

TWELFTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2006-2008)**

THIRTY SIXTH REPORT

(Presented on 25th July, 2007)



SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2007

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On

**Action taken by Government on the Recommendations
contained in the Hundred and Fifteenth
Report of the Committee on
Public Accounts (2001)**

CONTENTS

		<i>Page</i>
Composition of the Committee	..	v
Introduction	..	vii
Report	..	1
Annexure	..	11

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INTRODUCTION

I, the Chairman, Committee on Public Accounts having been authorised by the Committee to present this Report on their behalf present the Thrity Sixth Report on Action taken by Government on the Recommendations contained in the Hundred and Fifteenth Report of the Committee on Public Accounts (2001).

The Committee considered and finalised this Report at the meeting held on July 18, 2007.

Thiruvananthapuram,
25th July, 2007.

ARYADAN MUHAMMED,
Chairman,
Committee on Public Accounts.

Report

This report deals with the action taken by government on the recommendations contained in the 115th Report of the Committee on Public Accounts (2001).

The Hundred and Fifteenth Report of the Committee on Public Accounts (2001) was presented to the house on 2nd March 2001. The Report contained 10 recommendations relating to Taxes Department. Government were addressed on 5th November 2001 to furnish the Action Taken Statement on the recommendations contained in the Report and final replies were received on 14-2-2006.

The Committee examined the Action Taken Statements at its meetings held on 3-8-2004 and 6-3-2006 and decided not to pursue further action in the light of the replies furnished by Government.

The recommendations of the Committee and the Statements Action Taken by Government therein are incorporated in the Report.

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO
PURSUE IN THE LIGHT OF THE REPLIES FURNISHED BY
GOVERNMENT/ TAXES DEPARTMENT

Recommendation

(Sl. No. 1 Para No. 6)

The Committee note with great concern that application of incorrect rate of tax in assessment and thereby loss of huge amount towards sales tax to the State exchequer is a common phenomenon prevalent now. This throws light to a common system failure prevailing in the Department in understanding the upto date information about the changes in the tax rates effected by the Government from time to time. The Committee opine that the Department is not even aware of certain stipulations in Kerala General Sales Tax Act, 1963, regarding tax collection and they view it as a serious lapse on the part of the Taxes Dept. It is very much deplorable that during 1985-86 to 1987-88 an amount of Rs. 4.14 lakhs was short levied in respect of 3 cases in three circles. The Committee genuinely doubt how huge would be the final amount short levied if all cases in the State are audited and opine that strengthening of the Internal Audit Wing of the Department alone can trace out such anomalies and rectify them at once. The contention of the Government that awarding of punishment to guilty officers does not become effective as Internal audit is not concurrent and as it takes place five to six years after assessment is not convincing to the Committee. The Committee are of the view that it is the duty of the department, to initiate earnest attempt for making audit upto date. The Committee recommend that urgent action should be taken for making internal audit wing of the department more effective and make audit upto date. The Committee further recommend that strict disciplinary action should be taken against those officers who irresponsibly levy tax at the incorrect rate and that retired officers also should be brought to book for their lapses while in service.

Action Taken

To ensure that internal audit is fruitful and effective 100% internal audit is being done and proper functioning is ensured by supervision by the Deputy Commissioners (A&I) and 6 Inspecting Assistant Commissioners (Audit). The Commissioner also conducts periodical review of the work done by the audit staff of this department and timely instructions are given to them. At present 56 Sales Tax Officers (Audit) are attending to the audit work regularly. Now the system is working effectively. In-service training is given to all the officers of the Department periodically to make them aware of the up-to-date changes in law and the rates of tax prevailing during different periods. Strict disci-

iplinary action is being taken against the erring officers. 31 officers are facing disciplinary action. Action is also being taken against the delinquent officers who have retired from service wherever required. Now concurrent audit is also taken up.

Recommendation

(Sl. No. 2 Para 13)

The Committee observe that so many private companies try to avoid tax by adopting faulty methods by taking privilege of certain provisions in the Central Government Act. Therefore, the Committee recommend that the Department should formulate a method to check tax evasion and thereby prevent the loss of crores of rupees to the State exchequer. The Committee in this connection suggest that earnest efforts should be made for providing conducive atmosphere to the State Public Sector undertakings like Marketing Federation for availing the good results of tax concession allowed by the Central Government.

