

PRESS SERIES.

G.O., No. 272.

Dated 16th May

[Despatch Abstract.]

Assessments under Act II of 1886.

Considering that the tax collected from a certain Nattukottai Chetty of Devikottai, Madras Dist., should be refunded to him; and requesting the Bd. of Res. to point out to all Collrs. that — should be completed every year by the end of February at the latest.

[illegible]

No.	Date	H.C.	No.	Description	Doll.

Regd.

1898.

Enclosures

Spare copies

G.O., No. 272, 16th May 1898.

MAY.

Assessments under Act II of 1886.

Considering that the tax collected from a certain Nattukottai Chetty of Dévikóttai, Madura district, should be refunded to him; and requesting the Board of Revenue to point out to all Collectors that — should be completed every year by the end of February at the latest.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue (Separate Revenue),
Mis. No. 1209, dated 25th March 1898:—

Read—G.O., No. 151, Revenue, dated 12th March 1898.

ABSTRACT.—Passing orders as to when assessments to income-tax 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.

Resolution—Mis. No. 1209, dated 25th March 1898.

Before issuing orders on the above Government Order, the Board begs respectfully to explain why it appeared desirable to make the statements in the second sentence of its Orders No. 548 of 19th December 1897 to which Government has taken exception.

2. Assessments to income-tax are frequently and unnecessarily, for the most part, delayed till towards the end of the year to which they relate. Supposing assessment recoverable before 60 days, and if objected to objection can be lodged within 30 days. A report is required on the papers called for and a hearing is granted in which another month and generally more is consumed. Under section 30 another 30 days must elapse before the assessment as fixed on objection is recoverable. The result is that, if section 30 (5) is construed as the Government directs, the sum due may not be recovered at all.

3. On referring to Board's Proceedings, No. 410 of 5th August 1897, and No. 817 of 21st November 1889, it appears that the Collector of Madras had represented the first as ruling that the service of a distraint warrant was the commencement of proceedings for section 30, clause (5), and the Board permitted that statement to pass unchallenged. Collectors appear to have been guided by that dictum. The Government Pleader's opinion, however, simply was "that a demand must be served before proceedings could be said to be commenced."

4. The laches of the Collector in making the first assessment is, for the most part, remediable by proper diligence on his part; but on occasions, due it may be to concealment on the part of assessee or want of knowledge on the part of the Collector, late assessment is unavoidable. The Board when the present question was raised had to maintain its Proceedings of August 1893 and, if possible, to take care that assessments made at the end of the year should not be lost. It appeared therefore to it that forms G and H could legally be construed as demands which constituted the commencement of proceedings for recovery and, if these issued within the year of assessment, section 30, clause (5), did not operate to bar recovery as it certainly on occasions must, if the periods prescribed in section 16 (3) and section 30 (1) and necessary for due enquiry into objections are allowed to run.

5. It is admitted that under such a construction the application of section 30 (5) is not particularly evident if the Board's Proceedings of August 1893 is to be maintained; but the point for consideration is whether forms G and H are "proceedings" of the sort the Board believes, or not.

6. The person, whose assessment has given rise to this discussion, having been compelled to pay his tax, has, on the 15th January last, given notice of suit for recovery of the amount, because "clause 5 of section 30 of Act II of 1886 distinctly provides that no proceedings for the recovery of any sum payable under the 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," and the Board would venture to suggest for the consideration of Government that it suspends orders till the Court has given judgment if the suit be proceeded with. No further information has as yet been received.

(True Copy and Extract.)

(Signed) R. M. THURLEY,
Ag. Assistant Secretary.

To the Secretary to Government, Revenue Department.

ORDER—No. 272, Revenue, dated 16th May 1898.

Separate Revenue No. 24.

The Government regrets that it does not see sufficient reason to modify or suspend the orders already passed, and considers that, in the present case, the tax collected from the assessee should be refunded to him and the suit compromised. The Collector of North Arcot should be instructed to take early steps to this effect.

