SRA/HQ II

SRA (HQ) II

GOVERNMENT OF KERALA

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR
1975-76

REVENUE RECEIPTS

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PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Government of Kerala for the year 1975-76 is presented in a separate volume as was done last year. The material in the Report has been arranged in the following order:—

(i) Chapter I deals with trends of revenue receipts, classifying them broadly under tax revenue and non-tax revenue. The variations between Budget estimates and actuals in respect of principal heads of revenue, the position of arrears of revenue etc., are discussed in this Chapter.

(ii) Chapters II to VIII deal with certain cases and points of interest which came to notice in the audit of Sales Tax, Taxes on Agricultural Income, State Excise Duties, Taxes on Vehicles, Stamp Duty and Registration Fees, Other Tax Receipts and Non-Tax Receipts.

2. The points brought out in this Report are those which have come to notice during the course of test audit. They are not intended to convey any general reflection on the financial administration by the departments concerned.

CHAPTER I

GENERAL

1.1. Trend of Revenue Receipts

The total receipts of the Government of Kerala for the year 1975-76 were Rs. 351.22* crores as against the anticipated receipts of Rs. 295.29 crores. The total receipts realised during the year registered an increase by 21.96 per cent over those in 1974-75 (Rs. 287.97 crores). Of the total receipts of Rs. 351.22 crores, Rs. 222.20 crores represented revenue raised by the State Government, of which Rs. 159.70 crores represented 'Tax Revenue' and the balance 'Non-Tax Revenue'. The receipts from the Government of India (Rs. 129.02 crores) accounted for 36.73 per cent of the total receipts during the year, as against 37.95 per cent of the total receipts during 1974-75.

1.2. Analysis of Revenue Receipts

(a) An analysis of the receipts during 1975-76 along with the corresponding figures for the preceding four years is given below:—

	Receipts during					
	1971-72	1972-73	1973-74	1974-75	1975-76	*Percentage of increase of revenue for* 1975-76 *over that for* 1971-72
	(*in crores of rupees*)					
I. Revenue raised by the State Government:-						
(a) Tax revenue	74.70	82.80	95.46	123.56	159.70	113.79
(b) Non-tax revenue	39.52	34.21	39.51	55.13	62.50	58.15
Total I	114.22	117.01	134.97	178.69	222.20	94.54
II. Receipts from the Government of India:-						
(a) State's share of net proceeds of divisible Union taxes	36.78	44.03	47.38	47.13	61.70	67.75
(b) Grants-in-aid	28.19	35.45	35.35	62.10	67.28	138.67
(c) Receipts for the administration of Central Acts and Regulations	†	†	0.02	0.05	0.04	..
Total II	64.97	79.48	82.75	109.28	129.02	98.58
III. Total receipts of the State I+II	179.19	196.49	217.72	287.97	351.22	96.00
IV. Percentage of I to III	63.74	59.55	62.00	62.05	63.27	..

* Excludes miscellaneous capital receipts of Rs. 0.33 crore, being value of Bonus shares.

† Figures for the years 1971-72 and 1972-73 stand included under 'Non-tax revenue'.

(b) *Tax revenue raised by the State*

Receipts from tax revenue during 1975-76 constituted about 72 per cent of the State's own revenue receipts. An analysis of tax revenue for the year 1975-76 and for the preceding four years is given below:—

	Receipts during					
	1971-72	1972-73	1973-74	1974-75	1975-76	(+)*increase*/ (—) *decrease in* 1975-76 *with reference to* 1974-75
	(*in crores of rupees*)					
1. Taxes on Agricultural Income	3.64	3.12	2.87	4.02	7.23	+3.21
2. Other Taxes on Income and Expenditure	*	*	0.03	0.04	0.05	+0.01
3. Land Revenue	1.83	2.62	3.08	2.92	3.50	+0.58
4. Stamps and Registration Fees:						
(a) Stamps—Judicial	1.20	1.20	1.45	1.48	1.49	+0.01
(b) Stamps—Non-judicial	4.51	5.45	6.85	8.39	9.36	+0.97
(c) Registration Fees	1.33	1.46	1.76	2.06	2.46	+0.40
5. State Excise	9.99	9.42	12.06	15.55	21.54	+5.99
6. Sales Tax	42.37	46.14	53.80	75.32	97.92	+22.60
7. Taxes on Vehicles	7.02	7.16	6.75	6.68	9.25	+2.57
8. Taxes on Goods and Passengers	*	*	3.64	3.46	2.50	—0.96
9. Taxes and Duties on Electricity	*	*	2.46	2.99	3.44	+0.45
10. Other Taxes and Duties on Commodities and Services	*	*	0.71	0.65	0.86	+0.21
11. Taxes on Immovable Property other than Agricultural Land †	..	..	..	..	0.10	+0.10
12. Other Taxes and Duties	2.81	6.23	..	..	..	..
Total	74.70	82.80	95.46	123.56	159.70	+36.14