Action Taken

To prevent such evasion of tax effective cross checking is being done by the Intelligence Wing of the Commercial Taxes Department especially by the Inter State Investigation Branch by collecting extracts from the supplies of goods from outside the State and this system of cross checking is functioning effectively.

Further Recommendation

The Committee want to know the number of tax evasion cases detected by the cross-checking system.

Additional Details

The number of cases and collection from Investigation Branch in respect of cross verification of extracts dates received gathered from outside the state is detailed below :

<i>Year</i>	<i>No. of Cases</i>	<i>Amount (Rs.)</i>
2003-2004	42	46,20,305
2004-2005	48	56,96,649

Recommendation

(Sl No. 3 Para No. 14)

The Committee regret to note that the details called for by the Committee in respect of pending tax cases and the amount involved in them has not been furnished by the Department till date. The Committee urge that the details should be furnished to them without any further delay.

Action Taken

The details of pending tax cases and the amount involved upto 31-3-2003 is enclosed as Annexure I.

Recommendation

(Sl. No. 4 Para No. 19)

The Committee observe that an approximate amount of Rs. 500 crores which is due to the State exchequer is pending in Revenue Recovery Proceedings which are at a snails speed. This lapse is not acceptable to the Committee and recommend that urgent steps should be taken for settling the RR Proceedings and to recover the money due to Government. The Committee in this connection strongly criticize the department for not collecting the full amount pertaining to the short levy of tax on the sale of yeast, though Revenue Recovery proceedings were started in 1993.

Action Taken

In order to avoid delay in Revenue Recovery collection and to reduce the arrears due to the State Exchequer, Government have introduced a scheme as per the Finance Act, 1997 for granting certain relief of interest to the defaulters in order to realize arrear due. The newly inserted section 23 A grants reduction in interests to dealers and institutions who opt for this scheme and remit the arrears with the concession announced before the end of the financial year 1997-98. This department had given wide publicity through newspapers and notices were published in all offices of this Department. As the system was found effective to some extent and the Department could boost up the collection under Revenue Recovery the scheme was introduced again in 1999 and a new provision for this purpose was also incorporated in the Agricultural Income Tax Act, 1991 (Section 37A). In this regard, the Department has issued Circular instructions on 21-8-1999 as Circular No. 20/99. The system was again brought to application as per

Finance Act 2004 by introducing a new Section 23B with some more concessions in the rate of payment of interest on arrears.

A portion of the arrears involved in RR related to the assessments completed *ex parte* due to the non-production of accounts and required documents and also due to the non-co-operation of the dealers. Even though the demands are created legally those amounts are not actually due to the State exchequer. The realization of it is very difficult and in most such cases the demand will be decreased or become nil when appeal process is over. Another major portion of arrears are related to the public sector under takings and in very difficult to collect the amount because of the financial crisis they are facing. However this Department had been making sincere and earnest efforts to collect the arrears. The Deputy Commissioners of this Department have been given strict instructions to take proper and timely action to realize the arrears with the help of revenue authorities resorting to effective measure. The District Collectors also conduct monthly review conferences of RR authorities with this Department officials for reviewing all cases giving special importance to those cases having huge amounts pending under RR. The Department has been making all other coercive steps to realize the dues in an effective and speedy manner by invoking the provisions of 23 (2) b, issuance of Form 16, by attaching bank accounts action against sureties etc.

The realisation of balance tax amount Rs. 64,945 in respect of M/s. Construction Supplies & Agencies for the year 1989-90 & 1990-91 the auction procedure initiated by authorities on the immovable properties of the defaulter has been stayed by the Honourable High Court of Kerala in connection with an O.P. filed by the Indian Bank, Palakkad branch (O.P. No. 16343/94). The O.P. is still pending. The assessing authority has brought this matter to the Joint Commissioners (Law), Ernakulam for early disposal of the O.P.

Recommendation

(Sl. No. 5 Para No. 27)

The Committee note with grave concern that the Department had committed one year's delay in conducting revised assessment for Thalavar Tea Company though the assessee disclosed additional income far earlier. Not only that, the Department did not intimate the Committee the fact that the assessee was allowed to pay the remaining RR amount of Rs. 5.85 lakhs in equal instalments which was a subsequent development. The Committee are displeased in this regard and recommend that the action taken on audit paragraphs should be intimated to the Committee in time. Further the Committee are of the view that the Department

could have ascertained from the Coffee Board, the price awarded for each season's coffee before finalizing the assessment for the first time which would save time.

