Government of India.

2. The Commissioners are in error in supposing that Government have passed such a decision as that alluded to in paragraph 4. The claim negatived in the Order of 27th June last, No. 1,269, was to a certain refund, and the merits of the general question now put were not entered into, though the Special Commissioner had requested instructions on it.

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

Ordered that the following letter be despatched.

No. 61. From J. D. SIM, Esq., Secretary to the Government of Fort Saint George, to the Secretary to the Government of India, Financial Department, dated 6th September 1861, No. 1,776.

SIR,

1. I am directed by the Honorable the Governor in Council to forward for the Orders of the Supreme Government a letter* from the Income Tax Commissioners at this Presidency, relating to a question of much importance in connection with Act XXXII of 1860.

* 2nd August 1861, No. 64.

2. The Commissioners inquire whether excess of loss under Schedules I and II, can be set off against profits derived under Schedule III.

3. They allude to a ruling† of the Government of India, laying down that where an excess loss on landed property *does* occur, there can be no doubt that it should be deducted and set off against profits under the rules of Schedule II, and *vice versâ*, "the Income Tax not being intended to be paid "on any sum beyond the actual *profits* of the year after deducting such losses." On the other

† 6th November 1861, No. 115.

Continued Opinion under Schedule II Rule

hand, however, *premia* for Insurances for deferred annuities, though they may be deducted from income under Schedules I, II, and IV cannot be deducted from income under Schedule III.

4. In the 4th paragraph of their letter the Commissioners allude to a decision passed by this Government, on a reference from the Special Commissioner, but they are mistaken in supposing that it bears directly on the point now at issue, and it is therefore unnecessary to refer to it here.

5. The question raised by the Commissioners is so important that it is considered necessary to bring it under the particular notice of the Government of India. Hitherto it is well known that the Income Tax has failed to yield the revenue which it ought, and this disappointment has mainly arisen from the returns of income under Schedule II not having been faithfully made. The ignorance of the Government Officers regarding private incomes derived from trades and professions led parties desirous of eluding the tax to avail themselves, in the first instance, of this weak point, and their success has evidently been great.

6. But now that the tax has become more familiar and is better known, other ways will be sought of escaping it, and a good opportunity for evasion will, in the opinion of this Government, be afforded, if the ignorance which now conceals private incomes from taxation, is allowed to be used as a means for evading the tax on profits derived from such property, as houses, lands, Promissory Notes, and the like, yet this result will certainly ensue, if the Financial Order No. 115, was intended to have the broad effect which its wording justifies the Commissioners in giving to it, and persons are enabled to escape taxation on their real and funded property by the plea, the truth of which is only known to themselves, that they have sustained loss in their private trade or profession.

7. This Government, I am to remark, are doubtful whether the broad consequences now sought to be attached to the words "*vice versâ*" in the order in question were either apparent or intended when it was framed; for (1) if Income Tax is to be paid on the net actual profits of the year from ALL sources, there was no reason why the order should have omitted all mention of the other Schedules, merely specifying as it did, that losses under Schedule I should be deducted and set off against profits under the Rules of Schedule II, and *vice versâ*: (2) it may be urged that Act XXXII of 1860, by dividing property into different Schedules with a separate account and charge for each, and by the tenor of Section 134, (which gives an instance of a deduction being allowed for a payment from income under one Schedule and not under another) intended that Income Tax should be levied separately on different descriptions of property: and (3) the right of a possessor of real or funded property to claim exemption from the taxation due on such property on account of losses in his trade or professional business seems unwarranted, because as the community is called upon to pay an Income Tax for the purpose of meeting the administrative expenses of the Government by whom their property is protected, and as this tax becomes due when the Government has performed its part by the maintenance of order, and thus enable, the owner of houses and lands to collect his rents, and abandonment of their claim on the plea that the profits derived from real property have been lost in trade, speculations, or other ways appears an unnecessary sacrifice of the dues of the State.

8. The result of such abandonment would be that the most tangible sources of Income would slip away, and still more uncertainty and fraud be introduced into the working of an uncertain and unpopular tax.

9. This Government would submit for the grave consideration of the Government of India, whether, if the wording of the Income Tax Act does not allow parties to be taxed on their actual profits under each separate Schedule, it is not expedient to amend the law so as to admit of this course. It is obviously prudent to re-cast or abolish any tax which proves financially a failure while it encourages perjury and fraud, and brings serious unpopularity on the Government, and if the necessities of the State require an Income Tax, it should at least be effective, and answer the intended end of restoring the finances to an equilibrium.

Dated 2 Aug 61

This letter from the Income Tax Commissioners
raises so important a point, that a reference
ought, I think, to be made to the Govt of India
for instructions.

The Commissioners first advert to the Supreme
Govts Financial Order No 115 of 1860, as authorising
them to set off losses under Schedule II (Profits
of trade & business) against the Profits under
Schedule I (Real property) and then ask whether
they are also to set off such losses against Income
derived from the sources specified in Schedule III
(Interest annuities, dividends).

