

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 5235

DATED 7 Oct 97

[Despatch Abstract.]

Stating that there is no sufficient reason
for Govt's interference in Messrs Lushman
& Co's behalf in the matter of their revenue
land appeal

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Mis	702	Rw	11.2.97				

0
18 4,000-12-7-97.

Revenue (189) Department.

CURRENT No. 6836

From A. S. Cowdell, Esq.,
Solicitor,
Ootacamund

No.

Order

Dated 6th August 1897.

Received

Registered

Enclosures

Spare copies.

SUBJECT.

Forw. petition from
Messrs Leishman & Co.,
appealing against the
income-tax levied on the

Recd
10/8/97

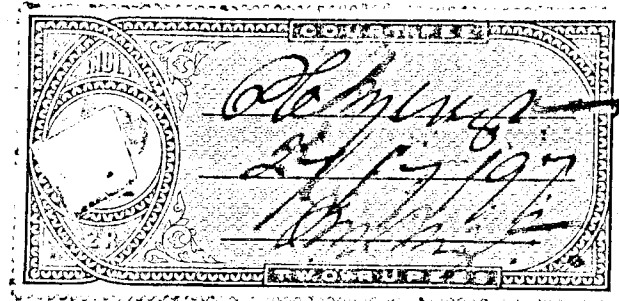
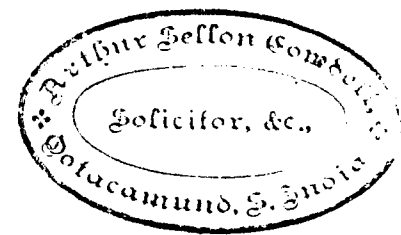
G.C

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS. O

G.O.	No.	Department.	Date.



BEFORE THE GOVERNOR OF FORT ST GEORGE IN COUNCIL; OOTACAMUND.

Revenue Appeal No. of 1897.

In the matter of the Petition of Messrs Laishman & Co.,
of Ootacamund and the Income Tax Act.

The Petitioners hereby retain Arthur Sellen Cowdell of
Ootacamund, Solicitor, as their Attorney to appear for
them and to adopt all such measures as may be necessary;
and to receive and give receipts for all moneys paid to
their credit in this Petition and agree to abide by all acts
the said Attorney may do in reference thereto.

Accepted.

A. S. Cowdell

Date 5-8-97.

Laishman & Co.

Executed in my presence this
August 1897.

5th day of
Laishman & Co.
Dy. Secy
Nilgiris

BEFORE THE GOVERNOR OF FORT ST GEORGE,
IN COUNCIL; OOTACAMUND.

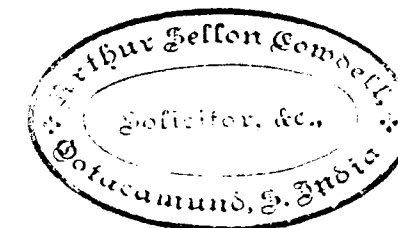
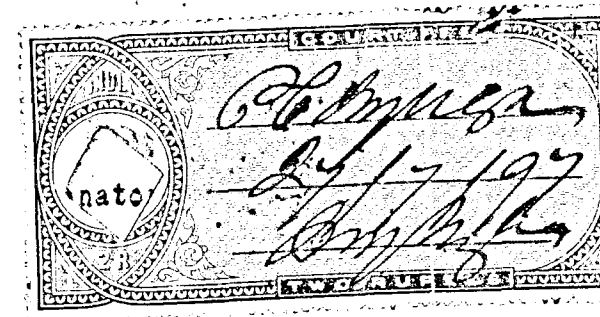
Revenue Appeal. No.

of 97.

In the matter of the Petition of Messrs
Leishman & Co., of Ootacamund and the
Income Tax Act.

VAKALOTH FOR PETITIONERS.

A. S. Corrdell,
Solicitor,
Ootacamund.



PETITION

0654

REVENUE DEPT.

To

HIS EXCELLENCY SIR ARTHUR ELIBANK HAVELOCK,

G. O. I. E., G. O. M. G.,

GOVERNOR OF FORT ST GEORGE, IN COUNCIL.

MAY IT PLEASE YOUR EXCELLENCY.

Your Petitioners, Messrs Leishman & Co., of Ootacamund, Brewers, beg to request that your Government will revise the decision of the Board of Revenue, on the appeal of your Petitioners against the Income Tax levied on them by the Collector of Nilgiris, as unconstitutional, irregular, illegal, and unjust on the following grounds:-

1. It is unconstitutional:-

Because in dealing with the subject, in all matters of taxation it has ever been the policy of good government to avoid arbitrary exactions, and high-handed proceedings in realizing them.

