

Revenue (1894) Department.

PRESS SERIES.

G.O., No. 151

Dated 12th March

[Despatch Abstract.]

Income - Tax

Passing orders as to when assessments to — should be considered made and as to the date from which the commencement of proceedings for the recovery of the tax must be taken to run.

BACK PAPERS.

ORIGINAL PAPERS.

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98

Government (1898) of Madras.
REVENUE.

Recd.

Regd.

1898.

Enclosures

Spare copies

G.O., No. 151, 12th March 1898.

MARCH.

Income-tax.

Passing orders as to when assessments to — should be considered made and as to the date from which the commencement of proceedings for the recovery of the tax must be taken to run.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following Proceedings of the Board of Revenue (Separate Revenue), No. 548, dated 19th December 1897 :—

Read—again the following Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 4894, dated 10th November 1897 :—

Read—the following letter from S. H. WYNNE, Esq., Collector and District Magistrate, North Arcot, to the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, dated Chittoor, 22nd October 1897, Ref. on Cur. No. 1803-Eng. :—

I have the honour to submit the following case for the orders of the Board.

2. M.R.Ry. G. Kothandaramayya Garu, the Head-quarter Deputy Collector of this district, assessed a Nattukottai Chetti of Devacottah in Madura district, carrying on money-lending transactions at Chittoor of this district, in a sum of Rs. 115-10-0 for 1896-97 on an estimated income of Rs. 4,440. The assessee objected to the tax on the ground that his father has been assessed at Madura inclusive of the income earned at Chittoor. The Deputy Collector kept this objection petition pending till the 24th June 1897 and on that day dismissed it for default of appearance of the party and confirmed the tax. On the 26th idem the Deputy Collector directed the Tahsildar of Chittoor to issue a demand for the collection of the tax due by the assessee stating that it fell due on the 29th idem. The Tahsildar, however, through whom an endorsement communicating to the assessee the order passed on his objection petition was sent, noticed from the said endorsement that the period of thirty days allowed for payment of the tax from the date of disposal of the objection petition did not expire within the month of June and represented to the Deputy Collector that no demand can lawfully be issued before the tax fell due. After some correspondence the Deputy Collector and the Tahsildar met together before the 30th June 1897 and discussed the question among themselves. The Deputy Collector disagreeing with the Tahsildar gave some oral instructions to the Tahsildar regarding the issue and the execution of the demand. It is not clear now what these oral instructions were. The Tahsildar says that he was asked to issue a demand before the 30th June and to keep its execution in abeyance until further orders. The Deputy Collector says on the other hand that he directed the Tahsildar to issue a demand before the 30th June, have it served on the assessee immediately, but to delay distraining property, &c., until the expiry of the thirty days from the date of disposal of the objection petition. According to what he thought was the Divisional-officer's order, the Tahsildar "issued" a demand but did not have it served, and subsequently asked the Deputy Collector for instructions as to whether he can take steps on the demand already issued. After some delay and further correspondence the Deputy Collector finally directed the Tahsildar to execute the demand already issued. The Tahsildar entertaining his own doubts about the legality of the Deputy Collector's order and being afraid of a civil suit, referred the matter to me for orders.

3. The Deputy Collector was called on to explain his illegal procedure (Act II of 1864 and section 30, Income Tax Act) in directing the issue of a demand before the tax was recoverable and also on the following points :—

- (a) the cause of the delay in the disposal of the objection petition;
- (b) the reason why he assessed the Nattukottai Chetti in question in this district contrary to orders contained in Board's Proceedings, Nos. 24 and 235, dated 12th January 1891, and 15th April 1891, respectively;
- (c) the reason for his showing 29th June 1897 as the date on which the tax fell due while it actually fell due only in July 1897.

4. In reply he quoted Board's Proceedings, No. 817, dated 21st November 1889, which of course, is not relevant and as regards the other points explains as to (a) that he got information from the Tahsildar that the assessee was doing business *independently* at Chittoor on 28th February 1897; that he issued the assessment notice ("H" notice) on 10th March 1897; that the assessee objected to the tax on the ground stated above on the 31st March 1897; that he made a reference on the subject to the Head Assistant Collector of Madura on the 8th April 1897; that the Head Assistant Collector's reply stating that the income earned at Chittoor was not taken into account in assessing the assessee's father at Madura, was received on 25th May 1897; that he and his office were most busy at the time conducting jamabandi of Vellore taluk; and that he therefore disposed of the petition on 24th June 1897. He has made no explanation of the delay in his office prior to 28th February 1897, nor has he satisfactorily explained the delay which took place after 25th May 1897 in a matter which was so emergent. I find from the records submitted that the Tahsildar first gave information about the assessee's income on the 24th November 1896 and that the Deputy Collector, after a delay of nearly two months and a half made a simple reference to the Tahsildar on the 8th February 1897, which was replied to by the Tahsildar on the 28th February 1897. The Deputy Collector is also to blame in not having sent proper reminders to the Head Assistant Collector of Madura when no reply was received from him after a reasonable time. I therefore consider that the delay in the matter is unpardonable.

5. Next as to the point (b) why he assessed the Chetti in question in this district contrary to orders, the Deputy Collector has no satisfactory explanation to offer. He merely says that the Tahsildar reported that the Chetti was trading *independently* at Chittoor and that he therefore assessed him.

6. As regards point (c) the Deputy Collector says that the mistake was committed in his office and that he failed to notice it when passing the draft.

7. A copy of his letter, Ref. on Cur. No. 1415-Eng., dated 15th October 1897, containing his explanation is enclosed.

8. The tax cannot now be collected (section 30 (5)) and there has been a loss to Government. The question arises whether the assessment should be cancelled or whether the amount should be written off as irrecoverable. I believe the orders in Board's Proceedings, No. 24, dated 12th January 1891, and Board's Proceedings, No. 235, dated 15th April 1891, are only directions and not notifications under section 47 of Act II of 1886, and therefore the assessment of a Nattukottai Chetti elsewhere than in Madura is not actually illegal. If so the amount must be written off. I request orders.

