



सत्यमेव जयते

REPORT
OF THE
COMPTROLLER AND
AUDITOR GENERAL OF INDIA
FOR THE YEAR ENDED
31 MARCH 1994
No.2
(REVENUE RECEIPTS)
GOVERNMENT OF GUJARAT



REPORT

COMPTROLLER GENERAL

AUDITOR GENERAL OF INDIA

FOR THE YEAR 1950

VOLUME I

GENERAL RECEIPTS

GOVERNMENT OF INDIA

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PREFATORY REMARKS

This Report for the year ended 31 March 1994 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising sales tax, land revenue, taxes on vehicles, stamp duty and registration fees and other tax and non-tax receipts of the State.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1993-94 as well as those noticed in earlier years but could not be included in previous Reports.

THE VARIOUS STATES

The various states are divided into three classes: the first class consists of those states which have a population of less than 100,000; the second class consists of those states which have a population of between 100,000 and 1,000,000; and the third class consists of those states which have a population of more than 1,000,000.

Overview

OVERVIEW

This Report contains 37 paragraphs including 2 reviews relating to non-levy/short levy of tax, penalty, interest etc. involving Rs. 128.07 crores. Some of the important findings are mentioned below:

I. General

(i) The total revenue receipts of the Government of Gujarat in 1993-94 were Rs.7030.01 crores as against Rs.5911.08 crores during 1992-93. The revenue raised by the State from taxes during 1993-94 was Rs.3941.72 crores and from non-tax receipts was Rs.1398.78 crores. State's share of divisible Union taxes and grants-in-aid from Government of India were Rs.983.08 crores and Rs.706.43 crores respectively. The main source of tax revenue during 1993-94 was Sales Tax (Rs.2771.03 crores). The main receipts under non-tax revenue were from Interest (Rs.777.53 crores) and Nonferrous Mining and Metallurgical Industries (Rs.381.04 crores).

[Paragraph 1.1 and 1.2]

(ii) Cases pending for assessment under Sales Tax Act increased from 16,69,159 as on 31st March 1993 to 18,81,217 as on 31st March 1994. Out of these, 31,022 cases had turnover of Rs.1 crore and above in each case.

[Paragraph 1.6]

(iii) A test check of the records of Sales Tax, Land Revenue, Motor Vehicles and other departmental offices conducted during the year 1993-94 revealed under-assessments and losses of revenue of Rs.32.58 crores in 1,734 cases. During the year the concerned departments accepted under assessments etc., Rs.7.29 crores in 1519 cases pointed out during 1993-94 and earlier years.

[Paragraph 1.8]

2. Sales Tax

(i) A review on 'Sales Tax incentives to new industries' revealed the following :

(a) Under the tax incentive schemes during 1986-87 to 1992-93 Rs.1651.64 crores of sales tax benefits were allowed to 9418 industrial units. Monitoring of the implementation of the schemes in the Industries and Sales Tax Departments was deficient. Coordination between the Sales Tax and Industries Departments to safeguard against leakage of revenue was lacking.

[Paragraph 2.2.6 and 2.2.7]

(b) Exemption of Rs.20.14 crores was granted to a soap manufacturing unit though it had opted for deferment of tax.

[Paragraph 2.2.7(B)(3)]

(c) Under 'Pioneer Units' Scheme 3 cement manufacturing units in Amreli, Junagadh and Bhavnagar Districts were sanctioned irregular exemption of Rs.45.41 crores.

[Paragraph 2.2.7(B)(1)(4)(5)]

(d) 157 ineligible units were allowed the benefit of exemption of Rs.15.04 crores.

[Paragraph 2.2.8(2) and (3)]

(e) No securities were obtained from 2343 units in 6 districts against deferred tax of Rs.242.57 crores.

[Paragraph 2.2.8(8)]

3. Land Revenue

(i) Lease rent of Rs.46.77 lakhs from cultivators of five talukas to whom land was allotted in 1965-66 for agricultural purpose remained to be recovered.

[Paragraph 3.2(ii)]

(ii) Assessment on Land revenue on non-agricultural land of Rs.10.91 lakhs in respect of 16.96 lakhs square metres of land occupied by statutory Boards, Municipality and private industries and used for non-agricultural purposes was not levied for the period between 1975-76 and 1991-92.

[Paragraph 3.4(ii)]

(iii) Conversion tax of Rs.12.67 lakhs was not levied on the land acquired by four autonomous bodies.

[Paragraph 3.5]

4. Taxes on Vehicles

Exemption from payment of motor vehicles tax was incorrectly continued in case of 49 vehicles of Central Government from July 1992 and consequently motor vehicles tax of Rs.3.71 lakhs was not levied.

[Paragraph 4.2(a)]

5. Stamp Duty and Registration Fees

(i) A review on "Valuation of properties" under Bombay Stamp Act, 1958 disclosed the following:

(a) Implementation of the provisions of Section 32-A was not monitored in the Government or in the department. Action to recover outstanding dues of Rs.72.43 crores was inadequate. Norms for non-agricultural properties (buildings) in smaller towns and cities and agricultural and non-agricultural land have not yet been framed. Ready reckoners for valuation were prepared and updated for only 2 districts so far.

[Paragraph 5.2.5 and 5.2.7]

(b) Due to incorrect action following an order of the High Court of Gujarat 4.14 lakh cases accumulated during February 1984 and May 1990. Exemption to certain class of instruments resulted in irregular exclusion of 63513 cases from valuation under Section 32-A.

[Paragraph 5.2.8]

(c) 105 cases were irregularly exempted from purview of valuation provisions resulting in short levy of stamp duty of Rs. 13.83 lakhs.

[Paragraph 5.2.8(b), 5.2.10 and 5.2.14]

(d) Rate of penalty for undervaluation was drastically reduced without considering the inter-departmental recommendation. The revised rate was too low to provide deterrence against large scale undervaluation.

[Paragraph 5.2.16]

(e) Due to delay in disposal of appeals 7232 cases accumulated in 18 districts. Out of these 3524 cases pertaining to 6 districts involved revenue of Rs. 3.17 crores. Action taken for the disposal of the appeals was inadequate.

[Paragraph 5.2.17]

(f) Valuation proposed by the Town Planning department was not considered during revaluation resulting in gross undervaluation and short levy of stamp duty of Rs. 17.82 lakhs in 4 cases.

[Paragraph 5.2.18]

(ii) Stamp duty of Rs. 3.36 crores was short levied due to misclassification of 'Deeds of Further Charge' as mortgage deeds.

[Paragraph 5.3]

6. Other Tax and Non-Tax Receipts

(i) Entertainment tax and interest amounting to Rs.3.04 lakhs were not recovered from one cinema house at Jamnagar.

[Paragraph 6.2(i)]

(ii) Entertainment tax of Rs.2.72 lakhs was neither paid nor demanded from owners of 14 video parlours of Ahmedabad and Jamnagar.

[Paragraph 6.4]

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GENERAL

CHAPTER - 1

GENERAL

1.1 Trend of revenue receipts

The tax and non-tax revenue raised by Government of Gujarat and the State's share of divisible Union taxes and grants-in-aid received from Government of India during 1993-94 and the preceding two years are given below and also depicted in Chart-I:

	1991-92	1992-93	1993-94
(Rupees in crores)			
I. Revenue raised by State Government			
(a) Tax revenue	2893.44	3456.55	3941.72
(b) Non-Tax revenue	1133.85	1157.97	1398.78
Total	4027.29	4614.52	5340.50
II. Receipt from Government of India			
(a) State's share of divisible Union taxes	593.19	813.09	983.08*
(b) Grants-in-aid	397.08	483.47	706.43
Total	990.27	1296.56	1689.51
III. Total receipts of the State Government (Revenue Account)	5017.56	5911.08	7030.01
Percentage of I to III	80	78	76

* For details, please see Statement No.11 - "Detailed Accounts of Revenue by Minor Heads" in the Finance Accounts of the Government of Gujarat for the year 1993-94. Figures under the head "0021 - Taxes on Income other than Corporation Tax - Share of net proceeds assigned to States" booked in the Finance Accounts under A-Tax Revenue have been excluded from revenue raised by the State and included in State's share of divisible Union taxes in the statement.

ANALYSIS OF REVENUE RECEIPTS FOR 1993-94

Total revenue receipts (Rupees in crores)

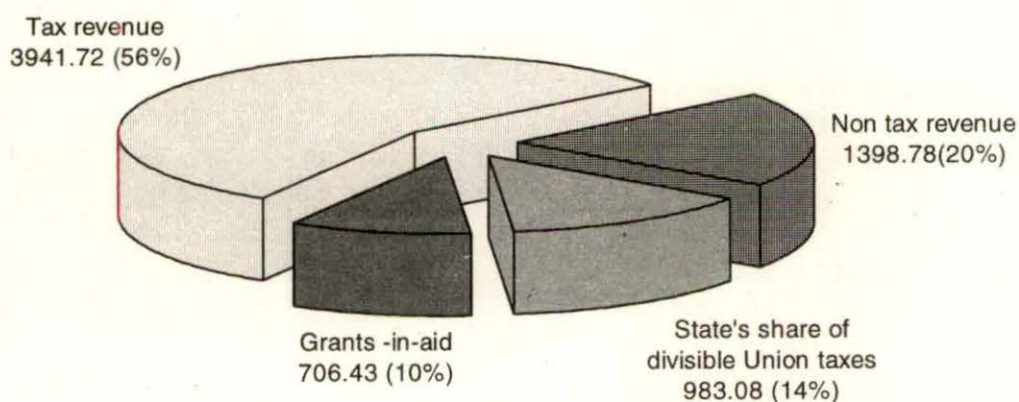


Chart No. I

1.2 Revenue raised by the State Government

(i) Tax revenue contributed 56 *per cent* of the total revenue receipts of the State Government during 1993-94.

The contribution of sales tax to the total tax receipts during 1991-92 to 1993-94 was as follows:

	(Rupees in crores)					
	1991-92		1992-93		1993-94	
Sales Tax	2010.53	(69)	2300.58	(67)	2771.03	(70)
Other Taxes	882.91	(31)	1155.97	(33)	1170.69	(30)
Total	2893.44	(100)	3456.55	(100)	3941.72	(100)

(Figures in parenthesis denote percentages)

The details of tax revenue raised from major taxes during the three years up to 1993-94 are given below and also depicted in Chart-II:

	1991-92	1992-93	1993-94	Percentage of increase (+) or decrease (-) in 1993-94 over 1992-93
(Rupees in crores)				
1. Sales Tax	2010.53	2300.58	2771.03	(+)20
2. Taxes and Duties on Electricity	376.33	544.19	465.53	(-)14
3. Stamp Duty and Registration Fees	166.94	184.56	210.77	(+)14
4. Taxes on Vehicles	113.01	145.02	174.69	(+)20
5. Taxes on Goods and Passengers	75.55	121.56	117.44	(-)03
6. Land Revenue	36.61	46.00	59.16	(+)29
7. Other Taxes	114.47	114.64	143.10	(+)25
Total	2893.44	3456.55	3941.72	(+)14

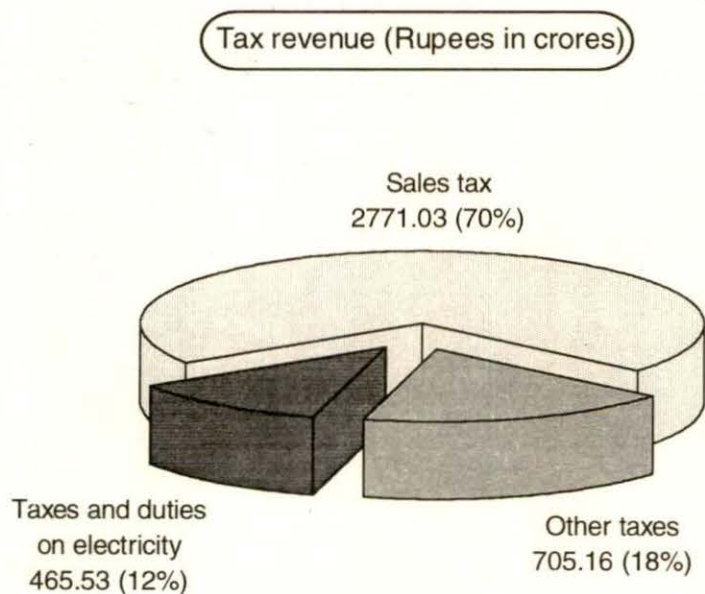


Chart No. II

There was significant variation in receipt under heads 'Sales Tax', 'Taxes on Vehicles' and 'Land Revenue'.

The reasons for variation called for from the concerned departments have not been received (December 1994).

(ii) Non-Tax revenue

(a) Details of revenue raised from some of the major non-tax receipts during the three years up to 1993-94 are given below and also depicted in Chart-III:

	1991-92	1992-93	1993-94	Percentage of increase (+) or decrease (-) in 1993-94 over 1992-93
(Rupees in crores)				
1. Nonferrous Mining and Metallurgical Industries	419.24	477.28	381.04	(-)20
2. Interest Receipts	502.49	438.37	777.53	(+)77
3. Major and Medium Irrigation	22.77	22.79	30.99	(+)36
4. Medical and Public Health	31.09	20.33	31.77	(+) 56
5. Others	158.26	199.20	177.45	(-)11
Total	1133.85	1157.97	1398.78	(+)21

Non-tax revenue (Rupees in crores)

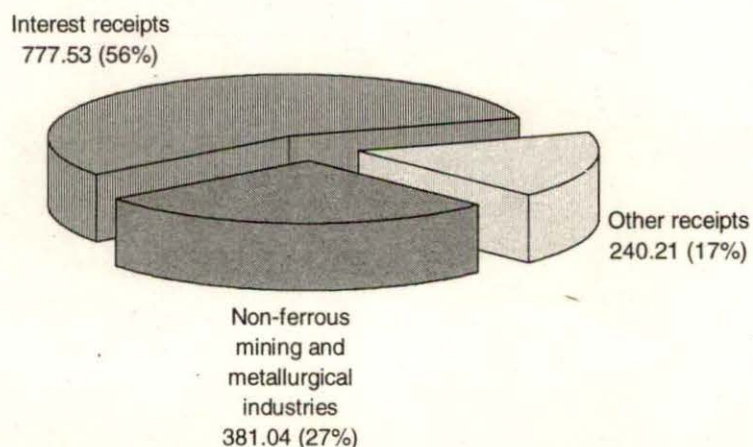


Chart No. III

1.3 Variations between Budget estimates and actuals

The variations between Budget estimates and actuals of some major revenue receipts for the year 1993-94 are given below :

Head of Revenue	Budget estimates	Actuals	Variation Increase (+) Decrease (-)	Percentage of variation
(Rupees in crores)				
Tax revenue				
1. Sales Tax	2635.80	2771.03	(+)135.23	(+)5
2. Taxes and Duties on Electricity	317.42	465.53	(+)148.11	(+)46
3. Stamp duty and Registration Fees	190.00	210.77	(+)20.77	(+)11
4. Taxes on Vehicles	136.74	174.69	(+)37.95	(+)28
5. Taxes on Goods and Passengers	137.30	117.44	(-)19.86	(-)14
6. Land Revenue	36.00	59.16	(+)23.16	(+)64
7. Other Taxes on Income and Expenditure	48.32	44.39	(-)3.93	(-)08
8. Entertainment Tax	40.70	36.00	(-)4.70	(-)12
Non-tax revenue				
9. Nonferrous Mining and Metallurgical Industries	366.68	381.04	(+)14.36	(+)04
10. Interest Receipts	319.84	777.53	(+)457.69	(+)143
11. Major and Medium Irrigation	24.90	30.99	(+)6.09	(+)24
12. Medical and Public Health	32.15	31.77	(-)0.38	(-)01
13. Forestry and Wild Life	20.90	15.23	(-)5.67	(-)27
14. Education, Sports, Arts and Culture	15.00	18.09	(+)3.09	(+)21
15. Police	13.96	9.80	(-)4.16	(-)30
16. Public Works	9.00	10.07	(+)1.07	(+)12
17. Miscellaneous General Services	6.38	4.73	(-)1.65	(-)26

The reasons for variation called for in November 1994 have not been intimated by the respective departments (December 1994).

1.4 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collections during the years 1991-92, 1992-93 and 1993-94 along with the relevant all India average percentage of expenditure on collection to gross collections for 1992-93 are given below:

Head of Revenue	Year	Collection	Expenditure on collection	Percentage of expenditure on collection	All India Average percentage of collection
<i>(Rupees in crores)</i>					
1. Sales Tax	1991-92	2010.53	24.42	1.2	1.5
	1992-93	2300.58	24.15	1.0	
	1993-94	2771.03	24.81	0.9	
2. Stamps and Registration Fees	1991-92	166.94	6.17	3.7	4.9
	1992-93	184.56	7.61	4.1	
	1993-94	210.77	5.16	2.4	
3. Taxes on Vehicles	1991-92	113.01	1.31	1.2	2.9
	1992-93	145.02	5.61	3.9	
	1993-94	174.69	6.24	3.6	

1.5 Arrears of revenue

As on 31st March 1994 arrears of revenue under principal heads of revenue, as reported by the departments were as under:

Head of revenue	Arrears pending collection	Arrears more than five years old	Remarks
<i>(Rupees in lakhs)</i>			
1. Sales Tax	56,999.72	10,682.80	Out of total arrears of Rs. 56,999.72 lakhs, Rs. 9705.27 lakhs were pending due to deferment scheme, Rs. 3,107.75 lakhs due to cases pending in liquidated Cooperative Societies, Rs. 1,527.79 lakhs due to postponement of recovery due to stay given by the departmental appellate authorities, Rs. 831.15 lakhs due to postponement of recovery due to stay given by the Sales Tax Tribunal/High Court and Rs. 41,436.07 lakhs due to other reasons.
2. Motor Vehicles Tax	1,116.44	290.32	Out of Rs. 1,116.44 lakhs, Rs. 569.85 lakhs were pending due to demand covered by revenue certificates, Rs. 1 lakh was pending due to stay granted by High Court and other judicial authorities and Rs.545.59 lakhs due to other reasons.
3. Profession Tax	542.85	202.55	—
4. Goods and Passengers Tax	336.90	62.62	Out of total arrears of Rs. 336.90 lakhs, Rs. 141.74 lakhs were pending due to demand covered by recovery certificates, Rs. 1.37 lakhs due to stay granted by High Court and other judicial authorities and Rs. 193.79 lakhs due to other reasons.

1.6 Arrears in Sales Tax assessments

The number of assessments due for assessment, number of assessments completed during the year and the number of assessments pending at the end of the year under report with corresponding figures of the year 1992-93 is as under:

	1992-93	1993-94
(a) Number of assessment due for completion during the year		
Arrear cases	16,15,090	16,69,159
Current cases	5,83,327	6,22,162
Remand cases	697	953
Total	21,99,114	22,92,274
(b) Number of assessments completed during the year		
Arrear cases	4,52,123	3,11,175
Current cases	77,279	98,954
Remand cases	553	928
Total	5,29,955	4,11,057
(c) Number of assessments pending finalisation as at the end of the year		
Arrear cases	11,62,967	13,57,984
Current cases	5,06,048	5,23,208
Remand cases	144	25
Total	16,69,159	18,81,217
(d) Year-wise breakup of pending cases are as under:		
Up to 1989-90	4,20,684	3,33,919
1990-91	2,72,767	1,86,737
1991-92	4,69,516	3,58,800
1992-93	5,06,192	4,78,528
1993-94	—	5,23,233*
Total	16,69,159	18,81,217

* This includes remand cases also

The above table shows that during the year out of 16,69,159 arrear cases only 19 *per cent* cases were assessed and out of 6,22,169 current cases only 16 *per cent* cases were assessed. As on 31st March 1994, 18,81,217 cases were pending for assessment, out of which 82,576 cases involved turnover of Rs. 50 lakhs and above and 31,022 cases involved turnover of Rs. 1 crore and above in each case.