* Figures for the years 1971-72 and 1972-73 stand included under 'Other Taxes and Duties'.

† Receipts on this account accrued only during 1975-76.

There has been noticeable increase during 1975-76 in receipts from 'Taxes on Agricultural Income', State Excise', 'Sales Tax' and 'Taxes on Vehicles'. The increase in 'Taxes on Agricultural Income' has been attributed to increase in the price of agricultural commodities and rise in the income of various assessees and that in 'State Excise' to more receipts on sale of country spirits (Rs. 3.23 crores) and foreign liquors and spirits (Rs. 1.30 crores). The increase in 'Sales Tax' has been attributed to impact of additional taxation measures introduced during the course of 1974-75 and 1975-76, restructuring the rates of Sales Tax on certain commodities, withdrawal of certain exemptions and reductions, increase in the price of and excise duty on petroleum products, normal growth of trade, etc., and that in 'Taxes on Vehicles' to the merger of 'Taxes on Goods and Passengers' with 'Taxes on Vehicles' with effect from 1st October 1975.

(c) *Non-tax revenue of the State*

Interest, Education, Medical and Forest were the principal sources of non-tax revenue. Receipts from the non-tax revenue of the State constituted about 28 per cent of the revenue raised by the State during 1975-76. An analysis of the non-tax revenue under the principal heads for the year 1975-76 and the preceding four years is given below:—

	Receipts during					
	1971-72	1972-73	1973-74	1974-75	1975-76	(+)*increase*/ (—)*decrease in* 1975-76 *with reference to* 1974-75
	(*in crores of rupees*)					
1. Interest receipts	14.63	8.81	3.90	13.54	9.56	—3.98
2. Education	1.93	3.93	4.87	4.91	7.00	+2.09
3. Medical	1.49	0.71	1.81	1.23	2.32	+1.09
4. Forest	10.61	10.46	14.57	18.17	21.92	+3.75
5. Others	10.86	10.30	14.36	17.28	21.70	+4.42
Total	39.52	34.21	39.51	55.13	62.50	+7.37

Whereas there has been a considerable increase in receipts from 'Education', 'Medical' and 'Forest', there has been a fall in realisation from 'Interest receipts'. Reasons for variation are as follows:—

Interest receipts—As against the adjustment in 1974-75 of Rs. 8.64 crores towards interest receipts from the Kerala State Electricity Board, only an amount of Rs. 5.23 crores was adjusted in 1975-76. This mainly accounted for the decrease.

Education—Increase was mainly under receipts from text books (Rs. 1.39 crores) and tuition and other fees (Rs. 0.47 crore).

Medical—Increase in receipts was mainly due to more receipts from the Employees' State Insurance Corporation towards its share of expenditure met by the Government on the Employees' State Insurance Scheme.

Forest—Increase in receipts was due to more receipts on sale of timber and other forest produce.

1.3. Variations between Budget estimates and actuals

The figures of Budget estimates and actuals for the five years from 1971-72 to 1975-76 in respect of some of the major heads of revenue are given below:—

Head of revenue	*Year*	*Budget estimates*	*Actuals*	*Variation (+) increase (—) decrease*	*Percentage of variation*
		(in crores of rupees)			
1. Taxes on Agricultural Income	1971-72	3.25	3.64	+0.39	+12.00
	1972-73	3.45	3.12	—0.33	—9.57
	1973-74	3.58	2.87	—0.71	—19.83
	1974-75	3.75	4.02	+0.27	+7.20
	1975-76	3.93	7.23	+3.30	+83.97
2. Land Revenue	1971-72	2.12	1.83	—0.29	—13.67
	1972-73	3.42	2.62	—0.80	—23.38
	1973-74	2.82	3.08	+0.26	+9.22
	1974-75	3.14	2.92	—0.22	—7.01
	1975-76	2.87	3.50	+0.63	+21.95