ENCLOSURE No. 1.

From M.R.Ry. G. KOTHANDARAMAYYA GARU, M.A., Head-quarter Deputy Collector, North Arcot, to the Collector of North Arcot, dated Chittoor, 15th October 1897, Ref. on Cur. No. 1415-Eng.

In reply to your letter, No. 1803-Eng., dated 14th October 1897, I beg to submit the record of the assessment and to state that, on information received from the Tahsildar on the 28th February last that Muthiah Chetti was doing business at Chittoor *independently* of others in his native place, he was assessed by me and a notice to that effect issued on 10th March.

2. The assessee's objection was received on 31st March stating that the business transacted at Chittoor was only a part and parcel of the business transacted by his father in the Madura district, and the Head Assistant Collector was addressed by me on 8th April.

3. His reply stating that this business in Chittoor was not taken into account in assessing the petitioner's father in that district, was received on the 25th May when myself and the office were most busy at the jamabandi of another taluk, and on the petitioner's failing to appear in answer to notice, which, however, was not personally served, the objection was dismissed on 24th June and orders sent to the Tahsildar soon after for collection of the amount due.

4. Though the amount be not "recoverable" till after the expiry of thirty days after the order on objection petition, I thought that the demand which was for an amount actually declared due to Government might issue and be shown to the party by the end of June, the actual distress being put off till the expiry of the remainder of the term of thirty days.

5. Board's Proceedings, No. 817, of 21st November 1889 (herewith submitted with the district circular issued thereon) which is a reference on the direct question in Board's Proceedings, No. 410 of 5th August 1887, seems to contemplate circumstances under which actual distress might have to be postponed after merely exhibiting or handing the demand notice to satisfy the legal requirement.

6. The entry of 29th June under the heading "fallen due" in the marginal note of my order to the Tahsildar was a mistake in the office which I failed to notice in passing the draft.

Resolution—Mis. No. 4894, dated 10th November 1897.

From paragraph 4 of the letter read above it would appear that the demand notice (Form II) was served on the assessee on the 10th March 1897, and proceedings for the recovery of the tax was therefore commenced on that date—*vide* Board's Proceedings, No. 817, dated 21st November 1889, and the note to section No. 30 (5) in page 57 of the Income-tax Manual. The fact that the assessee subsequently presented an objection petition which was in due course dismissed has no bearing on the point. The amount should now be recovered if need be by distraint.

2. The Board agrees with the Collector in considering that the delay of two months and a half on the part of the Deputy Collector in making a simple reference to the Tahsildar is unpardonable. He should be severely censured for his dilatoriness in the matter.

(True Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

To the Collector of North Arcot.

Read—also the following letter from S. H. WYNNE, Esq., Collector and District Magistrate, North Arcot, to the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, dated Palmanér, 20th November 1897, Reference on No. 1803-Eng. :—

As the ruling at the beginning of paragraph 1 of Board's Proceedings, Mis. No. 4894, dated 10th November 1897, is opposed to the practice and the interpretation of the law which have hitherto obtained in this district, I have the honour to request that the Board will give instructions on certain points in order that I may issue a circular on the subject.

2. In the Board's Proceedings, No. 817, dated 21st November 1889, which the Board now quotes, it was ruled that the commencement of proceedings was "the time when a copy of the Demand Notice was handed to defaulter." The demand was understood here to be Demand Notice No. I under Act II of 1864, not the assessment notices "G" or "H." In fact it seems to me a straining of language to describe these latter as demand notices as they are merely directions to take notice of the assessment and of the fact that it should be paid within sixty days. Again if the service of form "H" is "commencement of proceedings" under section 30 (5), these notices can be served up to three months after the expiry of the year. But the Board has ruled (Board's Proceedings, No. 338, dated 4th August 1893,) that the assessment must be made within the year. It was understood here that the "assessment" was not completed till the assessment notices had been served, and therefore that it was obligatory that they should be served before the year expired. But as this would render nugatory the Board's reference to section 30 (5) in Board's Proceedings, No. 817, dated 21st November 1889, I request to be informed what exactly constitutes "assessment" for the purpose of the ruling in Board's Proceedings, No. 338, dated 4th August 1893, since it is not the service of form "H" (which is served in every case in this Presidency whether the assessment is included in form "G" or not).

Resolution—No. 548, dated 19th December 1897.

The Board, as at present constituted, is of opinion that, for the purposes of the ruling contained in Board's Proceedings, No. 338, dated 4th August 1893, the assessment should be considered made when the list required by section 16 of the Act is published and the notice required by section 17 of the Act is served. The statement in the letter of the Collector of Madras printed in Board's Proceedings, No. 817, Land Revenue, dated 21st November 1889, that the service of a distraint warrant is the commencement of proceedings for purposes of section 30, clause 5 of Act II of 1886, was made in error, and the published list and served notice referred to are to be considered such commencement.

(True Copies and Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

To the Collector of North Arcot.
of Madras.

" Copy to all other Collectors.
" to the Secretary to Government, Revenue Department.

ORDER—No. 151, Revenue, dated 12th March 1898.

Separate Revenue No. 20.

The ruling in Board's Proceedings, No. 338, dated 4th August 1893, was that assessments to the tax should be made within the year, and that no power is given to the Collector to assess after the year has expired. The Government considers that this ruling is correct, and further agrees with the Board in the view expressed in the first sentence of the Proceedings read above, viz., that, for the purposes of the ruling referred to, the assessment should be considered made when the list required by section 16 of the Act is published and the notice required by section 17 of the Act is served. It follows therefore that the second sentence of the Proceedings read above, which lays down that the published list and served notice referred to are to be considered the commencement of proceedings for the recovery of the tax, is inaccurate. Under section 30, clause 5 of the Income-tax Act, 1886, such proceedings must be commenced within three months after the close of the year. The Government considers that the commencement of proceedings for the purposes of this section must be taken to run from the date of the issue of a distraint order or a demand notice in accordance with the provisions of sections 8 and 25, respectively, of Act II of 1864 or of the issue of an order under sub-section (1) of section 30 of the Income-tax Act.

