M.R.O. 2—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	311	Press ~~Mis.~~
205-206.		
Dated	14th December	1868.

Not to be folded or roughly handled

No. 205. Read the following Proceedings of the Board of Revenue, dated 16th November 1868, No. 8,095 :—

Read the following letter from the Acting Collector of the Madras District, to the Acting Secretary to the Board of Revenue, dated Sydapet, 1st October 1868, No. 317.

1. The Agent and Manager of the Madras Irrigation and Canal Company having appealed against the payment of License Tax *at all* on the ground of "no profits," and having also objected to Kurnool being classed as a place of business or agency of the Company, his appeal has been rejected both by Mr. Winscom and myself.

2. In passing his decision, Mr. Winscom however remarks, that "there is "some difficulty in determining how to define the terms 'Branches and Agencies' "when applied to Railways or Irrigation Companies, as these words are better "suited to meet the case of Banks and Insurance Companies, and some ruling of "the Government on this point is very much to be desired; but it evidently could "never have been the intention of the Legislature that the largest Companies, whose "capitals are counted by the million, should have only to make the nominal "payment of Rupees five hundred, whilst other much smaller ones are taxed on a "far heavier scale."

3. I agree with him in thinking it desirable that some ruling on the subject is required.

4. The question at issue, as to whether Kurnool is, or is not a place of business, is not difficult to decide; but I think it quite possible, that, even as now constituted, this Company may possess other places of business fairly ratable as such, and it is certain that if its operations should be extended, other branches would have to be established.

5. The Railway Company elected to pay on its dividend, otherwise it might have been a question, if every station were not a Branch Agency, or place of business.

To be returned.

6. The appeal petitions and Collector's decision in original, and copy of my final decision are forwarded herewith.

Enclosure No. 1.—Appeal petition.

Enclosure No. 2.

Abstract.—Proceedings of the Commissioner of Revenue in License Tax.

The Board observe that no appeal lies to them against the decision of the Commissioner.

2. The Board resolve, however, to lay the Collector's letter before Government, with the expression of their opinion that, in the event of the Act being re-constructed, it would be preferable to tax the Companies, of the kinds described in Section 22 of Act No. IX of 1868, only on their dividends, instead of leaving them, as at present, the option of paying either on the dividend of the year, or a sum of Rupees 500 for each place of Agency or Branch.

purpose of this act, cannot in the opinion of

Proceedings of the Madras Government, Revenue Department,
14th December 1868.

No. 206. ORDER THEREON, 14th December 1868, No. 3,111.

Miscellaneous.

The Government concur with the Board and resolve to address the Government of India on the subject.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

purpose of this act, cannot in the opinion of

Proceedings of Commissioner of Revenue in Levenue Case.

Read appeal preferred by the Agent and Manager Madras Irrigation & Canal Company against the assessment imposed by the Licensing Collector, Madras.

Read Rules framed on first appeal of the Licensed Tax Collector in the above case.

The appeal is based on two grounds

1st That the Company has made no Profits

2nd That the Company has only one Place of Business in Chola, viz, Madras, whereas the Collector has assessed it in Madras and Cuddapah both.

No finding, viz, that of no Profits, is relied by the Collector

Tinch, on the ground that the Company having failed to make a return of the Dividend within the stipulated time had forfeited its claim to the exemption of payments in that year. This is one instance of the claim but the Collector disposing the point conceded claims that the Company should on their own admissions be called to a much higher rate of assessment as the tax is payable on Dividend & not on Profits

That the Government guarantee interest on Capital is equivalent to a Dividend for the purpose of this act, cannot in the opinion

To

THE BOARD OF REVENUE.

Dated December, 14th.

Recd. Encl.

G. O., 14th December 1868, No. 3,111.

From the Consultations &c &c.
of 5 June 69 Nos. 1911.

DECIPHERED.

Nos. 205-208.

License Tax payable by Irrigation Company.—Proceedings of the Board of Revenue on the appeal of the Agent, ordered to be forwarded to Government of India for consideration and orders.

of the Commissioner be questioned. he quite concurs with the Collector on this point and considers the Company would have been fairly liable to assessment calculated on the Dividend had the Agent & Manager elected that it should be so taxed.

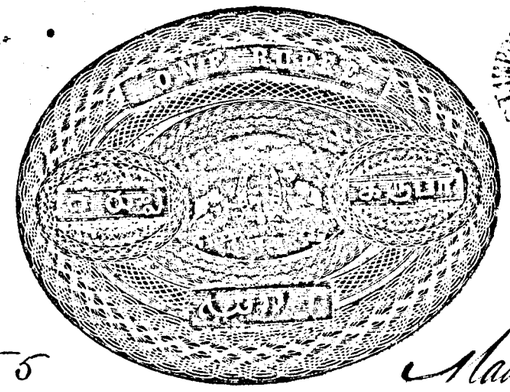
With regard to the plea that Madras is the only Agency or place of business in India, and that Kurnool is not so, the Commissioner also agrees with the Collector entirely. At Kurnool — the Head Quarters of the Engineering Staff of the Company, Money is received there, payments of salaries &c. are made there & the accounts are kept there, if Kurnool is not an Agency or place of business, it would be hard to say what could be. The appeal is therefore rejected and the assessment of the Collector confirmed.