Head of revenue	*Year*	*Budget estimates*	*Actuals*	*Variation (+) increase (—) decrease*	*Percentage of variation*
		(in crores of rupees)			
3. Stamps and Registration Fees					
(a) Stamps-Non-judicial	1971-72	4.47	4.51	+0.04	+0.89
	1972-73	4.95	5.45	+0.50	+10.10
	1973-74	5.00	6.85	+1.85	+37.00
	1974-75	5.46	8.39	+2.93	+53.66
	1975-76	8.26	9.36	+1.10	+13.32
(b) Registration Fees	1971-72	1.21	1.33	+0.12	+9.91
	1972-73	1.46	1.46	..	..
	1973-74	1.49	1.76	+0.27	+18.12
	1974-75	1.73	2.06	+0.33	+19.08
	1975-76	2.05	2.46	+0.41	+20.00
4. State Excise	1971-72	10.00	9.99	—0.01	—0.10
	1972-73	11.00	9.42	—1.58	—14.36
	1973-74	9.39	12.06	+2.67	+28.43
	1974-75	13.44	15.55	+2.11	+15.70
	1975-76	15.20	21.54	+6.34	+41.71
5. Sales Tax	1971-72	40.00	42.37	+2.37	+5.92
	1972-73	45.40	46.14	+0.74	+1.63
	1973-74	50.11	53.80	+3.69	+7.36
	1974-75	57.32	75.32	+18.00	+31.40
	1975-76	76.81	97.92	+21.11	+27.48
6. Taxes on Vehicles	1971-72	6.90	7.02	+0.12	+1.73
	1972-73	8.30	7.16	—1.14	—13.73
	1973-74	8.03	6.75	—1.28	—15.94
	1974-75	8.25	6.68	—1.57	—19.03
	1975-76	8.74	9.25	+0.51	+5.84
7. Forest	1971-72	9.65	10.61	+0.96	+9.94
	1972-73	10.75	10.46	—0.29	—2.69
	1973-74	11.27	14.57	+3.30	+29.28
	1974-75	13.36	18.17	+4.81	+36.00
	1975-76	17.31	21.92	+4.61	+26.63

Variations between Budget estimates and actuals for 1975-76 in respect of all principal sources indicated above except Taxes on Vehicles were more than ten per cent. Reasons for the variations are awaited (February 1977).

1.4. Cost of collection

Expenditure incurred in collecting the receipts under the principal heads of revenue during the three years from 1973-74 to 1975-76 is given in the Appendix.

1.5. Taxation measures

Government anticipated at the budget stage additional revenue of Rs. 6 crores during 1975-76 from five new measures. The measures proposed, dates of their implementation, revenue anticipated from each and achievements thereagainst and reasons for variation in collection are given below:—

Measures	*Date of implementation*	*Revenue anticipated during* 1975-76	*Actuals during* 1975-76	*Reasons for variation*
(1)	(2)	(3)	(4)	(5)
		(*in crores of rupees*)		
(i) Revision of rate of sales tax on declared goods	30-8-1975	1.00	1.00	..
(ii) Re-structure of taxes on motor vehicles and taxes on goods and passengers	1-10-1975	1.00	0.52	Delayed implementation of the measures.
(iii) Increase in electricity duty	1-7-1975	1.00	0.50	Against the original proposal to revise the rate in all cases, the revision was actually effected in the case of industrial consumers taking supply of energy at 11 KV and above alone.

Measures	*Date of implementation*	*Revenue anticipated during 1975-76*	*Actuals during 1975-76*	*Reasons for variation*
(1)	(2)	(3)	(4)	(5)
		(*in crores of rupees*)		
* (iv) Revision of electricity tariff on Extra High Tension consumers	1-7-1975	1.00	1.12	..
(v) Sales tax on monopoly trade commodities		2.00	..	Not implemented due to procedural reasons.