(True Extract.)

Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).

Exd. Shaik Karim.

30 Copies.

NOTES CONNECTED WITH G.O., No. 151, REVENUE, DATED
12TH MARCH 1898.

From the Board of Revenue (Separate Revenue), No. 543, dated 19th December 1897.

[SUBJECT:—When assessments under Part IV of Income-tax Act should be considered made.]

To Secretary—

The Board of Revenue submits, for the information of Government, a copy of its Proceedings embodying certain revised rulings which it has issued on the questions (1) when assessments under Part IV of the Income-tax Act should be considered to be made, and (2) what should be treated as "commencement of proceedings" for purposes of section 30, clause 5 of the said Act.

2. The section last referred to, after enumerating the methods in which arrears of the tax might be recovered, sets forth in clause 5 that "no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable." The question as to what should be considered to be "commencement of proceedings" for

purposes of this clause was first raised in 1887, when the Board, in consultation with the Government Pleader, held that it was the actual service on, or the conveyance to, the defaulter of the demand notice.

The specific question raised was whether the issue of the demand or its service constituted the commencement of the proceedings. N.E.M.
G.O., No. 860, dated 2nd September 1887. The Collector of Madras, interpreting the term "demand notice", here referred to, to mean "distrain warrant," enquired in September 1889 what constituted the service of such notice or warrant, and the Board, in its Proceedings No. 817, Land Revenue, dated 21st November 1889, apparently accepting the Collector's interpretation of the term, ruled that "if for any reason a distress is not actually levied at the time, a copy of the demand notice should be handed to the defaulter and his signature obtained on the original or in case of his absence affixed to or left at his usual place of residence." The Board's Proceedings was not communicated to Government. The effect of the two rulings will be found concisely set forth in the note under section 30 (5) of the Act on page 57 of the Income-tax Manual (Madras), wherein it is stated that "the commencement of the proceedings referred to in section 30, sub-section (5), is the time when a copy of the demand notice shall be handed to the defaulter and his signature obtained on the original, or, in case of his absence, shall be affixed to or left at the defaulter's usual place of residence." It will thus be noticed that in the passages above quoted the word made use of is "defaulter" and the "demand notices" referred to therein should consequently be, as stated by the Collector of Madras, in whose view the Board of 1889 tacitly concurred, "distrain notices."

3. In November last, however, when a case of late assessment made by a Deputy Collector in North Arcot was submitted for orders, the Board held that as the demand notice required by section 17 of the Act was served on the assessee on 10th March 1897, the proceedings for the recovery of the tax should, under the rulings quoted in paragraph 2 above, be considered to have commenced on that date. The Collector of North Arcot, Mr. Wynne, thereupon pointed out that it would be a straining of the language to describe the former, i.e., the notices under section 17 (H notices) as "demand notices" and that further if their service could be considered to be "commencement of proceedings" for purposes of section 30 (5) of the Act, they could be served up to three months after the expiry of the year — the

latter, a procedure inconsistent with the view expressed in paragraph 1 of Board's G.O., No. 813, dated 12th September 1893. Proceedings, No. 338, dated 4th August 1893, wherein it was held that under sections 14 and 16 of the Act "assessments to the tax are to be made within the year and no power is given to the Collector to assess after the year has expired." Mr. Wynne accordingly requested that definite rulings might be issued both as to what constituted "assessment" for purposes of the ruling contained in the Board's Proceedings of August 1893, and also as to what should be considered to be "commencement of proceedings" for purposes of section 30 (5) of the Act.

4. The Board now states :—

(1) that, as at present constituted, it "is of opinion that, for the purposes of the ruling contained in Board's Proceedings, No. 338, dated 4th August 1893, the assessment should be considered made when the list required by section 16 of the Act is published and the notice required by section 17 of the Act is served."

(2) that "the statement in the letter of the Collector of Madras, printed in Board's Proceedings, No. 817, Land Revenue, dated 21st November 1889, that the service of a distraint warrant is the commencement of proceedings for purposes of section 30, clause (5) of Act II of 1886 was made in error," and

(3) that "the published list and served notice referred to are to be considered such commencement."

The Board apparently has adhered to its former view that assessments under the Act can only be made within the year. If so, the Board's rulings appear to deprive section 30 (5) of the Act of any meaning. If assessments to be legal must be made on or before 31st March, and if publication of the list required by section 16 of the Act and the service of the notice required by section 17 of the Act, constitute the making of the assessment and also the commencement of proceedings for recovering the tax, then it is clearly unnecessary to say that such commencement shall not take place more than three months after the 31st March. Possibly, however, it is the Board's intention to modify the order contained in its Proceedings, No. 338, dated 4th August 1893, viz., that assessments to be legal must be made within the year. In this case, the Board's position is easily intelligible.

Under section 29 of the Act the tax is, unless otherwise provided, payable on the 1st June of each year. After that date the tax is in general due. In this view the G and H notices are clearly the commencement of proceedings for recovering the tax and under section 30 (5) they may be taken up to the 30th June following. Section 4 of the Act is a direction to the public who should know the law; the tax, if any, each one should pay should be known to himself. He should pay it by the 1st June of each year. If he does not, he may be compelled to do so by proceedings which must be begun before the 30th of June of the following year. Board's Proceedings, No. 338, dated 4th August 1893, would in this view be directly contradictory to the provisions of section 30 (5) of the Act and should, I submit, be distinctly cancelled.

If this view is not accepted, the only alternative seems to be to consider the service of a distraint notice as the commencement of proceedings for the recovery of the tax. This view would necessitate the cancelment of the present proceedings of the Board. This view is apparently that held in Bengal—*vide* note to clause 30 (5) in the Bengal Manual, page 33.

