M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 235	Press Mis.
471-472	
Dated 29-1-	1864.

Not to be folded or roughly handled

No. 471. Read the following letter from F. WALTHEW, Esq., Secretary to the Income Tax Commission, to J. D. SIM, Esq., Acting Secretary to Government, Revenue Department, dated Madras, 22nd December 1860, No. 29 :—

SIR,

1. I am directed by the Income Tax Commissioners to report with reference to the Order of Government, dated the 23rd ultimo, No. 2,211, in which the Commissioners are requested to report upon the admissibility of a claim to exemption from duty under Section 133 of Act XXXII of 1860, that P. Sómasundara Chetti has appeared before the Commissioners and satisfied them that the interest of Rupees 55,000, bequeathed by the late P. Kódandaráma Chetti in trust of his Executors Páliam Súraya Chetti and Páliam Sómasundara Chetti is appropriated in accordance with the wishes of the Testator.

2. The object of the Testator was, that this interest should be expended in religious ceremonies at various Pagodas, in feeding the poor, in giving water to cattle, and in the instruction of children in the Vedás.

3. On a consideration of the nature of the bequest, the Commissioners are of opinion that only 1,140 Rupees per annum, being the interest of Rupees 28, 326, can be exempted from Income Tax, under Section 133 of Act XXXII of 1860, as being devoted to religious or charitable *public* purposes.

These purposes are.	Per annum.
(1.) For Sadávirti or helpless travellers..... ..... Rs.	420 0 0
(2.) For supplying cattle with water at the Choultry, Tondiarpettah.....	60 0 0
(3.) For the expense of the maintenance of boys, who read Vedás and salary of Tutor, and sundry expenses.....	660 0 0
Total Rs...	1,140 0 0

4. The Commissioners consider, that Rupees 1,073 being annual interest on Rupees 26,674, expended at the request of the deceased P. Kódandaráma Chetti, for the occasional performance on his behalf of religious ceremonies at various Pagodas, can only be regarded as employed for private religious purposes, and as such do not come within the scope of Section 133 of the Act.

5. The Commissioners have therefore the honor to recommend that Rupees 1,140 being the annual interest on Rupees 28,326, invested in Government Securities, bequeathed by P. Kódandaráma Chetti, be exempted from Income Tax.

6. The Commissioners resolved to annex to their report to the Government on the application for exemption, submitted by P. Súraya Chetti, the protest recorded by Mr. Commissioner Lakshmínarasu Chetti.

Protest recorded by Mr. Lakshmínarasu Chetti.

I am unable to concur with my brother Commissioners in the view which they have taken of the case of P. Kódandaráma Chetti's charities, as I consider the distinction drawn by them between public and private religious purposes is not tenable. All native bequests of the kind indicated are in one sense of a "private" character. That is to say, under whatever shape trusts may be constituted by Testators, their primary and invariable object is the benefit of the souls of themselves and their relations.

The "public" advantages arising from them are secondary matters. No foundation of a nature like the present could be made if the propitiation of the Divine favor for the families of those who have money to establish them were not anticipated through their means. It seems to me, therefore, that all bequests of that sort should be regarded as religious, and be dealt with alike. If arbitrary distinctions are drawn, as in the instance under notice, we shall never know where to stop. Moreover, I submit that we are not called on to go into niceties of that description. The 12th paragraph of the Proceedings of the Madras Government, dated 31st August 1860, No. 1,484, says, nothing about "public" or "private" appropriations of the funds of charitable and religious trusts. It deals with the question generally, and puts all on the same footing, as follows.

12. Paragraph 34 relates to Clause 133 of the Act, which gives power to the local Government to exempt from the tax "property solely employed for or dedicated to religious or "charitable public purposes." Under that Clause the Government now resolve to direct the Collectors as well as the Presidency Commissioners, to exempt the property of all Hindú and Mahomedan religious and charitable institutions.

Charitable

Acting under this direction, it appears to me that the whole of the sum bequeathed by P. Kódandaráma Chetti should be exempted from Income Tax.