2. It is irregular:-

[a] Because both the Collector and the Board of Revenue have full power as conferred by Sections 27 and 28 of the Income Tax Act, to obtain the necessary information, upon which to ascertain the actual profits realized, and so to avoid the necessity of "guess-work," or ill-founded assumptions and conclusions, as to the amount of profits realized.

[b] Because the petitioning firm has ever been ready, and ever anxious, to furnish all the information that could be required, is shown by the statements of receipts and expenditure, with an

explanatory summary, furnished to the Board of Revenue.

3. It is illegal:-

[a] Because it is settled law, that all fiscal enactments are to be construed in favor of the Tax-payer, and this precludes the principle of levying Income Tax upon an income, on the ground that there is a want of certainty, as to what that income amounts to.

[b] Because the right to tax is incident only in respect of income duly ascertained, and not upon an assumption, except where the Assessee declines to furnish the necessary information, upon which to assess the proper tax.

4. It is unjust:-

[a] Because it is obvious that a person, who is living on his income and who, for that purpose, realizes a portion of his stock, investments, or other properties, cannot be made to pay a tax on the amount so realized, merely because it is spent in the same way, or on the same objects, as income, or profits would be spent.

[b] It is equally obvious that this principle applies to a Firm or Company.

[c] Any excess previously found and added to the capital, whether in the shape of the cash balances, bank deposits, stock on hand, or outstandings due, has already been made to pay Income Tax, and on being drawn out, ought not again be made liable.

[d] Because in times of financial difficulty, the increased pressure of taxation should be made to fall evenly on the community, and not on individuals, by the spasmodic and ill-considered efforts of over-zealous officers to obtain an additional contribution from them.

OUTACAMUND,

5 AUG. 97

[Signature]
Petitioner's Attorney.

[Signature]
Leishman & Co.

LIST OF DOCUMENTS PRODUCED ON BEHALF OF THE PETITIONERS.
MESSRS LEISHMAN & CO.

1. Letter dated 6th June 1896, from the Collector of Nilgiris to Messrs

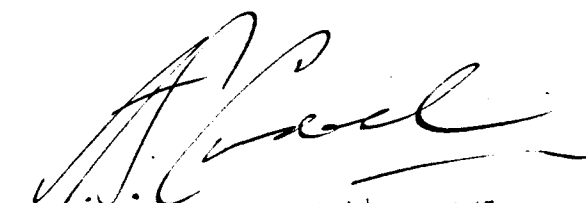
Leishman & Co., forwarding a blank K form return.

2. Copy of letter dated 24th June 1893, from Messrs Leishman & Co., to the Collector of Nilgiris, submitting a K form shewing particulars of Inco
3. Letter dated 25th June, [despatched 27th June 1893] from the Collector of Nilgiris to Messrs Leishman & Co.
4. Letter dated 19th August 93 from the Collector of Nilgiris to Messrs Leishman & Co.
5. Letter dated 29th August 93 from the Collector of Nilgiris to Messrs Leishman & Co.
6. Letter dated 5th September 93 from the Collector of Nilgiris to Messrs Leishman & Co.
7. Notice under Section 17 of the Income Tax Act 11 of 1883 [Form H] dated 5th September 93 from the Collector of Nilgiris to Messrs Leishman & Co.
8. Letter dated 14th December 1893 from the Collector of Nilgiris to Messrs Leishman & Co.
9. Letter dated 14th January 1897 from the Collector of Nilgiris to Messrs Leishman & Co.
10. Notice dated 20th January 1897 from the Collector of Nilgiris to Messrs Leishman & Co.
11. Copy of the Proceedings of the Collector of Nilgiris dated 25th January 1897.
12. Letter dated 23rd January 1897 to Messrs Leishman & Co.
13. Copy of "Balance Sheet of the Nilgiri and Castle Breweries on the 30th June 1896."
14. Copy of "Balance Sheet of the Nilgiri and Castle Breweries on the 30th June 1895."
15. Copy of a Comparative Statement of the Property and Assets, as shown in the abovementioned Balance Sheets.
16. Copy of letter dated 24th June 1893 from Messrs Leishman & Co. to the Collector of Nilgiris.
17. Copy of letter dated 3rd August 1896 from Messrs Leishman & Co. to the Collector of Nilgiris.
18. Copy of letter dated 23rd August 1896 from Messrs Leishman & Co. to the Collector of Nilgiris.