Though the system of deemed assessments was introduced in November 1991 as per recommendations of the Sales Tax Study Team (Subba Rao Committee - October 1990), there was no significant improvement in the clearance of arrear cases during 1993-94. The recommendations of the Committee regarding clearance of the pending assessments within one year of the close of accounting year are yet to be implemented.

1.7 Internal Audit

The internal audit wing in Sales Tax department was constituted in May 1960. During 1993-94, assessments of 869 cases were revised at the instance of internal audit and additional demands of Rs. 108.03 lakhs were raised.

The internal audit wing was constituted in Entertainment Tax department in February 1989 and in Motor Vehicles department in April 1992. Information regarding additional demands raised as a result of internal audit, though called for in April 1994, has not been furnished (December 1994).

1.8 Results of audit

Test check of the records of Sales Tax, Land Revenue, Motor Vehicles and other Departmental offices conducted during the year 1993-94 showed under-assessments/short levy/loss of revenue aggregating Rs. 32.58 crores in 1,734 cases. During the year the concerned Departments accepted under-assessments etc. of Rs. 7.29 crores (1,519 cases), of which Rs. 0.23 crores (152 cases) were pointed out during 1993-94 and the rest in earlier years.

This Report contains 37 paragraphs including two reviews involving Rs. 128.07 crores which illustrate some of the major points noticed in audit. Of these, the departments accepted audit observations amounting to Rs. 3.65 crores. The departments did not accept audit observations involving an amount of Rs. 0.44 crores, but their contentions having been found to be at variance with the facts or legal position. These have been commented upon in the relevant paragraphs.

1.9 Outstanding inspection reports and audit observations

(i) Audit observations on assessments, collection and accounting of receipts and defects noticed during local inspection are communicated to the heads of offices and the departmental authorities through audit inspection reports. More important irregularities are also reported to the heads of departments and to the Government.

To expedite settlement of inspection reports and audit observations, Audit Committees were formed for six departments up to June 1991. Only one meeting was held during 1993-94 (September 1993) and as a result of this 10 observations relating to Sales Tax department

were settled. For the remaining five departments no meeting of the committee was held during 1993-94 although the concerned departments were regularly reminded in this respect. Thus, an important mechanism for settlement of outstanding Audit Inspection Reports and observations was not put into operation effectively.

The details of pending inspection reports and audit observations at the end of June of the last three years are given below:

	As at the end of June		
	1992	1993	1994
Number of outstanding inspection reports	1,656	1,747	1,645
Number of outstanding audit observations	5,679	5,640	4,963
Amount of receipts involved (Rupees in crores)	207.97	204.86	395.08

In respect of 87 Inspection Reports issued between January 1993 and December 1993 Departments have not issued even first replies. These Inspection Reports involve revenue of Rs. 2.03 crores in Revenue department, Information, Broadcasting and Tourism department and Finance Department.

(ii) Year-wise breakup of the outstanding Inspection Reports and audit observations as on 30th June 1994 is given below:

Year in which Inspection Reports were issued	Number of outstanding		Amount of receipts involved (In crores of rupees)
	Inspection Reports	Audit observations	
Up to 1989-90	618	1411	8.33
1990-91	220	642	137.07
1991-92	266	1002	219.34
1992-93	293	956	15.36
1993-94	248	952	14.98
Total	1,645	4,963	395.08

The above position was brought to notice of Secretaries to Government in the concerned departments from time to time. The matter was also reported to the Chief Secretary in December 1994.

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CHAPTER 3

Year	Population	Area	Notes
1800	100	100	
1810	110	110	
1820	120	120	
1830	130	130	
1840	140	140	
1850	150	150	
1860	160	160	
1870	170	170	
1880	180	180	
1890	190	190	
1900	200	200	
1910	210	210	
1920	220	220	
1930	230	230	
1940	240	240	
1950	250	250	
1960	260	260	
1970	270	270	
1980	280	280	
1990	290	290	
2000	300	300	

CHAPTER 3

CHAPTER - 2

SALES TAX

2.1 Results of audit

Test check of assessment records in various sales tax offices, conducted in audit during 1993-94 revealed under-assessment of Rs. 1137.09 lakhs in 1083 cases, which broadly fall under the following categories:

	Number of cases	Amount (Rupees in lakhs)
1. Application of incorrect rate and mistake in computation	449	525.41
2. Irregular setoff	242	290.53
3. Irregular exemption and concessions	129	269.39
4. Non-levy/short levy of penalty and interest	209	26.54
5. Other irregularities	54	25.22
	1083	1137.09

During 1993-94, the department accepted under-assessment etc. of Rs. 80.70 lakhs involved in 940 cases of which 119 cases involving Rs. 14.47 lakhs were pointed out during 1993-94 and the rest in earlier years. A few illustrative cases and results of a review on exemption and deferment of tax to new industries involving Rs. 105.54 crores are given in the following paragraphs.

2.2 Sales Tax incentives to New Industries

2.2.1 Introductory

To secure balanced development of industries in the State through accelerated pace of industrial development of the less developed areas and to promote growth of industries away from the cities, Government introduced tax incentive schemes for the new industries between May and July 1986. The schemes offered several incentives including exemption from/deferment of payment of sales tax to new industrial units established in Gujarat between 1st April 1986 and 31st March 1991. The earlier incentive scheme of August 1980 which was due to expire in May 1985, was extended up to 31st March 1989. In 1990, Government announced new industrial policy and introduced special incentives to large industrial units irrespective of their location under the 'Prestigious Units' Scheme in October 1990 and in July 1991.

In the case of exemption, the eligible unit is exempted from levy of tax on its products for the prescribed period. In the case of deferment, the eligible unit collects the tax levied on its product but it is allowed to retain the tax for the prescribed period. It pays the tax to the Government in prescribed annual instalments after the period of deferment.

The salient features of the schemes are mentioned below:

Sr. no.	Scheme	Quantum of Sales Tax concession	Period	Special conditions for availing of the benefits
1.	Sales Tax Incentive Scheme for Industries 1980 (1980-86)	<u>Exemption</u> 40-60% of the fixed capital assets with a maximum limit of Rs. 80 lakhs.	5-7 years from the date of commencement of production.	Quantum of incentive linked to the backwardness of the location of industry.
		<u>Deferment</u> 25-35% of the fixed capital assets with a maximum limit of Rs. 45 lakhs.	5-7 years from the date of commencement of production and recoverable in six annual instalments after 12 years.	-do-
2.	Sales Tax Incentive Scheme for Industries 1986 (1986-91 Scheme)	<u>Exemption</u> 40-100% of the fixed capital investment.	5-9 years from the date of commencement of production according to the category of area specified.	-do-
		<u>Deferment</u> 30-75% of the fixed capital investment.	5-9 years from the date of commencement of production and recoverable in six annual instalments after expiry of the relevant period.	-do-
3.	Special Incentives for 'Pioneer Units' (1986-91 Scheme)	<u>Exemption</u> 70-90% of fixed capital investment	12-14 years from the date of commencement of commercial production.	(1) The unit was to have fixed capital investment of at least Rs. 3 crores. (2) At least 100 workers to be employed on permanent basis. (3) Only one unit per village in the eligible area would be given pioneer status.
		<u>Deferment</u> 65-90% of fixed capital investment	12-14 years from the date of commencement of commercial production.	—

Sr. no.	Scheme	Quantum of Sales Tax concession	Period	Special conditions for availing of the benefits
4.	Sales Tax Incentive Scheme for Electronic Industry, 1986.	<u>Deferment</u> 70-100% of the fixed capital investment	7 years from the date of commencement of commercial production and recoverable in six equal annual instalments after 12 years from the date of commencement of commercial production.	—
5.	Scheme for Special Incentives to 'Prestigious Units' (1990-1995)	75-100% of the fixed capital investment as exemption/deferment	8-14 years from the date of commencement of commercial production	(1) Unit was to have fixed capital investment of at least Rs. 100 crores. (2) One unit per taluka (3) Employment to at least 100 workers
6.	Modified Scheme for Special Incentives to 'Prestigious Units' (1990-1995)	90% of the fixed capital investment as deferment/exemption	14 years from the commencement of commercial production.	Unit was to have fixed capital investment of Rs. 300 crores. No locational restriction except 6 urban areas. Employment to at least 100 workers.

2.2.2 Organisational set up

The incentive schemes are implemented by the Commissioner of Sales Tax through his department based on the certificate of eligibility issued by the Commissioner of Industries.

2.2.3 Scope of audit

The review examined the quality of internal control and the efficiency in implementation of the incentive schemes by the Industries department and Finance department and assessed whether due regard was paid by these departments to the revenue interest of the State. For this purpose the records of Industries department and Industries Commissioner, District Industries Centre and assessment records of the Sales Tax Offices at Bharuch, Valsad, Godhra, Mehsana, Gandhinagar and Surendranagar were test checked during February to April 1994 and in earlier period. The salient features of the review were discussed with the Heads of concerned departments in the Government and their response is included in the review.

2.2.4 Highlights

(i) Sales tax concessions of Rs. 1651.64 crores were granted under various incentive schemes between 1986-87 and 1992-93. Though the schemes involved outgo of significant revenue, monitoring the implementation of the schemes by the Finance, Industries and Sales Tax departments were deficient. Formal coordination between the Industries department and the Sales Tax department was not established to safeguard leakage of revenue. No priority was attached to timely completion of the pending assessment cases. No security was obtained from the industrial units against the deferred taxes.

[Paragraph 2.2.6.]

(ii) A soap manufacturing unit at Mehsana was irregularly granted exemption of Rs. 20.14 crores though the unit opted for deferment of sales tax.

[Paragraph 2.2.7.B(3)]

(iii) By considering the investment made after commencement of the commercial production a cement manufacturing unit at Amreli was granted irregular exemption of Rs. 14.44 crores under the Pioneer Unit Scheme.

[Paragraph 2.2.7.B(4)]

(iv) Due to irregular computation of fixed capital investment a cement manufacturing unit at Junagadh was given undue benefit of Rs. 29.85 crores under the Pioneer Unit Scheme.

[Paragraph 2.2.7.B(5)]

(v) 83 units were allowed benefits of exemption of Rs. 9.37 crores under the scheme of 1986 though they were not eligible for such benefit.

[Paragraph 2.2.8(2)]

(vi) 74 ineligible units in 6 districts were given exemption for Rs. 5.67 crores under 1986 scheme even though these units were not engaged in the manufacturing activity.

[Paragraph 2.2.8(3)]

(vii) No securities were obtained from 2343 units in 6 districts against deferred tax of Rs. 242.57 crores. No demand notices were issued to 7 units involving deferred tax of Rs. 33.60 lakhs in Mehsana district.

[Paragraph 2.2.8(8) and (9)]

(viii) In 6 districts 4343 assessments involving tax exemptions of Rs. 58 crores and 1786 assessments involving tax deferment of Rs. 39.70 crores were pending at the end of March 1994. The oldest cases out of the pending assessments pertained to 1986-87.

[Paragraph 2.2.8(10)]

2.2.5 System and procedure for granting sales tax exemption/deferment

The Government in Industries and Mines department, formulates the scheme of incentives for industries and issue Government resolutions regarding the schemes and the eligibility conditions for the prospective industries. Based on these resolutions Finance department

issues notifications under Section 49(2) of the Gujarat Sales Tax Act, 1969 for the exemptions and Government Resolutions for deferment of sales tax. The exemption notifications become effective after their publication in the Gazette.

To avail of the benefit of sales tax concessions, an unit has to obtain Eligibility Certificate (EC) from the Industries Commissioner or the District Industries Centre depending on the size of the unit. The Eligibility Certificates specify the category of unit, kind of goods to be manufactured, investment in fixed capital assets, and based on that indicate the quantum of benefit and the period for which it can be availed. Based on the Eligibility Certificate the Assistant Commissioner of Sales Tax (Range) issues exemption/deferment certificates. The Commissioner of Sales Tax also issues public circulars in respect of exemption/deferment.

2.2.6 Internal control and monitoring

Up to March 1993, 7574 industrial units were granted sales tax exemption of Rs. 972.46 crores and 1844 units were granted sales tax deferment of Rs. 679.18 crores. Since large amount of revenue was being forgone under the schemes, the internal controls were required to be carefully devised and operated to safeguard against any undue loss or leakage of revenue. A review of the existing controls in the Finance, Industries and Sales Tax Departments showed that internal controls in these departments were either deficient or nonexisting and thus there was significant scope of improvement in this regard as discussed below:

(A) Finance Department

Finance department has the overall responsibility of effective management of the collection and accountal of revenue. Therefore the incentive schemes were issued with the concurrence of the Finance department.

It was noticed that the department did not systematically watch or monitor the impact of the schemes on the collection and growth of revenue of the State or arranged to institute proper control over the timely collection and security of deferred taxes.

Further, the department took no initiatives to ensure that the incentive schemes are operated in a well coordinated way by the Industries department and the Sales Tax department so that possibility of leakage of revenue is minimised.

(B) Industries Department

The eligibility certificates issued by the Industries Commissioner formed the basis of concessions of sales tax. These certificates were not subjected to scrutiny concurrently by any official other than those who had actually issued the certificates. As a result the possibility of mistakes in according eligibility for incentives and the resultant loss of revenue were not minimised. During review serious mistakes and omissions were noticed in the eligibility certificates issued by the department which indicated that such check was necessary and desirable for the purpose of better control.

The scheme of 1986 provided for issue of joint procedures by Sales Tax department and Industries department. Such joint procedures were not issued and consequently the

implementation of the Schemes suffered from lack of coordination between the two departments.

(C) Sales Tax Commissionerate

The assessing officers (STOs) are to maintain a control register containing the details of concessions granted to industrial units and dates on which the repayments are due in case of deferment. This register was not maintained properly and thus an important control mechanism to watch the revenue collection was not operating efficiently.

Further, no periodical information was collected by the department regarding the exemption/deferment availed by industrial units under these Schemes. As a result, the details of the deferred tax due to be collected from the units after the prescribed period was not readily available with the department.

The department did not take up the pending assessments of the beneficiary units on priority basis though in 6129 cases in 6 districts Rs. 97.69 crores were blocked up. Thus due control and monitoring to ensure timely completion of the assessments was not evident. Consequently there was possibility of cases getting time barred leading to non-recovery of revenue.

To ensure timely recovery of deferred tax, securities and guarantees were to be obtained from the beneficiary units. Such securities were not obtained by the department. Control over the timely recovery of deferred taxes was thus inadequate. No formal coordination was developed between the Sales Tax department and Industries department for systematic implementation of the schemes. As a result tax concessions were extended in some cases to ineligible units but such cases remained undetected.

The internal audit wing of the department was not utilised to provide watch against possible leakage or loss of revenue due to the operation of the incentive schemes. Thus no check was exercised by them to ensure that the large number of arrear assessment cases of the beneficiary units are completed on priority basis or security was obtained from the units for deferred taxes to the tune of Rs. 242.57 crores.

The control weaknesses were discussed (October 1994) with the Heads of department of the Industries and Finance (Economic affairs and Sales Tax). The Government agreed that there is need to strengthen coordination at the field level by periodical sharing of information between the Industries department and Sales Tax department and also devising systems by which the recoveries start as soon as the exemption/deferment period is over. Government also agreed that formal arrangements for this purpose will be put in place shortly.

2.2.7 Administration of the Schemes and issue of Eligibility Certificates

During the period 1986-87 to 1992-93, Eligibility Certificates were issued to 7574 units for sales tax exemption for Rs. 972.46 crores and to 1844 units for sales tax deferment for Rs. 679.18 crores. Under the 'Prestigious Units' Scheme registration was accorded to 4 units

involving sales tax exemption/deferment of Rs. 4359.41 crores up to March 1994. The scheme-wise details of beneficiary units and the amount of incentives are mentioned below :

(Rupees in crores)				
Scheme	No. of units to whom EC issued for sales tax exemption	Amount	No. of units to whom EC issued for sales tax deferment	Amount
General Scheme (1986)	7449	863.05	1754	461.60
Pioneer Industries	73*	75.55	Not available	182.12
Electronic Industries	52	33.86	90	35.46
Total	7574	972.46	1844	679.18

Examination of the implementation of the Schemes by the Industries Commissioner/District Industries Centre and the Sales Tax department revealed the following general deficiencies :

(a) Though all the schemes envisaged issue of detailed procedure jointly by the Industries Commissioner and Sales Tax Commissioner, such procedures were not issued for any scheme. Consequently, ineligible industries were granted incentives for Rs. 951.23 lakhs.

(b) The schemes do not provide for issue of adhoc eligibility certificate. In all cases test checked, eligibility certificates were initially issued on adhoc basis and amended certificates were issued subsequently. As a result, the quantum of benefit varied significantly from the adhoc certificates to the amended certificates as discussed in para 2.2.7(B) and (C).

(c) Investments in fixed capital assets made up to the commencement of commercial production only was required to be considered for the purpose of incentive. This provision was not observed and investments made even 5 years after commencement of commercial production were considered for granting incentives. Consequently ineligible investments were allowed for granting substantial benefits.

(d) The scheme did not provide for furnishing of project reports at the time of application for incentives. Consequently the department had to issue eligibility certificate based on statements made by the intended beneficiaries regarding the proposed industrial units. Such statements were not supported by approved project reports which would facilitate checking of facts regarding the various conditions to be fulfilled for eligibility.

* This represents number of units to whom E.C. for exemption and/deferment were issued.

(e) The period of the benefit of exemption/deferment was to be reckoned from the date of starting production. In all the cases test checked, it was noticed that incentives were allowed from the date of starting commercial production. Consequently the period of benefit was irregularly extended beyond the date of commencement of the trial production.

2.2.7.(A) Sales Tax Incentive Scheme to Industries 1986 (General)

Test check of records in the offices of the Industries Commissioner/District Industries Centre, revealed that in the following cases the Eligibility Certificates were not in accordance with the prescribed terms and conditions of the scheme:

(1) Incentives for unspecified goods

According to the Scheme of 1986 the total amount of sales tax exemption admissible in respect of expansion was to be restricted to additionally manufactured goods on account of such expansion. Accordingly additionally manufactured goods on account of expansion only are entitled for sales tax exemption.

A unit in Bulsar district, manufacturing straw boards expanded its capacity for manufacturing Kraft paper and applied for sales tax exemption in June 1992. The Eligibility Certificate for sales tax exemption issued to the unit in March 1993 covered all varieties of paper and paper grade pulp including paper board/straw board though the expansion programme was only for 'Kraft paper'. Thus the Eligibility Certificate issued for Rs. 34.19 lakhs for other varieties of paper and paper grade pulp was irregular.

(2) Incentives for movable assets

Under the scheme, fees paid for technical know-how is an eligible investment provided the foreign collaborators or suppliers to whom the fees are paid are approved by Central Government. Further according to instructions issued by the Industries Commissioner in March 1986, movable machines such as dies, tools, jigs, moulds etc. are not to be treated as fixed capital assets (plant and machineries) for working out the fixed capital investment.

