

TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

THIRTY EIGHTH REPORT

(Presented on 17th September, 2007)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM**

2007

TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

THIRTY EIGHTH REPORT

On

**Action taken by Government on the Recommendations contained in the
Hundred and Fourth Report of the Committee on
Public Accounts (1998-2000)**

1139/2007.

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COMMITTEE ON PUBLIC ACCOUNTS (2006-2008)

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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 Thirty Eighth Report on Action Taken by Government on the Recommendations contained in the Hundred and Fourth Report of the Committee on Public Accounts (1998-2000).

The Committee considered and finalised this Report at the meeting held on September 10, 2007.

Thiruvananthapuram,
17th September, 2007.

ARYADAN MUHAMMED,
Chairman,
Committee on Public Accounts.

REPORT

This Report deals with the action taken by Government on the recommendations contained in the 104th Report of the Committee on Public Accounts (1998-2000).

The Hundred and Fourth Report of the Committee on Public Accounts (1998-2000) was presented to the House on December 18, 2000 and it contained 16 recommendations relating to Taxes Department. Government were addressed to furnish the action taken statements on the recommendations contained in the report on 15th January 2001 and the final replies were received from Government on 31st August 2006.

The Committee examined the statements at its meetings held on 6-3-2006 and 10-1-2007 and decided not to pursue action in the light of the replies furnished by Government. The recommendations and the Statements of Action Taken by Government 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. 8)

From the additional information subsequently furnished the "Committee understand that eventhough Government have constituted an Audit Committee in Taxes Department during 1993 for clearing the audit objections in the Department, failed to arrange for frequent sittings, for the speedy disposal of audit objections. If the Taxes Department had initiated timely action for ensuring the sittings of the Committee as laid down in the guidelines issued in G.O.(Rt) No.93/98/TD. dated 10-2-1998, the delay in clearing the audit objections and consequent loss of revenue could have been averted. The Committee desire to furnish the details of the meetings of Audit Committee specifying the date of its sittings since the date of its constitution.

Action Taken

The details of the meetings of the Audit Monitoring Committee constituted as per G.O.(Rt) No.93/98/TD. dated 10-2-1998 are as follows:

Trivandrum	..	24-9-2002
Kottayam	..	7-3-2000

Alappuzha	..	27-1-2000
Idukki	..	3-9-2002 & 11-12-2002
Malappuram	..	3-8-2002 & 17-12-2002

Audit Monitoring Committee was reconstituted vide G.O. (Rt) No.99/2003/TD. dated 14-2-2003 to meet once in every month. The dates of Audit Monitoring Committee meetings since its reconstitution are given below:

10-6-2003
 12-8-2003
 16-9-2003
 14-10-2003
 15-11-2003

Recommendation

(Sl. No. 2 Para No. 9)

The Committee opines that the Internal Audit Wing of Taxes Department has been heavily understaffed from the beginning itself and independent scrutiny was not done due to interchangeable posting. The Committee also point out that 1215 cases noticed during test Audit went undetected during the Internal Audit. The Committee notice that eventhough the number of assessments increase by 10% every year, the staff necessary for Internal Audit were not increasing proportionally. The demand for staff and for strengthening Internal Audit fell upon deaf ears for many years and the proposal for creation of additional posts is still pending with Government. Government which ought to have taken action to sanction adequate number of posts which were needed urgently for the revenue interest of the State, failed to make them available to the Department. The Committee, therefore, urge the Government to constitute a full fledged independent internal audit wing in the Taxes Department to throw light on the irregularities in applying incorrect rate allowing concessional rate, Irregular exemption of tax etc. by assessing authorities.

Action Taken

The audit wing has been strengthened and 2 posts of Deputy Commissioner (Audit) have been newly created for supervising the audit work of the Department. 6 Inspecting Assistant Commissioner (Audit) were also created for supervising the work of Sales Tax Officer (Audit). There are 63 Nos. of Sales Tax Officers (Audit) who are attending the audit work. The work of audit wing is reviewed by Deputy Commissioner and Commissioner during every month and good results are being achieved.