19. Copy of letter dated 5th September 1896 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
20. Copy of letter dated 25th September 1896 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
21. Copy of letter dated 10th December 1896 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
22. Copy of letter dated 5th January 1897 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
23. Copy of letter dated 16th January 1897 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
24. Copy of letter dated 26th January 1897 from Messrs Leishman & Co.,
to the Collector of Nilgiris.
25. Statement of Messrs Leishman & Co's expenditure for the year ended
30th June 1896.
26. Nilgiri Brewery Statement of gross Receipts for the year ended 30th
June 1897.
27. Summary of Messrs Leishman & Co's expenditure for the year ended
30th June 1896.
28. Copy of Petition to the Board of Revenue [Separate Revenue]
29. Proceedings of the Board of Revenue [Separate Revenue] Mis-No. 2736
dated 2nd July 1897.

OOTACAEUND.

5 AUG. 97


Petitioner's Attorney.

DATED

1397.

PETITION OF MESSRS LEISHMAN & CO., TO
HIS EXCELLENCY SIR ARTHUR ELIBANK HAVELOCK,
G.C.I.E., G.C.M.G.,
GOVERNOR OF FORT ST GEORGE, IN COUNCIL.

A. S. Cowdell,
Solicitor,
Ootacamund.

Revenue (1897) Department.

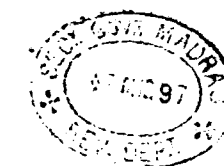
CURRENT No.

TELEGRAPHIC ADDRESS:—
"COWDELL, OOTACAMUND."

ALSO AT COONNOR
AND COIMBATORE.

OOTACAMUND.

6 AUG. 97



FROM
ARTHUR SELLON COWDELL,
SOLICITOR.

TO
The Secretary to Government,
Revenue Department,
Ootacamund.

Sir,

IN YOUR REPLY
PLEASE QUOTE
THIS SUBJECT.

re Petition of Messrs Leishman & Co (Income Tax).

I have the honor to forward a Petition to His Excellency the Governor in Council by Messrs Leishman & Co, appealing against the Income Tax levied on them, and request that you will be good enough to lay the same before the Council at an early date.

I also forward the documents, 29 in number, as Exhibits in the Petition.

I have the honor to be,

Sir,

Your most obedient Servant,

A. S. Cowdell

ENC 29

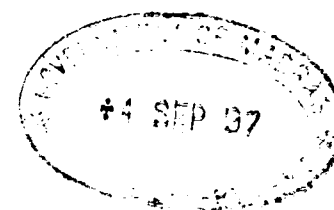
re
re - statement of Income
for 1896-97

DATED

1897.

Revenue (1897) Department.

CURRENT No.



Order

From

*The Collector of the
Nilgiris
No. 2263*

Dated *4 September 1897*

Received *1-2-87*

Registered *1-2-87*

Enclosures *2*

Spare copies

SUBJECT.

Income tax

*Forwarding as
ordered Copies of
reports to the Board
re. Messrs Leishman & Co
assessment of Income
for 1896-97.*

*mm.
4.9.*

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Nilgiri Collector's Office
Ootacamund 18th March 1897

R. G. B. No 249 of 1897

From. J. H. A. Tremenhare Esquire
Collector of Nilgiris

To. The Secretary to the
Commissioners of Salt, Akkar and
Separate Revenue
Madras.

Sir,

I have the honour to report on
Messrs Leishman and Co's Income Tax appeal
(Petition Register No 241 and 227 of 1897)

2 I must first ask the Board to observe
that none of my statements of fact has
been traversed, and none of my argu-
ments met.

3 The business was started on a capi-
tal of Rs 30000 and has been so successful
that by the mere fact of the partners not
drawing out their annual profits, one of them
has now, invested in the Brewery, a lakh
and a half of Rupees, while the other has
a lakh and a quarter. That is to say -
Rs 30000 has grown to 2 3/4 lakhs, while the
assets of the company are shown in the
balance sheet as four lakhs.

4 I was asked to believe that the profits of this large concern were only Rs 3500. This seemed so grossly improbable that I examined the accounts, and found that no less than 34,000 had been "withdrawn" by the partners. I passed 12,000 of this under special circumstances; but it seemed clear that the balance, 22,000 Rs, had been repaid from profits.

5 Were this not so, it was for the firm to show me from what other source the means of so large a payment was obtained. Mr. Leishman directed his efforts to this and contended that the sum accrued mainly from a reduction in stock. He alleged that he wished to close some out branches, and had not been replenishing their stock. That this might affect the profits of following years cannot be denied; but it is equally indisputable that it does not diminish the profits of the year in question. An illustration will make this clear. At the beginning of the year say there were in the Belgium branch 1000 hogsheads, and at the end of the year only 100. It follows that 900 hogsheads have been sold, with

with the usual profit. To show the value of this 900 hogsheads as a loss is simply misleading.