Action Taken

The delay in completing the revised assessment was not deliberate. Now the assessment has been completed. The action taken on Audit Para's will be intimated to the Committee in time in future. Now the income from coffee is assessed only after obtaining the details from pool centers. The recommendations is noted for future guidance.

Recommendation

(Sl. No. 6 Para No. 28)

The Committee opine that the changes in the method of accounting made by M/s. Poothundu Plantations (P) Ltd. is against Section 40 of the Kerala Agricultural Income Tax Act 1950. If change in the method of accounting is to be made it can be done only after incorporating a provision in the Act to this effect. The assessee's action was specific for evading tax. The Committee recommend that the assessing officer should be more vigilant against such manipulations of assessee's and the loopholes in the existing rules in this regard should also be plugged.

Action Taken

Now the Agricultural Income Tax Act 1950 has been replaced by the new Act of 1991. The direction is noted for future guidance.

Recommendation

(Sl. No. 7 Para No. 29)

The Committee also recommend that it should be intimated about the outcome of the second appeal filed by Government in respect of M/s. Poothundu Plantations (P) Ltd., Chittur and whether the tax has been recovered. The Committee recommend that the present position and recovery in respect of Mr. Cherian Philip be intimated to the Committee.

Action Taken

The Department has filed second appeal before the Sales Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner in respect of M/s. Poothundu Plantations (P) Ltd. While deciding the appeal, the Sales Tax Appellate Tribunal has also confirmed the finding of the first appellate authority and dismissed the departmental appeal vide order No. AITA/38 to 40/93 dated 5-12-2000. There is no scope for filing TRC in this case.

Consequent on the revised assessment in respect of Shri. Cherian Philip, the assessee filed second appeal before the Sales Tax Appellate Tribunal, Additional Bench, Kottayam. While deciding the appeal, the Sales Tax Appellate Tribunal vide order No. AITA/223 & 234/93 dated 14-11-2001 ordered to re-do the assessment considering all aspects of the case based on the directions of the first appellate authority. While implementing the Tribunal Order the assessment was completed and the demand was reduced which resulted in excess payment. There is no scope for filing TRC in this case.

Recommendation

(Sl. No. 8 Para No. 32)

The Committee understand that the Government lost an amount of Rs. 59,320 towards tax during 1987-88 due to the failure of the Department to take advantage of the available information regarding the yield of cardamom received by an assessee during the previous year. The assessing officer considered the low yield submitted by the assessee for calculating tax. The Committee opine that this incident happened as a result of the in sincere attitude of the assessing officer to collect necessary data or to conduct internal and external surveys which would help for proper assessments. The Committee are of the view that the change which the assessee made in his accounting system was specific for evading tax which the appellate authority approved. The Committee express grave concern over the laxity on the part of the assessing officers and urge that stringent action should be taken against the erring official as a deterrent measure to avoid such lapses in future.

Action Taken

Noted for future guidance. In this case fresh assessment was completed by proceedings dated 27-11-1992, on the basis of audit this assessee filed appeal against this order before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner ordered partial modification of the assessment. Not satisfied with the order, the assessee filed second appeal before the Sales Tax Appellate Tribunal. The Tribunal as per order AITA 125 & 126/93 dated 27-5-1994 allowed the appeal observing that the inspection was not during the accounting year in question and there are no data or basis to disbelieve the yield of cardamom recorded in the accounts of the assessee. The Tribunal ordered for the acceptance of the crop register for cardamom for fixing the yield and to adopt the yield of 361 Kg. as per crop register instead of the estimate yield of 750 Kg.

