

TWELFTH KERALA LEGISLATIVE ASSEMBLY

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

FIFTY SIXTH REPORT

(Presented on 17th March, 2008)



SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2008

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On

**Action taken by Government on the Recommendations
contained in the Eleventh Report
of the Committee on Public
Accounts (2001-2004)**

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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 Fifty Sixth Report on Action taken by Government on the Recommendations contained in the Eleventh Report of the Committee on Public Accounts (2001-2004).

The Committee considered and finalised this Report at the meeting held on 11-3-2008.

Thiruvananthapuram,
17th March, 2008.

ARYADAN MUHAMMED,
Chairman,
Committee on Public Accounts.

Report

This Report deals with the action taken by Government on the recommendations contained in the 11th Report of Committee on Public Accounts (2001-2004).

The 11th Report of the Committee on Public Accounts (2001-2004) was presented to the House on 14th March, 2002 and it contained twenty recommendations relating to Taxes Department. Government were addressed on 21st March, 2002 to furnish the Statement of Action Taken on the recommendations contained in the Report and the final replies were received on 16-6-2005.

The Committee examined the statements at its meetings held on 24-5-2005 and 18-8-2005.

The Committee was not satisfied with the statements of action taken by Government on recommendation Nos.1,3 and 17 (Para Nos.2,4 and 44) and decided to pursue it further. Such recommendations, the replies thereon and the further recommendations of the Committee are included in Chapter I of this Report.

The Committee decided not to pursue further action for the remaining recommendations in the light of the replies furnished by Government. These recommendations and their replies are incorporated in Chapter II of this Report.

CHAPTER 1

RECOMMENDATIONS IN RESPECT OF WHICH THE ACTION TAKEN BY
GOVERNMENT IS NOT SATISFACTORY AND WHICH REQUIRES
REITERATION**Taxes Department***Recommendation**(Sl. No. 1 Para No. 2)*

1.1 The Committee found that there was inordinate delay in furnishing replies to audit paragraphs by the Department. The Committee express their serious displeasure and urge the department to ensure that replies to audit paragraphs are furnished promptly.

Action Taken

1.2 Earnest attempt are now being made by Government to furnish replies to audit paragraphs promptly.

Further Recommendation

1.3 The Committee desires that the notes on audit paragraphs relating to Taxes Department should be furnished within the stipulated time without any delay.

*Recommendation**(Sl. No. 3 Para No. 4)*

1.4 The Committee, in its earlier reports had recommended to strengthen the Internal Audit Wing to avoid audit objection and to lessen the loss suffered by Government due to short levy of tax. The recurring nature of under assessment cases tends to stress the need for strengthening Internal Audit. The Committee are displeased to note that no effective steps have been taken by the Department in this way and internal audit is still not effective. The Committee strongly recommend to take immediate action for the strengthening of Internal Audit Wing of the Department.

Action Taken

1.5 The Internal Audit Wing of the Department has been strengthened with two additional posts of Deputy Commissioner (Audit) and strict supervision of internal audit is being done. Further 6 posts of Inspecting Assistant Commissioner (Audit) were also created to supervise the audit works of Sales Tax Officer (Audit) in the Department. Now the wing is working effectively in full swing with good results.

Further Recommendation

1.6 **The Committee recommends that the objections noted by the Internal Audit Wing should be recorded in the respective files. Steps should also be taken for the preparation of the Internal Audit Manual at the earliest.**

Recommendation

(Sl. No. 17 Para No. 44)

1.7 The Committee urge the Department to take immediate action to vacate stay order granted to the assessee by the Tribunal.

Action Taken

1.8 The appeal is still pending disposal in the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Ernakulam.

Further Recommendation

1.9 **The Committee desires to be informed of the present position of the case pending in the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, of the number of cases involving pecuniary loss detected during last year and of the action taken other than disciplinary action like barring of increments etc. against the delinquent officers.**

CHAPTER II

RECOMMENDATIONS WHICH THE COMMITTEE DOES NOT DESIRE TO PURSUE IN THE LIGHT OF REPLIES RECEIVED FROM GOVERNMENT

Taxes Department*Recommendation*

(Sl. No. 2 Para No. 3)

2.1 The Committee find that further action to collect the amount raised through additional demand on the basis of audit is still pending due to various reasons. The Committee desires the Department to take immediate action for the collection of the amount due to Government.

Action Taken

2.2 As and when audit objections are received, the same will be entered in a register kept for this purpose noting the revenue involved and immediately on collection of the additional demand created on the implementation of audit objection, the same will also be entered. This helps in watching additional demand created, consequent to the rectification on the basis of audit objection.