An industrial unit at Kanjari, District Panchmahals engaged in the manufacture of switch gear, control panel etc. applied for sales tax exemption in January 1989. The Eligibility Certificate for sales tax exemption for Rs.5.41 lakhs was issued in October 1989 and was amended in April 1991 for Rs.49.21 lakhs. The details of fixed capital investment furnished by the unit included Rs.30.40 lakhs towards payment of technical know-how fees. However, there was no record to indicate that the foreign collaborator in this case was approved by Central Government.

It also included Rs.44.08 lakhs towards investment made on dies, moulds and jigs. These investments (Rs.74.48 lakhs) were not eligible for sales tax incentive and consequently granting of benefit of Rs.33.52 lakhs for such investments was irregular.

(3) Exemption granted for ineligible manufacturing activity

A unit located at GIDC Vapi, engaged in the manufacture of texturised yarn applied for sales tax exemption under August 1980 scheme for its expansion project. The Eligibility Certificate for sales tax exemption for Rs. 14.50 lakhs was issued in November 1990 for

texturised yarn. As the unit installed only crimping and twisting machines under the expansion programme, the Eligibility Certificate granting exemption for texturised yarn was irregular.

(4) Exemption was granted while deferment was asked for

At Vapi, a unit had opted for sales tax deferment for Rs. 2.42 lakhs whereas eligibility certificate was issued for Rs. 3.23 lakhs for tax exemption. This resulted in irregular grant of exemption of tax of Rs. 3.23 lakhs.

(B) Special Incentive Scheme for Pioneer Units (May 1986)

Government introduced a special incentive scheme for Pioneer Units in August 1980 for large industrial units going to a new location in backward areas. The operative period of the scheme was five years i.e. up to 31st March 1985 which was further extended up to 31st December 1989. A second scheme was introduced in May 1986 covering initially 5 years up to March 1991 and extended up to March 1993. Thus both the schemes (1980-85 and 1986-91) were simultaneously operative during April 1986 to December 1989. Under the scheme of 1986 the 'Resource based Industry'* was eligible for sales tax incentive at half the scale compared to the incentives available to other industries. Under the previous scheme such industries were entitled to full incentives.

Audit scrutiny of the Scheme revealed the following general deficiencies:

(a) Under both the schemes incentive was to start from the date of commencement of commercial production and the investment in fixed capital assets made up to the commencement of commercial production only was required to be considered for the purpose of incentive. It was noticed that in some cases investments made even 5 years after the commencement of commercial production were also considered for sales tax incentive.

(b) A scheme of interest free loan was introduced in August 1983 to 'Pioneer Units' for meeting the expenditure on infrastructural amenities. The amount of sales tax deferment under 1980 Scheme was to be reduced to the extent of such loan. However the scheme did not provide for verification of sanction of interest free loan while granting the benefit of deferment of tax. As a result the amount of deferred sales tax was not reduced to the extent of the interest free loan sanctioned to the units.

(c) Due to extension of operative period of 1980 Scheme (up to December 1989) which allowed full incentive to all industries, 3 resource based units which were eligible for half the scale of incentives under the 1986 scheme, were allowed full incentives even after the introduction of the 1986 Scheme. These cases are discussed in the following paragraphs:

(1) Irregular relaxation for according pioneer status

Under the August 1980 scheme an industrial unit to be eligible for granting the Pioneer status, was to be situated at a specified location. Further, not more than two units having fixed assets of Rs. 50 lakhs or more were to be located within a distance of 8 kilometres from each other.

* Resource based industry means industries based on local mineral resources.

At Mahuva (Bhavnagar District) a unit engaged in the manufacture of cement (resource based industry*) applied for pioneer status in 1984 under the 1980 Scheme. The unit was not considered for registration as Pioneer Unit as it was not fulfilling the eligibility conditions. Though the operative period of the scheme expired in December 1989 the Government relaxed the condition of existence of other units within 8 kilometres in this case and granted 'Pioneer Status' to this unit in August 1991 retrospectively from 1st April 1984 for 14 years. The relaxation of condition for this unit after the operative period of the scheme resulted in conferring extra benefit of Rs. 1.12 crores to the unit.

(2) Irregular amendment of EC after commencement of commercial production

At Halvad, District Surendranagar a unit registered as Pioneer Unit and engaged in the manufacture of cotton yarn applied for sales tax incentive stating that it started commercial production in September 1987 and Eligibility Certificate was issued for Rs. 1.35 crores considering the fixed capital investment of Rs. 1.5 crores. In December 1991 the eligibility certificate was amended enhancing the sales tax exemption to Rs. 1.87 crores considering the fixed capital investment as Rs. 2.08 crores.

As the period of incentive starts from the commencement of commercial production, the investments made up to the date of commencement of commercial production only was required to be considered for the purpose of incentive. The amendment of the eligibility certificate considering investment after commencement of commercial production resulted in irregular grant of sales tax incentive of Rs. 52.17 lakhs.

(3) Benefit accorded for exemption though deferment was opted.

A unit intending to avail of the incentive under the scheme for Pioneer Units had to exercise an irrevocable option for deferment or exemption .

At Mehsana a unit engaged in the manufacture of toilet soap opted for sales tax deferment while applying for incentive in November 1989 under August 1980 scheme. However the unit was issued an eligibility certificate for exemption of Rs. 19.09 crores in April 1991. This certificate was revised to Rs. 20.14 crores in February 1993. As the unit opted for sales tax deferment the issue of eligibility certificate for sales tax exemption was without justification and resulted in conferring unintended benefit of Rs. 20.14 crores to this unit.

(4) Eligibility Certificate revised irregularly

At Kodinar, District Amreli, an unit engaged in the manufacture of cement was granted registration as 'Pioneer Unit' on relaxation of condition regarding existence of other units within a radius of 8 kilometres though the scheme had no provision for such relaxation.

The unit applied in September 1986 for eligibility certificate under August 1980 scheme stating that it had started commercial production during September 1986. The Eligibility Certificate for sales tax exemption was issued in April 1987 for Rs. 15.09 crores. This certificate was revised in August 1988, September 1989 and September 1992 increasing the amount of exemption to Rs. 73.91 crores based on additional investments in fixed capital after

* Resource based industry means industries based on local mineral resources.

the commencement of commercial production. By considering the investment made after commencement of the commercial production the unit was given undue exemption of Rs. 12.44 crores.

Further, the unit received interest free loan of Rs. 2 crores under the scheme mentioned in para 2.2.7 (B) (b) which was to be granted only to those units who have opted for sales tax deferment. As the unit has opted for sales tax exemption, the unit was not entitled for such loan.

Thus the unit received irregular tax exemption benefit of an aggregate amount of Rs. 14.44 crores.

(5) Irregular computation of fixed capital investment

At Junagadh a unit registered as 'Pioneer Unit' and engaged in the manufacture of cement applied for sales tax deferment during the month of November 1987 stating that it started commercial production during that month. An eligibility certificate for sales tax deferment of Rs. 96.67 crores was issued in December 1991, which was revised to Rs. 106.97 crores in January 1994.

It was noticed that eligible fixed capital investment included Rs. 25.96 crores towards capitalised interest, Rs. 4.33 crores towards pre-operative expenses and Rs. 0.66 crore towards railway siding. As these items are not included in the definition of 'fixed capital investment', sales tax incentive based on such investments was irregular and resulted in undue benefit of Rs. 27.85 crores. Further, the unit received interest free loan of Rs. 2 crores. Though this amount was required to be deducted from sales tax deferment, this was not done while issuing the Eligibility Certificate. The aggregate amount of undue benefit of deferment to the unit worked out to Rs. 29.85 crores.

(C) Sales Tax Incentive Scheme for Electronic Industry (1986)

A test check of the cases revealed the following general weaknesses in implementation of the Scheme by the Industries department:

- (a) No time limit for applying for sales tax incentive was prescribed with the result the applications received at any time after the commencement of commercial production were entertained. In some cases applications were made long after the commencement of commercial production and such applications were not easily verifiable.
- (b) The department had no means to verify the correctness of data furnished by units regarding the date of implementation of expansion and probable date of its completion.

In the following cases eligibility certificates issued by the Industries Departments were not in accordance with the norms prescribed under the Scheme:

(1) Incentives given for mobile machinery parts

Under the scheme, investments made in new plant and machinery are considered as eligible fixed capital investment for the purpose of sales tax incentive. Thus investments on mobile parts such as jigs, dies, moulds etc. can not be considered as eligible investment for the purpose of sales tax deferment benefit.

In the case of five electronic units at Gandhinagar the investments made on dies and moulds were considered as fixed capital investment. Consequently, Eligibility Certificates granted undue tax deferment benefit of Rs. 1.18 crores to these units.

(2) Incentives given for ineligible expansion

Under the scheme 'expansion' is deemed to be a new electronic unit and sales tax deferment benefit is available subject to fulfillment of the following conditions: (i) increase in the value of fixed capital investment by not less than 25 *per cent* of the net assets of the unit prior to expansion, (ii) increase in production to the extent of at least 25 *per cent* of the original installed capacity and (iii) the unit not having been granted sales tax incentive under any other scheme. In the following cases these conditions were not observed:

(a) An electronic unit at Gandhinagar manufacturing colour and black and white T.V. receiver sets completed its expansion in April 1990. It applied for sales tax exemption for expansion in March 1992 indicating in the application the details of production before and after the expansion.

The original installed capacity of the unit was 1,00,000 colour TV/ B/W TV receiver sets per annum. According to conditions stipulated, production of the unit after expansion was to be 1,25,000 colour TV/ B/W TV receiver sets. However, after expansion i.e. during the year 1990-91 and 1991-92, the unit produced only 28,081 and 40,000 TV sets respectively.

Though the department was aware that the unit did not even achieve the normal production after expansion, it did not consider this aspect and issued the eligibility certificate in May 1992 for Rs.90.62 lakhs. Thus the benefit of exemption granted to this unit was irregular.

(b) An eligibility certificate was issued for sales tax exemption of Rs.38.82 lakhs in July 1992 to an electronic unit at Gandhinagar manufacturing plastic film capacitors completed expansion of its existing project in August 1990 and applied for sales tax exemption in March 1991.

The original installed capacity of the unit was 205 lakhs pieces per annum which was to be increased, after expansion to at least 255 lakhs pieces. However, after expansion the unit manufactured only 167 lakhs pieces. Thus the stipulated conditions were not fulfilled. Though the eligibility certificate was issued in July 1992 for Rs.38.82 lakhs the department did not consider this aspect and hence the issue of eligibility certificate for exemption of Rs.38.82 lakhs was irregular.

(c) An eligibility certificate for sales tax exemption of Rs. 96.79 lakhs was issued in October 1991 to an electronic unit at Gandhinagar engaged in the manufacture of Printed Circuit Boards for its expansion project in August 1990.

The original installed capacity of the unit was 20,000 square metres per annum and, therefore, production after expansion was to be at least 25,000 square metres per annum. After expansion the unit produced only 6205 square metres. Since the unit did not fulfil the stipulated conditions, issue of eligibility certificate for sales tax exemption for Rs. 96.79 lakhs was irregular.

(d) At Gandhinagar an electronic unit engaged in the manufacture of Radio Receivers and Two-in-One sets applied in January 1992 for issue of eligibility certificate for sales tax

deferment for its expansion project. An ad hoc eligibility certificate was issued in July 1992 for sales tax deferment of Rs. 23.37 lakhs.

It was, however, noticed that an eligibility certificate for sales tax deferment of Rs. 47.02 lakhs as a new unit was issued earlier to this unit for the period from April 1986 to April 1993. As the unit was already granted sales tax incentive it could not be considered as a new electronic unit under the scheme. The eligibility certificate issued for sales tax deferment for Rs. 23.37 lakhs was therefore irregular.

(3) Incentive given for second hand machinery without assessing its residual value

Under the scheme, investments on imported second hand machinery are considered as eligible for sales tax incentive provided such machinery has a life of above 10 years as certified by the valuer.

An electronic unit at Gandhinagar was issued eligibility certificate in July 1992 for sales tax exemption for Rs. 38.82 lakhs for its expansion project on the ground that the unit purchased imported second hand machinery valued at Rs. 60.53 lakhs. No certificate, however was obtained from the valuer in regard to the life of this machinery. In the absence of such certificate the eligibility certificate was issued without due verification of the condition of the prescribed productive life of the assets.

2.2.8 Implementation of the scheme by the Sales Tax Department

(A) Cases of tax exemption/deferment under the Sales Tax Incentive Scheme for Industries, 1986, Special Incentive Scheme for Pioneer Units and Sales Tax Incentive Scheme for Electronic Industry were reviewed from the records at the Sales Tax department in 6 districts as mentioned below :

Sr. no.	District	Scheme of benefit under			
		Exemption Scheme		Deferment Scheme	
		No. of units	Amount (Rupees in lakhs)	No. of units	Amount (Rupees in lakhs)
1.	Bharuch	238	58,03.34	80	12,44.60
2.	Valsad	867	28,62.82	243	26,54.11
3.	Mehsana	969	1,00,15.00	265	47,51.00
4.	Gandhinagar	22	3,39.09	46	25,53.33
5.	Panchmahals	173	11,55.20	97	10,74.62
6.	Surendranagar	304	26,68.25	206	18,39.06
Total		2573	22,843.70	937	14,116.72

During examination of the above cases the following irregularities were noticed:

(1) Change of option

Under the Deferment scheme of 1980 and 1986 an industrial unit was to apply for eligibility certificate along with a written option for deferment/exemption. The option, once exercised was final.

It was noticed that some of the eligible units were allowed to change their options from deferment scheme to exemption scheme. Such change of option was noticed in 10 units involving exemption of Rs. 75.85 lakhs and in 16 units involving deferment of Rs. 25.59 lakhs.

The department stated that changes in option were allowed as the exemption certificates were yet to be issued for the units and they had not utilised the exemption limit. However, the Scheme did not allow such flexibility and since the units had exercised the option after the prescribed period, the change of option was irregular.

(2) Grant of incentives to ineligible units

As per Government Resolution of May 1986, new industrial units which commenced commercial production during the operative period of the scheme were eligible to get the sales tax incentives. Those units which availed of sales tax incentive under the previous scheme were not deemed to be considered as new industrial units for incentives under this scheme. Audit scrutiny revealed that this provision was not observed in some cases. In 5 districts 83 industrial units who had expanded their industrial units and were earlier issued eligibility certificate under the previous scheme were also certified to be eligible for sales tax benefits under the scheme of May 1986. The issue of exemption certificates in these cases resulted in conferring of irregular benefit of Rs. 9.37 crores.

(3) Exemption granted to units other than specified manufacturers

According to the Government Resolution (May 1986) of the Industries and Mines department, the term 'industry' was classified to include only manufacturing units as eligible for incentives. Under the Gujarat Sales Tax Act, 1969 manufacture does not include activities such as ginning of cotton, twisting of yarn, milling of rice, polishing of stone, grinding of salt, dyeing and printing, doubling of yarn (up to 1.12.89). In the following cases 75 units engaged in the above activities were granted sales tax concessions amounting to Rs. 570.09 lakhs.

District	Exemption granted		Deferment granted	
	No. of units	Amount	No. of units	Amount
	(Rupees in lakhs)			
Bharuch	34	307.87		
Himatnagar	4	1.97		
Mehsana	11	121.63		
Panchmahals	5	14.87		
Surendranagar	6	4.89	1	3.12
Valsad	14	115.74		
Total	74	566.97	1	3.12

(4) Issue of exemption certificate to ineligible manufacturers

- (a) According to a notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, the units engaged in the manufacture of non-edible oil are exempted from payment of purchase tax under Section 15 of the Act. Even though purchase of oil seeds was made taxable under Section 19-B of the Act with effect from 1st August 1990, 23 units in Mehsana, Bharuch and Panchmahal districts engaged in the manufacture of non-edible oil were irregularly granted tax exemption of Rs. 307.61 lakhs.
- (b) Under the sales tax exemption scheme, a specified manufacturer was not entitled to the benefit of purchasing goods without payment of tax either under Sections 12 or 13 of the Gujarat Sales Tax Act, 1969 or under any entry of the Notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969.

A specified manufacturer holding tax exemption benefit at Ankleshwar purchased iron scrap worth Rs. 27.34 lakhs on a declaration under Section 49(2) of the Act and avoided tax liability of Rs. 1.09 lakhs. This had resulted in excess tax exemption of Rs. 1.09 lakhs.

(5) Non-recovery of deferred tax from discontinued units

Government Resolution of Finance department of June 1987, provided that within the tax concession limit, the eligible industrial units would be entitled to postpone the payment of tax payable by them on the sales of the finished products under the Gujarat Sales Tax Act, 1969, and the Central Sales Tax Act, 1956. Such concession would be available for a prescribed period as calculated from the date of starting the commercial production of goods by the units. If any unit had discontinued commercial production of goods for a period exceeding twelve months within the duration of deferment the benefit of the scheme was to cease to operate forthwith and the entire amount of tax deferred until then was to be refunded.

In the case of 108 units which were either closed or had stopped commercial production for a period exceeding twelve months during the tax deferment period, no action was taken to recover the deferred tax of Rs. 1.95 crores. Government agreed (October 1994) that periodical reports would be obtained from the units for verification whether the units are working or not. They also agreed that coordinated follow up action would be taken by the Industries department and Sales Tax department at the district level by sharing necessary information in this regard.

(6) Grant of excess concession due to computation error

Under Deferment Scheme, the benefit of tax concessions was to be equal to certain percentage of investments in fixed assets and the percentage was fixed according to categories to which the beneficiary industry would belong. In case of 5 units of Surendranagar district, Eligibility Certificates were issued incorrectly due to computation error in calculation of percentage of investments in fixed assets resulting in excess grant of deferment benefit of Rs. 5.67 lakhs.

(7) Other irregularities

In respect of 8 dealers shown in the table below, irregular grant of exemption resulted in short levy of tax of Rs. 24.25 lakhs.

Name of the Sales Tax Office	Year of Assessment	Amount (Rupees)	Nature of irregularity
Mehsana (1 dealer)	1985-86	73,885	Though 'Isabgul' industry was included in the table of non-eligible industries the exemption certificate was issued.
Bharuch (1 dealer)	July 1987 to June 1989	18.48 lakhs	Though the dealer was granted deferment benefit, he has also been granted exemption benefit to the extent of Rs. 19.07 lakhs out of which he has availed benefit of Rs. 18.48 lakhs which was irregular.
Mehsana (1 dealer)	January 1987 to March 1989	86,370	Though the beneficiary has made sales of Rs. 14.92 lakhs against declaration, no adjustments of tax was made against the exemption limit.
Dhrangadhra (1 dealer)	1987-88	86,628	Though the exemption certificate did not include the product synthetic yarn, the exemption benefit was availed by the dealer for the product.
Junagadh and Ankleshwar (2 dealers)	July 1987 to March 1989	1.02 lakhs	The beneficiaries are not entitled for deduction against declaration. Same was allowed on declaration.
Vijapur and Himatnagar (2 dealers)	Between S.Y.2044 and 31st March 1990	2.28 lakhs	Though the dealers were holding exemption certificate under 1980-86 they were irregularly allowed exemption under 1986-91 scheme.

(8) Securities under the sales tax deferment scheme not obtained

Under G.R. of August 1990 of Industries and Mines department, all the units which are either covered or will be covered under the sales tax deferment scheme are required to furnish to competent sales tax authority, either *pari-passu* charge on their assets or when the *pari-passu* charge is not possible, give second charge or personal guarantee in the form of security bond on their assets till the deferred tax is fully recovered. The units which are not able to give *pari-passu* or second charge or even personal guarantee in the form of security bond are required to give guarantee as acceptable to competent sales tax authority concerned. Such securities were to be furnished within 180 days from the date of issue of the G.R.

