

498

*Proceedings of the Madras Government, Revenue Department,
22nd March 1872.*

Mo. 266. Read the following Proceedings of the Board of Revenue, dated 1st November 1871, No. 4,577 :—

Read again Board's Proceedings, dated 29th September 1871, No. 4,177.

Read also the following letter from the Government Solicitor, Madras, to the Acting Secretary to the Board of Revenue, dated 16th October 1871, No. 404.

ABSTRACT.—Forwards a copy of the Advocate-General's opinion relative to the question raised by the Collector of Kistna District as to the legality of assessing Income-tax to persons who were liable for the past year, but had been omitted to be taxed, and returns the Proceedings of the Sub-Collector, Kistna District.

ENCLOSURE No. 1.

OPINION.

I AM of the same opinion as Mr. Wilson, the Sub-Collector of the Kistna District. I cannot put the argument more vividly or conclusively than he has done.

14th October 1871.

(Signed) J. B. NORTON,
Advocate-General.

THE Board resolve to submit these papers for the consideration of Government.

2. The question is whether *assessments* to the Income-tax could be made under Act XVI. of 1870 *after* that year expired, that is, after the 1st of April 1871.

3. The particular case which gave rise to the discussion is very clearly stated by the late Sub-Collector of the Kistna District in his Proceedings* under Sections 25 and 26 of the Act; and having come to the conclusion that no assessment could be made after the year had expired, he remitted the demand (Rs. 165-10-0).

4. The Collector (Mr. Boswell) considered that "as Act XII. of 1871, on "repealing Act XVI. of 1870, provided that such Act should continue in force "until the first day of April 1872 as to taxes and penalties *due and incurred* there- "under, the Sub-Collector was still empowered to assess persons who were liable "for the passed year, but had been omitted to be taxed."

5. The Advocate-General, to whom the Board referred the papers for an opinion, accepts Mr. Wilson's reasoning as conclusive, apparently without considering the arguments on the other side.

6. The Board think it might plausibly be argued even from the strictly legal point of view that the taxes are due *absolutely* on the passing of the Act; but, assuming that the Advocate-General's opinion is technically correct, the Board think it might be desirable to bring the matter to the notice of the Government of India, with a view to an amendment of the wording of the Act; because that Government clearly never contemplated the construction now put upon it. In an

*Proceedings of the Madras Government, Revenue Department,
22nd March 1872.*

office Memorandum dated 22nd April 1870, No. 214, embodied in Government Order No. 732, dated 18th May 1870, and in paragraph 5 of a Memorandum dated 4th June 1870, No. 732, embodied in Government Order No. 885, dated 16th June 1870, it is clearly implied that assessments could be made after the expiry of the year; and though these papers had reference to the former Act, the terms of which were slightly different, there can be no doubt the same principle must apply to the present one.

7. The question is of considerable importance, as it is clear from the Collector's letter that many (if not all) of the assessments made by the Sub-Collector in the Kistna District were made after the close of the year; and it is likely that there will be many more appeals when the result of this becomes known.

8. The Board are not in a position to say how many similar cases there may be in other districts, and do not think it desirable to delay this reference in order to find out.

Proceedings of the Board of Revenue, dated 29th September 1871, No. 4,177.

Read the following letter from the Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 9th August 1871, No. 2,415 :—

I HAVE the honour to forward herewith copy of a Proceedings held by the Sub-Collector of this district, dated 27th July 1871, under the following circumstances. I regret to say that during the past year, owing to several changes in the office of Acting Sub-Collector, there was great delay in assessing, under the Income-tax Act, those whose income exceeds Rs. 5,000 a year, whom the Sub-Collector was required to tax himself. Several reminders were sent, but the year passed by. Objections were then raised as to the legality of taxing those who had not been assessed within the official year. I gave it as my opinion that as Act XII. of 1871, on repealing Act XVI. of 1870, provided that such Act should continue in force until the first day of April 1872 as to taxes and penalties *due and incurred* thereunder, the Sub-Collector was still empowered to assess persons who were liable for the passed year, but had been omitted to be taxed.

2. As Mr. Wilson takes a different view, and has on appeal remitted the demand, I beg to submit the question for the Board's opinion.

ENCLOSURE No. 1.—Copy of Proceedings of Sub-Collector under Sections 25 and 26 of Act XVI. of 1870.

THE question raised in these papers will be submitted for the opinion of the Advocate-General.

No. 267. ORDER THEREON, 22nd March 1872, No. 498.

Miscellaneous.

THE Government observe that Act XVI. of 1870 provided in Section 1, that "it shall cease to be in force on 31st March 1871, except as to taxes and penalties then *due* and incurred thereunder." The question raised is whether a Notice, dated 27th March 1871, of an assessment

*Proceedings of the Madras Government, Revenue Department,
22nd March 1872.*

on an income estimated above Rs. 2,000 which was irregularly made without previous issue of a notice under Section 17 calling for a return of income and was therefore cancelled, or a subsequent notice *after* 31st March 1871, under Section 17, and assessment and notice thereof under Section 22 can establish such liability as to bring the party within the exception in Section 1, or whether such liability is otherwise incurred under the general provisions of the Act. The Government concur with the Sub-Collector and Advocate-General in opinion that, under the circumstances stated, the tax not having been assessed legally before 31st March 1871 was not *due* on that date, and could not be legally assessed for the year 1870-71 at a later date. The delay in making the assessment is to be regretted, but from circumstances seems to have been unavoidable. The papers will be communicated to the Supreme Government in the Legislative Department as suggested by the Board.