Recommendation

(Sl. No. 3 Para No. 10)

The Committee suggests to assess the feasibility of deputing an officer from the Audit Wing of the Accountant General to attain Independence and transparency of Internal Audit Wing of Taxes Department without hampering the promotion prospects of the existing staff of the Department.

Action Taken

Now, District level Audit Monitoring Committee meetings are being held by District Deputy Commissioners for evaluating the pendency in clearing audit paras by the concerned assessing authorities with the help of the Audit Officers of the Accountant General's Office.

Recommendation

(Sl. No. 4 Para No. 15)

The Committee regrets to note that the recurrence of applying incorrect rates by assessing authorities without being aware of the law, even after being warned by the Audit and Committee on Public Accounts itself in its earlier reports. This shows the failure of the Taxes Department in ensuring that their instructions are strictly followed up by Departmental officers. The Department seems to be not keen on fixing responsibility for their lapses. The Committee vehemently criticise the delaying tactics often adopted by the Department in initiating action against the erring officials who are answerable for the loss to the exchequer. The Committee recommend that the Department should take more stringent steps against the assessing officers, for their failure to observe existing rules in taxation.

Action Taken

The observation of the Committee is noted. Now timely and strict actions is taken against the erring officials who are responsible for loss to the state exchequer. Strict disciplinary action is being taken in all cases of gross negligence, carelessness, malafides and failure to observe the existing rules of taxation.

Recommendation

(Sl. No. 5 Para No. 17)

The Committee observes that in the cases relating to turnover escaping assessment, the Department has not been making any serious efforts, for the recovery of the amounts created vide additional demand at the instance of audit.

The recovery of Rs. 27.11 lakhs mentioned in paragraph 2.3 (i) and the amount outstanding against the delinquent officers in respect of not taking timely action in para 2.3 (iii) has not been effected after a lapse of many years, sincere steps are also not seen to have taken against the assessing officers responsible for irregular assessment and the cases become time barred.

Action Taken

Out of the total revenue loss of Rs. 27.11 lakh pointed out in audit in this case, an amount of Rs. 14,60,057 has been fully collected in respect of 19 assesseees, leaving a balance amount of Rs. 12.51 lakhs. Out of this balance a partial collection of Rs.1,10,321 has been effected leaving a balance of Rs. 11.41 lakhs. Out of this 11.41 lakhs Rs. 4,25,099 is under Revenue Recovery leaving a balance Rs. 7.16 lakhs. This amount involves escape of tax on REP in the following cases.

KSCDC (12010694/84-85)	:	Rs. 5,83,826
Sujeer Vamadeva Naik	}	:
Century Cashew Products 12010202/84-85		
Do. (97-98)	:	Rs. 1,00,478
Total	:	<u>Rs. 7,16,000</u>

The original irregular assessment for the year 1988-89 was completed by Shri V. R. Chitharanjan Das, Sales Tax Officer. He retired from service on 30-6-1993 before the receipt of the Draft Paragraph. Hence no action was taken against him. The original irregular assessment for the year 1990-01 was completed by Shri T. M. Souri, Sales Tax Officer. He was issued with the memo and obtained explanation. Considering the fact that the loss of revenue was made good by revising the assessment on the basis of audit and that the officer completed 327 assessments during the year 1992-93, he was let off with a warning as per order No. E6-105409/93/TD. dated 3-8-1998.

Recommendation

(Sl. No. 6 Para No. 18)

The Committee recommends that present position and recovery in respect of 2 cases mentioned in paragraph 2.3(1) which were reported to be revised should be intimated to the Committee.

Action Taken

(1) *M/s. K. Gopinathan Nair & Company (1989-90)* :

The short levy noted in audit Rs. 38,346 has been collected from the assessee vide chalan No. 276 dated 29-6-1991. Since the assessment became time barred on 4-4-1995, it has not been revised. Since the amount has been collected, there is no loss of revenue to the state exchequer.