In respect of 2343 units (in 6 districts) which availed the benefit of sales tax deferment amounting to Rs. 242.57 crores, no securities/guarantees were obtained by the department. Consequently, recovery of deferred tax amounting to Rs. 242.57 crores remained unsecured.

(9) Non issue of demand notices

As per the deferment scheme, the assessing officers were to issue separate and specific demand notices during the deferment period to the beneficiary units showing the amount of deferred tax and due date of payment.

In the case of 7 units in the Sales Tax Division at Kalol, demand notices for Rs. 33.60 lakhs of deferred sales tax dues were not issued. The Sales Tax Officer stated that the demand notices would be issued and demands would be recorded in Recovery Register No.11. The Commissioner of Sales Tax while discussing the review report assured that the matter will be investigated.

(10) Arrears in Assessments

The Commissioner of Sales Tax directed the Sales Tax Officers in October 1984 to assess on priority basis the sales tax cases of the units which availed tax incentives.

In six districts, 4343 assessments involving tax exemption of Rs. 5799.73 lakhs and 1786 assessments involving tax deferment of Rs. 3970.32 lakhs respectively were pending for assessment as on 31st March 1994 as detailed below. The assessments of these cases were required to be taken up on priority basis.

District	Exemption		Deferment	
	No. of assessments	Amount (Rs. in lakhs)	No. of assessments	Amount (Rs. in lakhs)
Mehsana	1445	2359.21	601	1399.95
Valsad	714	1037.58	432	538.71
Bharuch	1174	1114.62	119	319.01
Panchmahals	748	958.55	315	836.56
Surendranagar	209	264.04	234	309.69
Gandhinagar	53	65.73	85	566.40
Total	4343	5799.73	1786	3970.32

The year-wise breakup of the pending assessment cases is as under:

Year	Exemption		Deferment	
	No. of assessment cases	Amount (Rs. in lakhs)	No. of assessment cases	Amount (Rs. in lakhs)
1986-87	23	24.27	34	60.25
1987-88	83	138.77	59	149.22
1988-89	168	315.25	103	364.89
1989-90	395	596.51	195	510.84
1990-91	842	984.39	317	819.33
1991-92	1326	1818.92	507	1094.88
1992-93	1506	1921.62	571	970.91
Total	4343	5799.73	1786	3970.32

The inordinate delay in assessment of these cases indicates that due priority was not attached to timely recovery of the deferred dues. Further, some of the pending assessments may also become time barred due to delay. The Commissioner of Sales Tax stated (September 1994) that instructions are being issued to Internal Audit parties to check the pending assessments of beneficiary units on priority basis.

During discussion of the salient findings of the review the Additional Chief Secretary, Industries Department agreed that the cases of exemption and deferment granted to industrial units will be carefully scrutinised to ensure that there is no lapse leading to loss of revenue.

The results of the review was communicated to the Government in June 1994. Their formal reply has not been received. (January 1995).

2.3 Irregular grant of setoff

(A) Under the Gujarat Sales Tax Rules, 1970, a dealer who has paid tax on the raw materials used in the manufacture of taxable goods, is allowed setoff from the tax payable on the sale of manufactured goods. The setoff is not allowed on the tax paid on the purchases of "prohibited goods" as defined in the Gujarat Sales Tax Act, 1969.

In the case of 2 dealers assessments for the assessment periods between July 1987 and March 1989 finalised in September 1990 and March 1992 setoff of Rs. 1.97 lakhs was incorrectly granted on purchase of prohibited goods as under:

Sr. no.	Location of dealer	Period of assessment	Date of assessment	Goods on which set-off granted	Amount of setoff including interest (Rupees)
1.	Mehsana	July 1987 to March 1989	30.3.92 *	Transformers, Switchgears and Switch Boards	1,16,845
2.	Ankleshwar	July 1987 to June 1988	25.9.90	Melamine	80,931

This was brought to the notice of the department in March and November 1992 and to Government in June 1994, their replies have not been received (December 1994).

(B) In case of 9 dealers irregular grant of setoff resulted in short levy of tax of Rs. 84.23 lakhs as detailed in the table below:

Sr. no.	Name of the Sales Tax Office	Assessment period	Nature of irregularity	Excess set-off allowed
1.	District Division I, Ahmedabad (1 Dealer)	July 1987 to March 1989	Though electric control panels are not machinery setoff tax paid on electric motor was irregularly allowed.	46,726
2.	District Division II, Ahmedabad, Division 8, Ahmedabad, Division II, Baroda, Unjha and Dhoraji (8 Dealers)	Between September 1987 and March 1990	As per Rule 42 E of the Gujarat Sales Tax Rules, 1970 setoff of purchase tax levied under Section 15-B of the Gujarat Sales Tax Act, 1969 is granted when the taxable goods manufactured are sold in the State of Gujarat. In these cases though the dealers have exported the goods, the setoff was irregularly allowed.	83.76 lakhs

The above cases were brought to the notice of the department between October 1992 and May 1993 and Government in June 1994; their reply has not been received (December 1994).

2.4 Incorrect classification of goods

According to the classification of goods, tax is leviable at different rates as laid down under the schedules to the Gujarat Sales Tax Act. However, where the goods are not covered under any of the schedules, general rate of tax applicable from time to time under the Act is leviable. Incorrect classification of goods in the 15 cases as shown below in the table resulted in short levy of Rs. 77.73 lakhs.

Sr. no.	Name of the Sales Tax Office	Assessment Year	Name of the commodity and nature of irregularity	Amount of turnover (Rupees in lakhs)	Rate of tax leviable	Rate of tax actually levied	Amount of short levy including interest (Rupees in lakhs)
1.	District Division III, Ahmedabad and Rajkot (3 dealers)	1977 to 1989-90	Cotton rolled bandages considered as handloom bandages	363.00	4 per cent up to 5th August 1988 and 6 per cent thereafter	Nil	51.00
2.	District Division II, Ahmedabad (1 dealer)	1989-90 to 1990-91	Gobar Gas Stoves and burners considered solar energy equipments	5.54	7 per cent	3 per cent	4.50
3.	Billimora (1 Dealer)	1989-90	Pan Masala (Zarda)	33.63	14 per cent	Nil	8.24
4.	District Division II, Ahmedabad (1 dealer)	1989	Blue (Gali) considered as dye instead of chemical	77.65	5 per cent	4 per cent	1.20
5.	Anand (1 dealer)	S.Y.2044 to 31st March 1989	Grass cutter considered as agricultural equipment.	17.19	12 per cent	Nil	3.85
6.	Division IV Surat (1 dealer)	S.Y.2044 to 31st March 1989	Machinery used for twisting/dyeing of yarn considered as machinery used for manufacture of goods	19.39	12 per cent	5 per cent upto 5th August 1988 and 6 per cent thereafter	2.57
7.	Himatnagar (1 dealer)	1990-91	Kisan Pipes considered as agricultural equipments	5.99	10 per cent	6 per cent	0.30
8.	Division V Ahmedabad (1 dealer)	1989-90	Electric Control Panel Boards	62.02	8 per cent	6 per cent	2.24
9.	Division III Rajkot (1 dealer)	1990-91	Plastics lids considered as packing materials	12.53	10 per cent	5 per cent	0.63
10.	Amreli, Surendranagar and Rajkot (4 dealers)	Between April 1987 and March 1991	Cotton puni/yarn considered as Khadi and village industries product	28.55	12 per cent	Nil	3.20
							77.73

The above cases were brought to the notice of the department between October 1992 and August 1993 and Government in May 1994; their replies have not been received (December 1994).

2.5 Short levy of turnover tax due to incorrect computation of permissible deduction

(A) Under the provisions of the Gujarat Sales Tax Act, 1969, with effect from 6th August 1988 where the turnover of either of all sales or of all purchases made by any dealer exceeds Rs. 99,99,999 in any year, a turnover tax is to be levied on the total turnover of sales of specified goods after allowing permissible deductions under the Act. With effect from 1st August, 1990, the provision was amended to charge turnover tax on taxable turnover of sales. Further, if any dealer has changed the year of accounts and adopted a transitional accounting year, the liability to turnover tax was to be calculated on a proportionate basis for the transitional period of assessment involving a period of more than 12 months.

(i) In 33 assessments of 27 dealers (18 of Ahmedabad, 3 of Rajkot, 2 of Surat and one each of Junagadh, Jamnagar, Bhavnagar and Surendranagar) relating to period July 1987 to March 1990 and finalised between March 1990 and February 1992, turnover tax was levied on net turnover of sales after reducing the amount of sales tax which resulted in short levy of turnover tax of Rs. 29.04 lakhs (including interest for nonpayment of turnover tax due).

The cases were brought to the notice of the assessing officers between July 1991 and September 1992. They did not agree with the audit observations and stated that deduction of sales tax was permitted as per departmental circular of 5th August 1988. This is not tenable as the amendment of August 1990 provided that turnover of sales should include sales tax.

This was brought to the notice of the department between June 1993 and January 1994 and Government in April 1994; their reply has not been received (December 1994).

(ii) In eleven assessments of 10 dealers of 10 offices it was noticed that though the dealers were liable to pay turnover tax of Rs. 8.08 lakhs, the tax was either not levied or levied short as shown in the following table :

Sr. no.	Name of the office	Period of assessment and date of Assessment order	Amount of turnover of sales (Rupees in lakhs)	Turnover Tax leviable including interest	Remarks
1.	Ankleshwar (1 case)	July 1987 to <u>March 1989</u> 20.2.91	97.92	1,39,050	The assessing Officer accepted the objection. Report on recovery is awaited.
2.	Rajkot (1 case)	<u>1989-90</u> 30.11.90	66.18	75,445	Reassessment order passed in March 1992. The dealer preferred an appeal. Further report has not been received.
3.	Junagadh (2 cases)	<u>1989-90</u> 29.2.92 and <u>1989-90</u> 20.9.90	187.25	2,57,880	
4.	Jamnagar (1 case)	<u>1989-90</u> 3.1.1992	1.67	58,510	
5.	Ahmedabad (4 cases)	Between April 1990 and December 1991	184.72	1,95,707	
6.	Dhrangadhra (1 case)	1988-89 to <u>1989-90</u> 8.5.91	37.96	81,145	
			Total	8,07,737	

The cases were brought to notice of the department between May 1993 and January 1994 and Government in April 1994; their reply has not been received (December 1994).

(B) Non-levy of turnover tax due to incorrect computation of assessment period

The Gujarat Sales Tax Act, 1969, provides for levy of turnover tax in the case of those dealers liable to pay tax, whose total turnover during the year exceeds Rs. 99,99,999. In respect of dealers who obtain registration certificate their liability to pay sales tax arises from the date of issue of registration certificate. For the purpose of levy of turnover tax in respect of dealers who switch over their accounting year to financial year, turnover tax is worked out with reference to number of completed months in the transitional year which comprises of more than 12 months. If the extra days are more than 15 days it should be reckoned as one month and less than 15 days are to be ignored as clarified by Commissioner of Sales Tax in circular issued in March, 1989.

During the course of audit of Sales Tax Office, District Division II, Ahmedabad it was noticed that a trader in tyres was issued a registration certificate on 30th March, 1988. His accounting year as shown in his application for registration certificate ended in April 1988 and he later switched over to financial year. His turnover of sales and purchases upto April 1988 was nil. The assessment for the period from 30th March 1988 to 31st March 1989 was finalised with total turnover of Rs. 1.02 crores and the entire sales were taxed. For the purpose of levy of turnover tax, the assessment was considered for 13 months and no turnover tax was levied.

As the dealer's liability to pay sales tax under Section 3 arises on 30th March 1988 and the assessment was finalised for the period 30th March 1988 to 31st March 1989, the period of assessment was to be reckoned as 12 months and not 13 months as 2 days of March 1988 being less than 15 days were required to be ignored. As the total turnover for this period (12 months) exceeded the prescribed limit, the dealer was liable to pay the turnover tax which worked out to Rs. 1.16 lakhs (including interest).

The assessing officer did not agree with the view of audit on the ground that the dealer started his business from 1st March 1988 and as his first assessment was from 30.3.88 to 31.3.89, one month of previous year plus the period from April 1988 to March 1989 i.e. 13 months is to be treated as transitional year and hence the dealer is not liable to pay turnover tax.

The reply is not tenable as the dealer's liability to pay turnover tax is only from the date of registration which was 30th March 1988, though he commenced the business from 1st March 1988. The liability to pay turnover tax should therefore be based on the turnover of twelve months as per the Commissioner of Sales Tax's clarification of March 1989.

This was brought to the notice of the department in January 1994 and Government in April 1994. Government while accepting the audit observation stated (January 1995) that Sales Tax authority has been instructed to initiate *suo motu* revision proceedings.

2.6 Irregular application of concessional rate of tax

(A) As per entry 18 of notification dated 29th April 1970 under Section 49(2) of the Gujarat Sales Tax Act, 1969, tax is leviable at a concessional rate of 4 *per cent* on production of Form 'D' and Form 'P' on sales made to Central and State Government departments respectively. The Commissioner of Sales Tax clarified in a circular of September 1975 that concessional rate of 4 *per cent* is not admissible on sales of goods to autonomous bodies and institutions like municipalities, boards etc.

(i) At Junagadh and Amreli in case of two dealers, one being a reseller of explosives and the other a manufacturer of cement, sales of explosives and cement amounting to Rs. 48.50 lakhs, relating to the assessment period October 1987 to June 1990, made to a State Government company registered under Companies Act, 1956 were incorrectly assessed to tax at a concessional rate of 4 *per cent*. This resulted in short levy of tax of Rs. 5.90 lakhs (including interest). In reply the department stated (February 1993) that as the sales was made to a Government department concessional rate was charged. This reply is not tenable as the organisation is a company and not a Government department.

(ii) Under the provisions of the Central Sales Tax Act, 1956, tax is leviable at concessional rate of 4 *per cent* on inter-State sales of goods, when a declaration in Form 'C' is furnished. Sales without Form 'C' is chargeable to tax at twice the rate applicable as per local Act in the case of declared goods and in the case of goods other than declared goods at the rate of 10 *per cent* or at the applicable rate, as per the State Act whichever is higher. On failure to pay tax due in time, the dealer would also be liable to pay interest.

(A) In Ahmedabad, in 15 assessments of four dealers finalised between April 1990 and March 1992, inter-State sales amounting to Rs. 80.57 lakhs were subjected to tax at the rate of four *per cent*, even though the dealers had not produced the prescribed declarations on the plea that these were destroyed in fire and flood and even no duplicate 'C' Forms could be produced. Under the Act production of 'C' form is mandatory and there are no discretionary powers with the assessing officer to waive this mandatory requirement. The sales were chargeable to tax at 10 *per cent*. This resulted in short levy of tax of Rs. 11.93 lakhs (including interest).

(B) As per notification issued under Section 8(5) of the Central Sales Tax Act, 1956, sales of cycle parts in the course of inter-State trade are leviable to tax at 1 *per cent* subject to production of Form 'C'.

At Ahmedabad, in the case of a manufacturer of cycle rims, sales worth Rs. 2.70 lakhs without production of Form 'C' in the course of inter-State trade were subjected to tax at the rate of 1 *per cent* instead of at 10 *per cent*. This resulted in short levy of tax of Rs. 39,460 (including interest).

The above cases were reported to the department between November 1993 and March 1994 and to Government in June 1994; their replies have not been received (December 1994).

2.7 Non-levy/short levy of purchase tax

(A) Under the Gujarat Sales Tax Act, 1969, a recognised dealer on production of certificate in Form 19, can purchase goods other than prohibited goods without payment of tax for use in the manufacture of taxable goods for sale. In the event of breach of conditions of the declaration, the dealer would be liable to pay purchase tax on the goods purchased under such certificate. Further, where a dealer who is liable to pay tax under the Act, purchases any taxable goods (not being declared goods) and uses these goods as raw or processing materials or consumable stores in the manufacture of taxable goods, purchase tax at the prescribed rates would be leviable in addition to any tax levied under other provisions of the Act. As per the Gujarat Sales Tax Rules, 1970, the purchase tax levied under the above provision of the Act would be refunded subject to the condition that the goods so manufactured are sold by the assessee in the State of Gujarat.

(i) A manufacturer of chassis of motor vehicles at Godhra during the assessment period 1987-88, finalised in January 1992, purchased parts of motor vehicles worth Rs. 5.50 lakhs against Form 19 without payment of tax. A portion of the manufactured goods was consigned to a branch which was in contravention of the conditions of the declaration in Form 19. For breach of conditions, the dealer was liable to pay purchase tax of Rs. 1.01 lakhs (including interest).

This was pointed out to the department in February 1994; their reply has not been received (December 1994).

(ii) A manufacturer in medicines at Ahmedabad purchased raw materials worth Rs. 7.39 lakhs between April and December 1986 and used it in the manufacture of taxable goods. The goods manufactured were transferred to his branch. No purchase tax was levied. The purchase tax leviable worked out to Rs. 32,050 (including interest).

This was brought to the notice of the department in January 1994 and Government in June 1994; their reply has not been received (December 1994).

(iii) At Rajkot, a manufacturer of oil engines and parts thereof purchased goods (other than declared goods) worth Rs. 1.17 crores in the assessment period 1989-90 and used the same in the manufacture of taxable goods and 36 per cent of the goods so manufactured were exported out of the country. Since export of goods cannot be considered as sale within the State the dealer was liable to pay purchase tax of Rs. 2.82 lakhs (including interest) which was not levied.

This was brought to the notice of the department in January 1994; their reply has not been received (December 1994).

(B) Under Gujarat Sales Tax Act, 1969, purchase tax at the rate of four per cent is leviable on the purchase price of groundnuts purchased from unregistered dealers or from registered dealers on prescribed forms.

In the case of an oil mill at Amreli for the assessment period S.Y. 2041 (25th October 1984 to 12th November 1985) on purchase of groundnut worth Rs. 74.40 lakhs used in the manufacture of groundnut oil, purchase tax was levied at one per cent instead of at the correct rate of 4 per cent resulting in short levy of purchase tax of Rs. 4.73 lakhs (including interest).

This was brought to the notice of the department in October 1993; their reply has not been received (December 1994).

The above cases were brought to the notice of the Government in June 1994; their reply has not been received (December 1994).

2.8 Incorrect application of concessional rate of tax

(i) As per entry 144 of Notification issued under Section 49 of the Gujarat Sales Tax Act, 1969, sales of nylon twine, monofilament twine and synthetic twine by a registered dealer were leviable to tax at the concessional rate of 1 *per cent*. The above concession was withdrawn with effect from 1st June 1988.

At Bhavnagar, in the case of a manufacturer of plastic twine it was noticed that sales of such twine for the assessment period September 1988 to June 1989 amounting to Rs. 18.40 lakhs were subjected to tax at the concessional rate of 1 *per cent* though the concession was withdrawn w.e.f. June 1988. This resulted in short levy of tax of Rs. 99,216 (including interest).

This was brought to the notice of the department in January 1994 and Government in June 1994; their reply has not been received (December 1994).

(ii) The following conditions are laid down in the Gujarat Sales Tax Act, 1969 for resale:

(A) Goods purchased should be sold in the same form in which they are purchased (B) goods purchased should not be subjected to any activity which amounts to or results in manufacture and (C) resales is allowed if the declared goods purchased are sold without doing anything to them as a result of which the resultant product is not taken out of the description of the goods in that entry. According to a decision of the Gujarat High Court all three conditions laid down in Section 2(26) of the Gujarat Sales Tax Act, 1969 are to be satisfied and even if one of the conditions is not satisfied there would be no resale.