Recommendation

(Sl. No. 9 Para No. 37)

The Committee strongly condemn the inability of the Taxes Department to collect the amount of Rs. 75,367 due in the revised assessment conducted on the Rubber Plantation of Sri. C. Perumal Pillai though RR Proceedings was started in 1992. The Committee opine that this slackness is very much shameful to a department like Taxes Department which is expected to act in a prompt and sincere manner in collecting Tax and thereby strengthen the State exchequer. The Committee also opine that the assessee is also guilty for hiding the details of the actual income derived out of the slaughter tapping of the rubber plantation in this possession from the Department by submitting false returns of his income. The Committee recommend that strict action should be taken not only against the assessing officer for his lapses but also against the assessee who misled the Government and that a report in this regard as well as the reason for the omission should be submitted to the Committee immediately. The Committee further recommend that all the pending R.R. proceedings in respect of tax collection should be settled at an early date and that all the amounts pending in these cases should be realized without delay. The Committee while appreciating the scheme which the Government declared in the Budget for accelerating tax collection and suggest to initiate another scheme in that pattern which will strengthen the exchequer by increasing tax collection.

Action Taken

Based on the audit the assessment for the year 1989-90 and 1990-91 were revised, creating additional demand of Rs. 49,457 for 1989-90 and Rs. 25,410 for 1990-91. Out of this the assessee paid Rs. 9,034 for 1990-91 and filed appeal against the revised assessment. The assessments were remanded for fresh disposal. The assessing authority has been directed to initiate penal action under the Agricultural Income Tax Act, 1991 against the assessee who wilfully filed untrue return. The assessing authority who completed the irregular assessment was Smt. Latheefa Beevi who retired from service on 31-1-1994. Since the officer has already retired from service no action has been taken against her.

Action to collect arrears in all pending RR cases in being done.

Recommendation

(Sl. No. 10 Para No. 41)

The Committee have no hesitation to come to a conclusion that the action of the assessing officer in conducting separate assessment of the income of the female and minor partners of the Rajakkad Estate instead of clubbing their income

with the income of their respective spouses or guardian was purposeful and that the assessing officer tried to find justification for his action. The Committee opine that no assessing officer who has basic knowledge of the Agricultural Income Tax Act can commit such an omission. Therefore, the Committee recommend that stringent action should be taken against the assessing officer who caused a loss of Rs. 1.13 lakhs to the State exchequer, even if he has retired from service.

Action Taken

It is informed that there is no loss of revenue for the year 1983-84, 1984-85 and 1988-89.

The assessment for the year 1983-84 was remanded for fresh disposal as per appellate order No. AIT-704 (A) 87 dated 12-8-1987 and the assessment was completed afresh on 21-5-1992. The net income fixed is Rs. 12,501. The loss of the firm for the previous year 1980-81 and 1981-82 were set off with the income available for 1983-84 and total loss fixed for the year 1983-84 is Rs. 1,11,572. So there is no loss of revenue as pointed out in the audit for 1983-84.

The original assessment in this case was completed by Shri K. V. Radhakrishnan Nair who retired from service on 30-11-1990. Since there is no loss of revenue and the officer retired from service years back (1990), no disciplinary action was taken against him.

With regard to the assessment for the year 1984-85 the same was also recommended for fresh disposal by the appellate Assistant Commissioner as per order dated 30-10-1991 (AITA No. 726/91, dated 30-10-1991). The assessment was completed afresh setting off the loss outstanding for the previous years. When the net income is divided among the non-partners equally, the share income of each partner will be Rs. 4,794. Even if the clubbing of income is done the net total agricultural income of each assessee will be below the assessment limit and as such there will be no loss of revenue for the year 1984-85.

For the year 1988-89 the assessment has been revised rectifying the mistake pointed out in the audit. Against the revised assessment order, the assessee filed appeal. The Appellate Assistant Commissioner as per order in AITA No. 178, 279/94 dated 5-7-1995 dismissed the appeal. As per revised assessment order the additional demand created is Rs. 37,875. Out of this Rs. 36,354 has been adjusted from excess remittance for the year 1984-85 and balance Rs. 1,521 has been collected vide Chalan No. 41 dated 3-5-1997.

The assessing authority who completed the assessment for the year 1988-89 is Sri. T. A. Gopinathan Nair, who retired from service on 31-7-1994. No disciplinary action is possible against him at this distance of time.

Since there is no loss of revenue for the year 1984-85 as per the revised assessment, no disciplinary action was initiated against the officer who completed the original assessment.

Thiruvananthapuram,
25th July 2007.

SHRI ARYADAN MUHAMMED,
Chairman,
Committee on Public Accounts.