6 I now turn to the arguments put forward by Messrs. Leishman & Co's legal adviser in the petition of appeal. In para 5(a) he simply asserts that the Rs 34,000 is a reduction of capital, but he omits to give the very important information whence this sum was obtained if not from profits. He admits the money has been drawn from the business, and it seems to be impossible to trace any other source for it except profits.

7 In para 5(b) I am said to have erred in an important particular in that I did not allow petitioners to substitute a fresh account as to depreciation of buildings. To the best of my memory, no such request was made to me; nor is this asserted.

8 In para 5(c) care is taken to put a case hypothetically - "fresh stock ordered, say in January might not actually arrive and be paid for before the 31st March. xxx The accident of the end of

the end of the official year happening or would
etc. The fact is Mr Leishman represented
that in the out-branches he intended not to
replace the stocks. The argument about
the official year I cannot understand,
as the balance sheet on which I acted is
dated 30th June. But granting (what
is not the case) that the money derived
from the sale of stock was held or set apart
for the purchase of new stock, it remains
income at least until the new stock is
ordered. Nor is this inequitable, for if this
year's income is swelled thereby, that of
the next year will be correspondingly reduced.
And that in the interval of selling old stock
and ordering new, the proceeds of the
selling old stock should be deducted from
the accounts appears quite untenable.

Para 5 (d) is founded on a misconcep-
tion. A good debt due to a firm may be
taken into account in assessing profits,
when this is collected in the next year no
change takes place, for if there is an increase
under one head of receipts, there is a corres-
ponding

corresponding decrease under the old head. But
in the present case the firm has not been assessed
for two consecutive years on its accounts;
in the preceding year it paid an arbitrary
rate for every hogshead issued. When the
accounts were looked into this year, the
assessing officer had no concern with
the amount of debts due to the firm in
the preceding year; he had only to ascer-
tain the profits which by each several
means accrued in this year. This being so,
the question of an increase or decrease of
debts arose solely from Mr. Leishman
attempting to prove that the Rs. 34,000
withdrawn by the partners had come
to hand otherwise than by profits. In
this attempt he asserted that whereas
the Firm had a net balance of debt
due to them in 1895 of 24,000, it had only
16,000 in 1896. The reply was obvious, that
it had collected 8,000 Rs from past oper-
ations of trade and this sum could
not be handed over to any partner with-
out at least coming into the assessable accounts.

10 In the same clause of this paragraph ~
Mr Candell goes so far as to contend that debts
whether due or collected are capital and
therefore not assessable; and that when
collected a firm may utilize the proceeds
as they please, and draw them out if they
wish, without this being liable to assess-
ment for tax. This needs no reply.

11 The broad question is whether a firm
may distribute money to partners, with-
out showing it as profits, and unless on
proving that it is derived otherwise than
from profits. In the present case it appears
to me that Partners profits (now for the
first time drawn out) are sought to be
excluded by a mere trick of account; and
that if this be allowed the firm will
never return any but trifling profits until
the whole of its "capital" of $2\frac{3}{4}$ lakhs has
been "withdrawn".

12. All ~~and~~ available papers are forwarded
herewith.

I have &c.
(Sd). H. Tremenhare
Collector

(True copy)

4/11/97

Refm 93 no 249
97.

Vilgin collector's office
Ootacamund 10th April 97

Firm

J. H. A. Tremenhare Esquire
Acting collector of the Vilgin

2

The Secretary to the Commissioner
of Separate Revenue
Madras.

Sir,

I have the honour to reply to
Board's Proceedings Refm Govt. Register no 3248
1897
(Messrs Leishman & Co's Income Tax appeal)

2. When the firm was established. A
reference to the Report on Breweries shows
that the Arvenghant (Castle) Brewery
was established in 1884. At that time,
the Ootacamund (Vilgin) Brewery was
a branch of the Murree Brewery, assessed
at its head office. In 1893 the firm,
which was working the Arvenghant, bought
the Ootacamund Brewery.

3. The amount of Income Tax paid by the
firm since 1886.

(a) No figures can be traced from 1886
to

(Last year) "we personally represented
"to Mr. Mc Cartie that the sum of Rs 5
"per Hopshead was too high a rate, but
"the return of Rs 10,000 was ultimately
agreed

agreed upon?

b. There is an Office note of September of that year (1892) observing that there is nothing on record to show that Mr. Mc Cartie fixed the rate of profit at Rs 5 per Hogshead. However, that arrangement continued, even after the firm bought the Ootacamund brewery, until the present year. In 1893 and 1894 this office objected to the returns of the firm which merely stated net profit, and asked that the various headings might be filled in, in detail. The firm replied that their accounts being in the hands of an Arbitration Committee they could not comply with this request, but hoped to do so in 1895. In that year and 1896 the matter seems to have been overlooked. The firm have now for the first time been able to make out a balance-sheet, which is for the year ending 30th June 1896.