(2) *M/s Veena Mohan Cashew Company (1989-90)* :

The assessment was revised on 17-8-1994 creating an additional demand of Rs. 21,291. It has not been collected so far. The dealer Shri Mohanan Pillai committed suicide on 30-4-1995. Regarding the recovery of Sales Tax arrears under Revenue Recovery, the immovable properties owned by the assessee could not be sold in auction, because, his two minor Children have right over the properties and the assessee had huge liabilities as debt to two banks and several private parties.

Recommendation

(Sl. No. 7 Para No. 19)

With regard to the turnover escaping assessments in respect of M/s. K. Gopinathan Nair relating to the period of 1989-90 the Committee understand that the case become time barred due to laxity on the part of assessing officers in completing the assessments in time and steps were initiated against the officers for their lapse. The Committee recommends that responsibility should be fixed in this regard and immediate action should be taken to recover the loss sustained to Government.

Action Taken

Rs. 38,246 has been collected from the assessee eventhough the cases has been barred by limitation. There is no loss to the Government in this case.

Recommendation

(Sl. No. 8 Para No. 23)

With regard to the assessment of Shri A. K. Sreekumar, the Committee maintain that laxity and inaction on the part of the Deputy Commissioner in examining the statements contained in the returns, and failure of verifying returns before appeal are intentional. The Committee recommends to intimate the result of the second appeal filed by the Department before the Tribunal.

Action Taken

The second appeal filed by the department against the Appellate order in STA No. 105 & 106 dated 30-4-1994 has been dismissed by Additional Sales Tax Appellate Tribunal, Thiruvananthapuram as per order No. TA 375 & 374/94 dated 1-1-1999.

Recommendation

(Sl. No. 9 Para No. 27)

The Committee recommends that it may be examined to find out whether the same assessing officer had committed the same mistakes earlier and if so, suitable action be initiated against the assessing officer and intimated to the Committee.

Action Taken

No such case has been noticed against the same officer.

Recommendation

(Sl. No. 10 Para No. 38)

In the omission to assess the agricultural income of an assessee in Manjeri, the Committee could see deliberate and calculated move on the part of the Assessing Officer to safeguard the assessee on the plea that the rubber trees were in a neglected condition and the assessee had not derived any income, and it was sold to another party during 1987. But surprisingly to note that first plot inspection was not ascertained the real condition of rubber trees and this was not mentioned in the assessment records or brought to the notice of the Audit. The Committee view seriously the failure on the part of the assessing officer in taking note of vital points in the records which helped the assessee to claim that the yield shown was not only for him but also to other persons. The Committee, therefore, recommends that the assessing officers should be specifically entrusted with the duty of recording all information in assessment records, to avoid the recurrence of such lapses.

Action Taken

The observations of the Committee are noted and the assessing officers have been specifically and strictly directed to record all vital information in assessment records to avoid the recurrence of such lapses in future.

Recommendation

(Sl. No. 11 Para No. 39)

The Committee would like to point out that the Agricultural Income Tax Act clearly specify that the value of earning from trees in plantations should be reckoned for computation of Agricultural Income. The Committee understand that based on a court verdict from the Supreme Court, the value of latex derived from slaughter tapping was not reckoned since it was being calculated a capital receipt. The Committee cannot accept the view of the assessing authority and observe that at the time of selling advantage goes to the clients only and the Government is losing the revenue. Therefore, the Committee urge the Government to examine this issue based on legal opinion and in the light of Supreme Court verdict and explore the possibility of suggestion in amending the Act so as to prevent the loss to Government.

Action Taken

Latex derived from slaughter tapping is now being assessed in Agricultural Income Tax assessments. The value of earning from trees in plantations are now being assessed under the KGST Act.

Recommendation

(Sl. No. 12 Para No. 41)

The Committee desires to be informed of the details of the action taken against the Officers concerned for lapses occurred in computation of income and whether the amount recovered from M/s. Vythiri Plantations.

Action Taken

Based on the audit the assessment for 1987-88 was revised on 18-5-1994. But the original assessment for 1987-88 was set aside by the appellate authority vide AITA No. 375/93 dated 4-11-1995. The assessment was revised on 1-3-1997. As per the fresh order, there is no demand. Hence there is no loss of revenue.