To the Honourable Member—

N.E.M.
21-2-98.

I think the service of the distraint notice must be taken to be the commencement of "proceedings for the recovery" of the tax.

G.S.F.
25-2-98.

Yes, that is, the first sentence of the Board's Proceedings is right and the second sentence wrong. That's about it, I take it.

H. W. E[LISS].
1-3-98.

To Secretary—

Please see draft below.

N.E.M.
3-3-98.

Office—

Is there any other process issuable under section 30 (1)? This section prescribes the mode of "recovery."

G.S.F.
4-3-98.

To Under Secretary—

The section prescribes that the sums due under the Act may be recovered in the following three ways, viz. :—

(1) Under the law applicable for the recovery of land revenue, *i.e.*, under the provisions of Madras Act II of 1864, and apparently of India Act I of 1890;

(2) under the provisions of the Acts relating to the recovery of Local Fund rates and municipal taxes;

(3) by an order issued by the Collector of Income Tax in accordance with the provisions of section 254 of the Civil Procedure Code.

2. In this Presidency it has been decided that the first and the last courses alone should be adopted—the first in all ordinary cases and the second in those exceptional cases, such as taxes imposed on shipping companies, etc., where the procedure relating to the recovery of land revenue could not be adopted without inconvenience—*vide* paragraph 30 of the Board's Proceedings on G.O., No. 319, Revenue, dated 5th May 1896.

3. Under Act II of 1864, as supplemented by India Act I of 1890, both the movable and immovable property of the defaulter can be proceeded against. In the case of the movable property, the procedure is what is indicated in the draft order put up, *i.e.*, to issue the distraint order first if the tax is not paid in time, the distress being made only if the sum due be not paid at once, *i.e.*, on the order being shown to the defaulter—*vide* section VIII of Act II of 1864. In the case of immovable property, however, prior to the attachment or distraint of property, a demand notice (independently of the first assessment) has to be served on the defaulter and he is to be allowed to pay the amount due by him within a period to be fixed by the Collector "with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid." If the amount is not paid in accordance with the demand notice, his property is to be attached by another notice, viz., an attachment notice which has to be fixed in some conspicuous part of the land—*vide* sections XXV to XXVII of Act II of 1864. Thus, corresponding to the "distraint" notice or order in the case of movable property, there are two notices—a demand notice and an attachment notice in the case of immovable property. As the persons assessed to income tax will always be men of means, it is but rarely that their immovable property will have to be proceeded against, and that is apparently the reason why the Collectors of Madras and of North Arcot and the Board of Revenue refer merely to distraint notices or "demand notice No. I under Act II of 1864"—*vide* Form No. I on page 152 of the appendix to Board's Standing Order No. 106. In the case of attachment of immovable property, proceedings for purposes of Act II of 1886, section 30 (5), should obviously be considered to have commenced when the demand notice proper under section XXV of Act II of 1864 is served on the defaulter (*i.e.*, the notice in Form No. 4 on page 153 of the appendix to Board's Standing Order).

4. Under the Civil Procedure Code, when the order is for the payment of a sum not exceeding Rs. 1,000, the Court may direct on passing the decree its immediate execution thereof "by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court or against his movable property within the same limits" (section 256). If the above

4
course is not followed and in all cases where decrees for money have to be executed, the procedure adopted, when the property is in the possession of a defaulting judgment-debtor, is—

(1) in the case of movable property, to issue an attachment warrant corresponding exactly to the distraint order under Madras Act II of 1864 (*vide* Form No. 136 on page 339 of the Civil Procedure Code) or

(2) in the case of immovable property, to attach it by an order prohibiting the judgment-debtor from transferring or charging the property in any way," etc., (section 274) and

(3) then, if necessary, direct its sale (section 284) after issue of a notice of sale and proclamation—*vide* section 287 and Form No. 145 on page 343 of the Civil Procedure Code.

When, however, the property is in the actual possession of some one other than the judgment-debtor, the procedure, again, is to attach such property by a prohibitory order prior to its sale or, if it is money, until the Court directs how it should be disposed of—*vide* forms on pages 340—343 of the Civil Procedure Code.

It seems thus clear that if an order is issued by a Collector of Income Tax under section 30 (1) of Act II of 1886 for the payment of a sum, the first step that has to be taken against a defaulter is to issue an "attachment order" or a warrant of arrest. The order first mentioned, viz., that issued under section 30 (1) is made long after fixing the assessment and corresponds, it is submitted, to the demand notice to be issued under section XXV of Madras Act II of 1864, the only difference being that while the former applies to both movable and immovable property, the latter is issued only when immovable property is to be attached. That order, therefore, must apparently be considered to be itself one of the methods in which proceedings can be commenced for purposes of section 30 (5) of the Income-tax Act.

5. If the above view is concurred in, it will perhaps be more accurate to substitute, in the last sentence of the draft order, for the words "the service of a distraint warrant," the following, viz.:—

"the service of a distraint order or demand notice in accordance with the provisions of sections VIII and XXV, respectively, of Act II of 1864, or the issue of an order under subsection (1) of section 30 of the Income-tax Act II of 1886."

P.N.M.
11-3-98.

To Secretary—

This emendation may be made. But modes of procedure under Local and Municipal Acts may be adopted, though this is not the rule. The meaning of Government will, however, be clear and applicable to such cases also *mutatis mutandis*.

N.E.M.
12-3-98.

I have modified the last sentence of the draft, which may now issue.

G.S.F.
12-3-98.

1898
REVENUE DEPARTMENT.

1897.

15-3-98
Board of Revenue

(Separate Revenue),

MADRAS.

Printed January 28th, 1898.

Recd 3 Feb
Regd 4

Proceedings, No. 548, 19th December 1897.

DECEMBER.