At Patan, it was noticed that in the case of a manufacturer of 'KURIA' (coarse powder or split) from rai, methi and sarsav turnover of Rs. 20.86 lakhs without production of Form 'C' was subjected to tax at a concessional rate of 4 *per cent* for the assessment period S.Y. 2044 to March 1989 treating it as resale. Since the conditions stipulated under Section 2(26) of the Act were not fulfilled, the sale of Kuria could not be treated as resale and was chargeable to tax at the rate of 10 *per cent* instead of the concessional rate of 4 *per cent*. Irregular application of concessional rate resulted in short levy of tax of Rs. 1.25 lakhs.

This was brought to the notice of the department in November 1993 and Government in June 1994; their reply has not been received (December 1994).

2.9 Incorrect allowance of deduction

Under Gujarat Sales Tax Act, 1969 sale of prohibited goods against declaration in Form 19 is not permissible.

In the assessment of 4 dealers (2 of Veraval and 2 of Ahmedabad) for the assessment period between 25th October 1984 and 31st March 1991, sales of prohibited goods valued at

Sales Tax

Rs. 31.06 lakhs made against declarations in Form 19 were allowed as deduction from the sales turnover though such sales were liable to be taxed. Tax not levied amounted to Rs. 1.76 lakhs details of which are given below:

Sr. no.	Location and number of dealers	Period of assessment	Date of assessment	Item of goods sold	Value of goods sold (Rupees in lakhs)	Tax leviable but not levied (Rupees)
1.	Veraval (2 dealers)	S.Y.2043 S.Y.2044 S.Y.2041	11.7.91 29.6.91 15.7.91	Lime Stone	15.86	75,601
2.	City Division 4 Ahmedabad	S.Y.2043 S.Y.2044 to 31.3.89 1989-90 1990-91	19.11.91 18.1.92 18.1.92 24.2.92	Gun Metal Valves	9.01	57,501
3.	Division 8 Ahmedabad	1987-88	25.10.89	Machinery parts	6.19	43,104
					31.06	1,76,206

Non-levy of tax in the above cases resulted in short realisation of revenue of Rs. 3.06 lakhs (including interest of Rs. 1.30 lakhs).

This was brought to the notice of the department between December 1993 and March 1994 and Government in June 1994; their reply has not been received (December 1994).

2.10 Non-levy of General Sales Tax

Under entry 195 of Notification issued under Section 49(2) of Gujarat Sales Tax Act, 1969, sales of all types of stoves, spares parts and accessories thereof are exempted from payment of sales tax. Such sales, however, are not exempted from general sales tax.

At Surendranagar, in the case of a manufacturer of stoves and parts thereof sales worth Rs. 15.27 lakhs were exempted from levy of both sales tax and general sales tax in the assessment period S.Y. 2044 (23rd October 1987 to 9th November 1988) to 31st March 1989 resulting in non-levy of general sales tax to the extent of Rs. 1.25 lakhs (including interest).

The omission was brought to the notice of the department in December 1993 and Government in June 1994; their replies have not been received (December 1994).

2.11 Short levy of tax

According to entry 175 of Notification issued under Section 49(2) of the Gujarat Sales Tax Act, 1969, a specified manufacturer is allowed to purchase raw materials, processing materials, or consumable goods on prescribed Form, for which the rate of tax was 0.25 *per cent*. The tax so saved on purchases, is to be adjusted against the tax exemption limit.

In Bharuch a manufacturer of cement and RCC pipes had purchased cement, chemicals and steel amounting to Rs. 10.51 lakhs on prescribed form, during the period under assessment. Though tax payable by the dealer on these purchases was Rs. 1.10 lakhs, only Rs. 3,135 was adjusted against tax exemption limit resulting in short levy of tax of Rs. 1.07 lakhs.

This was brought to the notice of the department in January 1994. The department while accepting the observations stated (July 1994) that Rs. 1.07 lakhs have been adjusted towards ceiling limit.

This was brought to the notice of the Government in June 1994; their reply has not been received (December 1994).

2.12 Non-levy of additional tax

Under the Gujarat Sales Tax Act, 1969, an additional tax is leviable on the sale or purchase of goods liable to tax under the Sales Tax Act at the applicable rate. However, in respect of declared goods, the tax plus additional tax shall not exceed four *per cent* of the sale or purchase price thereof.

In Rajkot, in the case of a manufacturer and reseller in groundnut oil and cake for the assessment period S.Y. 2044 (23rd October 1987 to 9th November 1988) to 31 March 1989, though purchase tax on purchases of Rs. 1.25 crores of groundnut at one *per cent* was levied, the additional tax of Rs. 30,098 however was not levied. This resulted in non-levy of tax of Rs. 51,165 (including interest).

This was brought to the notice of the department in January 1994 and Government in June 1994; their reply has not been received (December 1994).

2.13 Non-levy/short levy of interest

Under the provisions of the Gujarat Sales Tax Act, 1969, if a dealer does not pay the amount of tax within the time prescribed for its payment, simple interest at the rate of 24 *per cent* per annum is liable to be levied on the amount of tax not so paid or any amount thereof remaining unpaid for the period of default. This provision also applies to the levy of interest in the case of assessments made under the Central Sales Tax Act, 1956.

In 10 assessments of 8 dealers for the assessment periods between April 1980 and July 1989 finalised between March 1988 and February 1992 interest amounting to Rs. 8.39 lakhs was either not levied or levied short on the amount of tax due and remaining unpaid on finalisation of the assessments.

This was brought to the notice of the department between October 1993 and March 1994 and Government in June 1994; their reply has not been received (December 1994).

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LAND REVENUE

CHAPTER 3

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CHAPTER - 3

LAND REVENUE

3.1 Results of Audit

Test check of Land Revenue records in the office of the District Development Officers, Taluka Development Officers and District Inspector of Land Records, conducted in audit during 1993-94, disclosed short recovery and losses of revenue amounting to Rs. 267.25 lakhs in 219 cases. These cases broadly fall under the following categories:

	Number of cases	Amount (Rupees in lakhs)
1. Non-raising of demands for Land Revenue on non-agricultural land	133	124.25
2. Non/short recovery of occupancy price	7	48.29
3. Non-recovery/short recovery of conversion tax	23	43.78
4. Non-recovery/short recovery of Land Revenue	30	24.03
5. Other irregularities	26	26.90
	<u>219</u>	<u>267.25</u>

During 1993-94, the department accepted under-assessments etc. of Rs. 91.60 lakhs in 227 cases. Out of these, 6 cases involving Rs. 1.90 lakhs were pointed out during 1993-94 and the rest in the earlier years. A few illustrative cases involving revenue of Rs. 100.15 lakhs highlighting important observations are given in the following paragraphs.

3.2 Non-recovery of lease rent

Under the Bombay Land Revenue Code, 1879 as applicable to Gujarat, Government can dispose off unoccupied land on lease for a specified period subject to payment of rent fixed by Government.

(i) Unoccupied land measuring 14000 acres at Balambha village in Jodia taluka, District Jamnagar was leased out to a private company for the period from 1980-81 to 1983-84 and further renewed upto 1991-92 for manufacture of salt, subject to payment of lease rent at the

rate of Rs. 11,126 per acre per year. The department did not raise any demand and consequently no rent was recovered from the company. The amount of unrecovered lease rent for the period from 1984-85 to 1991-92 worked out to Rs. 89,000.

The omission was pointed out to department in September 1992; their reply has not been received (December 1994).

(ii) By a resolution issued in December 1979 Government in Revenue department issued instructions for leasing out river bed land for cultivation to needy persons which, inter alia, provided that (1) the land should be leased out by auction for a period of one year or more to the highest bidder and (2) the auction amount is recoverable in a maximum of three instalments, the first instalment being forty *per cent* of auctioned amount and the balance amount is recoverable before the crop is reaped.

During the local audit of District Development Officer, Palanpur it was noticed (March 1992) that Collector, Palanpur leased out land in five talukas for temporary cultivation but did not arrange to collect the balance amount before the crop was reaped. Consequently Rs. 46.77 lakhs remained uncollected since 1965-66 and there are no reasonable prospects of recovery of the amount due to non-availability of addresses of bidders.

The matter was reported to department in June 1992 and again in February 1993; their reply has not been received (December 1994).

The above cases were reported to Government in April 1994; their reply has not been received (December 1994).

3.3 Application of incorrect rates of non-agricultural assessment

Under the Gujarat Land Revenue Rules, 1972, cities towns and villages in Gujarat are divided into five classes 'A' to 'E' for the purpose of determining the rates of non-agricultural assessment. Peripheral area within five kilometres of the major cities falling in class 'A' and the area falling within one kilometre of the cities and towns falling in class 'B' and 'C' are classified along with respective cities and towns. Certain industrial and allied areas notified by the Government irrespective of the population of the concerned city etc. are also classified as Class 'B'. The classification of the areas for the purpose of non-agricultural assessment is done by the Collector in respect of the urban areas under jurisdiction of municipalities and by the District Development Officer in respect of other areas under the control of panchayats. Different rates of non-agricultural assessment are also fixed under the rules depending upon the use of the land. The rates of non-agricultural assessment were revised with retrospective effect from 1st August 1976 and were further revised from 1st August 1989 by a notification issued in April 1992. In addition to land revenue, local fund cess and education cess at the prescribed rates are also leviable.

In 113 cases non-agricultural assessment was leviable at higher rates. However the non-agricultural assessment was not revised and continued to be levied at old rates. This resulted

in short recovery of non-agricultural assessment amounting to Rs. 23.40 lakhs as detailed in the following table :

Sr. no.	Name of the place	No. of cases	Area of land in square metres (in lakhs)	Period	Amount of non-agricultural assessment short levied (Rupees in lakhs)	Remarks
1.	Bhestan (Surat District)	1	10.14	1985-86 to 1992-93	10.83	The village was included in municipal limit from 1.4.1986 but rates of non-agricultural assessment were not revised.
2.	Wadhwan (Surendranagar District)	1	11.45	1982-83 to 1991-92	2.79	The non-agricultural assessment was levied and collected at the rates applicable to 'D' class village instead of 'C' class village.
3.	Surat (Choryasi Taluka)	6	25.77	1989-90 to 1992-93	5.54	The non-agricultural assessment was levied and collected at pre-revised rates i.e. before 1.8.1989.
4.	Balasinor, Anand and Porbandar	18	3.33	1976-77 to 1991-92	1.47	In Balasinor the land was put to non-agricultural use, but non-agricultural assessment was recovered at lower rate. In Anand and Porbandar the non-agricultural assessment was levied and collected at pre-revised rates i.e. at the rates prior to 1st August, 1976.
5.	Kosamba, Jamjodhpur and Surendranagar	87	11.03	1981-82 to 1991-92	2.77	The towns were upgraded to 'B' and 'C' class, but non-agricultural assessment was levied and collected at the rates applicable to 'C' and 'D' class towns.
			61.72		23.40	

The above cases were reported to department between May 1992 and July 1992 and in February 1993 and December 1993. The department accepted the objection in three cases and stated that an amount of Rs. 11.62 lakhs has since been recovered (August 1994 and October 1994). Report on recovery in remaining cases has not been received (December 1994).

The above cases were reported to Government in April 1994; their reply has not been received (December 1994).

3.4 Non-recovery of land revenue on lands put to non-agricultural use

Under the Bombay Land Revenue Code, 1879 and the Rules made thereunder, land revenue is payable at the prescribed rates, unless specifically exempted from payment. Land Revenue is to be assessed with reference to the purpose for which the land is used, such as agricultural, residential, commercial, or industrial.

An occupant of agricultural land can put his holdings to any non-agricultural use only with the prior permission of the Collector. Prior to 1st August 1976, non-agricultural assessment was levied from the date of commencement of non-agricultural use. However, from 1st August 1976, levy of non-agricultural assessment is effective from the commencement of the revenue year in which land is permitted or deemed to have been permitted to be used for any other purpose or is used without the permission of the Collector. Executive instructions issued in May 1967, provide that where land is acquired for specific non-agricultural purposes and handed over to the acquiring bodies (Boards, Corporations etc.), no separate permission for non-agricultural use is necessary. In such cases, non-agricultural assessment is leviable from the date of handing over possession. In addition to land revenue, local fund cess at the prescribed rates is also leviable.

(i) Land measuring 19.74 lakhs square metres situated in six talukas was acquired and handed over to Gujarat Industrial Development Corporation for industrial use between the period 1975-76 and 1992-93. The non-agricultural assessment in respect of these lands were either not levied or levied at incorrect rates which resulted in short recovery of an amount of Rs. 5.51 lakhs as detailed below:

Taluka	Area of land in square metres (In lakhs)	Period	Amount of non-agricultural assessment not/short levied (Rupees in lakhs)
TDO, Choryasi	1.77	1975-76 to 1992-93	1.88
TDO, Bhuj	1.90	1980-81 to 1991-92	1.14
TDO, Sihor	0.99	1981-82 to 1991-92	0.83
TDO, Thasra	0.82	1982-83 to 1991-92	0.48
TDO, Limbdi	0.91	1986-87 to 1991-92	0.32
TDO, Baroda	13.35	1984-85 to 1991-92	0.86
	19.74		5.51

This was pointed out to the department between September 1992 and May 1993; their reply has not been received (December 1994).

(ii) Similarly in respect of land measuring 16.96 lakhs square metres occupied by Gujarat Electricity Board, Gas Authority of India, Gujarat State Machine Tools Ltd., Kalol Municipality and other industries and used for non-agricultural purposes the non-agricultural assessment was not levied for the period between 1975-76 and 1991-92. This resulted in non-levy amounting to Rs. 10.91 lakhs as detailed below:

Name of places	Area of land in square metres (in lakhs)	Period	Amount of Non-agricultural assessment not/short levied
			(Rupees in lakhs)
Kalol	3.03	1976-77 to 1991-92	2.67
Bhavnagar	3.29	1977-78 to 1991-92	2.66
Surat	0.72	1975-76 to 1991-92	1.07
Thasra	2.77	1978-79 to 1991-92	1.19
Devgadhbaria	5.03	1987-88 to 1991-92	0.95
Saijpurbogha (Ahmedabad)	0.51	1978-79 to 1991-92	0.82
Surat	0.53	1975-76 to 1991-92	0.51
Jamkhambalia	0.47	1981-82 to 1991-92	0.40
Saijpurbogha (Ahmedabad)	0.33	1975-76 to 1991-92	0.29
Bhavnagar	0.28	1977-78 to 1991-92	0.35
	16.96		10.91

The omission was pointed out to the department between November 1992 and February 1994; their reply has not been received (December 1994).

The above cases were reported to Government in April 1994; their reply has not been received (December 1994).

3.5 Non-levy of conversion tax

Under the Bombay Land Revenue Code, 1879, as applicable to Gujarat, conversion tax is payable on change in the mode of use of land from agricultural to non-agricultural purposes or from one non-agricultural to another in respect of land situated in a city or town including peripheral areas. The acquiring body is not required to obtain the permission of Government for non-agricultural use before handing over the possession of land acquired specifically for that purpose, but in such cases also conversion tax will be leviable as per Government clarification of February 1979.

(a) In the Choryasi taluka in Surat District it was noticed in audit (April 1993) that in four cases, 6,93,260 square metres of land was acquired and handed over to acquiring bodies between August 1988 and September 1991 but conversion tax was not levied.

The conversion tax recoverable in these cases amounted to Rs. 11.85 lakhs as detailed below:

Location	Allottees	Land allotted in square metres	Purposes	Amount of Conversion Tax not levied (In rupees)
Magdalla	GIDC	79,223 @ Rs. 2/- per square metre	construction of staff quarters	1,58,446
Magdalla	ONGC (Now ONGC Ltd)	1,40,218 @ Re.1/- per square metre	Residential	1,40,218
Magdalla	A private company	61,288 @ Re.1/- per square metre	Residential	61,288
Un	GIDC	4,12,531 @ Rs. 2/- per square metre	Industrial	8,25,062
		<hr/> 6,93,260		<hr/> 11,85,014

(b) In another case of Choryasi Taluka of Surat District, 27,317 square metres of land was acquired and allotted by Collector in October 1987 for religious purpose but conversion tax amounting to Rs. 81,951 though recoverable was not levied.

The above cases were reported to department in June 1993 and again in January 1994; their reply has not been received.

The above cases were reported to Government in April 1994; their reply has not been received (December 1994).

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TAXES ON VEHICLES

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THE UNIVERSITY OF

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TAXES ON VEHICLES

4.1 Results of audit

Test check of records in the office of the Commissioner of Transport, Regional Transport Offices and Assistant Regional Transport Offices and Inspector of Motor Vehicles in the State conducted in audit during 1993-94, disclosed under-assessments amounting to Rs. 258.14 lakhs in 145 cases. These cases broadly fall under the following categories:

	Number of cases	Amount (Rupees in lakhs)
1. Short levy or non-levy of motor vehicles tax	102	221.74
2. Short levy or non-levy of goods tax	21	8.44
3. Other irregularities	22	27.96
	<u>145</u>	<u>258.14</u>

During 1993-94, the department accepted under-assessment etc. of Rs. 138.87 lakhs in 147 cases. Out of these, 11 cases involving Rs. 2.88 lakhs were pointed out during 1993-94 and the rest in earlier years. A few illustrative cases involving Rs. 14.44 lakhs highlighting important observations are given in the following paragraphs:

4.2 Irregular grant of exemption from payment of tax

(a) By a notification issued in June 1992 under Motor Vehicles Tax Act, 1958, as applicable to Gujarat, Government withdrew the exemption from payment of motor Vehicles tax from 1st July 1992 in respect of vehicles owned by the Central Government.

In Bhavnagar, Valsad, Nadiad and Rajkot it was noticed (between July 1993 and September 1993) that in respect of 49 vehicles of Central Government the benefit of exemption was allowed even after 1st July 1992. The motor vehicles tax recoverable in these cases for the period July 1992 to 30th June 1993 amounted to Rs. 3.71 lakhs.

This was pointed out to the department between October 1993 and December 1993. The department while accepting the facts (April 1994) stated that Rs. 1,07,561 has been recovered in eight cases and demand notices have been issued in remaining cases. Reply in other cases has not been received (December 1994).

(b) Tax is required to be levied and collected on all motor vehicles used or kept for use in the State under the Bombay Motor Vehicles Tax Act, 1958 as applicable to Gujarat. In addition to motor vehicles tax, goods tax is also leviable under the Gujarat Carriage of Goods Taxation Act, 1962 on goods vehicles. The Government is empowered to exempt any motor vehicles belonging to any class of persons either totally or partially from the payment of motor vehicles tax. By a notification issued in June 1936 and adopted under the Act of 1958, motor vehicles tax is not leviable on vehicles owned by the State Government but the motor vehicles owned by autonomous bodies are not exempted from payment of tax. For non payment of motor vehicles tax and goods tax within the prescribed time, penalty upto 25 per cent is also leviable besides interest in respect of goods tax.

(i) At Bharuch 6 transport vehicles owned by the Sardar Sarovar Narmada Nigam Limited (SSNNL) and Gujarat State Civil Supplies Corporation (GSCSC) both Government companies which came into being with effect from 1st September 1988 and 26th September 1980 respectively were allowed exemption from payment of motor vehicle tax and goods tax, which resulted in non-recovery of motor vehicles tax and goods tax amounting to Rs. 2.02 lakhs for the period till March 1993. In addition penalty and interest are also leviable.

This was pointed out to the department in August 1993 and again in January 1994. Reply of the department has not been received (December 1994).