*Recommendation**(Sl. No. 4 Para No. 6)*

2.3 The Committee are surprised at the wrong clarification justifying the incorrect assessment given by the Deputy Commissioner (General). The Committee express their dissatisfaction towards the manner in which the audit objection was answered by the Taxes Department. The Committee urge that the Officers concerned should be more diligent and should strictly follow up provisions contained in the relevant Act and Rules and to interpret the same in a proper manner.

Action Taken

2.4 Noted for future guidance.

*Recommendation**(Sl. No. 5 Para No. 10)*

2.5 The Committee urge to expedite action by the Department for the speedy disposal of the appeal and vacate stay granted to the assessee regarding the collection of balance amount.

Action Taken

2.6 The stay in appeal pending before the Honourable High Court in OP No.8641/97 relates to levy of tax on “Cenex” income both under the Central Income Tax Act and Kerala Agricultural Income Tax Act. The order in CMP No.14941/97 staying collection of tax on “Cenex” (value added rubber) income is in force. It may be seen that the issue of tax due on Cenex income is not the subject matter of the audit and the stay relates to Central Income Tax portion and the Central Government would be pursuing the case. The escaped income was assessed to tax at the instance of the audit and the assessee had remitted the amount.

*Recommendation**(Sl. No. 6 Para No. 11)*

2.7 The Committee notice that the original assessment in respect of seventeen companies/firms out of twenty-five under question were completed by Shri. Thomas Philip, Assistant Commissioner. It was also observed that the loss incurred on account on incorrect assessments, completed by the said officer alone amounted to Rs.80.74 lakhs. The Committee do not find that the mistakes occurred accidentally. The Committee were informed that disciplinary action has

been started against Shri. Thomas Philip, Assistant Commissioner. The Committee are surprised and alarmed to see that the officer who was responsible for a huge loss to Government is still in service and disciplinary action against him even in a single case has not been completed till date. The Committee are also doubtful about the completion of disciplinary action in this regard, before the retirement of the officer. Therefore, the Committee urge the Department to expedite the disciplinary proceedings so as to complete the same at least before his retirement.

Action Taken

2.8 In three batches of cases, all the cases of disciplinary action initiated against Shri Thomas Philip, Assistant Commissioner has been already finalized as detailed below:

1. G. O. (Rt.) No. 298/01/TD., dated 9-4-2001 withheld 2 increments with cumulative effect. This has been confirmed vide order No. G. O. (Rt.) No. 341/02 dated 6/02.
2. G. O. (Rt.) No. 215/01/TD. dated, 26-3-2001 withheld one increment with cumulative effect. This was confirmed in order No. G. O. (Rt.) No. 10/02 dated, 5-1-2002.
3. G. O. (Rt.) No. 215/01/TD. dated 26-3-2001 withheld one increment with cumulative effect. The disciplinary action initiated against Shri Thomas Philip has been completed.

Recommendation

(Sl. No.7 Para No. 13)

2.9 The Committee recommend that urgent measures should be taken for the disposal of appeal filed by the assessee. The outcome of the appeal and the action taken on the decision should be informed to the Committee.

Action Taken

2.10 a. M/s. Highland produce Company Limited (1989-90 & 1990-91)

The Sales Tax Appellate Tribunal Additional Bench, Ernakulam as per order No.AITA-76, 77/95 dated, 29-7-2000 remanded the assessments for the year 1989-90 & 1990-91 for fresh disposal. The fresh assessment has been completed on 15-4-1996 and 7-11-1996 respectively on net loss. Hence there is no loss of revenue.

b. (1) M/s. Midland Rubber Company Limited for the year 1990-91

As per the Appellate Order No.AITA-71/97 dated, 16-11-2000, the assessment has been modified on 7-2-2001 and as per this order the assessee paid the entire tax.

(2) M/s. Midland Rubber Produce Company Limited 1991-92.

As directed in the Appellate Order No.AITA 72/97 dated 16-11-2000, the assessment was modified on 6-2-2001 and based on the revised assessment order, the assessee paid the entire tax.

Supplementary Action Taken

2.11 1. M/s. Midland Rubber & Produce Company Limited (1990-91 & 1991-92).