(Figures are as furnished by Government)

1.6. Uncollected revenue

The total revenue collected and the arrears of revenue pending collection as at the end of the three years 1973-74 to 1975-76, as reported by the departments, were as shown below:—

Year	*Total amount collected*	*Arrears pending collection as at the end of March*	*Percentage of arrears to total revenue*
	(*in crores of rupees*)		
1973-74	134.97	33.40†	24.75
1974-75	178.69	43.46‡	24.32
1975-76	222.20	55.15@	24.82

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* Revenue to accrue to the Kerala State Electricity Board.

† Does not include arrears pertaining to Taxes on Passengers and Goods, Survey and Land Records and Public Works.

‡ Does not include arrears pertaining to Survey and Land Records and Public Works.

@ Does not include arrears pertaining to the departments of State Excise, Municipalities and Health Services.

The details of amounts outstanding as on 31st March 1976 in respect of some of the principal sources of revenue are given below:—

Sl. No.	*Source of revenue*	*Amount pending collection*	*Amount of arrears outstanding for more than five years*
		(*in lakhs of rupees*)	
1	Land Revenue	407.16*	177.74
2	Sales Tax	2,336.45	388.19
3	Agricultural Income Tax	478.44	63.47
4	Vehicle Tax	673.68	.. †
5	Taxes on Goods and Passengers	252.94	.. †
6	Electricity Duties	95.12	.. †
7	Forest	573.18	23.78
8	Public Health Engineering	172.67	57.30
9	Survey and Land Records	176.82*	.. †

1.7. An analysis of arrears of revenue pending collection as on 31st March 1976 in respect of certain departments is given below:—

(a) *Land Revenue*

Arrears of land revenue as at the end of March 1976 amounted to Rs. 4.07 crores as against Rs. 4.13 crores outstanding at the end of March 1975. Year-wise analysis of the outstanding amounts is given below:—

Year		*Arrears as on 31st March 1975*	*Arrears as on 31st March 1976*
		(*in crores of rupees*)	
Upto	1971-72	1.97	1.97
	1972-73	0.38	0.30
	1973-74	0.49	0.35
	1974-75	1.29	0.48
	1975-76	..	0.97
	Total	4.13	4.07

* Figure is provisional.

† Details are awaited from the department.

The information regarding stages of action taken by the department to realise the amount of arrears as on 31st March 1976 is awaited (February 1977).

(b) *Sales Tax*

Sales tax demand raised but not collected as at the end of March 1976 amounted to Rs. 23.36 crores as against Rs. 18.41 crores outstanding at the end of March 1975. Year-wise analysis of the outstanding amounts is given below:—

Year	*Arrears as on* 31*st March* 1975	31*st March* 1976
	(*in crores of rupees*)	
Upto 1971-72	5.13	4.48
1972-73	1.00	0.70
1973-74	2.64	1.58
1974-75	9.64	5.82
1975-76	..	10.78
Total	18.41	23.36

According to information furnished by the department (July 1976), the amount of arrears as on 31st March 1976 was in the following stages of action:—

Stages of action	*Amount of arrears (in lakhs of rupees)*
(i) Revenue recovery proceedings	654.45
(ii) Amount stayed by courts	133.61
(iii) Amount stayed by Government	43.16
(iv) Amount stayed by other authorities	429.47
(v) Amount likely to be written off	214.60
(vi) Other stages	861.16
Total	2,336.45

(c) *Vehicle Tax and Taxes on Goods and Passengers*

Arrears of vehicle tax and taxes on goods and passengers as at the end of March 1976 amounted to Rs. 9.27 crores as against Rs. 2.76 crores outstanding at the end of March 1975. Year-wise analysis of the outstanding amounts as on 31st March 1976 and the stages of action taken by the department to realise the amount of arrears, called for from the department in May 1976 are awaited (February 1977).

(d) *Electricity Duty*

In terms of Section 3 (1) of the Kerala Electricity Duty Act, 1963, every licensee has to pay a duty to Government at 6 paise per unit of energy sold at a price of more than 12 paise per unit. Section 4 of the Act prescribes levy of electricity duty on consumers at varying rates ranging from 10 per cent to 30 per cent of the price of energy billed for. The licensee has to collect this duty from the consumers and remit it to Government. According to Section 5A of the Act, consumers who generate energy for their own consumption shall pay electricity duty at 1.2 paise per unit of energy so consumed. The arrears of electricity duty to be realised from various licensees as at the end of March 1976 are given below:—

	Licensee	*Amount of duty due (in lakhs of rupees)*
1.	Kerala State Electricity Board	91.28 *
2.	Kottayam Electricity Supply Agency, Kottayam	3.17
3.	Others	0.67
	Total	95.12

(e) *Forest*

Arrears of revenue pending collection as at the end of March 1976 in Forest Department amounted to Rs. 573.18 lakhs. The arrears represented the amount due from other departments, the Government of India, Public Sector Undertakings of the Central

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* The figure represents arrears of duty under Sections 4 and 5A of the Act, but does not include duty under Section 3(1) of the Act.