2. The Board of Revenue should point out to all Collectors that assessments under the Act should, for safety's sake, be completed every year by the end of February at the latest.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).

Exd. A. F. Eoleston.

40 Copies.

REVENUE DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 272, REVENUE, DATED
16TH MAY 1898.

[SUBJECT.—*Assessments under Act II of 1886.*]

*Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 1209,
dated 25th March 1898.*

To Under Secretary—

On a reference made by the Collector of North Arcot in connection with the late assessment to income-tax (for 1896-97) of a professional money-lender in Chittoor, the Board of Revenue, in its Proceedings, Mis. No. 4894, dated 10th November 1897, held that, inasmuch as the demand notice (form H) was served on the assessee on the 10th March 1897, proceedings for the recovery of the tax under section 30, clause V of the Income-tax Act were commenced on that date, and accordingly ordered that the amount of the tax should be recovered from the assessee, if need be by distraint. When the Collector subsequently pointed out that under Board's Proceedings, No. 817, dated 21st November 1889*, the commencement of proceedings was "the time when a copy of the demand notice was handed to defaulter," and that it appeared to him to be a straining of language to describe the assessment notices (forms G and H) as demand notices, the Board of Revenue ruled that the statement in its Proceedings of 1889 referred to by the Collector was made in error, and that proceedings for the purposes of section 30, clause V of the Act, must be held to commence from the date of the publication of the list required by section 16 and the service of the notice required by section 17. In G.O., No. 151, Revenue, dated 12th March 1898, the Board of Revenue was informed that the above ruling was inaccurate and that the commencement of proceedings for the recovery of the tax under section 30 of the Act 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 (i) of section 30 of the Income-tax Act.

Printed at page 4 of G.O., No. 151, dated 12th March 1898.

*Copy stitched with G.O., No. 151, dated 12th March 1898.

2. In the Proceedings read above, the Board, after explaining at some length why it appeared desirable to it to lay down the ruling to which Government has taken exception, reports that the person whose assessment has given rise to the present discussion, having been compelled to pay up his tax, has given notice of a suit for recovery of the amount because "clause V of section 30 of Act II of 1886 distinctly provides that no proceedings for the recovery of any sum payable under the 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."

No doubt it was *desirable*, but it was *illegal*.

N.E.M.
5-4-98.

it appeared desirable to it to lay down the ruling to which Government has taken exception, reports that the person whose assessment has given rise to the present discussion, having been compelled to pay up his tax, has given notice of a suit for recovery of the amount because "clause V of section 30 of Act II of 1886 distinctly provides that no proceedings for the recovery of any sum payable under the 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 Board suggests for the consideration of Government that the ruling contained in G.O., No. 151, dated 12th March 1898, as to the date of commencement of proceedings for the recovery of the tax may be held in abeyance till the court shall have delivered judgment if the suit be proceeded with.

P.N.M.
4-4-98.

To Secretary—

It is not quite clear what the Board fears as a consequence of the issue of the G.O., No. 151, dated 12th March 1898. It would perhaps prejudice the suit; but if the Government Order is correct the logical course would be to compromise the suit, and I submit the Board should be instructed to do this. It will be a year or so before the suit gets to the High Court (if it gets there at all) and the ruling of a lower court will not be of much authority.

The Board's present orders (if Board's Proceedings, No. 338, dated 4th August 1893, is to stand as well as the second sentence of Board's Proceedings, No. 548, dated 19th December 1897), are contradictory. One or the other of these must be cancelled. Government has decided that the second sentence of Board's Proceedings, No. 548, dated 19th December 1897, was wrong.

If it is thought that the suit should be defended the only logical course would be, I submit, to reconsider the Government Order first passed and to cancel Board's Proceedings, No. 338, dated 4th August 1893, instead of the second sentence of Board's Proceedings, No. 548, dated 19th December 1897.

N. E. MARJORIBANKS.
5-4-98.

To the Honourable Member—

I must confess that after careful consideration I cannot see how the Board's interpretation of "proceedings for the recovery" of the tax in section 30 (5) of the Act is legally sound. This is almost admitted in paragraph 5 of their current letter.