Recommendation

(Sl. No. 13 Para No. 45)

The Committee would like to be intimated about the present position of the case and also whether any recovery had been effected in this regard.

Action Taken

Based on the audit, the assessment was revised under section 42 on 19-7-1994 demanding tax of Rs. 1,15,622. The original assessment was completed on 6-3-1993. The Deputy Commissioner (Appeals), Ernakulam as per Order

No. AITA – 67/93 dated, 5-8-1994 remanded the case for fresh disposal and the assessment was finalized on 13-2-1997 by fixing a net income of Rs. 11,85,030 and AIT at Rs. 7,70,270. An appeal filed against this fresh order is dismissed by the Deputy Commissioner (Appeals), Ernakulam vide order No. AITA – 52/1997 dated, 26-11-1997. Meanwhile, another appeal filed by the assessee company specifically challenging the disallowances of depreciation for Rs. 1,77,878 was also dismissed by the Deputy Commissioner (Appeals), Ernakulam as per order No. AITA-28/1994 dated, 28-4-1999. The assessee then filed a second appeal against the above order of the Deputy Commissioner (Appeals), Ernakulam and the Tribunal in a common order for the years 1987-88, 1989-90 and 1990-91 (AITA No.99/96 to 44 A/01 dated, 29-3-2003) has set aside the order of the assessing authority dated 19-7-1994 ie. the revised assessment in the light of audit objection with direction to consider the claim of depreciation in accordance with law.

Hence it may be seen that the revised assessment order dated 19-7-1994 was issued to rectify the mistake of allowance of depreciation to the tune of Rs. 1,77,878 and to assess the escaped turnover to that respect.

In the Appellate order, there is no specific finding regarding the disallowance of depreciation, but to consider the claim of depreciation in accordance with the law. Hence there is no ground to deviate from the order dated 19-7-1994 and it requires to be restored.

Accordingly, the assessment for the year 1989-90 has been completed afresh vide order dated, 3-3-2006 by the CTO on deputation to the special circle (KGST & AIT), Kottayam in the light of Tribunal Order mentioned earlier by fixing a net income of Rs. 11,80,620 (After allowing Rs. 4,414 from the net income of Rs. 11,85,030 fixed earlier towards workmen & staff welfare on the basis of evidence) assessing to AIT @ 65% and raised a demand of AIT to Rs. 7,67,403 and an interest of Rs.13,62,140 @177.5%.

On receiving the above revised assessment order, the assessee company filed a letter indicating that the levy of interest in the order is illegal. The averments of the assessee company was discussed by the CTO vide order dated, 30-3-2006 as follows:—

(i) The assessment for the year 1989-90 was completed on 6-3-1993 and it was revised on 19-7-1994. The assessee then went in appeal before the Deputy Commissioner (A), Ernakulam and as per order No.AITA/67/93 dated 5-8-1994 the Deputy Commissioner (A), Ernakulam remanded the order and as such assessment order was again revised on 13-2-1997. The demand issued

along with the assessment states to remit the tax due within 13-3-1997. Therefore, it is clear that the assessee is liable to pay interest from 13-4-1997 only, by virtue of section 37(4).

(ii) In the revised order dated, 3-3-2006 interest has been levied on the entire tax due with demand notice dated, 5-8-1994. (Enclosed as Appendix-I). This is a mistake apparent on the face of the records.

(iii) The revised order dated, 3-3-2006 is not a fresh assessment but only a modified one of the order dated, 13-2-1997.

(iv) The Hon'ble Tribunal in order No.99/96 to 44A/01 dated, 29-3-2003 in which the claim of depreciation was challenged has a clear decision to set aside the order dated 19-7-1994. Hence, Interest will not accrue on the demand of Rs.1,15,622.

Incorporating the above conclusions, the STO issued order dated, 30-3-2006, re-computing the interest. (Enclosed as Appendix-II).

As mentioned earlier, the original assessment order dated, 6-3-1993 was remanded for fresh disposal by the Deputy Commissioner (A), Ernakulam and the assessment was completed afresh on 13-2-1997 fixing a net income of Rs. 11,85,030.