I would further observe, in support of my view of the case, that the entire funds of Patchiappá's charities were, on the application of the Trustees thereof, specially relieved from taxation by order of Government, and yet the principal portion of those funds, according to the terms of the Testator's Will, were to be appropriated to purposes strictly falling within the definition of "private" drawn by my colleagues. I am of opinion that equity requires the application of one rule to all like cases, and am consequently obliged to enter my protest against the forwarding to Government of the letter approved by them, as I did in the analogous case of the Christian charities of Mrs. Arathoon.

10th December 1860. (Signed) G. LAKSHMINARASU CHETTI,

(True Copy.)

(Signed) F. WALTHEW,
Secretary.

No. 472. ORDER THEREON, 29th January 1861, No. 235.

1. In accordance with the terms of the Order of 23rd November last, No. 2,211, the Income Tax Commissioners for the town of Madras submit their report on a claim made by P. Súraya Chetti for exemption from Income Tax for certain Government Securities bequeathed by his late brother P. Kódandaráma Chetti for charitable and religious purposes.

2. The Commissioners are of opinion that the whole of the interest on the sum of Rupees 55,000 in question is appropriated in accordance with the wishes of the Testator, but the majority think that the interest on a portion only of this sum, viz., on Rupees 28,326-0-0, can be exempted under Section 133 of the Income Tax Act, as being devoted to religious or charitable *public* purposes; while the interest on the remainder, or Rupees 26,674-0-0, being expended for *private* religious purposes, viz., on certain ceremonies performed from time to time at certain Pagodas for the Testator's benefit, cannot be considered as coming within the scope of that Section.

3. One of the Commissioners, Mr. Lakshminarasu Chetti, dissents from this view, and his protest has been sent up with the letter under consideration. The Governor in Council however agrees with the majority of the Commissioners; he observes, moreover, that the principle to be followed in such cases has already been laid down in the case of the Estate of the late Mr. Samuel Moorat. He therefore resolves, under Section 133 of Act XXXII of 1860, to exempt from the duties chargeable under the said Act, so much of the total sum of Rupees 55,000 referred to as will produce annually Rupees 1,140-0-0, the amount proved to be expended for religious or charitable *public* purposes. The remainder cannot be exempted. The Accountant General is authorized hereby to make any refund that may be necessary under this order.

Order, November 27th 1860, *No.* 2,252.

4. The dissenting Commissioner argues that the distinction drawn by the majority between public and private objects has no real existence as respects native bequests, inasmuch as all of both kinds spring from the same motive, viz., the desire to benefit the souls of the Testator himself or of his relatives. But the Government must deal with acts not with motives; and must treat those expenditures as for a public object whichin reality effect the public, from whatever motive made.

5. Mr. Lakshmínarasu points out that the entire funds of Patchiappá's charities were exempted from taxation, while in reality, the principal portion of them is appropriated to purposes which, under the opinion of the majority of the Commissioners are of a private nature. It is true that the order in the case referred to made no distinction between public and private objects; as the Government were under the impression that all the funds in question were connected with Patchiappá's Institution. A large part of those funds being now stated to be in fact devoted to objects of a private and personal character, the Governor in Council resolves to request the Income Tax Commissioners to report how much of them is so employed.

(Signed) J. D. BOURDILLON,
Secretary to Government.

Rev Departt

Ret to

The Act. Sect 133 says
religious & charitable purposes - and the majority
of the Comrs construe that term
left for purposes personal
& the donor - as for Masses -
prayers &c are not public -
One of the Comrs protests against
this construction -

The ruling of the majority
has been upheld in another
case and is right clearly in
the sense - Such bequests as
they mention do not concern
the public at large and so are
private affairs - But they do
not bring any thing in the
way of income or profit to

The Minor who is legally
all Persons reach. It
would be Equitable
I think & Expedient such
grants - which were
created bona fide, without
any idea of evading
this Act -

A reference to Govt.
could may be made
if Govt. concur in this
View.