(ii) Tractors-cum-trailers owned by agriculturists and used for specified agricultural purposes are exempted from payment of motor vehicles tax and goods tax as per notification of September 1987 and November 1990 issued under the Bombay Motor Vehicles Tax Act 1958 and Gujarat Carriage of Goods Taxation Act, 1962. Persons other than agriculturists owning tractors-cum-trailers are however not entitled for exemption.

At Himatnagar motor vehicles tax and goods tax was not levied in respect of 8 tractors and 4 trailers belonging to persons other than agriculturists. The irregular grant of exemption resulted in non levy of motor vehicles tax and goods tax of Rs. 1.47 lakhs.

This was pointed out to department in September 1992 and again in December 1993. The department accepted the observations (February 1994) and stated that in three cases an amount of Rs. 22,890 has been recovered and in the remaining 9 cases demand notices have been issued. Further reply in regard to recovery in these cases has not been received (December 1994).

The above cases were reported to Government in June 1994; their reply has not been received (December 1994).

4.3 Short recovery/non-recovery of goods tax

As per the reciprocal agreements entered into between Gujarat, other States and Union Territories etc., the vehicles operating in Gujarat State under a counter signature permit are exempt from payment of Motor Vehicle Tax. However, vehicle owners of reciprocating States operating in Gujarat State are required to pay goods tax under the Gujarat Carriage of Goods Tax Act 1962.

It was noticed during audit of the office of the Commissioner of Transport (July 1992) that goods tax for the period from April 1989 to March 1993 was either not recovered or recovered at incorrect rates from 64 vehicle owners of Maharashtra, Madhya Pradesh and Rajasthan operating in the State under the above scheme. This resulted in short levy/non levy of goods tax of Rs. 2.02 lakhs.

This was pointed out to the department in August 1992. The department while accepting the observations stated (March 1994) that Rs. 78,128 has since been recovered in twenty four cases. Report on the recovery of balance amount in other cases has not been received (December 1994).

The above cases were reported to Government in June 1994; their reply has not been received (December 1994).

4.4 Improper issue of No Objection Certificate

Under the provisions of the Bombay Motor Vehicles Tax Act, 1958, as applicable to Gujarat an additional tax is leviable in lieu of passenger tax with effect from 1st May 1982 on all omnibuses used or kept for use as contract carriage in the State. The rates of additional tax were revised from 14th September 1987 and again from 1st April 1989.

Under the provisions of the Motor Vehicles Act, 1988 a vehicle owner who intends to transfer and register his vehicles in another State has to obtain 'no objection certificate' from the registering authority where the vehicle is registered. The registering authority before granting such certificate is required to verify whether all the amounts due to Government including road tax are paid.

At Vadodara a Travel Association obtained a stay order in September 1987 from civil court against payment of additional tax at revised rates effective from September 1987. Consequently, all the members of the said Association did not pay additional tax at revised rates. Owners of nine motor vehicles who were members of the Association applied for 'no objection certificate' between July and October 1991 for transfer of their vehicles to other State. An amount of additional tax of Rs. 1.94 lakhs was outstanding against these vehicle owners due to operation of stay orders granted by Civil Court. No instructions were sought from the Court on how to secure the revenue interest of Government.

This was pointed out to the department in September 1992 and again in November 1993 and to Government in June 1994; their final reply has not been received (December 1994).

4.5 Short realisation of composite tax

(a) From 1st April 1991, a tax on all omnibuses exclusively used or kept for use as contract carriages in the State is leviable at the rate of Rs. 1800 per annum per passenger. This tax, commonly known as composite tax is payable in advance at the annual rate or in monthly instalments of one twelfth of the annual rate.

By an ordinance of December 1991 the rate of composite tax was reduced to Rs. 1500 per annum per passenger with retrospective effect from 1st April 1991. Subsequently this ordinance was repealed on 21st March 1992 and the reduced rate was made effective from that date.

In Bharuch and Gandhinagar it was noticed (July 1993) that in 22 cases the owners of omnibuses paid composite tax for the period from April 1991 to December 1991 in monthly instalments of Rs. 150 per month per passenger. Based on the reduced rate of tax prescribed in ordinance, the department suo motu adjusted the excess tax paid during April to December 1991 towards the tax payable for January to August 1992.

Though the ordinance was repealed in March 1992 and reduced rates were made effective only from 21st March 1992, fresh demands were not raised promptly for tax already adjusted. This resulted in short realisation of composite tax amounting to Rs. 1.72 lakhs.

The matter was reported to department in August 1993 and again in January 1994 and to Government in June 1994; their replies have not been received (December 1994).

(b) Under the provisions of Bombay Motor Vehicles Tax Act 1958, as applicable to Gujarat, a tax commonly known as composite tax is leviable in lieu of additional tax on all omnibuses exclusively used or kept for use as contract carriages in the State from 1st April 1991. The rate of tax in case of luxury buses which have all India tourist permit is Rs. 2,700 per annum per passenger and in case of ordinary omnibus Rs. 1,500 per annum per passenger.

In one case at Ahmedabad though a vehicle was covered by all India tourist permit, tax was recovered at rate applicable to ordinary omnibuses. Incorrect application of the rate of tax resulted in short levy of composite tax of Rs. 58,900.

This was pointed out to the department in December 1992. The department has accepted the observation (January 1994). Details of recovery have not been received (December 1994).

This was brought to the notice of the Government in June 1994; their reply has not been received (December 1994).

4.6 Non-recovery of additional tax

Under the provisions of the Bombay Motor Vehicles tax Act, 1958, as applicable to Gujarat, an additional tax is leviable in lieu of passenger tax with effect from 1st May 1982 on all omnibuses exclusively used or kept for use as contract carriage in the State. According to the rules made under the Act, if a non use declaration is filed in advance and accepted by the taxation authority the additional tax is not required to be paid for the period of non use. The rates of additional tax were revised from 14th September 1987 and again from 1st April 1989.

In Vadodara operators of twelve omnibuses exclusively kept for use as contract carriages, did not file the necessary non use declarations for various periods between March 1989 and March 1990. In the absence of the declarations, the operators were liable to pay additional tax. The additional tax recoverable in these cases amounted to Rs. 96,861.

This was pointed out to the department in April 1992. The department accepted the observation and stated that demand notices have since been issued to all vehicle owners (January 1994). Details of recovery of the tax have not been received (December 1994).

This was brought to the notice of the Government in June 1994; their reply has not been received (December 1994).

CHAPTER - 5

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STAMP DUTY AND REGISTRATION FEES

CHAPTER 2

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STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of documents and records in the registration offices in the State conducted in audit during the year 1993-94, disclosed short realisation of stamp duty and registration fees amounting to Rs. 1548.30 lakhs in 219 cases, which broadly fall under the following categories:

	Number of cases	Amount (Rupees in lakhs)
1. Incorrect/irregular grant of exemption	43	1351.46
2. Mistakes in classification of documents	71	95.97
3. Non-recovery/short recovery of stamp duty/registration fees due to other reasons	75	50.18
4. Under-assessment of stamp duty on instruments of mortgage	20	46.14
5. Undervaluation of properties	10	4.55
	<hr/> 219	<hr/> 1548.30

During 1993-94, the department accepted under-assessments etc. of Rs. 397.36 lakhs in 138 cases, out of these 9 cases involving Rs. 2.10 lakhs were pointed out during 1993-94 and the rest in earlier years. A few illustrative cases highlighting important observations and the results of a review on "Valuation of properties" bringing out cases of undervaluation and consequent under-assessment of stamp duty involving Rs. 2410.15 lakhs are given in the following paragraphs.

5.2 Valuation of properties

5.2.1 Introduction

With a view to ensure recording of true market value of property to be sold, transferred, assigned and gifted, Section 32-A was inserted in Bombay Stamp Act, 1958 (as applicable to

Gujarat) with effect from 1st May 1984. This section inter-alia provides that the Stamp Duty should be payable on the basis of true market value of the property as assessed on reference or *suo motu* by the Collector. Prior to the introduction of Section 32-A no legal remedy was available against undervaluation of properties and loss of revenue. Section 32-A was introduced to plug this lacuna and augment revenue by proper valuation of properties based on their market value.

5.2.2 Scope of Audit

Valuation of properties under Section 32-A was reviewed in audit to assess whether the new provision of the Act was implemented effectively and the projected augmentation of revenue was achieved by the Inspector General of Registration and the Revenue department. For this purpose the files in Revenue department were examined and assessment cases finalised during 1984 to 1994 were test checked in six districts (from February 1994 to May 1994). The salient features of the review were discussed with Secretary, Revenue department in the Government and results of such discussion are included in the review.

5.2.3 Organisational setup

Revenue department is the controlling department in Government, which issues Notifications, Resolutions and Circulars for the implementation of the provisions of the amended legislation. Registration department is the implementing department and is headed by Inspector General of Registration who is assisted by Deputy Collectors (Valuation) and Sub-Registrars in administering the collection of stamp duty. There are 21 specially designated Deputy Collectors in the State who deal with the valuation of properties under Section 32-A of the Act.

5.2.4 Highlights

(i) Implementation of the provisions of Section 32-A in the Government or in the department was not effectively monitored. Action to recover outstanding dues of Rs. 72.43 crores is inadequate. Ready reckoners for valuation were prepared and updated only for 2 districts so far. Norms for non-agricultural properties (buildings) in smaller towns and cities and agricultural and non-agricultural lands have not yet been framed.

[Paragraph 5.2.5 and 5.2.7]

(ii) There was avoidable accumulation of 4.14 lakhs cases during May 1984 to February 1990 due to incorrect action following a High Court order. Due to irregular exemption granted to certain class of instruments 63,513 cases remained outside the purview of valuation provisions.

[Paragraph 5.2.8]

(iii) 163 cases were irregularly exempted from purview of valuation under Section 32-A resulting in short levy of stamp duty of Rs. 17.36 lakhs.

[Paragraph 5.2.8.b., 5.2.10, 5.2.14]

(iv) Revaluation of properties in accordance with the principles of valuation was not done in 235 cases resulting in short levy of stamp duty of Rs. 10.85 lakhs.

[Paragraph 5.2.11]

(v) Valuation of properties proposed by Sub-Registrars in 81 cases was not considered resulting in short levy of stamp duty of Rs. 11.53 lakhs.

[Paragraph 5.2.12]

(vi) Existing rates of penalty were revised to a very low rate overlooking the inter departmental recommendations. The revised rates are too low to provide deterrence to large scale undervaluation.

[Paragraph 5.2.16]

(vii) Huge number of appeals (7232 cases) were pending with CCRA. Out of these cases 3524 appeals are pending in 6 districts blocking revenue of Rs. 3.17 crores. Action taken for disposal of the appeals was not adequate.

[Paragraph 5.2.17.]

(viii) The valuation of property proposed by the Town Planning department was not considered in revaluation resulting in gross undervaluation and short levy of stamp duty of Rs. 17.82 lakhs in 4 cases.

[Paragraph 5.2.18.]

(ix) In 623 cases, properties were not valued in accordance with rules, which resulted in short levy of stamp duty of Rs. 2.64 lakhs.

[Paragraph 5.2.20.]

5.2.5 Market valuation of properties under Section 32-A

Based on the report of the Land Revenue Revision and Stamp Duty Review Committee which was constituted in July 1981 Government formed a Valuation Cell in May 1982 to fix market value of non-agricultural properties in 13 major cities and towns with a population of one lakh and above. The work of valuation was entrusted to the Building and Communication department.

In 1982 the Government sanctioned 160 posts for the purpose of valuation and preparation of ready reckoners. So far ready reckoners were prepared and updated for two districts viz. Rajkot and Jamnagar only.

Norms for non-agricultural properties (buildings) located in smaller towns and cities and agricultural and non-agricultural lands have not yet been framed. Besides, norms for determining market value for agricultural and non-agricultural lands were also not framed.

The department issued (September 1993) orders for recording of speaking orders by the Collectors while deciding the valuation of properties. The rates of land and construction reported by Sub-Registrars to the Deputy Collectors were based on registers maintained in the department and rates reported by Town Planning Officers. These rates were not considered by Deputy Collectors (Valuation) and rates were fixed without recording speaking orders about the basis of valuation.

In absence of speaking orders it could not be verified that valuation of properties by Deputy Collectors was in accordance with the provisions of Bombay Stamp (Determination Market Value of Properties) Rules, 1984.

5.2.6 Deficiency in the procedure for valuation of properties under Section 32-A

Under sub-Section (1) of Section 32-A of Bombay Stamp Act, 1958, if any officer registering specified instruments has reason to believe that the consideration set forth in these instruments do not approximate to the market value of the property, he may, after registering the instruments, refer these to the Collector for determining the true market value of such property.

On the receipt of an instrument, the Collector is required to follow the procedure laid down in the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 and determine the true market value of the property specified in the instrument. For this purpose, the Collector may, if necessary, refer the case to Town planning officer. Thereafter he is required to issue a notice showing the basis on which the market value of property and the duty payable thereon has been provisionally determined.

Scrutiny of valuation in 30,796 cases decided by Deputy Collectors under Section 32-A in six districts (Ahmedabad, Baroda, Surat, Rajkot, Kheda and Mehsana) disclosed the following deficiencies and irregularities:

(1) No form was prescribed for issuing notice for provisionally determined market value. Consequently the basis of the market value so determined was not mentioned or recorded in the notices issued to executors by any of the Deputy Collectors (Valuation). In the absence of such details, it could not be verified whether the market value was determined in accordance with the rules framed under the Act.

(2) Government appointed 21 Deputy Collectors (Valuation) for determination of the market value under Section 32-A. Such officers included Assistant Collectors, Deputy Collectors (Irrigation), Deputy Collectors (Mid-day-Meal) etc., who were not familiar with the working of Revenue department and the provision of the valuation under the Bombay Stamp Act, 1958. No training was given to these officers to acquaint them with the provisions of the Act and rules made thereunder to enable them to discharge their duties effectively. In Rajkot and Surat districts such officers determined 15090 cases.

(3) No uniform basis of valuation was adopted by the department for the State and thus valuation differed from district to district and from case to case as shown below:

(a) In Baroda the rates cited by Sub-Registrars and the rates recommended by the Town Planning Officers were not adopted by Deputy Collector in 37 cases out of 258 cases examined in audit. Valuation was reduced in these cases without any formal explanation for such reduction. Undervaluation in these cases ranged from Rs. 50,000 to Rs. 5.70 lakhs.

(b) In Surat in 3 cases the rates recommended by the Town Planning Officers were not considered by the Deputy Collector during valuation and the principles laid down in Rule 8 of Determination of Market Value Rules 1984 were ignored and lump sum amount and/or fixed percentage were added to the consideration for valuation. In another 3 cases lump sum amount of stamp duty was asked to be paid without recording the basis of determination of

such amounts. Under valuation in these 6 cases ranged from Rs. 1.83 lakhs to Rs. 14.30 lakhs.

(c) In Rajkot, out of 32 cases examined in audit 25 cases were not referred to the Town Planning Officers for valuation. In 46 cases out of 66 examined in audit the rates cited by the Sub-Registrars and Town Planning Officers were not considered and very low rates were adopted without recording the basis of such rates. The undervaluation in these cases ranged from Rs. 6,500 to Rs. 11.74 lakhs. In 25 cases market value was determined by the Deputy Collectors at rates lower than 50 *per cent* of the consideration. The undervaluation due to the lower rate of market value adopted by the Deputy Collector in these cases ranged from Rs. 55,000 to Rs. 32.77 lakhs.

5.2.7 Implementation of valuation provisions under Section 32-A was not monitored

There was no system for departmental inspection or internal audit/check of the cases finalised by the Deputy Collectors (Valuation).

During May 1984 to March 1994, 5.75 lakhs cases were finalised under Section 32-A involving additional stamp duty of Rs. 110.82 crores out of which Rs. 38.39 crores were recovered upto July 1994. Government stated (November 1994) that the posts of Deputy Mamlatdar and Ex-Officio Recovery Officers were created in July 1992 and a monthly target of recovery fixed for them. Further, instructions for effecting recovery were issued in August 1992 and June 1994. However, considering the huge outstanding (Rs. 72.43 crores upto July 1994) the action initiated by Government for recovery was inadequate.

5.2.8 Irregular grant of exemption

(a) Section 32-A of the Bombay Stamp Act, 1958 was introduced for determining the market value of property for the purpose of levy of stamp duty. On an appeal against the amended Section, the Gujarat High Court issued a stay order in December 1984. Following this order, 4.14 lakhs cases referred by Sub-Registrar to Deputy Collectors (Valuation) for determining market value got accumulated till February 1990.

While considering a special civil application by a private party against the stay order, the High Court observed in August 1987 that there was no stay on the operation of Section 32-A and that cases could be referred to the Collector for determining market value. No cases, however, were referred to Collector between 1984 and 1987. Thus, the accumulation of 4.14 lakhs cases and consequent blocking of Government revenue were avoidable.

The Act does not empower the Government to exempt any class of instruments from the purview of determination of market value of property. However, the Government exempted 9 classes of instruments in GRs of May 1990 and September 1991. Such exemptions are not in conformity with the provisions of the Act. Consequently exemption granted under these GRs in 63513 cases during May 1990 to March 1994 was irregular. The Government stated (November 1994) that the matter would be considered and if necessary amendment in the Act will be made in consultation with the legal department.

(b) Under sub-Section (3) of Section 32-A of the Bombay Stamp Act, 1958, no party shall be required to pay any amount to make up the difference or to pay any penalty, if the difference

between the amount of consideration set forth in the instrument and the market value as determined by the Collector of the district does not exceed ten *per cent* of the latter.

Scrutiny of cases in 3 districts showed that the market value as determined by the Deputy Collector was less than ten *per cent* of the amount of the original consideration and therefore these cases were treated as exempted from payment of additional duty as per sub-Section 3. This method of valuation was in violation of the principles laid down in Rule 8 of Bombay Stamp Rules, 1984. Further, valuation was done in some cases based upon the statements made in the representation of executor although the Act and the Rules did not provide for such methods of valuation.

(i) In Baroda, 4 cases were executed on the same date in favour of a Cooperative Housing Society and the market value for land measuring 6650 square metres in aggregate was determined at the rate of Rs. 120 per square metre as against Rs. 110 per square metre shown by executors in the instrument. The total valuation worked out to Rs. 7.31 lakhs in such cases. The addition of Rs. 10 per square metre during valuation was made on the ground that the land was agricultural. A scrutiny of the recitals of these documents however revealed that land transferred in these cases was non-agricultural land and District Collector, Baroda accorded permission for construction of houses on such land. The land transferred in these cases should have been valued at Rs. 29.92 lakhs based on the value of similar land recorded in the register maintained by Sub-Registrar. The undervaluation resulted in short levy of stamp duty of Rs. 1.13 lakhs.

(ii) In Surat, exemption was allowed in 18 cases based on the statements made by executors (such as roads were kachha, area was underdeveloped, absence of facilities like railway station and bus station etc). The market value in these cases was determined at very low rates without considering the valuation proposed by the Town Planning Officers and without recording any reason for such decision. Consequently the properties were undervalued by Rs. 71.40 lakhs resulting in short levy of stamp duty of Rs. 3.63 lakhs.

5.2.9 Undervaluation of property due to non-adoption of schedule of rates prescribed by the Town Planning (Valuation) Department

Under the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 the market value of property in the case of buildings are to be determined taking into account area of construction, the floor index space, type and structure, year of construction, kind of material used etc. The Town Planning department prepares a schedule of rates based on such factors and these rates are required to be applied while determining the market value of property.

In 68 cases referred for valuation in Rajkot, Kheda and Mehsana districts, non-application as well as incorrect application of schedule of rates resulted in short levy of stamp duty of Rs. 2.43 lakhs.