Meanwhile the Hon'ble Tribunal has set aside the order dated, 19-7-1994 (the assessment order of audit objection) thereby the assessee is liable to pay interest for an amount of Rs. 6,51,781 only (Rs. 7,67,403, Rs. 1,15,622) from 13-3-1997.

The interest was therefore, computed only on an amount of Rs. 6,51,781 from 13-3-1997 to 31-3-2006 @Rs.136.25% which works out to Rs. 8,88,051 for which demand notice was issued on 30-3-2006. The collections is still pending.

Recommendation

(Sl. No. 14 Para No. 47)

The Committee notes that in Vythiri case the Officer who was responsible for not following the guidelines issued by the Taxes Department was let off with a censure. The Committee are of the opinion that the punishment awarded to the delinquent officers was quite inadequate. The Committee urge the Government to take stringent action against the officer responsible to prevent the recurrence of such lapses in future.

Action Taken

Based on the audit the assessment for the year 1987-88 has been revised on 18-5-1994. But the Original assessment for the year was set aside by the Appellate authority in AIT No. 375/93, 117/95. dated 4-11-95. The assessment was completed afresh on 11-3-1997. As per the fresh assessment, there is no loss of revenue. Hence no further action has been taken.

Recommendation

(Sl. No. 15 Para No. 48)

The Committee recommends that the Department should issue instructions to follow the prices fixed by the Bureau of Economics and Statistics based on sample survey of computing agricultural income instead of fixing average market rate based on market intelligence surveys.

Action Taken

The recommendations of the Committee are noted for future guidance.

Recommendation

(Sl. No. 16 Para No. 52)

The Committee recommends that it should be intimated about the present stage of the remanded assessment.

Action Taken

The assessment for the years 1988-89 to 1990-91 is still pending for want of income tax assessment order for the said years from the Income Tax Assessment Company Circle, Chennai.

Thiruvananthapuram,
17th September, 2007.

ARYADAN MUHAMMED,
Chairman,
Committee on Public Accounts.

APPENDIX I

THE KERALA AGRICULTURAL INCOME TAX RULES, 1991

Form No. 16

(See Rule 62)

Proceedings of the Agricultural Income Tax Officer

Present : Aji, V. Dev

Permanent Account No. 23900031

1. Year of assessment : 1989-90
2. Name of assessee with complete address : Tropical Plantations
3. Status (Whether individual, Company, Local Authority, firm or other association of persons) : Company
4. Method of accounting : Mercantile
5. Previous Year : Year ending 31st March - 1989
6. Section and sub-section under which the assessment is made : 39

- Read :*
- (1) Assessment Order Nos. 23900031 dated : 6-3-1993, 19-7-1994 (Revised), 13-2-1997 (Modified) of the IAC (Special), Ernakulam.
 - (2) Order No. AITA-44 & 45/94 & 10,11 & 12 of 98 Dated 27-9-2000 of the Appellate Tribunal, Addl. Bench, Ernakulam.
 - (3) Order Nos. 99/96 to 44A/01-Dt: 29-3-2003 of the Appellate Tribunal, Addl. Bench, Ernakulam.
 - (4) This office notice dated 29-12-2005 and 22-2-2006.
 - (5) Replies filed by the assessee dated 25-2-2006 and 27-2-2005.

Assessment Order Dated : 3-3-2006 (Revised)

The final assessment in respect of agricultural operations of the assessee company was originally completed, revised and modified as per the orders read first above. The assessee has further filed second appeals and as per the order cited second above the Hon'ble Tribunal has directed to re-examine the disallowances of expenses such as salaries, staff welfare expenses, cumbly

allowance, rates and taxes, provision for bonus, gratuity etc. As per the order read third above it is directed to “reconsider the claim of depreciation as well in accordance with the Rules governing such matters”.

In the light of above Tribunal orders I have issued a notice as read fourth above to the company giving an opportunity of being heard and to produce documents in support of the claims. On the basis of the discussions already made with the authorized representative the matter is further discussed below.