7. Does the sum of Rs 22,520 withdrawn by the partners, represent capital and profits not drawn in former years but upon which tax has already been paid? The Board will see from

The

the above that in the absence of accounts for previous years it is impossible to check the statement of Mr Leishman that until this year the partners have not drawn out any profits. But let it be so. Then the profits accruing each year were first taxed but then (as is admitted) re-invested in the business. The balance sheet will show how this increase of capital has been spent on buildings, machinery etc, the enormous value of which is shown and may be compared with the small original capital of some Rs 30000 already reported. The result of withdrawing the re-investment, having thus been utilized can be withdrawn in only one possible way, namely, out of profits. *

8. If a chemist makes a profit of Rs 5,000 and re-invests it in his business by extending his shop, and a year or two after, wishes to transfer this sum to his private banking account, he can only do so, if he has made sufficient profit to allow of this and that

x
So far however as the re-investment was spent not in a permanent form (buildings, machinery etc) but in transient stock (barrels, barley etc) any decrease in that stock in the course of a year with the object of withdrawing the re-investment, would affect the out-turn and consequently the profits of the next year.

and that profit is taxable.

9. The working of the Act would be reduced to an absurdity if the Brewery firm could pay no profits until it had recouped itself, e.g., the 112,000 Rs profit it has returned since 1893-94 and re-invested in the business.

I have the honour to be,
Sir,

Yours most obedient servant

(signed) H Tremereere

Acting Collector

(True copy)

For collector

Cy. 11
WLC
4/17

2263

Nilgiri Collector's Office
Coimbatore 4th September 1897

From.

J. H. A. Trueman Esquire
Collector of Nilgiris.

To

The Secretary to Government
Revenue Department
Stone House Hill

Sir,

With reference to Memorandum
C No 6836 of 1897, dated the 3rd instant,
I have the honour to forward here-
-with copies of my letters to the
Board, viz, Regs on G. B No 249 of
1897 dated ~~18~~¹⁸th March 1897 and
10th April 1897 regarding —
Messrs Lushman & Co's Income
Tax for the official year 1896-97.

I have the honour to be
Sir
Your most obedient servant

J. H. A. Trueman
for Collector

Messrs Leishman & Co

REVENUE DEPARTMENT.

Income tax appeal

C. No. 6836 and 7702 of 97

From Messrs Leishman & Co
& the Collector of the Mithun

Dated 7. viii & 4. ix. 1897.

The Hon Sir Henry Bliss & C. L.

FOR ORDERS.

The petition is a declamation
rather than arguments.

The only matter really in dispute
is a small doubtful sum, & the Collector
the Rs 22520 paid the partners was
Capital returned on profits. No sum
was that it was the latter. The sum
many statements of receipts and ex-
penditure.

Relay accounting & receipts
and paid by Mithun -

Expenditure among the Mithun shows
Rs 263424-11-7 receipts & Rs
262361-3-8 expenditure - But
under the expenditure is included
this sum of Rs 22520 - That is,
the receipts of the year were Rs 22520
more than the expenditure including
what the partners drew. What, then,
can this sum be but profits? The
petition should be endorsed that the fact
regards its inability to do so. 21/10/97

Messrs Leishman and
Co of Ootacamund submit thro'
their Solicitor Mr Cowdell, a petition
to Govt praying for a revision of
the orders issued by the Board of Rev.
on the appeal preferred by them
against the decision passed by the
Collector of the Mithun fixing their
income during the year 1896-97 as
Rs 50837 for purposes of assessment
under the Income Tax Act.

2. The petition to Govt is,
it is submitted, not very pertinent
worded. It refers vaguely to the
Board's orders as unconstitutional
irregular, illegal and unjust and
leaves the Govt to find out the
point or points of their complaint
from the mass of accounts and
correspondence therewith forwar-
the facts of the case, as far as it

could

2

could be gathered from these are briefly set forth below for information

FOR ORDERS.