The list prepared under section 16 (form G) and the notice served under section 17 (form H) appear to be proceedings quite distinct from proceedings for the recovery of the tax. Forms G and H are mere assessments, not proceedings for recovery.

G. S. FORBES.
28-4-98.

In his letter on page 3 of Board's Proceedings, No. 548, dated 19th December 1897, paragraph 8, the Collector says "the tax cannot now be collected." I suppose therefore that steps were taken to make the man pay after the receipt of the Board's Proceedings. In my view, which is that of G.O., No. 151, dated 12th March 1898, and in which the Secretary concurs, it was illegal to make the man pay, and the proper course therefore would seem to be to refund the man his money and get him to withdraw his suit; and to maintain the G.O., of 12th March 1898. I admit that the course for which the Board contends would be the most convenient, but that is not the question. The question is as to the law. If the Secretary thinks there can be any doubt, the Advocate-General's opinion might be obtained. But in that case the points in issue must be carefully set out, for this last Board's Proceedings is by no means a clear exposition of the Board's case. I don't myself doubt, however, as to the law. If the Government Order is maintained, the Board should point out to Collectors that assessments should, for safety's sake, be completed by the end of February at latest.

H. W. B[LISS].
3-5-98.

To Secretary—

It is presumed that the Secretary does not consider it necessary to refer the matter to the Advocate-General.

A draft Government Order is accordingly submitted for approval.

N.E.M.
6-5-98.

No. I do not see there is any doubt; indeed the Board argue more from considerations of convenience and expediency than from the construction of the law.

Draft may issue.

G.S.F.
14-5-98.

Revenue (1898) Department.

CURRENT No. 2542.

Order

From

The Secretary to the Commissioner of Salt, Ahkari and Separate Revenue, Madras.

Mis. No. 1209.

Dated 25th March 1898.

Received 30

Registered 31

Enclosures

Spare copies

SUBJECT.

Explaining to Government why it appeared desirable to make the statement in the second sentence of its Proceedings 548, dated 9th December 1897 and suggesting that orders now passed be suspended till the Court has given judgment if the suit filed by the assessee be proceeded with.

21/3/98
21/4/98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Proceedings of the Board of Revenue

(Separate Revenue),

Dated 25th March

1893.

Mis. No. 1209.

Read Government Order, Revenue Department, Press No.

111 of 12th March 1893.

Resolution.

Before issuing orders on the above Government Order, the Board begs respectfully to explain why it appeared desirable to make the statements in the second sentence of its Orders No. 143 of 19th December 1897 to which Government has taken exception.

2. Assessments to Income-tax are frequently and unnecessarily for the most part delayed till towards the end of the year to which they relate. Supposing assessment is made only on the 31st March and that G or H form then issues, the tax fixed is not recoverable before 60 days, and if objected to objection can be lodged within 30 days. A report is required or the papers called for and a hearing is granted in which another month and generally more is consumed. Under section

260 151
12-3-93

For Govt
12-3-93

21
X/Man
chooses
20th 10

30 another 30 days must elapse before the assessment as fixed on

objection is recoverable. The result is that if section 30 (5)

is construed as the Government directed the sum due may not be

recovered at all.

5. On referring to Board's Proceedings No. 410 of 15th August 1897

and 817 of 21st November 1899 it appears that the Collector of

Madras has represented the first as ruling that the service of a

distraint warrant was the commencement of Proceedings for section

30 clause (5) and the Board permitted that statement to pass unchallen-

ged. Collectors appear to have been guided by that dictum. The Govern-

ment Pleader's opinion, however, simply was "that a demand must be ser-

ved before proceedings could be said to be commenced".