(True Extract.)

(Signed)

W. HUDLESTON,
Officiating Chief Secretary.

To the Board of Revenue.
,, the Legislative Department.

Exd. J. Tulloch.

from the
must clear -
I. O. H.

Wt. Pass: 1 Wt. 70. W. 4577

I incline to the Wt.
view - The best saves
Taxes due - and pe-
nalties incurred - The
Tax, in any view, be-
came due in the year -
though the exact amount
payable was not as-
sessed or demanded

within the year -
I do not think
the liability to
the tax depends on
assessment & demand.
Cases, for example,
may occur where
the fact of a man
possessing a taxable
income is ascertained
at the last moment.

5
The duty is levied on
the 1st April 76 - i.e. the
very first day
of the year - when of
course assessments can
not have been made.

I do not see however
what we can do under
the Act.

He may let my
letter tell the Sub-Com
that if the income
tax is continued next
year - we should be

8. The Board are not in a position to say how many similar cases there may be in other districts, and do not think it desirable to delay this reference in order to find out.

(A true Copy and Extract.)

J. H. Remington
Acting Secretary.

To the Secretary to Government, Revenue Department,

with copy of Board's Proceedings No. 4,177 of 1871 and enclosure.

Copy to the Collector of the Kistna District.

to the Government Solicitor.

Receipt
The for: order that Act 16 of 1870 provided in Sec. 1. that it shall come into force on 31. March 71. except such taxes & penalties then due and incurred thereunder. The question raised is whether a notice of 27 March 71. for an assessment on an income returned above Rs. 2000. is irregularly made without previous issue of a notice under Sec. 17. calling for a return of income. and was therefore cancelled. or a subsequent notice after 31 March 71. under Sec. 17. and assess. under Sec. 22. can establish such liability as being the party within the exception in Sec. 1. or whether such liability is otherwise incurred under the general provisions of the act. The Govt. comes with the conclusion that the assessee has not having been assessed legally before 31. March 71. was not due on that date. and could not be legally assessed for the year 70-71. at a later date. The delay in making the assessment is to be regretted. but from circumstances seems to have been unavoidable. The papers will be communicated to the Supdt. in the Dep't. as suggested by the Secy.

Ezd. T. Cartledge.

16 March 70 - 193-96
17 March 70 - 193-96
18 March 70 - 193-96

Income-tax.—Papers from Collector of Kistna District on legality of assessing to, after 1st April 1871, for past year, persons who were liable to tax under Act XVI of 1870, but had been omitted to be taxed, submitted for consideration of Government, with copy of Advocate General's opinion, agreeing with Sub-Collector that tax cannot be levied.

NOVEMBER.
No. 4,577.

PROCEEDINGS, 1ST NOVEMBER 1871, No. 4,577.

BOARD OF REVENUE,
MADRAS.

1871.

No: 1911 Dep
No 3609

Received. (1) + 5000 Rs. 10/0

4210/10/11

Encl. 2

Memo

The 1st Assistant, Smt. Office
Revenue Department is re-
-quested to be good enough
to return the enclosure for-
warded to Government with
the Board's Proceedings dated
1st November 1871 No. 4577
regarding the legality of
assessing persons who were
liable to tax under Act
XVI of 1870, but had been
omitted to be taxed.

Revenue Board Office
22nd July 1872

Handwritten signature

Registration
To The 1st Assistant, Smt. Office
Revenue Dept.

Ans

37

Revenue Department

No. 498.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 22nd March 1872.

Read the following *Pros of the Board of Revenue.*

Submitting for consideration of Govt, papers from collector of Kisma District on legality of assessing to Income Tax after 1st April 1871, for past year, persons who were liable to tax under Act XVI of 1870, but had been omitted to be taxed, with copy of Advocate General's opinion agreeing with Sub-Collector that tax cannot be levied.

(H. G. 1st November 1871. No. 4577)

A. A.

This has been seen by Mr W. Sim.
R. D.

M. E.

The Govt observe that Act 16 of 1870 provided in Sec. 1. that "it shall cease to be in force on 31st March 1872 except as to taxes and penalties then due and incurred thereunder." The question

raised is whether a notice dated 27th March 1871 of an assessment on an income estimated above Rs 2000 which was irregularly made without previous issue of a notice under Sec. 17 calling for a return of income and was therefore cancelled, or a subsequent notice after 31st March 1871, under Sec. 17, and assessment and notice thereof under Sec. 22 can establish such liability as to bring the party within the exception in Sec. 1, or whether such liability is otherwise incurred under the general provisions of the Act. The Govt concur with the Sub. Collector and Advocate General in opinion that

8
that under the circumstances stated, the tax not having been assessed legally before 31st March 1871 was not due on that date, and could not be legally assessed for the year 1870-71 at a later date. The delay in making the assessment is to be regretted, but from circumstances seems to have been unavoidable. The papers will be communicated to the Supreme Govt in the Legislative Department as suggested by the Board. L.D.

14. Board of Revenue Dept. 23rd March 1872
5. Legislative Dept. 21

No 266-267

that make the criminal
debt the law not
can account equally
of the law not
in that date and

will be equally
of the law not
in that date. The delay in
making the arrangement
is to be expected, but
the arrangement seems to

be made in the
department of
the law.

of the law

No 69

QD

Assess & Income
Tax after 1st April

1871

699

12