Government and the State Government, private parties etc., towards value of forest produce supplied, lease rent of forest areas, liability of contractors etc. The break-up of the arrears is given below:—

	Amount due as on 31st March 1976 (in lakhs of rupees)
Government of India	157.29
Public Sector Undertakings of the Central Government	0.13
Public Sector Undertakings of the State Government	36.87
Departments of the State Government	71.68
Other State Governments	2.83
Private parties	304.38
Total	573.18

1.8. Write off, waiver and remission of revenue

Details of demands written off, waived and remitted during 1975-76, as furnished by the departments, are given below:—

Department	*Write off of losses, irrecoverable revenue, duties etc.*		*Waiver*		*Remission*	
	Items	*Amount Rs.*	*Items*	*Amount Rs.*	*Items*	*Amount Rs.*
1. Agricultural Income Tax and Sales Tax	5	14,785	1	10,902	6	1,039
2. Motor Vehicles	4	1,677	Nil	Nil	Nil	Nil
3. State Excise	1	24,386 plus interest	8	34,652	Nil	Nil
4. Land Revenue	41,991	18,51,880	91	11,725	10,292	6,51,682

CHAPTER II

SALES TAX RECEIPTS

2.1. Results of test audit in general

During the period 1975-76, test audit of documents of the Sales Tax Offices revealed under-assessment of tax of Rs. 44.84 lakhs in 309 cases.

The under-assessment of tax is categorised under the following heads:—

Nature of irregularity	*Number of cases*	*Amount (in lakhs of rupees)*
1. Turnover escaping tax	86	8.96
2. Irregular exemptions	68	15.74
3. Double accountal of remittance/arithmetical mistakes	18	1.30
4. Non-levy of penalty	50	1.33
5. Other lapses	87	17.51
	309	44.84

Some important cases are mentioned in paragraphs 2.2 to 2.12.

2.2. Assessments made to the best of assessing officer's judgement

Under the Kerala General Sales Tax Act, 1963, and the Rules made thereunder, every dealer liable to pay sales tax under the Act should submit a return in the prescribed form to the assessing authority on or before the first day of May every year, showing the total turnover and the taxable turnover for the preceding year and the amount of tax actually collected during that year *vis-a-vis* the balance amount of tax due, if any, on the annual taxable turnover. If no return is submitted by a dealer within the period mentioned above or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority could assess the dealer to the best of his

judgement. The Act also provides for imposition of penalty on dealers for non-submission of returns or for submission of incorrect returns. It was seen in audit (April 1975 to March 1976) that many of the assessees either avoided furnishing tax returns or furnished the returns with incorrect and incomplete data, with the result that the assessing authorities completed these assessments to the best of their judgement.

Test checks conducted (August and September 1975) in 58 Sales Tax Offices showed that out of 36,818 assessments finalised in these offices during the year 1974-75, 23,304 cases were best judgement assessments. But penal action against the dealers for non-submission of returns or for submission of incorrect returns was taken by the department only in 333 cases. It was also noticed that out of the 23,304 best judgement assessments mentioned above, only 3,066 cases were taken up before the appellate authorities by the assessees.

The matter was reported to Government in August 1976; reply is awaited (February 1977).

2.3. Incorrect computation of tax

In an assessing office (I Circle, Ernakulam), tax due at the rate of 15 per cent on a turnover of Rs. 5,90,477 of an assessee, for the year 1974-75, was incorrectly worked out as Rs. 68,572 against the correct amount of Rs. 88,572. This error in calculation resulted in short levy of tax of Rs. 21,000 (including surcharge of Rs. 1,000).

On this being pointed out in audit (April 1976), the department rectified the mistake by revising the assessment in April 1976.