5.2.10 Irregular exemption of valuation of property under Section 32-A

G.R. of September 1991 exempted application of Section 32-A in cases relating to residential properties having carpet area upto 50 square metres. In July 1992 Government clarified that in cases where the actual carpet area did not exceed 50 square metres, and the

total area including land exceeded 50 square metres, such cases would not be exempted from valuation.

In Baroda, Surat and Ahmedabad, 66 cases were exempted from valuation though the carpet area including land exceeded 50 square metres. Irregular exemption in these cases resulted in short levy of stamp duty of Rs. 4.89 lakhs.

5.2.11 Principle for determination of market value not observed

Under Rule 8 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984, the Collector of the District, while determining the market value of property is required to take into consideration primarily the capitalised value of the property and certain other factors related to buildings or agricultural land or non-agricultural land as the case may be.

(a) In Surat, Rajkot, Kheda and Ahmedabad districts revaluation was not made on the basis of these factors but lump sum amount of 15 per cent was added to the consideration shown in instruments without recording any basis of such revaluation. This method of revaluation was contrary to the provisions of the above rules.

(b) In Surat, in 3 cases valuation computed by the Town Planning department was not considered and a lump sum amount was added to the consideration, while in 3 other cases a fixed amount of stamp duty was ordered to be recovered. These resulted in undervaluation of the properties and short realisation of stamp duty of Rs. 1.23 lakhs.

(c) In Rajkot City (Division I) in 25 cases market value was determined at a very low scale as against valuation worked out by Town Planning Officers. This resulted in short levy of stamp duty of Rs. 1.89 lakhs.

(d) In 25 cases finalised by Assistant. Collector, Rajkot, it was noticed that rates quoted by Registrar based on departmental records were ignored and lump sum market value was fixed resulting in short realisation of stamp duty amounting to Rs. 6.70 lakhs.

(e) In Nadiad in 179 cases, market value was determined by applying and adding certain percentage to the consideration shown in the instruments instead of following the principles laid down for determination of market value. Deviation from the prescribed procedure resulted in short levy of stamp duty of Rs. 1.03 lakhs.

5.2.12 Valuation reported by Sub-Registrar, Town Planning department ignored during market value determination by Deputy Collector (Valuation)

The market value of property is required to be determined based on reports received from Sub-Registrar (Registering authority) and Town Planning Officers (Valuation). On receipt of a report from Sub-Registrar, Deputy Collector (Valuation) sends the case along with Sub-Registrar's report to Town Planning Officers for valuation as discussed in para 5.2.6 above. These provisions were not followed in the following cases :

(a) In 60 cases in Baroda, Kheda and Rajkot Districts the valuation proposed in the reports of Registering officers were not considered and market value was determined without recording reasons resulting in short levy of stamp duty amounting to Rs. 10.23 lakhs.

(b) In 21 cases relating to Morvi in Rajkot district, the Deputy Collector did not adopt the rates cited and recommended by Town Planning Officers and Sub-Registrars. In 16 cases out of above the valuation was reduced even below the consideration shown in the documents though no representation for such reduction from executors of instruments was on record. In these cases the valuations proposed by Sub-Registrar were ignored without recording speaking orders. The notices issued to executors did not contain the reasons for valuation below the consideration shown in the instruments.

Adoption of such arbitrary procedure resulted in short levy of stamp duty of Rs. 1.30 lakhs.

5.2.13 Market value irregularly determined on the basis of representation of the executors

Under Rule 8 of Bombay Stamp (Determination of Market Value of Property) Rules, 1984, the market value of the property is to be determined in accordance with the principles laid down under the rules. In 104 cases of Surat, market value was determined based on the representations made by the executors without reference to the principles of valuations. In 7 cases of "Ex parte" valuation though no representations were on record from the executors, the recoverable amount of stamp duty was reduced. Deviation from the prescribed procedure resulted in short levy of stamp duty of Rs. 12.74 lakhs in these cases.

5.2.14 Irregular valuation of cases of certificate of "Proper Stamp Duty"

As per sub section (2) of Section 32-A of the Bombay Stamp Act, 1958, when an instrument is received under sub Section (i), the Collector is to give the parties concerned a reasonable opportunity of being heard. Thereafter he is to determine the market value of the property and the proper duty payable thereon in accordance with the rules made by the Government in this regard. However, upon such determination if the Collector finds that consideration shown in the instrument is approximately true he may return the case to the registering authority. In the following cases market value was not ascertained in accordance with the rules made by the Government:

(a) In Surat, in 12 cases, valuation reported by Town Planning Officers was reduced substantially based on a private Valuer's report, produced by executors of instruments though the valuation report of the Town Planning Officers was required to be taken into account. Disregard of the valuation report of the Town Planning Officers led to undervaluation and consequent short levy of stamp duty of Rs. 3.03 lakhs.

(b) In Nadiad, in 5 cases, the valuation was determined on the basis of statements by executors that earlier cases were decided by Deputy Collector at very low rates. The Deputy Collectors relied upon such evidence and did not consider the valuation reported by the Sub-Registrar.

Disregard of valuation reports of the Sub-Registrar resulted in short levy of stamp duty of Rs. 1.15 lakhs in these cases.

5.2.15 Non-levy of fine under the Bombay Stamp (Determination of Market Value of Property) Rules, 1984

Sub-Rule (1) of Rule 3 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 stipulates that while presenting any instrument for Registration the person presenting the instrument should also furnish a true statement in Form I to enable the registering officer to determine whether the consideration set forth in the instrument approximates to the market value of the property. Where any person presenting an instrument fails to furnish a true statement or furnishes a statement which is not true to the best of his knowledge and belief, he is liable to a fine not exceeding Rs. 500.

Scrutiny of 195 cases in Surat, Rajkot and Kheda (Nadiad) districts revealed that the executors did not furnish the required statement in Form I along with the instrument. No fine was imposed in these cases and no reasons were recorded for not levying fine. Fine could have been levied in these cases upto a total maximum amount of Rs. 97,500.

5.2.16 Unduly low rate of penalty provides no deterrence against large scale undervaluation

Under sub-section (3) of Section 32-A upon determination of true market value of the property, the Collector of District shall require the party to pay the difference between the amount of duty determined and the amount of duty already paid by him and to pay a penalty which should not be less than such difference and not more than twice the amount of such difference. This provision was amended in March 1991 and the amount of penalty was reduced to Rs. 250 with retrospective effect from 1 May 1984.

A scrutiny of the concerned Government file revealed that the revised rate of penalty was approved without considering the rates proposed by the Revenue department based on inter departmental consultation with Finance department. The unduly low rate of penalty was not conducive to the revenue interest of the State.

Further the rate of penalty being uniform irrespective of the amount of undervaluation, makes no discrimination between cases of large scale undervaluation and minor cases and thus provides no deterrence against such undervaluation. When the financial and other implications of this amended rate of penalty was pointed out in audit, Government stated (November 1994) that the matter would be taken up again with Finance department to reconsider the penalty provisions.

5.2.17 Huge pendency in disposal of Appeals

As per the provisions of the Act/Rules, appeal against the order of Collector (Valuation), lies with the Chief Controlling Revenue Authority (CCRA).

Scrutiny of the Register of appeals against the orders passed by Collector (Valuation) revealed that 7232 appeals relating to 18 districts were pending as on October 1994. Out of these cases, 3524 appeals related to 6 districts, (Ahmedabad, Baroda, Surat, Rajkot, Mehsana, Kheda) pertaining to the period 1989-90 to 1993-94 and involved revenue of Rs. 3.17 crores. Action taken for disposal of these appeals was inadequate.

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The Government stated (September 1994) that a decision has been taken to notify more officers as a Chief Controlling Revenue Authority for disposing the pending appeals within the stipulated time.

5.2.18 Gross undervaluation of properties

It was noticed that value of the property disclosed in the instruments was not properly determined and fundamental aspects required to be taken into consideration for determining the market value were not considered resulting in short levy of stamp duty amounting to Rs. 17.82 lakhs in respect of 4 cases detailed below:

District	Subject	Value determined	Value required to be determined	Under Valuation	Amount of deficient stamp duty	Reasons given by department
(Rupees in lakhs)						
1. Baroda	Irregular acceptance of value set forth in the documents	62.60	210.97	148.37	14.84	(i) Property was sold by Mill owner due to mill running in loss. (ii) Higher valuation will result in retrenchment of 600 employees. (iii) Government approved valuer had fixed @ Rs. 80 per square metre against Rs. 750 by Town Planning Officers.
2. Baroda	Banakhat (Agreement to sale price adopted)	1.31	6.48	5.17	0.51	The price in consideration is taken because the same was shown in the "Agreement to Sale" instrument.
3. Surat	Incorrect computation of market value 2/3rd property transferred by other beneficiaries.	1.14	5.60	4.47	0.45	1/3rd share of property only taken into account.
4. Nadiad	Determination land at lower rate	4.21	21.04	16.83	2.02	Deputy Collector (Valuation) recorded that as per discussion with party rate per square metre of Rs. 80 as against Rs. 400 cited by Sub-Registrar was applied (Matter of discussion for lowering the rate was not on record).
					17.82	

Government stated that these cases would be reopened if any irregularity is found.

5.2.19 Non-reconciliation of treasury challans

Payments on account of deficient stamp duty, penalty and fine are to be paid through challan duly prepared and signed by Deputy Collector (Valuation). According to executive instructions issued in August 1992 all such receipts remitted to treasury through challans are required to be reconciled with treasury every month. Scrutiny of records in Baroda, Nadiad, Rajkot, Surat and Mehsana revealed that amounts remitted through challans were not being reconciled by Deputy Collector (Valuation) with the Treasury records.

5.2.20 Other irregularities

(a) The Deputy Collector, Baroda returned 613 cases to the Sub-Registrar as these cases were time barred and asked for reasons for inordinate delay. The cases were not resubmitted to the Deputy Collectors. The amount of revenue involved in these cases was not determined. The Government stated that necessary action will be taken in these cases immediately.

(b) In 3 cases in Surat received for determination of market value, immovable property was valued on "rent basis". However, the recitals of lease agreement disclosed that only part of the property was rented out and the rest of the property was in occupation of the owner. Thus portion of property occupied by owner was required to be valued on "land and construction basis". Based on the value shown in Ready Reckoner, the value of property worked out to Rs. 11.37 lakhs. Incorrect determination of market value on rent basis resulted in short levy of stamp duty of Rs. 1.13 lakhs.

(c) In Surat, scrutiny of 5 cases revealed that due to adoption of incorrect area of land, construction and non-inclusion of development charges, market value was determined at lower rate. This resulted in under valuation of property by Rs. 6.20 lakhs and consequent short levy of stamp duty of Rs. 54,702.

(d) Under the Bombay Stamp Rules (Determination of Market Value of Property) 1984 the principles laid down thereunder are to be applied and market value determined accordingly. In Surat, it was noticed in 2 cases that cost of construction which was required to be included for purposes of valuation was not included. This resulted in undervaluation of property by Rs. 9.51 lakhs and consequent short levy of Stamp duty of Rs. 95,144.

The results of the review was reported to Government in June 1994. Their replies have been incorporated in the review.

5.3 Short levy of stamp duty on documents of further charge

By a notification issued in March 1987 under Bombay Stamp Act, 1958 as applicable to Gujarat, Government reduced the rate of Stamp duty on mortgage deeds executed by any industrial undertaking in favour of certain financial institutions including Life Insurance Corporation of India, from ad-valorem rates (Rs. 8 for every Rs. 100 or part thereof) to slab rates varying from Rs. 50 (for loan/debt not exceeding Rs. 10,000) to Rs. 25,000 (for loan/debt not exceeding Rs. 30 lakhs). These rates are not applicable to documents of further charge on which the duty at ad-valorem rate is leviable.

The legal department in the Government opined (May 1991) that since additional burden (charge) was created on a property already mortgaged (to the financial institutions), these

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instruments would fall within the purview of Article 27 *ibid* and were, therefore, liable to be charged accordingly.

In Vadodara and Ahmedabad it was noticed that six documents of further charge on the property already mortgaged were classified as mortgage deeds. This resulted in short levy of stamp duty amounting to Rs. 3.36 crores as detailed in the table below:

Sr. no.	Place	Number of documents	Correct classification under which the document was to be classified	Classification already done	Duty levied (Rupees)	Duty leviable (Rupees in crores)	Amount of short recovery (Rupees in crores)
1.	Vadodara	1	Further Charge	Mortgage	31,250	2.27	2.27
2.	Ahmedabad	5	Further Charge	Mortgage	62,550	1.09	1.09
							3.36

This omission was pointed out to the department between March 1992 and July 1994. The department accepted the objection (February and July 1994) in two cases of Ahmedabad and one case of Vadodara and stated that Sub-Registrar Ahmedabad and Vadodara have been instructed to forward the documents to Deputy Collector (Valuation) for recovery. Report on recovery has not been received (December 1994).

The above cases were reported to Government in May 1994; their reply has not been received (December 1994).

5.4 Short levy of stamp duty and registration fees due to misclassification of documents

(a) Mortgage deeds treated as equitable mortgage

The rates of stamp duty on mortgage deed is higher than that on equitable mortgage also known as mortgage by deposit of title deeds. If an equitable mortgage contains provisions creating by its own force a right or interest in the property as in a mortgage deed, the document would be classifiable as a mortgage and not as a deed of equitable mortgage for the purpose of levy of Stamp duty.

In Ahmedabad, Kadi (District Mehsana) and Thasra (District Kheda), 83 cases styled as equitable mortgage contained provisions creating by its own force a right of interest in the properties and therefore were classifiable as mortgage deed. The incorrect classification of

these deeds as deeds of equitable mortgage resulted in short levy of stamp duty and registration fees of Rs. 8.07 lakhs in aggregate as detailed in the following table:

Sr. no.	Place	Number of documents	Details of recitals	Amount of stamp duty/ registration fees short levied
				(Rupees in lakhs)
1.	Ahmedabad	2	Loanees executed demand promissory note and authorised mortgagee to recover the money by selling the property in the event of default in payment of money.	0.69
2.	Kadi	55	A separate undertaking was given by mortgagors to execute demand promissory notes and in the event of default the bank may dispose off the properties or goods for recovery of loan and interest.	6.75
3.	Thasra	26	Mortgagors executed separate loan agreements wherein they agreed that mortgagee may recover loan amount and interest by disposing off the property. The mortgagee also obtained demand promissory notes.	0.63
				8.07

The above cases were reported to the department between May 1993 and January 1994. The department accepted the objection in respect of cases relating to Ahmedabad and Thasra. Reply in remaining cases has not been received.

The Government to whom the matter was reported in May 1994 confirmed the reply of the department in October 1994.

(b) Conveyance deed treated as agreement

Under the Bombay stamp Act, 1958, 'conveyance' includes every instrument by which property, movable or immovable is transferred, inter-vivos, i.e. between living persons. An agreement containing recitals by virtue of which immovable property is transferred inter-vivos, is also to be classified as conveyance deed.

During the course of audit of Sub-Registrar, Vadodara and Junagadh, it was noticed that twelve documents styled as "Agreement to sell" in respect of various properties were presented for registration in 1988 and 1990 and were registered and assessed to stamp duty accordingly. The recitals of the documents however indicated that the buyer might create charge over the property and development of land and construct shops and flats thereon. The possession of the land was handed over to the purchaser and all rights, titles and interest on the land were transferred in favour of purchasers. On the date of execution of agreement irrevocable power of attorney was also given to mortgage the property, construct flats and shops and retain sale proceeds. The property was thus transferred by virtue of these agreements. These documents were therefore required to be classified as 'conveyance deed'. The misclassification resulted in short levy of stamp duty and registration fees of Rs. 8.61 lakhs as detailed below:

Sr. no.	Place	Number of documents	Value of the properties (Rupees)	Short levy of stamp duty and registration fees (Rupees in lakhs)
1.	Vadodara	7	72,17,125	8.01
2.	Junagadh	5	6,01,625	0.60
	Total	12	78,18,750	8.61

The above cases were reported to the department between December 1991 and February 1993. The department did not agree with the audit observations and stated that no right or interest is created by virtue of 'agreement to sell' (August 1993). The reply is not tenable in view of the fact that when possession of property is given and consideration has been paid, it amounts to transfer and the documents are thus covered within the definition of term 'conveyance' under the Bombay stamp Act, 1958.

The above cases were reported to Government in May 1994; their reply has not been received (December 1994).

(c) Conveyance deed treated as benami assignment

Stamp duty on a conveyance and gift deed is leviable at eight rupees for every hundred rupees or part thereof of the amount of consideration of the conveyance or the market value of the property, whichever is greater.

(i) In Balasinor of district Kheda an individual purchased five pieces of land between January and February 1991. The land was converted into non-agricultural land and assigned to a cooperative housing society in April 1991 without consideration. The deeds executed in January 1991 and February 1991, however, did not indicate that the land was purchased from the funds of society or was held on behalf of the society. In the absence of any of these indications, the deeds executed in April 1991 were classifiable as conveyance deeds and not benami assignment. The approximate value of the land on the basis of records maintained in Sub-Registrar's office worked out to Rs. 15.38 lakhs. The incorrect classification of instrument of conveyance as benami assignment, resulted in short levy of Stamp Duty and Registration Fees of Rs. 1.82 lakhs.

This was pointed out to the department in June 1993. The department stated (September 1994) that the Collector and District Registrar, Kheda had been instructed to recover the deficit stamp duty and registration fees. Further report on recovery has not been received (December 1994).

(ii) Gift deed treated as benami assignment

(a) In another document, a plot of land in Palanpur purchased by a person in May 1964 was assigned to his wife in May 1988 without consideration executing a deed styled as benami assignment. The recitals of the document executed in 1964 indicated that purchase money for the plot was paid by the person concerned from his own source and there was no mention that plot was purchased for or on behalf of his wife. The deed executed in May 1988, therefore, was classifiable as gift deed. The market value of the land on the basis of records maintained in Sub-Registrar's office worked out to Rs. 4.97 lakhs.

The incorrect classification of gift deed as benami assignment resulted in short levy of Stamp Duty and Registration Fees of Rs. 46,979.

The matter was reported to department in September 1990. The department stated in April 1992 that the case has been referred to Collector. Further report on action taken for recovery has not been received (December 1994).

(b) In Surat an individual purchased a building valued at Rs. 3.75 lakhs in February 1987 and assigned the same to a group of individuals without consideration by executing a deed in March 1987 styled as benami assignment. The recitals of deed executed in February 1987 did not indicate that purchase money was paid from the fund of group of individuals and there was nothing to indicate that building was purchased for or on behalf of the group of individuals. The document executed in March 1987, was therefore classifiable as conveyance deed and not as benami assignment.

The incorrect classification of document resulted in short levy of Stamp Duty and Registration Fees of Rs. 31,840.

The matter was reported to department in July 1990. The department stated in September 1991 that the case has been referred to Deputy Collector (Valuation) for recovery. Further report on recovery has not been received (December 1994).

The Government to whom the matter was reported in May 1994 confirmed the reply of the department in October 1994.

(d) Conveyance deed treated as release

Under the provision of Bombay Stamp Act, 1958 'Conveyance' includes every instrument by which property movable or immovable is transferred inter-vivos i.e. between living persons. The property transferred by way of sale or otherwise and not otherwise specifically provided for by the schedule are also chargeable as 'conveyance'. An instrument of release means any instrument through which a person gives up his claim or right in a property to another person who has preexisting right or claim in that property. This is called a release deed. Stamp duty and registration fees on conveyance deed is higher than that on a release deed.