Estate expenditure (Rs. 22,51,688.71)	:	Already allowed in the original assessment order itself.
Sales tax paid	:	Already allowed as per order dated 13-2-1997.
Interest paid	:do.....
Repairs to roads and buildings	:do.....
Legal charges	:do.....

Other claims considered

Workmen & Staff welfare	:	Rs. 4,414.00 - Allowable claim on the basis of the evidences produced and various Tribunal decisions.
Rates and taxes	:	Not allowable - No case for deviation from previous assessment orders.
Sundry expenses	:do.....
Provision for Bonus	:	Only actual payment is allowable-disallowed.

Provision for Gratuity :

The only contention raised by the assessee is that since they were following Mercantile system of accounting, the amount of gratuity shown as liability during the year has to be allowed in full. However the final assessment was completed taking a view that provision for gratuity and gratuity paid during the year cannot be simultaneously allowed. Even now the assessee is failed to furnish any material to counter this view. It can clearly be noted that if the provision for gratuity is allowed there will be a duplication and overlapping in the allowance of gratuity claims. Hence both these claims cannot be allowed simultaneously.

Depreciation - Rs. 1,77,878.00

This was claimed as per the detailed statement attached to the return which was on the ground of some additions also. These additions were not proved by any supporting bills. This matter is seen discussed elaborately in the order dated 19-7-1994. Now there is no grounds to deviate from that order.

In the circumstances narrated above the final assessment for the year 1989-1990 is proposed to be modified as under :

Net income fixed as per the order dated 13-2-1997	:	Rs. 11,85,030.00
Less reliefs granted	:	Rs. 4,414.00
Balance agricultural income proposed	:	Rs. 11,80,616.00

This will be assessed to tax @ 65%

A notice containing the above proposal for implementation of the appellate orders is issued to the assessee and they have filed their reply as read last above, the contentions raised in the reply are discussed below :

(1) *Gratuity :*

The assessee has pointed out that the Hon'ble Tribunal had clearly directed that "provisions made for bonus and gratuity etc. especially when considering the system of accounting followed by the appellants, are fully allowable items of expenses". However the assessing authority as per the original order, the claim was disallowed only on a single ground that... "According to assessee the provision is based on the last paid wages. But for enjoying provisions the company ought to have filed actuarial valuation certificate from an approved value under Rule 8.1 of the AIT Rules 1951". The assessing authority has pointed out that this view was already upheld by the Hon'ble Kerala High Court in 102 ITR 803, 148 ITR 736 and 161 ITR 497 etc. However even at this juncture of time the assessee could not prove that they have filed actuarial valuation certificates as stipulated by the relevant Rules and also laid out by various judicial pronouncements. Further it can be noted that the direction of the Hon'ble Tribunal in the above decision is that "... to allow all such items which are found allowable in law and disallow such items which are not admissible in law, that too giving his clear findings on such disallowances". The Hon'ble Tribunal has not directed to allow provision for gratuity in the absence of actuarial valuation certificate eventhough observed in general that provision for gratuity is an allowable claim in the cases where mercantile system of accounting is followed.

(3) *Bonus :*

As per the original assessment order provision for bonus for Rs. 1,05,824.80 is seen disallowed. However the assessing authority has allowed all the payments

of bonus effected during the year for various years. Further there is no definite finding for the year in the tribunal decision to allow both the bonus paid and provision for bonus simultaneously for the same assessment year.

(4) *Depreciation :*

As per the original assessment order depreciation for Rs. 1,77,878.00 was allowed by a mistake. The revised assessment order dated 19-7-1994 was issued only to rectify that mistake and to assess the escaped turnover in that respect. This matter is seen discussed elaborately in the light of the detailed reply filed by the assessee, in the order dated 19-7-1994. Now there is no grounds to deviate from that order nor there is nothing in the appellate orders specifically in connection with the disallowance of depreciation for Rs. 1,77,878.