Informing the Collector of North Arcot that, for the purposes of the ruling contained in Board's Proceedings, No. 338, dated 4th August 1893, the assessment should be considered made when the list required by section 16 of the Income-tax Act is published and the list required by section 17 is served.

PROCEEDINGS OF THE BOARD OF REVENUE
(SEPARATE REVENUE).

READ—again the following Proceedings of the Board of Revenue (Separate Revenue),
Mis. No. 4894, dated 10th November 1897:—

Read—the following letter from S. H. WYNNE, Esq., Collector and District
Magistrate, North Arcot, to the Secretary to the Commissioner of Salt,
Abkari and Separate Revenue, dated Chittoor, 22nd October 1897, Ref. on
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I have the honour to submit the following case for the orders of the Board.

2. M.R.Ry. G. Kothandamayya Garu, the Head-quarter Deputy Collector of this district, assessed a Nattukottai Chetti of Devacottah in Madura district, carrying on money-lending transactions at Chittoor of this district, in a sum of Rs. 115-10-0 for 1896-97 on an estimated income of Rs. 4,440. The assessee objected to the tax on the ground that his father has been assessed at Madura inclusive of the income earned at Chittoor. The Deputy Collector kept this objection petition pending till the 24th June 1897 and on that day dismissed it for default of appearance of the party and confirmed the tax. On the 26th idem the Deputy Collector directed the Tahsildar of Chittoor to issue a demand for the collection of the tax due by the assessee stating that it fell due on the 29th idem. The Tahsildar, however, through whom an endorsement communicating to the assessee the order passed on his objection petition was sent, noticed from the said endorsement that the period of thirty days allowed for payment of the tax from the date of disposal of the objection petition did not expire within the month of June and represented to the Deputy Collector that no demand can lawfully be issued before the tax fell due. After some correspondence the Deputy Collector and the Tahsildar met together before the 30th June 1897 and discussed the question among themselves. The Deputy Collector disagreeing with the Tahsildar gave some oral instructions to the Tahsildar regarding the issue and the execution of the demand. It is not clear now what these oral instructions were. The Tahsildar says that he was asked to issue a demand before the 30th June and to keep its execution in abeyance until further orders. The Deputy Collector says on the other hand that he directed the Tahsildar to issue a demand before the 30th June, have it served on the assessee immediately, but to delay distraining property, &c., until the expiry of the thirty days from the date of disposal of the objection petition. According to what he thought was the Divisional-officer's order, the Tahsildar "issued" a demand but did not have it served, and subsequently asked the Deputy Collector for instructions as to whether he can take steps on the demand already issued. After some delay and further correspondence the Deputy Collector finally directed the Tahsildar to execute the demand already issued. The Tahsildar entertaining his own doubts about the legality of the Deputy Collector's order and being afraid of a civil suit, referred the matter to me for orders.

3. The Deputy Collector was called on to explain his illegal procedure (Act II of 1864 and section 30, Income Tax Act) in directing the issue of a demand before the tax was recoverable and also on the following points:—

- the cause of the delay in the disposal of the objection petition;
- the reason why he assessed the Nattukottai Chetti in question in this district contrary to orders contained in Board's Proceedings, Nos. 24 and 235, dated 12th January 1891, and 15th April 1891, respectively;
- the reason for his showing 29th June 1897 as the date on which the tax fell due while it actually fell due only in July 1897.

4. In reply he quoted Board's Proceedings, No. 817, dated 21st November 1889, which of course, is not relevant and as regards the other points explains as to (a) that he got information from the Tahsildar that the assessee was doing business *independently* at Chittoor on 28th February 1897; that he issued the assessment notice ("II" notice) on 10th March 1897; that the assessee objected to the tax on the ground stated above on the 31st March 1897; that he made a reference on the subject to the Head Assistant Collector of Madura on the 8th April 1897; that the Head Assistant Collector's reply stating that the income earned at Chittoor was not taken into account in assessing the assessee's father at Madura, was received on 25th May 1897; that he and his office were most busy at the time conducting jamabandi of Vellore taluk; and that he therefore disposed of the petition on 24th June 1897. He has made no explanation of the delay in his office prior to 28th February 1897, nor has he satisfactorily explained the delay which took place after 25th May 1897 in a matter which was so emergent. I find from the records submitted that the Tahsildar first gave information about the assessee's income on the 24th November 1896 and that the Deputy Collector, after a delay of nearly two months and a half made a simple reference to the Tahsildar on the 8th February 1897, which was replied to by the Tahsildar on the 28th February 1897. The Deputy Collector is also to blame in not having sent proper reminders to the Head Assistant Collector of Madura when no reply was received from him after a reasonable time. I therefore consider that the delay in the matter is unpardonable.

5. Next as to the point (b) why he assessed the Chetti in question in this district contrary to orders, the Deputy Collector has no satisfactory explanation to offer. He merely says that the Tahsildar reported that the Chetti was trading *independently* at Chittoor and that he therefore assessed him.

6. As regards point (c) the Deputy Collector says that the mistake was committed in his office and that he failed to notice it when passing the draft.

7. A copy of his letter, Ref. on Cur. No. 1415-Eng., dated 15th October 1897, containing his explanation is enclosed.

8. The tax cannot now be collected (section 30 (5)) and there has been a loss to Government. The question arises whether the assessment should be cancelled or whether the amount should be written off as irrecoverable. I believe the orders in Board's Proceedings, No. 24, dated 12th January 1891, and Board's Proceedings, No. 235, dated 15th April 1891, are only directions and not notifications under section 47 of Act II of 1886, and therefore the assessment of a Nattukottai Chetti elsewhere than in Madura is not actually illegal. If so the amount must be written off. I request orders.

ENCLOSURE No. 1.

From M.R.Ry. G. KOTHANDARAMAYYA GARU, M.A., Head-quarter Deputy Collector, North Arcot, to the Collector of North Arcot, dated Chittoor, 15th October 1897, Ref. on Cur. No. 1415-Eng.