30th Sept 1868. /Signed/ G. Thornhill
Commissioner

/True Copy/

/Signed/
A/Collector.

Ew





No 355 Madras 23 September 1868

To
G. Thornhill Esqre
Commissioner of Revenue

Whereas the Collector of License did on the fourteenth of August 1868 tax the Madras Irrigation and Canal Company under Section 22 of Act IX of 1868 Rupees 1000 and

Whereas I as the Company's Agent and Representative did duly present a Petition as provided by the Act praying that such Assessment might be revoked upon the following grounds:

1st That the Company had made no division of Profits and had declared no Dividend.

2ndly That the Company has but one Agency or place of Business in India and

Whereas on the 16th day of September now instant the Collector of License Tax did after the hearing of the said

Rev: 3627/68
From the Collr of Chingleput
Dated 20th Sept 1868
Recd 21st Sept 1868

C. Gopaul Chetty

F 1278 5-567

Irrigation & Canal Co. 22/9/68 Madras Collection

Petition

said Petition Confirm his Assessment.

Now I the said Agent and Representative of the said Company do on behalf of the said Company appeal against the said decision and Assessment, upon the Grounds above stated

Hereunto is appended a Copy of my Petition to the Collector and also a Copy of that Officers decision.

And I pray that this my appeal may be Considered and dealt with as the Act directs.

F. Hartwell Newsham
Agent and Manager

6V

To,

The Collector of Licence Tax
Madras

The Twenty first day of August 1868

The Petition of Francis Hartwell Newsham
of Madras

Sheweth

1 That in the list filed in your Office pursuant to Section 13 of Act IX of 1868. the name of the Madras Irrigation Canal Company of which your Petitioner is the Attorney and Representative in India, appears and that the said Company has been assessed under your amended assessment in the sum of Rupees 1000 and that you having decided that your petitioner is, as representing a public Company, not entitled to the privilege conceded by Clause 4 of paying a moiety of the assessment pending the decision of his case, notwithstanding that the latter portion of Section 22 states distinctly that all the provisions of this Act relate to the Secretary Treasurer or Agent of a public Company as if he were taking out a Licence on his own behalf, that is as a private individual

=ndividual— your Petitioner has paid the full sum of Rupees 1000 in the view to pre=
=secute an Appeal against your assess=
=ment—

2 That this Company has not made any profits upon which the Tax can be assessed, the Charges,— for maintenance repairs management &c— being very much in excess of the receipts and that the sum in which you have assessed the Company is equal to 15 or 20 per cent of the gross receipts not profits — of the Canal for the year ending the 30th June 1868 notwithstanding that the whole spirit and meaning of the Act is that the Tax shall be assessed upon profits. The Secretary to the Supreme Government in a letter addressed to the Calcutta Chamber of Commerce states that "in the event of no dividend having been declared a Company "can claim exemption from the Act". The Madras Irrigation Canal Company has made no profits and therefore has declared no dividend—

3. That the Madras Irrigation Canal Company having made no profits the expenses having been in excess of the re=
=ceipts is not amenable to the Taxing pro=
=vis of the Act—

4 That the guaranteed interest paid to the Shareholders on this Company does not belong to the Category of Profits the same being money lent by the Government on the Security of the Anticipated Revenue of the Canal and to be repaid out of future Earnings.

Your petitioner submits that it is op=
=posed to all justice and reason to deal with and tax borrowed money as if it were income or profits either in the case of an individual or a public Company—

5. That in the event of its being decided upon final Appeal that this Company is liable under the Act, the principle upon which you have assessed the Tax is opposed to the provisions of the Act and is therefore untenable: Section 22 provides that every Company carrying on business in British India shall pay annually for each Branch or Agency in this Country the sum of Rupees 500— This Company's head office is in London and it has but one Branch or Agency in this Country viz Madras, whereas you assess the Tax upon one other place besides Madras, viz Kur=
=nool which you arbitrarily term a Branch.

Kurnool

Kurnool is in no sense a Branch or Agency of the Company it being no more than the head quarters of the Company's Chief Engineer his Staff and Establishment.