In the circumstances the final assessment for the year stands modified as under :

Net income fixed as per the order dated 13-2-1997	:	Rs. 11,85,030.00
Less reliefs granted	:	Rs. 4,414.00
Balance agricultural income proposed	:	Rs. 11,80,616.00
Rounded to	:	Rs. 11,80,620.00
AIT due @ 65%	:	Rs. 7,67,403.00
AIT paid	:	Nil
Balance due	:	Rs. 7,67,403.00
Interest due @ 177.5%	:	Rs. 13,62,140.00

These amounts shall be paid as specified in the demand notice issued.

*Commercial Tax officer on deputation
to Special Circle (K.G. S.T & A.I.T.),
Kottayam*

To

Tropical Plantations,
Kottayam.

Copy submitted to the Deputy Commissioner, Kottayam.

APPENDIX II

Ref:— Letter No. J-2-49737/05/CT/15-11-2005 of the D.C (A&I) Typm

THE KERALA AGRICULTURAL INCOME TAX RULES, 1991

Form No. 16

(See Rule 62)

Proceedings of the Agricultural Income Tax Officer

- | | | |
|--|---|--|
| Present | : | Aji, V. Dev |
| | | Permanent Account No. - 23900031 |
| | | <i>New No. allotted : AIT - 210113</i> |
| 1. Year of assessment | : | 1989-90 |
| 2. Name of assessee with complete address | : | Tropical Plantations |
| 3. Status (Whether individual, Company, Local Authority, firm or other association of persons) | : | Company |
| 4. Method of accounting | : | Mercantile |
| 5. Previous Year | : | Year ending 31st March - 1989 |
| 6. Section and sub-section under which the assessment is made | : | 42 |

- Read :*
- (1) Assessment Order Nos. 23900031 dated : 6-3-1993, 19-7-1994 (Revised), 13-2-1997 (Modified) of the IAC (Special) Ernakulam.
 - (2) Order No. AITA-44 & 45/94 & 10,11 & 12 of 98 Dated 27-9-2000 of the Appellate Tribunal, Addl. Bench, Ernakulam.
 - (3) Order Nos. 99/96 to 44A/01-Dt: 29-3-2003 of the Appellate Tribunal, Addl. Bench, Ernakulam.
 - (4) This office notice dated 29-12-2005 and 22-2-2006.
 - (5) Replies filed by the assessee dated 25-2-2006 and 27-2-2005.
 - (6) Order No. 23900031/Dated : 3-3-2006.
 - (7) Letter Dated : 29-3-2006 filed by the assessee.

Assessment Order Dated : 30-3-2006 (Revised)

As per the order read sixth above the final assessment in respect of agricultural operations of the assessee company has been completed as below :

Net income fixed as per the order dated 13-2-1997	:	Rs. 11,85,030.00
Less reliefs granted	:	Rs. 4,414.00
Balance agricultural income proposed	:	Rs. 11,80,616.00
Rounded to	:	Rs. 11,80,620.00
AIT due @ 65%	:	Rs. 7,67,403.00
AIT paid	:	Nil
Balance due	:	Rs. 7,67,403.00
Interest due @ 177.5%	:	Rs. 13,62,140.00

On receiving the above order the assessee company has filed a letter indicating that the levy of interest as per the above order is illegal and requesting to rectify the said order. The objections raised in this connection by the assessee are discussed as below :

It is argued that by virtue of section 37(4) the liability to pay interest is only when there is a default in payment of tax pursuant to the demand notice issued u/s 45. The original order got merged in the appellate order and the same is already implemented and has issued the demand notice only on 9-3-2006 without specifying any date for payment. Actually they had returned a loss and the assessment was completed fixing income. In assessee's own case for the year 1998-99 the Tribunal has held that no interest can be levied when loss is returned. So the levy of interest is not sustainable.

Moreover the Hon'ble Supreme Court has held in Philips India Ltd. and another Vs. Asst: Commissioner, Comml. Taxes, Calcutta and others [(2004) 12 KTR 581 (SC)] that when fresh assessment is directed to be made, earlier orders ceases to exist and the default arises only from the date specified in the demand notice and hence the interest liability arises only from the date specified in the demand notice.