In reply to your letter, No. 1803-Eng., dated 14th October 1897, I beg to submit the record of the assessment and to state that, on information received from the Tahsildar on the 28th February last that Muthiah Chetti was doing business at Chittoor *independently* of others in his native place, he was assessed by me and a notice to that effect issued on 10th March.

2. The assessee's objection was received on 31st March stating that the business transacted at Chittoor was only a part and parcel of the business transacted by his father in the Madura district, and the Head Assistant Collector was addressed by me on 8th April.

3. His reply stating that this business in Chittoor was not taken into account in assessing the petitioner's father in that district, was received on the 25th May when myself and the office were most busy at the jamabandi of another taluk, and on the petitioner's failing to appear in answer to notice, which, however, was not personally served, the objection was dismissed on 24th June and orders sent to the Tahsildar soon after for collection of the amount due.

4. Though the amount be not "recoverable" till after the expiry of thirty days after the order on objection petition, I thought that the demand which was for an amount actually declared due to Government might issue and be shown to the party by the end of June; the actual distress being put off till the expiry of the remainder of the term of thirty days.

4 BOARD OF REVENUE (SEPARATE REVENUE), No. 548, 19TH DECEMBER 1897.

5. Board's Proceedings, No. 817, of 21st November 1889 (herewith submitted with the district circular issued thereon) which is a reference on the direct question in Board's Proceedings, No. 410 of 5th August 1887, seems to contemplate circumstances under which actual distress might have to be postponed after merely exhibiting or handing the demand notice to satisfy the legal requirement.

6. The entry of 29th June under the heading "fallen due" in the marginal note of my order to the Tahsildar was a mistake in the office which I failed to notice in passing the draft.

Resolution—Mis. No. 4894, dated 10th November 1897.

From paragraph 4 of the letter read above it would appear that the demand notice (Form II) was served on the assessee on the 10th March 1897, and proceedings for the recovery of the tax was therefore commenced on that date—*vide* Board's Proceedings, No. 817, dated 21st November 1889, and the note to section No. 30 (5) in page 57 of the Income-tax Manual. The fact that the assessee subsequently presented an objection petition which was in due course dismissed has no bearing on the point. The amount should now be recovered if need be by distraint.

2. The Board agrees with the Collector in considering that the delay of two months and a half on the part of the Deputy Collector in making a simple reference to the Tahsildar is unpardonable. He should be severely censured for his dilatoriness in the matter.

(True Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

To the Collector of North Arcot.

READ—the following letter from S. H. WYNNE, Esq., Collector and District Magistrate, North Arcot, to the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, dated Palmanér, 20th November 1897, Reference on No. 1803-Eng. :—

As the ruling at the beginning of paragraph 1 of Board's Proceedings, Mis. No. 4894, dated 10th November 1897, is opposed to the practice and the interpretation of the law which have hitherto obtained in this district, I have the honour to request that the Board will give instructions on certain points in order that I may issue a circular on the subject.

2. In the Board's Proceedings, No. 817, dated 21st November 1889, which the Board now quotes it was ruled that the commencement of proceedings was "the time when a copy of the Demand Notice was handed to defaulter." The demand was understood here to be Demand Notice No. I under Act II of 1864, not the assessment notices "G" or "H." In fact it seems to me a straining of language to describe these latter as demand notices as they are merely directions to take notice of the assessment and of the fact that it should be paid within sixty days. Again if the service of form "H" is "commencement of proceedings" under section 30 (5), these notices can be served up to three months after the expiry of the year. But the Board has ruled (Board's Proceedings, No. 338, dated 4th August 1893,) that the assessment must be made within the year. It was understood here that the "assessment" was not completed till the assessment notices had been served, and therefore that it was obligatory that they should be served before the year expired. But as this would render nugatory the Board's reference to section 30 (5) in Board's Proceedings, No. 817, dated 21st November 1889, I request to be informed what exactly constitutes "assessment" for the purpose of the ruling in Board's Proceedings, No. 338, dated 4th August 1893, since it is not the service of form "H" (which is served in every case in this Presidency whether the assessment is included in form "G" or not).

RESOLUTION—No. 548, dated 19th December 1897.

The Board, as at present constituted, is of opinion that, for the purposes of the ruling contained in Board's Proceedings, No. 338, dated 4th August 1893, the assessment should be considered made when the list required by section 16 of the Act is published and the notice required by section 17 of the Act is served. The statement in the letter of the Collector of Madras printed in Board's Proceedings, No. 817, Land Revenue, dated 21st November 1889, that the service of a distraint warrant is the commencement of proceedings for purposes of section 30, clause 5 of Act II of 1886 was made in error, and the published list and served notice referred to are to be considered such commencement.

(True Copies and Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

(True Copy.)

A. Bantamman
Ag. Assistant Secretary.

To the Collector of North Arcot.
" " of Madras.

Copy to all other Collectors.
" to the Secretary to Government, Revenue Department.

Exd. Md. Pahilvan.

$\frac{D}{4}$ 1,000-8-4-97.

quest cha

C. No. 943 of 98

From the Board of Rev. (Seps. Rev.)

Dated 189

FOR ORDERS.

The Board of Rev. submits for the information of Govt a copy of its Propo embodying certain revised rulings which it has issued on the questions (1) when assessments under Part IV of the Income Tax Act should be considered to be made and (2) what should be treated as "commencement of proceedings" for purposes of Sec 80, clause 5 of the said Act.

2. The Section last referred to after enumerating the methods in which arrears of the tax might be recovered sets forth in clause 5. that "no proceedings

C. 943

FOR ORDERS.