J. D. S

- All these persons enjoy the benefit of the security & protection afforded by Govt & should therefore I think contribute to the expenses of the administration of the country, except when exemption is granted on account of their being applied to a Public charitable purpose

Elliot

Agree with Mr. Maltby

Elliot

Proceedings of the Madras Government, Revenue Department
29th January 1861.

22 - Rov - 1860 - Nos 389-390
- 471.
L.A.

Rev: 1860 Department
Proc: of Govt for January
No 3050.

From F. Walthew Esqre
Secy to the Income Tax Coms

To J. D. Sim Esqre
Officiating Secy to Govt
Revenue Dept

Dated 22d December 1860
Received 29th
No 735. 29 Jany No 29

With reference to the Order of Government dated 23d Ultimo No 2211. Reports by direction of the Comrs their opinion on the bequest of the late P. Coothundaram Chetty, & states that Rs 1140 the interest on Rs 28,326 - can be exempted from Income Tax as being devoted to Religious & Charitable public purposes, and annexes a protest recorded by Mr Comr Ly. Lutchimunarin Chetty.

C & Sent Rd 1/2 C 17 - R 23.

Rev Depart

No 235

Proceedings of the Madras Government
Under date the 29th January 1861.

Read the following letter from the Secretary to the Madras Income Tax Commission -

Dated 22 October 1860 (Here enter 22 December No 29)

Reporting the opinion of the Commissioners on the bequest of the late P Vôdaradáma chetti -

In accordance with the terms of the order of 23d November last No 2211, the Income Tax Commissioners for the Town of Madras submit their report on a claim made by P. Looryah Chetti for exemption from Income Tax for certain Govt securities bequeathed by his late brother P Vôdaradáma Chetti for Charitable

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2. The Commissioners are of opinion that the whole of the interest on the sum of Rupees 55,000 in question is appropriated in accordance with the wishes of the Testator, but the majority think that the interest on a portion only of this sum viz- on Rupees 28,326-0-0, can be exempted under section 133 of the Income Tax Act, as being devoted to religious or charitable public purposes, while the interest on the remainder, or Rs. 26,674-0-0, being expended for private Religious purposes, viz-

Lakshminarain

performed from time to time at certain Pagodas for the testators benefit, cannot be considered as coming within the scope of that section.

3. One of the Commissioners, Mr. Saleh Mamarasa Chetty, dissents from this view, and his protest has been sent up with the letter under consideration. The Governor in Council however agrees with the majority of the Commissioners: he observes, moreover, that the principle to be got at in such cases has already been laid down in the case of the Estate of

of the late Mr Samuel Moorat. He therefore resolves, under section 133 of Act XXII of 1860, to exempt from the duties chargeable under the said Act, so much of the total sum of Rupees 55,000 referred to, as will produce annually Rs 1,140-0-0, the amount proved to be expended for religious or charitable public purposes. The remainder cannot be exempted. The Accountt General is authorized hereby to make any refund that may be necessary under this order.

4 The dissenting Commissioner argues that the distinction drawn by the majority between public and private objects has no real existence as respects native bequests, inasmuch as all of both kinds spring from the same motive viz. the desire to benefit the souls of the testator himself or of his relatives. But the Govt must deal with motives; and must treat those expenditures as for a public object which in reality affect the public, from whatever motive made.

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Income

13 C. Lies

3 "
13 "
4 "
1 "

President Income Tax Comm. Rejs. 30
Special Comm. Income Tax √
Board of Revenue √
Acct General √
Secretary to Chetty √

Income Tax Commissioners
to report how much of
them is so employed.

Claim to exemption under Sec 133 of the Income Tax. —

Revenue 1861 Department
Pro: of Govt for January.

№ 235

Pro: of the Madras Govt.
Dy 29th January 61.

From the Secretary to the Income Tax Commrs
dy 12th March 1861 Ds № 676. in pro 6th April
№ 766.

Regarding the claim made by Suraya Chetti for exemption from Income Tax for certain Govt Securities.

№ 471 & 472

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