In the light of the above reply and the decisions, entire records and the orders in respect of the assessee for the year 1989-90 were subjected to a meticulous re-examination and finally I have reached at the following findings and inferences :

- (1) The assessment for the year 1989-90 was completed on 6-3-1993 fixing the net income at Rs. 16,00,500.00 and the assessment was

subsequently revised on 19-7-1994 fixing the net income at Rs. 17,78,380.00. The assessee went in appeal against the assessment and the Addl: Deputy Commissioner (Appeals), Ernakulam as per his appellate order No. AITA. 67/93/5-8-94 remanded the assessment for fresh disposal. On the basis of that, a fresh order dated 13-2-1997 was issued by the I. A. C. (Special) Ernakulam by fixing a net income of Rs. 11,85,030.00 and AIT due at Rs. 7,70,270.00. As per the demand notice dated 13-2-1997, issued along with that order the assessee had to remit the above amount of tax within 13-3-1997. Considering the above order as a fresh order on remission, there could not be no dispute that the assessee is liable to pay the tax within 13-4-1997 and interest was automatically accrued on the tax due from 13-3-1997 by virtue of section 37(4).

- (2) I have also noted that as per the assessment order dated 3-3-2006 interest has been levied on the entire tax due in accordance with the demand notice dated 5-8-1994 issued with the order dated 19-7-1994. It is a mistake apparent from the records and this mistake is to be rectified by virtue of section 42 of the Act.
- (3) The principle laid out in the Philips case in respect of levy of interest, by the Hon'ble Supreme Court of India has no application to the Tribunal decisions dated 27-9-2000 and 29-3-2003 in the assessee's case. The decision of the Hon'ble court is applicable in cases where the original assessment order is set aside and a fresh disposal is directed by an appellate authority. The Hon'ble Tribunal as per its order dated 27-9-2000 has directed to modify the assessment as per the directions given by it and other similar decisions. There is no case of annulment of the original assessment order (In this case the Order dated: 13-2-1997) or direction for a fresh disposal for the year. It can also be noted that the Hon'ble Tribunal has considered certain cases of disallowances of expenses only for adjudication but not the assessment as a whole. Finally the tribunal has decided that "*the appeals for 1989-90, AITA 44/95 and 11/98 stand allowed as indicated above.*" The facts being so the order issued dated 3-3-2006 for giving effect to the above Tribunal orders is not a fresh assessment order but only a modified order emanated from the order dated 13-2-1997. Hence interest is leviable from the date of demand as per the order dated 13-2-1997.
- (4) As per the decision of the Hon'ble Tribunal in 99/96 to 44A/01-Dt: 29-3-2003 in which the assessment of escaped income for Rs. 1,77,878.00 (Claim of depreciation) was challenged there is a clear

decision to set aside the order dated 19-7-1994 and for a fresh disposal. Hence interest will not be accrued on the tax due on it (Rs. 1,15,622.00) when following the decision of the apex court.

- (5) The issue of a fresh demand notice does not mean that, the earlier orders and demand notices issued are merged with or vanished along with the new one. There is no irregularity in issuing a fresh demand notice along with a modified order as per section 46 of the AIT Act, 1991.

In the circumstances the final assessment order stands revised as under :

Net agricultural income fixed	:	Rs. 11,80,616.00
Rounded to	:	Rs. 11,80,620.00
AIT due @ 65%	:	Rs. 7,67,403.00
AIT paid	:	Nil
Balance due	:	Rs. 7,67,403.00
Interest is computed from 13-3-1997 to 31-3-2006 on an amount of Rs. 6,51,781.00 (Rs. 7,67,403.00 - Rs. 1,15,622.00)		
Interest due @ 136.25% on Rs. 6,51,781.00	:	Rs. 8,88,052.00
Interest paid	:	Rs.
Balance due	:	Rs. 8,88,052.00

These amounts shall be paid as specified in the demand notice issued.

(A fresh demand notice is issued.)

(Sd.)
Commercial Tax officer on deputation
to Special Circle (K.G. S.T & A.I.T.),
Kottayam

To

Tropical Plantations,
Kottayam.

Copy submitted to the Deputy Commissioner, Kottayam.