Act shall
be commenced after the expira-
tion of three months from
the last day of the year in
respect of which the sum
is payable". The question as
to what should be considered
to be "commencement of pro-
ceedings" for purposes of this
clause was first raised in
1887 when the Board in its
consultation with the Govt
Pleaser held that it was
the actual service on or the
conveyance to the defaulter
of the demand notice. The
Collector of Madras inter-
preting the term "demand
notice" here referred to to
mean "distraint warrant",
enquired in Sept 1889 what
constituted the service of such
notice or warrant and the
Board in its Progs No 817 L.R.
of 21st Nov: 1889, apparently
accepting the Collector's inter-
pretation of the term, ruled
that

The specific question raised was
whether the issue of the demand
or its service constituted the com-
mencement of the Progs.
The

G.O. 860 of 2nd Sept 1887 A

13

that "if for any reason a dis-
tress is not actually levied
at the time, a copy of the
demand notice should be
handed to the defaulter and
his signature obtained on
the original or in case of his
absence affixed to or left at
his usual place of residence
the B.P. was or not com-
municated to Govt but a
copy is put up. The effect
of the two rulings will be
found concisely set forth
in the note under Sec 30(5)
of the Act on page 57 of the
Madras Tax Manual (Madras
which is stated that the
"commencement of the pro-
ceedings referred to in Sec
30, subsection (5) is the time
when a copy of the demand
notice shall be handed to the
defaulter and his signature
obtained, or the original, or
in case of his absence shall
be affixed to or left at the
defaulter's

with the view expressed in
 para 7 of B.P. No. 338 of 4th
 August 1893, when it was
 held that under Sec. 14 and
 16 of the Act, "assessments
 to the tax are to be made
 within the year and no power
 is given to the Collector to assess
 after the year has expired"
 and Wigney accordingly re-
 quested that definite rulings
 might be issued both as to
 what constituted "assessment"
 for purposes of the ruling
 contained in the B.P. of Aug.
 1893 and also as to what
 should be considered to be
 "commencement of proceedings"
 for purposes of Sec. 30 (6) of
 the Act.

G.O. 813 of 12th Sep 1893 C

4. ~~Illustration,~~
~~assessments made~~
~~after the year has expired~~
~~are to be considered~~
~~as assessments made~~
~~within the year~~
~~and no power~~
~~is given to the Collector~~
~~to assess after the year~~
~~has expired~~
 for

The Board
~~now~~ now states

(1) that as at present
 constituted it is of opinion
 that for the purposes of the
 ruling contained in B.P. No.
 338 of 4th August 1893, the
 assessment should be con-
 sidered made when the list
 required by Sec. 16 of the Act
 is published and the notice
 required by Sec. 17 of the Act
 is issued served

(2) that the statement in
 the letter of the Collector of
 Madras printed in B.P. No.
 817 of 21st Nov. 1889 that
 the service of a distraint war-
 rant is the commencement
 of proceedings for purposes of
 Sec. 30 clause (5), of Act II of
 1886 was made in error

(3) that the published list
 and served notice referred to
 are to be considered such
 "commencement"

for the words, at instance
 The Board, ^{apparently} has adhered to its
 former

former view that assessments under the act can only be made within the year. If so, the Board's rulings appear to deprive Section 30(5) of the act of any meaning. If assessments to be legal must be made ^{on or} before 31st March, and, if publication of the list required by Section 16 of the act & the serving service of the notice required by Section 17 of the act constitutes the making of the assessment & is also the commencement of proceedings for recovering the tax, then it is clearly unnecessary to say that such commencement shall not take place more than 3 months after the 31st March.

Probably however it is the Board's intention to modify the order contained in its Memo No 338 & 4 August 1893 viz that assessments to be legal must be made within the year. In this case, the Board's position is easily intelligible.

9
Under Section 29 of the act the tax is, unless otherwise provided, payable on the 1st June of each year. After that date the tax is in general due. In this view, the 3rd notices are clearly the commencement of proceedings for recovering the tax & under Section 30(5) they may be taken up to the 30th June following. Section 4 of the act is a direction to the public who should know the law & the tax. Each one should pay & should be known to himself. He should pay it by the 1st June of each year. If he does not he may be compelled to do so by proceedings which must be begun before the 30th of June of the following year.
B.P. No 338 & 4. 5. 93

would in this view be
directly contradictory,
to the provisions of
Section 30 B, of the
Act & should, I submit
be distinctly cancelled.

If this view is not
~~not~~ accepted, the only
alternation seems to be
to consider the service
of a distant notice
as the commencement
of proceedings for the
recovery of the tax. This
view would necessitate
the cancellation of the
present proceedings of
the Board. The view is
apparently that held in
Bengal (vide note to
clause 30 (5) in the
Bengal Manual p. 33)

hrh
21.2.88

Ar,

I think the service of the distant nation must be taken

Due the commencement of proceedings for the recovery of the tax. *1/3/98*
See below

Yes - That is the 1st sentence of the N.P. is right other 2nd sentence wrong. That's about it. I take it

BS
1/2/98

20

1/3/98

Long
 Please re. draft-
 below us 3/8 (8)

Is there any other process issuable under Sec 30(1)? This Section prescribes the mode of "recovery".

4/3/58

-Noli T. Bana, Secy

The Section prescribes that the sums due under the Act may be recovered in the following three ways; viz,

(1) Under the law applicable for the recovery of land revenue i.e. under the provisions of Madras Act II of 1864 and apparently of India Act I of 1890 ;

(2) Under the provisions of the Acts relating to the recovery of local fund rates and municipal taxes;

(3) by an order issued
by the Collector of Income Tax
in accordance with the pro-
visions of Sec 204 of the Civil
Procedure Code

2. In this Pres. it has

has been decided that the first and the last courses alone should be adopted - the first in all ordinary cases and the second in those exceptional cases, such as taxes imposed on shipping companies &c, where the procedure relating to the recovery of land revenue could not be adopted without inconvenience (vide para 30 of the R.S. on G.O. No 319 Rev. dt 5th May 1896)