4. The lapses of the Collector in making the first assessment

is for the most part remediable by proper diligence on his part;

but on occasions, due it may be to concealment on the part of ---

assessee or want of knowledge on the part of the Collector, late-

assessment is unavoidable. The Board when the present question was

raised had to maintain its Proceedings of August 1895 and if pos-

sible, to take care that assessments made at the end of the year,

should not be lost. It appeared therefore to it that forms G and H

could legally be construed as demands which constituted the com-

mencoment of proceedings for recovery and if these issued within

the year of assessment, section 30 clause (5) did not operate to bar

recovery as it certainly on occasion must, if the periods prescribed

prescribed in section 16 (5) and section 30 (1) and neces-

ry for due enquiry into objections are allowed to run.

5. It is admitted that under such a construction the appli-

tion of section 30(5) is not particularly evident if the

Board's Proceedings of August 1895 is to be maintained; but

the point for consideration is whether forms G and H are -

"proceedings" of the sort the Board believes, or not.

6. The person whose assessment has given rise to this di-

cussion having been compelled to pay his tax has on the 15

January last given notice of suit for recovery of the amount

because "clause 5 of section 30 of Act II of 1886 distinctly

provides that no proceedings for the recovery of any sum pay-

able under the 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;" and the Board would venture to su-

gest for the consideration of Government that it suspends

orders till the Court has given judgment if the suit be pro-

ceeded with. No further ^{information} limitation has as yet been received.

(True extract)

R. W. Murray

Acting Assistant Secretary.

To the Secretary to Government, Revenue Department.

Read Proceedings of the
Board of Revenue, Sep. Rev.
No. 1209 Mis. d. 25-3-98-
C. No. 2542 of '98-

Note. To Mr. S. S. S. S.

On a reference made
by the Collector of North
Arcot in connection with
the late assessment to
income tax (for 1896-97) of a
professional money-lender
in Chittur, the Board of
Revenue, in its Proceedings
Mis. No. 4894 d. 10-11-97, held
that, inasmuch as the
demand notice (Form H) was
served on the assessee on the
10th March 1897, proceedings
for the recovery of the tax
under section 30, clause v
of the Income-tax Act
were commenced on that
date, and accordingly
ordered that the amount
of the tax should be re-
covered from the assessee,
if need be by distraint.

printed at p. 4 of
No. 151
12-3-98 A

C. S. S. S.

12/11/98

When the Collector subsequently pointed out that under B.P. 817 d 21-11-89 the commencement of proceedings was "the time when a copy of the Demand Notice was handed to the defaulter" and that it appeared to him to be a straining of language to describe the assessment notices (Forms G and H) as demand notices, the Board of Revenue ruled that the statement in its Proceedings of 1889 referred to by the Collector was made in error, and that proceedings for the purposes of section 30, clause v of the Act, must be held to commence from the date of the publication of the list required by section 16 and the service of the notice required by section 17. In No. 151 Rev. d 12-3-98 the Board of Revenue

copy stitched with Co. 151
B 12-3-98

2542/98

Shouldn't it be
deemed to be
illegal?
5/11/98

was informed that the above ruling was inaccurate and that the commencement of proceedings for the recovery of the tax under section 30 of the Act 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.

2. In the current read above, the Board after explaining at some length why it appeared desirable to it to lay down the ruling to which Government has taken exception, reports that the person whose assessment has given rise to the present discussion, having been compelled

compelled to pay up his
tax, has given notice of a
suit for recovery of the
amount because "clause
of section 30 of Act II of 1886
distinctly provides that no
proceedings for the recovery
of any sum payable under
the 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 Board suggests for the
consideration of Government
that the ruling contained
in G.O. No. 151 d 12-3-98 as
to the date of commence-
ment of proceedings for the
recovery of the tax may be
held in abeyance till the
court shall have delivered
judgment if the suit
be proceeded with. ~~It is~~

~~submitted that the~~
~~Board's suggestion may~~
~~be accepted. A draft~~
~~order is submitted for~~