3. The firm which originally consisted of two partners started with a capital of Rs 30,000 and now owns two breweries — one at Aravangal established in 1884 and the other at Ootacamund purchased from the Murree Brewery Company in 1893. The capital of the two partners has since increased to 2 3/4 lakhs while the total assets of the firm are now reported to amount to four lakhs of rupees. There is nothing on record to show how exactly i.e. on what principle this firm or the Murree Brewery Company was being assessed to income tax prior to 1892. It alleges that it had been returning its profits at the rate of Rs 5 per hogthead and that this rate was fixed long ago by Mr McClellan in the case of the Murree Brewery Company. Whatever might have been its origin, the above arrangement i.e. the arrangement under which the firm was to return its profits at the rate above mentioned, was allowed to be continued during the

the period intervening between 1892 and 1896 on the ground that its accounts and books were in the Civil Courts and were not available for purposes of inspection and scrutiny. In June 1896, however, Mr Rees insisted upon the firm's furnishing true and complete returns as required by the Act and after some correspondence with Mr Rees and his successor, Mr Smeethere, it furnished the necessary returns in Sept. 1896. Mr Smeethere then assessed its taxable income at Rs 50,837-8-4 composed (approximately) of the following items:

Taken by the Partners	Rs 22,520
Paid off mortgage & provide	16,000
Depreciation in buildings	8,785
Profit & loss	3,531
	50,836

The firm at first paid the tax on the above sum but subsequently stated that it had done so under protest and put in an objection petition to the Collector in Jan. last. A copy of this petition has not been submitted to you. But for the Collector's order thereon of 27th Jan.

25

27th Jan^y, it appears that the firm took exception to both the first and second items above shown on the ^{alleged} ground that the means of making the payments accrued solely from reduction of Stock, Rs 20,700, and Rs 8,600 - the balance of debts due in their favour. It was then for permit can only on Rs 8,785 on account of depreciation in buildings wrongly taken into account in arriving at its net profit and Rs 3,531, the balance as per profit and loss account. The Collector however pointed out that the two items first mentioned were not covered by the amounts referred to by the firm, that the balance of debts should properly be added to ^{its} income and not be deducted therefrom for the reason that "since the firm were owed a lakh in 95 and only 60,000 in 96, they collected 40,000; since they owed 76,000 in 95 and only 44,000 in 96 they paid 32,000, the result being a net gain of 8,000 and that the reduction in Stock was not due to any loss but was caused by a non replacement of stocks sold which selling was a source of

3

*
9300 in beer hops & barley,
7700 in stocks in trade

I should say that debts due to a firm, if an account of articles sold by the firm, as I suppose there were, were income, when paid
BP

of profit and therefore of income. He accordingly declined to disturb the original assessment.

4. Against the Collector's decision the firm appealed to the Board in Feb^y last alleging (1) that the sum Rs 22,520 represented the amount withdrawn by partners out of capital or accumulated profits on which tax had been paid

(2) that the Collector was wrong in having disallowed the sum of Rs 17,000 on account of reduced Stock belonging to capital account, for (apparently the firm wanted to say, in the analogous case) money realized in the sale of stocks in one year and intended to be paid on account of new Stock ordered could not be considered to be profits merely on the ground that it was kept in hand at the end of the year.

(3) that similarly the debts due to the firm being capital cannot be converted into profits by the mere process of collection (4) that in disallowing Rs 8,785-11-6 ^{the Collector} for depreciation of buildings, had not

not

2
T had not allowed ^{it} to substitute therefor
27th of the actual expenditure Rs 768-6-8
look & incurred by it on repairs.
and the Board after obtaining a report
the ^{ally} or rather two reports from the Collector
the p declined to interfere in the firm's
medi half after remarking that it was
Rs 8 "extremely difficult to follow the meaning
then of the appellants and their arguments,
can that Rs 768-6-8 on account of repairs
of for which they claimed a deduction
tax was apparently included in the
its amount 3531-12-10 representing
bo the profit + loss during the year, and
con that as regards the main point at
on issue viz when once a party had
to made up his accounts ^{whether} he should be
allowed to point to certain items, and
to say that they were capital items.
actions, such a procedure in the Board's
de view should not be allowed except on
ci the most conclusive evidence which was
wanting in Messrs Reichman & Co's case
and that the ^{variations} ~~ordinance~~ in Stocks and
in debts in no way showed that any
alteration had been made in the capital
or that particular sum was drawn
from capital and was not profits.