Based on the audit, the assessment for the years 1990-91 & 1991-92 was revised on 15-4-1996 and created an additional demand of Rs.6,16,740 and 5,65,831 respectively. Aggrieved by this order, the assessee preferred appeal before the Deputy Commissioner (Appeals) and the same was dismissed by the Deputy Commissioner (Appeals), against this the assessee filed second appeal before the Sales Tax Appellate Tribunal Additional Bench, Ernakulam. While deciding the appeal filed by the assessee, the Honourable Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in its order No. AITA 71/97 & 72/97 dated 16-11-2000 has held that “deduction under section 80 HHC of the Act 1961 are to be taken into account before allocation of 60% of income from tea for the purpose of taxation under the KAIT Act, the point raised in this appeal has been answered in favour of the Appellant-II. So the assessment for the year 1990-91 was revised on 7-2-2001 and for the year 1991-92 was revised on 5-1-2005. As such, there is an excess payment of Rs. 73,743 and Rs. 9,92,043 for the year 1990-91 & 1991-92 respectively.

M/s. Highland Produce Company Limited for the year 1990-91.

Based on the audit, the assessment for the year 1990-91 was revised on 15-4-1996 fixing a net loss of Rs. 85,576. The same was carried forward to the year 1991-92, against the above order, the assessee filed appeal before the Deputy Commissioner (Appeals), Ernakulam. The appeal was dismissed by the Deputy Commissioner (Appeals). The assessee again filed second appeal before the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam. The Sales Tax Appellate Tribunal, Additional Bench, Ernakulam has modified the assessment in Order No.AITA No. 110/96 dated, 10-10-2002. The assessment was modified on 3-1-2005 fixing on net loss.

M/s. Highland Produce Company Limited for the year 1991-92.

Based on the audit, the assessment was revised on 7-11-1996 under section 41 (1) of the KAIT Act, 1991 and demanded a balance tax of Rs. 23,66,166. Aggrieved by this, the assessee preferred appeal before the Deputy Commissioner (Appeals), Ernakulam. The Deputy Commissioner (Appeals), dismissed the appeal against this decision, the assessee preferred appeal before the Honourable Tribunal, Additional Bench, Ernakulam. The Tribunal as per Order No.49/99 dated 2-5-2002 has modified the appeal. The assessment was revised on 3-1-2005 with a balance demand of Rs.1,71,597. The same is under Revenue Recovery.

Recommendation

(Sl. Nos .8 and 9 Para Nos. 15 and 17)

2.12 The Committee urge to expedite the disciplinary proceedings against the delinquent officer.

2.13 The Committee view serious lapse on the part of the officials responsible for short levy of tax amounting to huge sums due to Government. The Committee are also of the view that the officers who make deliberate mistake should not be let to escape. The Committee recommend to take stringent action against the officers concerned.

Action Taken

2.14 The disciplinary action initiated against the delinquent officer has been finalized by awarding a penalty of withholding of 2 increments without cumulative effect vide G.O.(Rt.) No.298/2001/TD. Dated 9-4-2001.

Recommendation

(Sl. No. 10 Para No. 19)

2.15 The Committee are satisfied with the denial of the application for compounding tax under question through revised assessment as it did not fulfil the requisites contemplated under the Act. At the same time the Committee also desire that the applications for compounding tax should be processed safeguarding the intention of the Legislature to allow the same.

Action Taken

2.16 In this case the assessment has been finally completed under section 13 of the Agricultural Income Tax Act 1991 accepting the compounding petition of the assessee for the year 1995-96.

*Recommendation**(Sl. No. 11 Para No. 22)*

2.17 The Committee found that the assessee gets huge benefit through the allowance of certain percentage deduction for replantation and tax exemption for income derived from root removal of crops considering it as a capital gain. Therefore the Committee desires the Department to examine the matter in detail whether the double benefit entertained should be allowed or not in future.

Action Taken

2.18 Action has been initiated to amend provision in the Agricultural Income Tax Act as per the recommendation in CCT's office file No. 61385/02/TX. The double benefit is not allowed at present.

*Recommendation**(Sl. No. 12 Para No. 23)*

2.19 The Committee suggests that the expenditure incurred on the purchase of PVC pipes, motor and maintenance etc. should be enlisted in 'Revenue expenditure' and deduction should be allowed.

Action Taken

2.20 The recommendation of the Committee has been brought to the notice of the assessing authority for action.

*Recommendation**(Sl. No. 13 Para No. 32)*

2.21 The Committee understands that there was a three tier system of checking in the Department. The Committee is of the view that officers in each level are responsible for the mistakes that occurred during assessment. The Committee also urges to expedite action to collect the amount due to Government.

Action Taken

2.22 Disciplinary action against the officers has been completed by awarding punishment of withholding of 2 increments without cumulative effect vide G.O. (Rt.) No. 298/01/TD. dated, 9-4-2001. The entire amount as per the audit has been collected vide chalan No.134/dated 22-9-1997.