~~approval~~
P.T.O.
4/4/98

In his letter in p. 3 of
B.P. 548, June 8,
the Cms says "the tax cannot
now be collected." I suppose
that steps were taken to make the
man pay after the receipt of the
B.P. - In my view, which is
that of G.O. 157
12.3.98 and in
which the Govt concurs, it
was illegal to make the man
pay, and the proper course
... would be to refund
the man his money & get him
to withdraw his suit; and to
maintain the G.O. of 12.3.98.
I admit that the course for
which the Govt contends, would be
the most convenient, but that is
not the question - The question is
as to the law. If the Sec. thinks
there can be any doubt, the
Adv. Genl's opinion might be
obtained - But in that case
the points in issue must be carefully
set out, for this last B.P. is by
no means a clear exposition of
the Govt's case. I don't myself
doubt, however, as to the law -
If the G.O. is maintained the
Govt. should point out to the
court that assessments should, for
safety's sake, be completed by
the end of Dec. at latest.

B.S.
3/5/98

1518/12-3-98

G.O. 1518/12-3-98

5
Lay

It is not quite clear what
the Govt. fears as a conse-
quence of the issue of the
G.O. It would perhaps
prejudice the suit; but
if the G.O. is correct the
logical course would be
to compromise the suit.
And I submit the Board
should be instructed to do
this. North has made before
the suit gets to the High
Court (if it gets there at
all) and the ruling of
a lower court with such
a much authority.

The Board's present
order (if B.P. 338 d 4
August 1893 is to stand
as well as the 2nd sentence of
B.P. 548 d 15 Dec 97)
are contradictory. One
or the other of them must
be cancelled. Govt has
decided that the 2nd sentence
of B.P. 548 d 19 Dec 97
was wrong.

If Govt it is thought
that the suit should be de-

the only logical course
completing, I submit, to
reconsider the G.O. post-
poned & to cancel

B.P. 338 of 4 August 93 &
instead of the 2nd
sentence of B.P. 548 A.
of 19 Dec 97.

WU
5/4/98

WU. I must confess that
after careful consideration
I cannot see how the
Board's interpretation of
"proceedings for the recovery"
of ~~the~~ the tax in S. 30(5) of
the Act ~~is~~ is legally ad-
missible. This is almost
admitted in para. 5 of their
current letter.

The list prepared under S. 16
Form G) & the notice served
under S. 17 (Form H) appear to be
proceedings ~~distinct~~ quite distinct
from proceedings ~~for~~ for the
recovery of the tax. ~~Certainly~~
Forms G and H are mere
assessments not proceedings
for recovery. S/H 28/4/98

Boyle's letter of 19/1/98
of 19/1/98.
Note: 19/1/98

It is presumed that
the Secy does not consider it
necessary to refer the matter
to the Advocate General
a draft G.O. is acco-
ingly submitted for approval.

WU
6.5.98

WU
6.5.98

No. I don't see there is any
doubt: indeed the H-appeal
more from considerations of
convenience & expediency
than from the construction
of the law.

Draft may mine

S/H 28/4/98

272

Read B.P. Sep Rev: no 120
25th mar 98 (Cuo. 1254)

Sep. Rev. no 24.

Order No 272 of 16th May 1898.

The Govt requests
that it does not see sufficient
reason to modify, ^{or suspend} the orders
already passed and consider
that ^{in the present case} the ~~issue~~ should be re-
funded ^{to him} the ~~assessment~~ ^{tax} collected
from ~~the~~ ^{the assesses} ~~and made to suit~~
~~the~~ ^{the} ~~improvised~~ suit. The Collector of
North Arcot should be in-
structed to take early steps ^{to}
this effect.
~~Chair~~ ~~be~~ ~~half~~ and ~~the~~ Board
2. The Board
of Rev: should ~~also~~ point out
to all Collectors that assess-
ments under the Income Tax
Act should, for safety's sake, be
completed ^{every year} by the end of Feb?
at the latest.

To The Board of Rev: Sep Rev:

W.P.
3.6.98

B.M.
6.8.98

HO

W.P.
16/5/98

W.P.
7.5.98

8/7
14/5/98

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16/4/98

P.S.

to the Board
of Rev

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