3. Under Act II of 1864, as supplemented by India Act I of 1890, both the movable and immovable property of the defaulter can be proceeded against. In the case of the movable property, the procedure is what is indicated in the draft Order put up i.e. to issue the distraint order first, if the tax is not paid in time, the distress being made only if the sum due be not paid at once i.e. on the order being shown to the defaulter (vide

Sec

Sec VIII of Act II of 1864). In the case of immovable property, however, prior to the attachment or distraint of property, a demand notice (independent of the first assessment) has to be served on the defaulter and he is to be allowed to pay the amount due by him within a period to be fixed by the Collector "with reference to the distance from the land on which the arrears is due to the place at which the money is to be paid". If the amount is not paid in accordance with the demand notice, his property is to be attached by another notice, viz, an attachment notice which has to be fixed in some conspicuous part of the land. (vide Secs XXV to XXVII of Act II of 1864) Thus, corresponding to the "distraint notice or order" in the case of movable property, there are two notices - a demand notice and an Attachment notice in

the

the case of immovable property. As the persons assessed to income tax will always be men of means it is but rarely that their immovable property will have to be proceeded against and that is apparently the reason why the Collector of Madras and of North Arcot and the Board of Rev: refer merely to distraint notices or "Demand notice No. I under Act II of 1864." (vide Form No. I on page 152 of the Appx to B.S.O No. 106) In the case of attachment of immovable property, proceedings for purposes of Act II of 1864, Sec 30 (5) should obviously be considered to have commenced when the demand notice proper under Sec XXV of Act II of 1864 is served on the defaulter (i.e. the notice in Form No. ⁴ on page 153 of the Appx to B.S.O)

4. Under the Civil Procedure Code, when the order is for the payment of a sum

sum not exceeding Rs 1000, the Court may direct on passing the decree its immediate execution thereof "by the issue of a warrant directed either against the person of the judgment-debtor or if he is within the local limits of the jurisdiction of the Court or against his movable property within the same limits (Sec 256). If the above course is not ~~adopted~~ ^{followed} and in all cases where decrees for money have to be executed, the procedure adopted, when the property is in the possession of a defaulting judgment debtor, is,

(1) in the case of movable property, to issue an attachment warrant corresponding exactly to the distraint order under Madras Act II of 1864 (vide form No 136 on page 339 of the C.P.C.) and or

(2) in the case of immovable property, to attach it by an order prohibiting the judgment debtor from transferring or

charging the property in any way" (Sec 274) and (3) then, if necessary, direct its sale (Sec 284) after issue of a notice of sale and proclamation (vide Sec 287 and Form No 145 & page 343 of the C.P.C) to ~~the~~ such property.

When, however, the property is in the actual possession of some one other than the judgment debtor, the procedure, again, is to attach such property by a prohibitory order prior to its sale or, if it is money, until the Court directs how it should be disposed of (vide forms on pp 340-343 of the C.P.C)

It seems thus clear that, if an order is issued by a Coll^y of Income Tax under Sec 30(1) of Act II of 1886 for the payment of a sum, the first step that has to be taken against a defaulter is to issue an "attachment order" or a warrant of arrest. The order first mentioned ^{is} that issued under Sec. 30(1) ^{is} ^{sum}

made long after fixing the assessment and corresponds, it is submitted, to the demand notice to be issued under Sec XXV of Madras Act II of 1864, the only difference being that while the former applies to both movable and immovable property, the latter is issued only when immovable property is to be attached. That order therefore must apparently be considered to be itself one of the methods in which proceedings can be commenced for purposes of Sec 30(5) of the Income Tax Act.

5. If the above view is concurred in, it will perhaps be more accurate to substitute in the last sentence of the draft order, for the words "the service of a distraint warrant", the following viz:-

"the service of a distraint order or demand notice in accordance with the proviso."

of Secs VIII and XXV respectively
 of Act II of 1864 or the issue
 of an order under subsection
 (1) of Sec 30 of the Income Tax
 Act, II of 1886"

13th
 11th 98

Secy

~~A despatch~~
~~was sent~~ This amendment
~~with reference~~ may be
 made. But mode of
 procedure under local
 municipal acts may
 be adopted though this is
 not the rule. The meaning
 of Govt with however
 be clear & application
 to such cases also, mutatis
 mutandis.

11th
 11/3/98

I have modified the last
 sentence of the draft, which
 may now come

S.P.
 12/2/98

Read BP 578 d 19 Dec 97
 Cir. No 943

Sept. Rev. No. 20.
 Pen

E.O. No 157 d 12th March 1898.

The ruling in BP No 338
 of 4 Aug 1893, was that
 assessments to the tax
^{should}
 be made within
 the year and that no
 power is given to the
 Collector to assess after
 the year has expired.
 The Govt considers that
 this ruling is correct
 & further agrees with
 the Board in the
 view expressed in the
 first sentence of the
 Prop read above, viz,
 that for the purposes
 of the ruling referred to,
 the assessment
 should be considered
 made when the list
 required by section 16
 of the Act is published
 and the notice required
 by section 17 of the Act
 is served. If for

Printed
 12/2/98

therefor that the
second sentence of the
Prop read above,
which lays down that
the published list &
served notice referred to
are to be considered
the commencement
of proceedings for
the recovery of the
tax, ~~is wrong inaccurate~~
under Section 30 clause 5
of the Income Tax Act
of 1886, such
proceedings must
be commenced
within three
months after the
close of the year.

B. - The Court considers
that ~~the service of a distraint~~
~~is not~~ the
commencement of
proceedings for the purpose
of section 30 clause 5
of the Act. must be taken to run

[Is there any other
process issuable
under Sec 30 (1). This
Sec. permits the
issue of "recovery"
process.]

from the date of the issue of a distraint order or
the demand notice in accordance with the provisions
of s. 25 of Act of 1884 or of the issue of an order
under sub s. 1) of sec 30 of the Income Tax Act.

First copy sent to Press

Returned for signature.

Prepared in print.

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1.9.

2

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