

MADRAS RECORD OFFICE.**Government of Madras.***Revenue* **DEPARTMENT.**G.O. No. *464*Press
Mis.*412-413*

Dated

*28-2-1867***Not to be folded or roughly handled**

*Proceedings of the Madras Government, Revenue Department,
23th February 1861.*

No. 412. Read the following letter from C. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, to the Acting Secretary to the Government of Madras, dated Fort William, 22nd January 1861, No. 790:—

SIR,

1. I am directed to acknowledge the receipt of your letter, No. 2,207, dated the 22nd November 1860, submitting for the orders of this Government, a question, on which there has arisen a difference of opinion among the Income Tax Commissioners for the town of Madras, as to whether a house of business proving that its profits during the past year were "Nil," is liable or not to be taxed upon the current year, and if so, upon what data the assessment should be made.

2. In reply I am desired by the Honorable the President in Council, to forward for your information and guidance, a copy of the Advocate General's opinion on the question referred to, and to request that you will be good enough with the permission of the Honorable the Governor in Council, to warn the Commissioners to investigate closely the truth of a "Nil" return.

OPINION.

1. I think 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.

2. The Act provides that the duties under Schedule 2 shall be assessed and charged under certain Rules, according to the 1st of which, duties are to be computed upon a sum not less than the full amount of the profits of the trade during the preceding year. The other mode of computing the duties is provided by the Act in cases where the business has been continued for more than a year before the commencement of the year of assessment, although another mode under which the period of computation is discretionary, is prescribed in cases where the trade has been set up and commenced within the year and all the Returns which the parties are required to make and all the information which the Commissioners, are empowered to call for, are limited to the period thus specified in the Rules. Hence although the assessment is to be for the current year, and the preceding year is only referred to as affording an approximation as to the probable profits of the current year, subject to be reduced in case the out-turn of the current year proves more unfavorable than that of the past, and although the computation is to be made not upon the full amount of the profits, but upon a sum not less than the full amount, I do not think that under the Act as framed, any mode of computation of the profits of the current year can be legitimately resorted to by the Commissioners, when once they are satisfied that there were no profits during the preceding year.

3. Under the English Act, the computation is to be made upon a sum not less than the full amount of the balance of the profits of the trade upon a fair average of three years counting as in the Indian Act, but in other respects the provisions as to computing the duties under

Schedule 2 (Schedule D in the English Act) correspond. A "Nil" return upon the average of three years if proved to be correct would be allowed by the Commissioners (a) and their belief that the Firm was retrieving its losses, and that during the current year it was making a considerable profit would not justify an assessment upon a conjectural amount of profits for that year. The profits of that year would during the next year in England tend to raise the average of the

(b) 977, 8, 9, 980. profits of the last three years (b), while in India it would give the proper amount of the assessment for the next year. In either case, however, the duties on the profits of the year of assessment would, during that year, be lost to the State. The same consequence must follow under the Indian Act from an excess of loss over profit during the preceding year, as followed in England from a similar excess during the three preceding years.

*Proceedings of the Madras Government, Revenue Department,
28th February 1861.*

4. It is to be observed that the question as to the effect of return of Nil for the past year is identical in principle with that as to the effect of a return of less profits for the past year than those which the Firm may be making during the current year. In either case the return for the past year affords but an erroneous approximation, to the actual profits of the current year:—and the party making the return gets all the benefit of the error, at the expense of the State. But it would be obviously opposed to the principles of the Act to assess a Firm which had honestly returned the actual profits of the preceding year on a higher amount arrived at by conjecture upon the speculation that the profits for the current year will probably be larger than those of the past year. And so if a return be fairly made by which the Commissioners are satisfied that the losses of the previous year have swallowed up all the profits, I do not think that according to the spirit or letter of the Act, the Commissioners would be justified in charging the party with the assumed profits of the current year.

5. It will of course be the duty of the Commissioners to satisfy themselves where a Firm return Nil that it has not carried to the account of losses and deducted from the profits of the preceding year, any sums which ought properly to have been carried to the account of loss for some other year.

26th December 1860.

(Signed) W. RITCHIE,

(True Copy.)

(Signed) F. C. SANDES,

Solicitor to Government.

(A true Copy.)

(Signed) C. HUGH LUSHINGTON,

Secretary to the Government of India.

No. 413.

ORDER THEREON, 28th February 1861, No. 461.

Ordered that the foregoing letter with its enclosure be communicated, to the President of the Income Tax Commission, with reference to his letter of 16th November last, No. 21.

(Signed) J. D. BOURDILLON,

Secretary to Government.

22 Nov 1861

24

Revenue 1861
No. 343

From the Secretary to the
Board of Education, New York

Dated 22 Jan 1861
New York 8 Feb 1861
1 Encl 187930

Forward a copy of the
Memorial of the
Board of Education
on the question whether
a house of learning
bearing that title
shall be paid for
and if so in what
not to be paid upon
the General Fund.

No. 4124413

No. 4124413
North and Order

No. 464

Ordered that the

proceeding to the
to commence to the
of the above day
with reference to his letter of
16 November last No. 11.

28 Feb 1861

1879

13 Copies of the
3 " of the
13 " of the
13 " of the