*Recommendation**(Sl. No. 14 Para No. 33)*

2.23 The Committee desires to take immediate action for the speedy disposal of revenue recovery in respect of para 3.11 (iii).

Action Taken

2.24 The assessment was revised on 15-1-2000 based on the sale deed No. 435/92 dated 1-3-1992, 437/92, dated 4-3-1992 for the sale of 4.46 acres of land. After this alienation the assessee has only 3.25 acres under possession for the year concerned, which is below the assessable minimum. Hence the assessment has been completed as a case of NIL demand.

Recommendation

(Sl. No. 15 Para No. 34)

2.25 The Committee urge that the Department should take necessary action to vacate the appeal at the earliest in respect of para 3.11 (v).

Action Taken

2.26 The Appellate Assistant Commissioner has disposed the appeal. In the light of the appellate order the assessment for the year 1993-94 to 1994-95 were completed afresh on 16-3-1999 under section 13 of the Agricultural Income Tax Act, 1991 and the tax due has been adjusted against the excess outstanding to the assessee.

Recommendation

(Sl. No.16 Para No. 42)

2.27 The Committee are not convinced with the reason adduced by the Department for the under assessment. The Committee urge that the Department should take urgent steps to complete disciplinary action against the erring officer.

Action Taken

2.28 The original assessment in this case has been completed on 19-12-1996 by Shri A. Abdul Kaffar who has been removed from service before the receipt of the audit. Hence no disciplinary action was initiated.

Recommendation

(Sl. No. 18 Para No. 48)

2.29 The Committee desire to know whether the appeal has been decided and what action has been taken by the Government on the decision.

Action Taken

2.30 In the light of the decision of the Honourable High Court reported in 169 ITR 386 and the case reported in 115 ITR 624 and case reported in 200 ITR 911 and case reported in 200 ITR 27 the expenses incurred for professional fee 313/2008.

for taxation work is an allowable deduction. In 115 ITR 624, the Honourable High Court has held that expenses for obstructing encroachment, prevention of theft, resisting unreasonable demand of labourers etc. are allowable deduction. Expenses for conduct of Central Income Tax cases, land acquisition cases and Sales Tax cases are indirect expense in connection with the activities of deriving income and therefore are allowable deduction under the Act. The appeal filed by the assessee against the revised assessment order based on the audit objection was allowed by the appellate authority with the above said observation.

Recommendation

(Sl. No. 19 Para No. 52)

2.31 The Committee are of the view that the Department should take proper action to collect the amount immediately.

Action Taken

2.32 As per the order of the Appellate Assistant Commissioner in AITA Nos.143,144 and 145/97 dated 13-3-1998 the assessment was completed afresh on 31-3-1999 after verifying the reconstitution deed by the firm on 1-4-1992 and the assessee paid the tax due as per the fresh assessment order.

Recommendation

(Sl. No. 20 Para No. 54)

2.33 The Committee urge to speed up the Revenue Recovery Proceedings and to intimate the position.

Action Taken

M/s. Kalpetta Estate Limited

2.34 Based on audit, the assessment was revised on 16-7-1997 under section 41 (1) of KAIT Act 1991 along with certain other defects. The assessee preferred appeal before the Deputy Commissioner (A), Ernakulam. The Deputy Commissioner (Appeals), Ernakulam in his order dated 26-2-1999 has modified the assessment. Again, the assessee went on a second appeal in Tribunal and in the High Court also. As per the direction of the Tribunal in AITA-67/99 dated 30-9-2002 and the High Court Order TRC No.61/2003 dated, 17-2-2003, the assessment was modified on 1-1-2005 and the assessee paid an excess amount of Rs. 2,47,190.

ARYADAN MUHAMMED,

Thiruvananthapuram,

Chairman,

17th March, 2008.

Committee on Public Accounts.

APPENDIX 1

SUMMARY OF MAIN CONCLUSIONS/RECOMMENDATIONS

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department Concerned</i>	<i>Conclusions/ Recommendations</i>
(1)	(2)	(3)	(4)
1.	1.3	Taxes	The Committee desires that the notes on audit paragraphs relating to Taxes Department should be furnished within the stipulated time without any delay.
2.	1.6	„	The Committee recommends that the objections noted by the Internal Audit Wing should be recorded in the respective files. Steps should also be taken for the preparation of the Internal Audit Manual at the earliest.
3.	1.9	„	The Committee desires to be informed of the present position of the case pending in the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Ernakulam of the number of cases involving pecuniary loss detected during last year and of the action taken other than disciplinary action like barring of increments etc. against the delinquent officers.