In Vadodara, three documents styled as 'release deeds' in respect of three plots admeasuring 1030 square metres of land were presented for registration in March 1991 and these were accordingly registered and assessed to stamp duty and registration fees. The recitals of the documents however, indicated that the plots were allotted to tenants in consideration of release of leasehold rights on another property of the transferor.

The above documents though styled as 'release deeds' were required to be classified as conveyance deeds. The approximate market value of the plots as per the records of Sub-Registrar Vadodara was Rs. 9.27 lakhs. The incorrect classification of documents resulted in short levy of stamp duty and registration fees of Rs. 1.24 lakhs.

This was pointed out to the department in July 1993 and again in February 1994 and Government in June 1994, their replies have not been received (December 1994).

(e) Partition deed treated as release deed

Any instrument through which a person gives up his claim or right in a property upon another person who has preexisting right or claim in that property is called a "release deed". A deed by which co-owners divide or agree to divide property severally is a deed of partition and merely because mutual release is an incident of the division, the partition deed does not become a release. Stamp duty on partition is higher than that on "release deed" under the Bombay stamp Act, 1958.

In Ahmedabad two brothers executed four deeds styled as "release deed" in March 1989 releasing their rights in favour of each other over joint family property. The documents were assessed to stamp duty and registration fee as such. The recitals of the documents however, indicated that there were four houses and by virtue of these release deeds each brother became the sole owner of two houses each. Thus, by way of mutual release the joint family property was partitioned between the two brothers. The value of the property was Rs. 17.68 lakhs (approximately) on which deficit stamp duty and registration fees recoverable worked out to Rs. 55,535.

The omission which was pointed out to the department in April 1992 and again in October 1993, was accepted by the department in February 1994. Details of recovery have not been received (December 1994).

The matter was reported to Government in June 1994, their reply has not been received (December 1994).

5.5 Short levy of stamp duty and registration fees on sale deeds

Under the Bombay Stamp Act, 1958, as applicable to Gujarat, 'conveyance' includes a conveyance on sale and every instrument by which property, movable or immovable, is transferred inter-vivos. Thus when movable as well as immovable property is sold or transferred, the total value of such property is to be taken as consideration for the purpose of levy of stamp duty and registration fees.

In accordance with the scheme for providing houses to persons belonging to economically weaker sections excess land is acquired by the Collector under the Urban Land Ceiling Act, 1976 and houses are constructed by landowners and sold to eligible persons at lump sum price, including cost of land as certified by the competent authority in the occupation certificates given to landowners and purchaser.

During the course of audit (June 1993) of Sub-Registrar at Vadodara, it was noticed that in 179 cases conveyance deeds executed during June and July 1991 in respect of such housing units, only the cost of the land was taken into consideration for the purpose of levy of stamp duty excluding the cost of construction of the houses, which resulted in short levy of stamp duty and registration fees amounting to Rs. 9.58 lakhs.

This was pointed out to the department in July 1993 and again in January 1994; their reply has not been received (December 1994).

The matter was reported to Government in June 1994, their reply has not been received (December 1994).

5.6 Non-realisation of registration fees

Under the Indian Registration Act, 1908 as amended in December 1981, an instrument which purports to effect any contract for transfer of immovable property is compulsorily registerable and the prescribed registration fee, is chargeable thereon. Though the Bombay Stamp Act, 1958, provides for impounding of documents on which Stamp Duty has not been levied or levied incorrectly, there are no similar provision in the Registration Act to enforce registration of compulsorily registrable instruments and to recover the registration fees.

During audit of Estate Manager, Gujarat Housing Board, Ahmedabad and Surat, it was noticed that 349 instruments for agreement for sale on hire-purchase of tenements/flats of the Board executed during April 1987 to March 1992 were not got registered. Due to non-registration of these instruments and nonexistence of provisions to enforce registration of compulsorily registrable instruments, registration fees amounting to Rs. 5.73 lakhs remained to be recovered.

Government to whom the matter was reported stated (July 1994) that as maximum time limit of eight months from the date of execution of these documents is over, the registering authority is now not empowered to register the documents. However the Commissioner of Gujarat Housing Board had been asked to register such documents in future.

5.7 Irregular exemption of stamp duty

(a) By a notification of 20th March 1979, Government exempted the instruments of conveyance executed in favour of a public charitable trust registered under Bombay Public Trust Act, 1950, from payment of duty subject to fulfillment of certain conditions. One of the conditions prescribed in the notification inter-alia required that the trust shall not discriminate between citizens on the basis of caste, creed and sex.

During the course of audit at Ahmedabad, it was noticed that five conveyance deeds presented for adjudication during 1989 and 1990 by different persons in favour of two different registered trusts conveying immovable properties valued at Rs. 32.15 lakhs were certified as exempted from payment of stamp duty. The recitals of these documents, however, indicated that the trusts were created for the benefit of a particular community and the membership of the trusts was also limited to the community specified therein. Thus, the condition that the trust shall not discriminate between caste, creed and sex was not fulfilled and consequently documents were not entitled for exemption. The incorrect grant of exemption resulted in short levy of stamp duty amounting to Rs. 3.22 lakhs.

This was pointed out to the department in April 1992 and again in October 1993. The department accepted the objection (October 1994) and stated that action to recover deficit stamp duty has been initiated.

The matter was reported to Government in June 1994. They have confirmed (November 1994) the reply given by the department.

(b) By a notification of November, 1974 under Bombay Stamp Act, 1958 as applicable to Gujarat, Government remitted the stamp duty on instruments of sales of land executed in favour of Cooperative Societies. The land so purchased should be for housing of the members of the cooperative society and value thereof was not to exceed Rs. 50,000.

In Surat, 43 sale deeds were executed by various persons in favour of 'Sachin Udyognagar Sahkari Mandali' for industrial purposes. The documents were exempted from payment of stamp duty under the notification of November 1974 inspite of the fact that no exemption was available under this notification to individuals and only cooperative housing societies were eligible for this benefit for housing its members. The grant of remission from payment of stamp duty was thus irregular which resulted in non-levy of stamp duty of Rs. 1.33 lakhs.

The department accepted the observation and stated (April 1994) that Deputy Collector Valuation, Surat has issued orders for recovery of stamp duty. Report on recovery has not been received (December 1994).

The matter was reported to Government in June 1994, their reply has not been received (December 1994).

5.8 Short levy due to incorrect computation of consideration

'Conveyance' includes a conveyance on sale and every instrument by which property movable or immovable is transferred inter-vivos i.e. between living persons. Stamp duty on conveyance deed is levied on the basis of the consideration for such conveyance or the market value of the property whichever is greater.

In Kalol, two private limited companies agreed (September 1988) to sell their assets for a consideration of Rs. 8.51 lakhs to another company. The property was conveyed to the purchaser company by two separate sale deeds for a consideration of Rs. 5.01 lakhs. The recitals of the documents further indicated that in addition to above consideration the purchaser accepted the liability of Rs. 19.80 lakhs on account of loans obtained by sellers from a financial institution. Thus the property valued at Rs. 28.31 lakhs was conveyed for a consideration of Rs. 5.01 lakhs only. Consequent short levy of stamp duty and registration fees was Rs. 2.60 lakhs.

This was pointed out to the department in August 1992 and again in October 1993 and Government in June 1994, their replies have not been received (December 1994).

5.9 Short levy of registration fee

(a) According to the provisions of the Bombay Registration Manual on a deed of cancellation of 'agreement to sell', registration fee is chargeable on an ad-valorem scale on consideration fixed for agreed sale provided the deed of cancellation is executed by the claimant or by both claimant and executant under the original agreement to sell.

In Ahmedabad and Rajkot on 23 deeds of cancellation which were executed between 1989 and 1991 by claimant or by both claimant and executant under the original agreement to sell registration fee was not levied on an ad-valorem scale on the amount of consideration fixed for agreed sale. This has resulted in short levy of registration fees amounting to Rs. 86,005.

The omission was reported to department between October 1993 and January 1994 and to Government in May 1994; their replies have not been received (December 1994).

(b) In accordance with the provisions of a notification issued by the Government of Gujarat in May 1970 as amended in August 1987, the registration fee in respect of the documents styled as "agreement to sell" is leviable on an advalorem scale on the amount or value of the consideration for which the property is conveyed, in case the possession of the property has been handed over to the buyer or there is description to that effect in the recitals of the document.

It was noticed during the course of audit (June 1993) of the office of the Sub-Registrar, Vadodara in ten cases agreements for development of lands included a condition to sell the lands to prospective buyers to be nominated by the developers who were given irrevocable power of attorney to execute such sale. The Registration Fees levied in these cases were only at the rate applicable to simple agreements although the possession of land was handed over to the developer for developing and constructing a building and subsequent disposal of the building along with land attracted registration fees at advalorem rates based on the amount of

consideration for which the properties were conveyed. This resulted in short levy of Registration Fees amounting to Rs. 64,685.

The omission was reported to the department between January 1990 and February 1994. The department accepted the objection (November 1994) and stated that action has been initiated to recover the deficit fees.

The Government to whom the matter was reported (June 1994) confirmed the reply given by the department (November 1994).

5.10 Short levy of stamp duty and registration fees on lease deed

Under the provisions of Bombay Stamp Act, 1958, as applicable to Gujarat, where lease purports to be in perpetuity, stamp duty is leviable as on "conveyance" deed on one fifth of the entire amount of rent which would be paid in respect of the first fifty years of the lease.

In Bhuj, sixteen documents of lease in perpetuity were registered during the year 1990. Stamp duty and registration fees on these documents were recovered on one year's average rent instead of one fifth amount of the total rent payable in first fifty years. This resulted in short levy of stamp duty and registration fees of Rs. 71,224.

This was pointed out to the department in April 1992 and to Government in June 1994. The department accepted the objection (October 1994) and stated that action to recover deficit stamp duty has been initiated.

The Government to whom the case was reported confirmed the reply of the department (November 1994).

5.11 Short levy of stamp duty

Under the Bombay Stamp Act, 1958 as amended w.e.f. 1st August 1990 additional duty at the rate of 25 *per cent* was leviable on the instruments of sale, exchange, gift and lease etc. of vacant land in urban areas, other than vacant land intended to be used for residential purpose not exceeding 100 square metres.

During the course of audit of the office of the Sub-Registrar, Junagadh, it was noticed that in 25 conveyance deeds valued at Rs. 22.46 lakhs which were registered between January and August 1991, the additional duty leviable was not levied though the plots exceeded 100 square metres in each case. This resulted in short levy of stamp duty of Rs. 44,927.

This was pointed out to the department in March 1993 and January 1994 and to Government in June 1994; their reply has not been received (December 1994).

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OTHER TAX AND NON-TAX RECEIPTS

CHAPTER - 6

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CHAPTER - 6

OTHER TAX AND NON-TAX RECEIPTS

6.1 Results of Audit

Test check of assessment records relating to the following receipts conducted during the year 1993-94 revealed under assessment of tax and losses of revenue as detailed below:

	Number of cases	Amount (Rupees in lakhs)
A. Entertainment Tax		
1. Non-recovery/short recovery of entertainment tax and interest on belated payment of tax.	52	41.06
2. Irregular grant of exemption from payment of entertainment tax	4	5.47
3. Non/short levy of security deposit	12	1.47
	<u>68</u>	<u>48.00</u>

Entertainment Tax : During the year 1993-94, the department accepted under assessments etc. of Rs. 20.92 lakhs in 67 cases. Out of these 7 cases involving Rs. 1.22 lakhs were pointed out during the year 1993-94 and rest in the earlier year. A few illustrative cases involving revenue of Rs. 11.56 lakhs are given in the following paragraphs.

6.2 Non-recovery/short recovery of entertainment tax

Under the provisions of the Gujarat Entertainments Tax Act, 1977 and the Rules made thereunder, entertainment tax is payable weekly along with the returns to be filed by the proprietor of the entertainment. The department is required to check the returns and verify the tax payable on the basis of the number of tickets sold. If no return is furnished, or, if the return furnished appears to be incorrect or incomplete, the officer so authorised is empowered to assess the tax to the best of his judgement. In the case of a cinema house situated in a designated or specified area, Government may allow the proprietor to pay consolidated tax fixed per week based on the seating capacity of the cinema house irrespective of number of the shows held during a week even if the cinema house remained closed for any reason other than suspension of the licence. In case of default in payment within the prescribed period, simple interest at the rate of twenty four *per cent* per annum is chargeable on the unpaid amount of tax.

(i) In Jamnagar proprietor of a theatre did not submit weekly returns nor paid the entertainment tax for the period June 1992 to March 1993. He had also paid tax at lower rate for the month of April and May 1992. The department did not take any action to assess and recover the tax due. The entertainment tax recoverable for the period April 1992 to March 1993 amounted to Rs. 3.04 lakhs (including interest).

The omission was pointed out to the department in July 1993 and again in February 1994. The department accepted the audit observation and stated (August 1994) that out of Rs. 3.04 lakhs, Rs. 1.47 lakhs have since been recovered. Report on recovery of remaining amount has not been received (December 1994).

(ii) In Mehmedabad (Kheda district) a proprietor of a cinema house did not pay the tax for the period July 1991 to 18th November 1991. The department also did not take any action to raise the demand and recover the tax. The total amount of entertainment tax recoverable (including interest) amounted to Rs. 1.03 lakhs.

The omission was pointed out to department in April 1993 and again in December 1993; their reply has not been received (December 1994).

The above cases were reported to Government in April 1994; their replies have not been received (December 1994).

6.3 Non-levy of interest on belated payment of entertainment tax

Under the Gujarat Entertainments Tax Act, 1977, and the Rules made thereunder, entertainment tax is payable weekly along with returns to be filed by the proprietor of the place of entertainment. If the payment of tax is delayed, simple interest at the rate of twenty four *per cent* per annum is chargeable on the unpaid amount of tax for the period of delay.

In Ahmedabad, Songadh, Sidhpur and Vyara it was noticed that proprietors of 13 cinema houses did not pay tax within the stipulated period. No interest, however, was levied. The interest leviable in these cases works out to Rs. 2.75 lakhs as detailed in table below:

Sr. no.	Name of the place	Number of cases	Amount of interest not levied	Remarks
(Rupees in lakhs)				
1.	Ahmedabad and Jamnagar	9	1.05	Department has accepted the objection and stated that an amount of Rs. 23,811 has since been recovered.
2.	Sonagadh (Surat District)	1	0.65	—
3.	Sidhpur (Palanpur district)	1	0.65	—
4.	Vyara (Surat district)	2	0.40	—
			2.75	

The omission was pointed out to the department between June 1993 and February 1994 and to Government in April 1994; their reply has not been received (December 1994).

6.4 Nonpayment of tax by video parlours

Under the provisions of Gujarat Entertainments Tax Act, 1977 proprietors of video parlours who are permitted to pay compound tax, are required to pay tax at prescribed rates, in advance, latest by 15th day of the month preceding the month to which the tax relates. For delayed payment of tax interest at the rate of 24 *per cent* per annum is chargeable for the failure or default in payment on the unpaid amount of tax.

In Ahmedabad and Jamnagar it was noticed (between June 1992 and August 1993) that proprietors of fourteen video parlours did not pay tax for certain period falling between April 1991 and March 1993. The department also did not take any action to raise the demand and recover the tax. The amount of entertainment tax recoverable in these cases worked out to Rs. 2.72 lakhs (including interest).

The omission was pointed out to the department between August 1992 and September 1993 and again in February 1994. The department accepted the audit observation and stated (August 1994) that out of Rs. 2.72 lakhs, Rs. 78,000 had been recovered. Report on recovery in the remaining cases is awaited (December 1994).

The above cases were reported to Government in April 1994; their final reply has not been received (December 1994).

6.5 Non-recovery/short recovery of compound tax

Under the Gujarat Entertainments Tax Act, 1977, a proprietor of a cinema in designated or specified area shall have an option of payment of compound tax at prescribed rates. Such option is required to be exercised within ninety days from the commencement of Gujarat Entertainments (Amendments) Tax Act, 1989. The Act also provides that a proprietor who has opted to pay compound tax may, at any time but not before the expiry of a period of twelve months from the date of commencement of option, give a notice to the officer so authorised to revoke his option whereupon the option stands revoked on the expiry of thirty days after the receipt of notice by the authorised officer. In April 1992, Commissioner of Entertainment Tax clarified that the proprietor of a cinema in designated or specified area who has opted for consolidated payment of tax is required to pay tax during the operative period of option even if the cinema remains closed for any reason.

In Rajpipla (Bharuch district) a proprietor of a theatre opted for payment of compound tax in January 1989 and, after giving an application, closed the cinema in April 1989. The proprietor again opted for payment of compound tax on 15th January 1990 without paying the tax for the period 1st April 1989 to 14th January 1990 during which the cinema remained closed. As the option once exercised cannot be revoked before a period of twelve months, the

proprietor was liable to pay tax for the period the cinema house remained closed. The tax recoverable for such period amounted to Rs. 86,387.

The omission was pointed out to the department in November 1993 and in February 1994; their reply has not been received (December 1994).

(ii) In Nizzar (Surat district) a proprietor of a theatre opted for payment of compound tax but did not pay tax for certain months falling between April 1988 and April 1992 amounting to Rs. 36,542 on the ground that the cinema remained closed during the period though under the Act, he was liable to pay tax even for this period.

The omission was pointed out to department in June 1993 and in February 1994; their reply has not been received.

The above cases were reported to Government in April 1994; their reply has not been received (December 1994).

6.6 Loss of revenue due to procedural delay

Under the provisions of Gujarat Entertainments Tax Act, 1977 and the Rules made thereunder, where for any reason any payment for admission has escaped assessment to tax, the prescribed officer may at any time, but within a period of three years from the date the tax would have been payable, assess to the best of his judgement the tax due on such payment.

In Talaja (Bhavnagar district) owners of three video parlours were exhibiting films unauthorisedly between the period from February to June 1987. The department issued notices to the concerned owners in May 1989 and finalised the assessment between December 1988 and January 1989 raising demand for tax and penalty amounting to Rs. 78,304. However as the whereabouts of video owners were not available the amount was unrecoverable. The delay in finalising the cases thus resulted in loss of revenue amounting to Rs. 78,304.

The matter was reported to department in December 1993 and to Government in April 1994, their replies have not been received (December 1994).

B. FOREST RECEIPTS

6.7 Short recovery of sale value of furniture

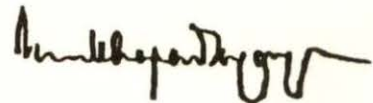
According to the provisions of para 234 of the Gujarat Forest Manual-II, when sale of furniture articles is made to public, private agencies or Autonomous bodies etc. supervision charges at the rate of 10 *per cent* of sale value are to be added to meet the overhead expenses.

With a view to imparting training to Dangi-Youth Adivasis in carpentry work the South Dangs division of Ahwa is running a 'wood workshop' manufacturing furniture articles.

Scrutiny in audit (May 1994) of the rates fixed for sale of these articles by the Deputy Conservator of Forests, Surat revealed that it did not include any supervision charges. During 1989 to 1994 the Division sold furniture articles worth Rs. 17.67 lakhs to public and non-inclusion of supervision charges in the sale price of these articles as required under the provisions of the Forest Manual and consequent wrong fixation of prices resulted in less realisation of sale value by Rs. 1.77 lakhs.

This was pointed out to the department in May 1994 and to Government in June 1994; their reply has not been received (December 1994).

Ahmedabad
The



(P.K.MUKHOPADHYAY)
Accountant General (Audit-I), Gujarat

Countersigned

New Delhi
The



(C.G.SOMIAH)
Comptroller and Auditor General of India

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