5. The firm now

$$\begin{array}{r} 8785- \\ + 3531. \\ \hline 12316 \end{array}$$

$$\begin{array}{r} 12316 \\ - 768 (-6-8) \\ \hline 11548 \end{array}$$

$$\begin{array}{r} 27,716 \text{ (2)} \\ 22,520 \\ \hline 5,196 \\ 50,886 \\ \hline 168 \end{array}$$

appeals to Govt in, as already
stated in para. 2 above, a hastily
worded petition and has also fur-
nished certain statements therein
which seems to render it more
difficult to ascertain what are the
present grievances— for in their
statements the firm has shown
its taxable income as Rs 27,716-12-11
while before the Collector it contended
that the amount was only Rs 12,316
and before the Board ~~apparently~~ Rs
11,548[†]. Apparently the firm now
wants the tax on Rs 22,520
alleged to have been withdrawn by
partners from the capital and on
Rs 768 spent on repairs cancelled
(though the three items referred to
come to a little, i.e. Rs 168, ⁽²⁾ over the
original amount fixed by the Coll:
as taxable) The main question
for consideration, therefore, seems
to be as pointed out by the Board,
how the Rs 22,520 should be
treated for purposes of income tax.
The firm, it will be seen, alleges that
the amount was actually withdrawn
from the capital of the two partners
and when asked how the money
was

was obtained ^{stated} ~~referred~~ that it was
by reduction in stocks and from debts
collected. In the case of the debts, the
Collector has already shown (vide page
4 above) what part of it could be
considered to be profits and ~~also~~ ^{should be} taxed
as such. In his two reports to the
Board he it is submitted seems to
conclusively prove that the reduction
in stocks referred to were really pro-
fits. ^{In reply to the question as to}
^{As to how this reduction}
was brought about Mr. D'Souza
seems to have told the Collector that
"he wished to close some out branches
and had ^{not} been replenishing their stock
on this Mr. D'Souza's remarks
"that this might affect the profits
"of following years cannot be denied,
"but it is equally indisputable that it
"does not diminish the profits of the
"year in question. An illustration
"will make this clear. At the begin-
"ning of the year, say there were in
"the Belgam Branch 1000 hogsheads
"and at the end of the year only 100.
"It follows that 900 hogsheads have
"been sold with the usual profit. To
show the value of this 900 hogsheads
"as a loss is simply misleading"

9
6 As regard the
hypothetical question involved in
allegation no (2) referred to in
para 4 above, the Collector has
remarked that "granting (what is
"not the case) that the money derived
"from the sale of stocks was held or
"set apart for the purchase of new
"stock, it remains income at least
"until the new stock is ordered" and
that this is not inequitable "for if
"this year's income is swelled thereby,
"that of next year will be correspond-
"ingly reduced". He also points out
that the profits of the firm once
reinvested in buildings machinery
~~de~~ the enormous value of which
viz 4 lakhs bears no comparison
with the original capital of Rs 30,000,
can only be withdrawn out of profits
arising from the total investment
and that if these profits are not
treated the working of the act would
be reduced to an absurdity and only
a small portion of ^{the firm's} its income tax-
able until it had recouped itself the
sum of Rs 1,12,000 of the investment
belonging to the two partners. It
is submitted that so far as the
amount

amount Rs 22,520 is concerned, the Collector has conclusively shown that the firm has no case and that it may be assessed accordingly.

7. The other item on which there appears to be dispute is Rs 768-6-8, spent on repairs, which the firm alleged the Collector should have allowed it to substitute for the amount Rs 8785 provided in ~~their~~ ^{its} accounts for depreciation of buildings. On this point, the Collector states that to the best of his recollection no request was made by the firm in that behalf, while the Board has disposed of it by merely remarking that the amount "seems to have been already included" in the item of profit + loss (Rs 3531-12-10).

The Board's inference seems to be a guesswork as neither the Collector's letter nor the accounts ~~show~~ ^{or not} whether this has been done. ~~It is not~~

~~It is not clear that the Collector~~
~~may be asked to submit a report~~
~~on the point.~~

Am
18.11.91

Under the Act the Local Govt, no doubt, has the power to revise the decisions of inferior authorities but I submit

this revisional power should not be exercised except on the clearest evidence.

In the present the only important point in dispute seems to be whether the sum of Rs 22,520 as shown as "withdrawals by Partners" can be justly claimed as a set off against the year profits. I submit it cannot be so claimed. Such an entry merely means that the partners have invested elsewhere or spent Rs 22,250 Rs of the receipts instead of reinvesting it in their business.

Applying the general tests I submit it cannot be said that the firm is over assessed.