Section 134 of the Income Tax act No 32 of 1860
would perhaps be sufficient authority for
answering this question in the negative, but
the whole subject is so important as to call
for particular attention.

The Commissioners are doubtlessly justified in
their reading of the Financial Order No 115, & yet
I cannot help feeling some doubt whether the
broad consequences to be expected from the
words "vice versâ" were fully apprehended when
the order was passed.

My doubts arise from the following 3 con-
siderations

I - If the Income Tax is to be paid on the
net actual Profits of the year from all sources,
then the Order in question should have
sanctioned Losses under Schedule II being

set off against ~~his~~ Profits under all the other three Schedules & not under Schedule I only. -

II ~~The~~ Act 32 of 1860 seems to show that the Income tax was intended to be levied separately on different descriptions of property - 1st by dividing property into different schedules with a separate account & ~~description~~ charge for each, & 2nd by the ~~terms~~ wording of Section 134 which gives an instance of a deduction being allowed for a payment from Income under one Schedule & not under another.

III - Although a person prosecuting a trade or profession may have had losses in his trade or professional business, it seems to me that he has no right to claim exemption from the taxation due on his property by reason of such losses. - ~~Raising the~~ Income tax is ~~justified by the necessity to~~ The community is called on to pay an Income tax for the purpose of meeting the administrative expenses of the Govt by whom their property is protected, & the tax becomes a due by the maintenance of order when the Govt has performed its part & then the Govt has performed its part & thus enabled the owner of houses & lands to collect his rents - To give up the tax on the plea that the profits derived from real property have been lost in trade speculations or otherwise would appear to me an unnecessary abandonment of the duties of the State.

Having thus briefly stated my objections to the claim for exemption on the grounds of right, I will shortly advert to the impolicy of granting such a concession. -

If the Financial Rdrs No 115 had merely ruled that crops & on real property might be deducted from the Profits of business under Schedule II, I should have been silent, but what I must call the fatal words "vice versâ" introduced into the order have so important a bearing, that it seems necessary to call attention to them - These words allow the owner of real property to escape taxation for profits on the plea, the truth of which is only known to himself, that he has met loss in some private business or profession. -