6: Your Petitioner having shewn that the Madras Irrigation Canal Company has made no profits upon which the License Tax can be assessed, and that the principle upon which you have assessed the Tax is opposed to the intent and meaning of the Act prays that you will cause the name of the said Company to be expunged from the list, cancel the assessment and cause the aforesaid sum of Rupees 1000 to be refunded.

I, Francis Hartwell Newsham the Petitioner named in the foregoing petition do declare that what is stated therein is true to the best of my information and belief.

(Signed) F. H. Newsham.

License Tax Office
Madras 16th September 1868

Copy of the decision of the Collector of License Tax on Petition No 129 from Madras Irrigation and Canal Company

Petitioners have been taxed under Section 22 of Act IX of 1868. Rupees 1000 as having two places of business within British India and their prayer is 1st Exemption on the ground of no profits. 2. That they should be assessed only on one place of business viz Madras.

In reference to the claim of exemption it is to be observed in the first place the Company not having complied with the provisions of the Section by making the needful return in writing of the dividend declared during the previous year by the Company have forfeited their right to the preference to pay on the dividends and secondly if such right were conceded they would have to pay a much larger sum than the Amount against which they now petition.

The Act provides that the principal Agent

Agent shall on every year in which he prefers to pay the percentage is legally bound on or before the 30th day of April of each year to deliver to the Collector for the place in which his principal place of business in British India is situate a writing signed by him and stating the dividend declared by the Company during the year ending 31st March in the year of assessment-

Under the power granted in 21 Section of General Order No. 2464 the time was extended by the Collector of License Tax for the making of this return from 30th April to 30th June and due notice of the same was given in his notification of 16th May published at that time in the Fort Saint George Gazette.

No return having been made on or before the 30th June it is evident that the option as far as regards the Company has been lost, but it is within the discretionary powers of the Collector to admit it if he thinks fit.

Supposing the point to be conceded. it is evident that the Company would have to pay one per cent upon their dividend and not upon their profits, as

as dividend is the word used in the Act whenever Joint Stock Companies are referred to, and it is on the dividend and not on the profits that other Companies have paid the Tax - The two words are in no respect synonymous - The profits being the sum earned by the Company in the exercise of its business and the dividend being the Amount divided by the Company amongst its Shareholders as such - The Argument of the Petitioner that there can be no dividend when there are no profits is untenable as though it is usual and generally necessary to make the profits first and pay the dividend afterwards this Company enjoying the privilege of a Government guarantee are able to pay their dividend now in anticipation of profit in future years being provided by the aforesaid guarantee from all risk of loss, should such anticipation never be realized - Under this guarantee the Shareholders of the Company have received during the last year the sum of £ 50,000 the tax at one per cent would Amount to Rupees 5000, for which Amount I consider the

Company

Company liable should the option be-
-exercised and consequently disallow their
claim for exemption-

The next point is as to whether they
should pay on one or two places of business.

The Petitioners admit Madras, but
deny Kurnool Zillah whereas the latter
is undoubtedly a place upon the prin-
-cipal place of business as whatever sums
are earned for the credit of Revenue account
are received there and it is the Head
Quarters of the Engineering works which
are being carried on in other localities-

There is some difficulty in determin-
-ing how to define the terms Branches
and Agencies when applied to Railways
or Irrigation Companies as these words are
better suited to meet the case of Banks
and Insurance Companies and some
ruling of the Government on this point
is very much to be desired; but there-
-dently could never have been the inten-
-tion of the Legislature that the largest
Companies whose Capitals are counted
by the million should have only to
make the nominal payment of Rupees
Five hundred whilst other much
smaller

smaller ones are taxed on a far heavier
scale-

The assessment is Confirmed-

for J. C. Vincent
Collector of Income Tax

/True Copy/
for J. C. Vincent

/True Copies/
for Hunter Kerr
Agent and Manager

Revenue Dep.t

No. 3111.

Proceedings of the Madras Government

Under date the 14th ~~November~~ December 1868.

Read the following Pro-
-ceedings of the Board of
Revenue

Submitting to Govt. letter from
Coll.r of Madras regarding objections
raised by the Madras Irrig.n &
Canal Comp.y to payment of License
Tax & to Kurnool being classed as a
place of business or agency, & expres-
-sing their opinion that it would be
preferable to tax Companies of
the kinds described in Sec: 22
Act IX of 1868 only on their
dividends

(H.E. 16th Nov.r/68 No. 3095)

The Government con-
-cur with the Board, and
resolve to address the Govt.
of India on the subject.

11 Copies Trans.d to Bd of Rev.e Dec.r 15.

Rec.d 3 Dec.r/68.

Revenue Dept. Madras 14th Nov.r 1868

Submitting letter from the Coll.r of
Madras, dated 1st Oct.r 1868 No. 1317

Enquire & Report

Rec.d 3 Dec.r/68.

C: 32-12-68 R102