They have been assessed on an estimated income of Rs 50,886 which is less than 10% on the gross receipts (Rs 588,073-4-2) & only 14.8% on the estimated capital of 2 ³/₄ lakhs

No useful comparison can be made with the assessment of 1908-9 for this case as there is no estimate of a profit of 5% per head of Rs. 1000.

to submit the firm has made
and no case for the interference
of the Court

Wille
24-9-58

The method on which this matter
has to be treated seems to be this -

The firm must set out their
gross receipts and ^{gross} charges which
they claim to deduct. This has
been done in Statement
flipped A & B. What the income
tax officer must do is whether the
charges claimed are admissible &
striking out those inadmissible
he shall assess the difference between
receipts and charges. Mr. Trenchard
seems to have deducted the items
mentioned in the letter only. & the
question is whether they are proper
deductions. In this connection attention
is invited to the instructions on the
back of the K notice p. 106 and
also to the instructions under Sec
18 (C) p. 42 of the Income Tax
Manual.

In regard to the sum of 22520
it will be seen from the instructions
that it has been properly disallowed.
The contention of the Firm is that

If you have to borrow in order
to carry on, that would be a loan, in trade
in the year in which you borrow; and you
would deduct the amt. under head (b)
on p. 107. But when you make a profit
from what you have formerly borrowed,
you may not ^{again} make
the deduction - *W*

But in also item 16 on
p. 108. Manual.
If depreciation machinery plant
but this depreciation is not admissible.
in buildings, which *W*

will draw as an int.
Income. but Capital. But one
difficulty in accepting this is
that if it be true the partners
must have lived on air for they
got no other income from the
concern. What they do not realize
is that such moneys are income
for the purposes of the Income Tax
Act (vide para 11. page 10 of the
Manual)

In regard to the sum of 16000/-
it is not to show that the deduction
has been properly disallowed. Probably
it has been but inquiring whether
it is not in the same category as interest
on borrowed capital on the amount
may have been borrowed and used
for the purposes of the trade which
is the real gist of the matter.
In regard to the item depreciation
8785. it will be seen that
depreciation up to 10% is a proper
charge. (Manual p. 107. Note 13)
but this item is nowhere shown in
the firm's expenditure (vide Statement
flg 13)

I have seen these two statements
of expenditure and taken out

these items which seem objectionable.
under the Act. The total charge
the disallowed amount to Rs.
67343. and the assessable income
to Rs. 68407. Messrs. Lushman &
Co have been assessed on Rs. 50886.
So that they have probably let
off light and the best course
seems the for Govt. to refuse to
interfere.

30.9.97.

* This is curious. B.
Haskins was the Insp. of the
O at one time - Draw Mr.
Willock's attention to this, D.O.
B.

Items disallowed.

General charges.	2385.
Travelling expenses.	2195.
General commo.	3729.
Takia Mahmood loan ^{but for} 23000.	
Hotel expenses.	265.
Lundry credits loan.	7298.
Taxes.	1820.
Loan.	195.
Cash not accounted for.	1243.
Plant + machinery.	73.
Loan W. Haskins.	18.
Adm. expenses.	173.
General charges Cattle Nursery.	17.
Purtners' withdrawals.	14520.
Loan to Humphry Gauden.	300.
Withdrawals Humphry Gauden.	8000.
Cum gratia.	1213.
Gen. charges.	819.
	<u>67343</u>

Total receipts 5,88,074.

Total expenditure 5,87,010
deduct: 67,343
5,19,677

Balance Bal. 68,407.

F 3,000-14-7-94.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read Case No 6836 & 7702

G.O. Misc. No 5235 d/7 Oct 97

The Govt reports that
in its opinion, no sufficient
reason has been shown
for interference on behalf
of the petitioners

Mt
6.10.97 7/10/97

To R.S. Cordell Esq Solicitor
for Messrs Lushman & Co
with a view to their Petn
thru the Bd of Revenue S.R.

To Mr Willock

My dear Willock

Messrs Lushman & Co

They presented an appeal to Govt
from B.P. No 3786 d/2 July 97 This
appeal has been rejected in G.O.

& 5235
7-10-97 which is being communi-
cated to the petitioners thro' the
Board in the ordinary course.

Among the enclosure which are
being returned to the petitioners

with the return

See for.

607/10/97

to be put up to the Govt

Expenditure for the year
ending 30 June 1896.

I am directed to draw your
attention to the following

item therein viz

"B. Hawkins, Loans re Hotel Expenses"

"Dec 95, 8 Rs; Mar 96, 10 Rs; Total, 18 Rs."

From the history of the
Services of Gazette & other
Officers, No 6 corrected to 1896
it appears

It would appear that
B. Hawkins was the Inspector
of the Combalin Circle
from 8 Oct 94 to 18 June 96.

Vide History of Services of
S. Officer p. 287. perhaps.

1896
6.10.97

7/10/97

then given for copying

copied

then examined

then signed

189

READ AGAIN G.O., No.

189

DATED

OUR IT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

SENT WITH DITTO.

HAS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

S.E.-

A = Copy in full.

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