Hitherto the Income tax has admittedly failed to yield the proper amount of revenue, & this disappointment has mainly arisen from the returns of Income under Schedule II not having been faithfully made - The ignorance of the Govt Officers regarding private incomes derived from trades & professions led Quarter Sessions ~~of~~ Judges to decide the tax to avail them selves, in the first instance, if the weak point & their success has evidently been great - But now we are entering on the 2nd year of the tax, and in proportion as it becomes more familiar to the people, we must expect more & strenuous attempts to evade it - No more unfortunate opening could be given for this purpose than our allowing the ignorance of our Officials which now shields private incomes from the tax

~~~ation~~ to be used as a means for evading the tax on real property which is alone conspicuous ~~to us~~. Yet this result will inevitably follow if reported losses through trade or business are allowed to reduce persons are entitled to escape taxation for their houses & lands. The most tangible sources of income will thus slip from us, & still more uncertainty & fraud will be introduced into the working of an uncertain & unequal tax.

I will only add that if the working of the Income tax Act does not show parties to be taxed on their actual profits under each Schedule, and if it is not deemed expedient to amend the Law so as to admit of this course, it becomes a serious question whether it is advisable to continue the Income tax in its present shape.

In having noted this point in his budget Speech and it is obviously advisable to amend or abolish ~~the objectionable~~ any tax which proves financially a failure while it encourages forgery & fraud, and brings into unpopularity on the Government. If we are to have an Income tax with all its drawbacks, let us at least take care that it is effective & answers the intended end of restoring our finances to an equilibrium.

24 Augt 1864 E Hamilton
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The Question is to be decided from
Law or Usage — Usage should not stand
to it unless it appear that it has been
as well settled by Usage as Law — & this
appears from a Case cited to be
adhered

Ir Ch

Revenue Separate

4 Colonel Dispatches

No 1776

To,

The Secretary to the Govt
of India
Financial Separate.

Sir;

I am directed by
the Honorable the Governor in Council to forward
for the orders of the Supreme
Govt a letter from the Income
Tax commissioners at this
Presidency relating to a
question of much importance in connection with
Act XXXII of 1860 —

2. The commissioners
inquire
ask whether excess of
loss under Schedules
I & II, can be set off
against profits de-
rived under Schedule
III.

3. They allude to an
ruling

+ 2d August 1861 No 64 -

No 1776

1. The question for decision by the Commissioners will be whether the loss incurred in the year of assessment is to be set off against the profits of the same year.

2. The Commissioners are of opinion that the loss incurred in any one of the Schedules I & II should be allowed to be set off against profits derived in the year of assessment under Schedule III. The clause referred to in para 4. of the Act of Parliament 16 & 17 Vict c 34 which regulates the mode of ascertaining the Annual Profits or Gains to be charged under Schedule D, appears to the Commissioners to be conclusive on the point.

And the Commissioners of the Revenue Board concur in the opinion above recorded with which the Board of Commissioners of this Presidency have also concurred.

(Sd) E Jones
Offg Secy to Govt

13 Colonial
To Mr. Braidwood, Secy to the Board of Commissioners for the Income Tax, Bombay
4 — Enclosures

Rec'd 27 August

ruling of the Govt of India, laying down that where an excess loss on landed property does occur, there can be no doubt that it should be deducted and set off against profits under the rules of Schedule II, and vice versâ, "the Income Tax not being intended to be paid on any "sum beyond the actual "profits of the year after "deducting said losses". On the other hand however provision for Insurances for deferred annuities, though they may be deducted from income under Schedules II & IV cannot be deducted from income under Schedule III.

4. In the 4th para of their letter the Commissioners allude to a decision passed by this Govt, on a reference from the Special Commissioners, but they are mistaken

mistaken in supposing that it bears directly on the point now at issue and it is therefore unnecessary to refer to it here.

5. I am to add that this Govt are of opinion that the plea of "no profits, no taxation" can be carried too far. The question raised by the Commissioners is to ascertain that it is considered necessary to bring it under the particular notice of the Govt of India. Hitherto it is well known that the Income Tax has failed to yield the revenue which it ought, and this disappointment has mainly arisen from the returns of Income under Schedule II not having been faithfully made.

The

The ignorance of the Govt officers regarding private incomes derived from trades and professions led parties desirous of eluding the tax to avail themselves, in the first instance, of this weak point, and their success has evidently been great

6. But now that the Tax has become more familiar & it better known, other ways will be sought out of evading it, and a fair opportunity will, in the opinion of this Govt, be afforded, if the ignorance which now conceals profits in some cases from taxation, is allowed to be used as a means for evading the tax on profits derived from such intangible property, as houses & lands promissory Notes & the like yet

get the result will certainly ensue, if the financial order No. 115 was intended to have the broad effect which according to the Commissioners inquiries it did, and persons are enabled to escape taxation on their real and funded property by the plea, the truth of which could not known to them selves, that they have sustained loss in their private trade or profession

7. This Govt, I am to remark, are doubtful whether the broad consequences now sought to be attached to the words "mixed" in the order in question were either apparent or intended when it was framed; for () if Income Tax is to be paid on the net actual profits of the year from all sources, there was no reason why the order should have omitted all mention of the other schedules, merely specifying as it did, that those under schedule I

should be deducted and set off against profits under the Rules of Schedule II, and vice versâ:

2) it may be urged that Act XXXII of 1860, by dividing property into different schedules with a separate account and charge for each, and by the terms of section 134 (which gives an instance of a deduction being allowed for a payment from income under one schedule and not under another) intended that income tax shd be levied separately on different descriptions of property:

and (3) the right of a possessor of real or funded property to claim exemption from the taxation due on such property on account of losses in his trade or professional business, seems unwarranted, because as the community is called upon to pay an Income Tax for the purpose of meeting the administrative expenses of the Govt by whom their property is protected, and as this tax becomes due when the Govt has performed its part by the maintenance of order, and thus enabled the owner of houses and lands to collect his rents, and abandonment of their claim on the plea that the profits derived from real property have been lost in trade speculations, or other ways, appears an unnecessary sacrifice of the dues of the State.

8. The result of such abandonment would be that the most tangible sources of Income wd slip away, and still more uncertainty and fraud introduced into the working of an uncertain and unpopular tax.

9. This Govt would submit for the grave consideration of the Govt of India, whether, if the wording of the Income Tax Act does not allow parties to be taxed on

their actual profits under each separate schedule, ~~and~~ it is not ~~deemed~~ expedient to amend the law so as to admit of this course, ~~deciding~~ ~~that contracts incon-~~ ~~sistent therewith shall be void.~~ It is obviously ~~desirable~~ prudent a recast or abolish any tax which proves financially a failure while it encourages perjury & fraud, and brings serious unpopularity on the Govt: and if the necessities of the State require an Income Tax, it shd at least be effectual, and answer the intended end of restoring the finances to an equilibrium.

J. D.S

Fort St George
6th Sept. 1861

Print for
House of Commons
by order of Council

Revenue 1861 Septr.
Pro: of Govt. for Septr.

No. 1776.

To the Secretary to the
Government of India
Financial Depart.
Dated 6th Septr/61.

From Do Dated 10th Novr/60 No. 2911

Forwarding a letter from the Income Tax Commissioners questioning whether excess of loss under schedules 1 & 2 can be set off against profits derived under schedule III.—

No. 61.