The matter was also reported to Government in June 1976. Government stated (August 1976) that the tax due from the dealer was ordered for recovery under Section 23(2) (b) of the Kerala General Sales Tax Act, 1963. Government added (February 1977) that the assessee has been permitted to pay off the arrears in twelve monthly instalments and that he has already paid Rs. 5,000 in four instalments.

2.4. Application of incorrect rate of tax

It was noticed in audit (April 1975) of a Sales Tax Office (Muvattupuzha) that turnover of an assessee on G. I. Pipes amounting to Rs. 2,96,195, for the years 1971-72 and 1972-73, was assessed

at the general rate of 3 per cent and 3½ per cent respectively, instead of at 7 per cent applicable to water supply and sanitary fittings, resulting in short levy of tax of Rs. 11,050.

On this being pointed out in audit (June 1975), the Board of Revenue stated (December 1975) that the Sales Tax Officer had since been directed to revise the assessment. Government stated (January 1977) that the assessment was revised which, however, on appeal by the assessee, was cancelled by the Appellate Assistant Commissioner on the ground that the goods sold would not come under water supply and sanitary fittings and that the Board of Revenue had directed the Deputy Commissioner, Ernakulam to examine the case in detail and to suggest a proper course for safeguarding the revenue.

2.5. Non-accountal of remittances

Mention was made in Paragraphs 15 and 14 of the Reports of the Comptroller and Auditor General of India on Revenue Receipts for the years 1972-73 and 1973-74 respectively about the wrong accountal by the department of tax remitted by the assessees. At the instance of Audit, the Board of Revenue had issued instructions in January 1969 and March 1970 to prevent incorrect/double accountal of tax. According to these instructions, while checking the accounts for finalisation of assessment, the assessing authority has to obtain from the assessee a statement of remittances made by him and compare the figures therein with the remittances as per departmental records. In the final assessment orders, the credits are required to be checked by a clerk, head clerk and the assessing officer. In spite of these instructions, non-accountal of remittances continued to occur. Details of a few cases are given below:—

(i) In a Sales Tax Office (I Circle, Ernakulam), non-accountal of remittances of tax in respect of two assessees amounting to Rs. 12,424 resulted in excess demand to that extent. In one case, credit for Rs. 6,096 remitted in February 1973 (Rs. 4,096) and June 1974 (Rs. 2,000) towards tax for the years 1972-73 and 1973-74 was not given to the assessee in the assessments completed in May 1975.

In the other case, against Rs. 11,848 remitted by the assessee towards tax for 1973-74, credit was afforded for Rs. 5,520 only.

On these being pointed out in audit (June 1976), Government stated (August 1976) that action had since been taken to rectify the mistakes and that directions had been given by the Board of Revenue to the Deputy Commissioner to take action against the delinquents who failed in discharging their responsibilities. Further report is awaited (February 1977).

(ii) In another Sales Tax Office (Thiruvalla), remittances for a total amount of Rs. 10,295 made by an assessee towards Central Sales Tax, for the years 1968-69 (Rs. 3,925) and 1969-70 (Rs. 6,370), were not credited to his accounts, resulting in excess demand of tax to that extent.

On this being pointed out in audit (January 1975), the department rectified the mistake by revising the assessments in July 1975 and October 1975.

The matter was also reported to Government in May 1976. Government stated (August 1976) that facts of the case were verified and found correct.

2.6. Non-levy of penalty

Under the Kerala General Sales Tax Act, 1963, an assessee, who fails to pay the tax assessed or any instalment thereof within the time specified for the purpose, is liable to pay penalty at the rate of 0.5 per cent per month on the tax due for the first three months and one per cent per month for each subsequent month. It was noticed in audit (June and July 1975) of a Sales Tax Office (Special Circle, Cannanore), that in the case of two assessees, who failed to pay the tax for the years 1970-71 to 1973-74, within the stipulated time, no penalty was levied. On this being pointed out in audit (July 1975), the department stated (December 1975) that penalty amounting to Rs. 16,649 had since been levied.

The matter was also reported to Government in August 1976. Government stated (November 1976) that the facts of the cases were verified and that details regarding collection of the amount levied as penalty were awaited from the Board of Revenue. Further report is awaited (February 1977).

2.7. Turnover escaping tax

(i) Since 1947, the Forest Department had been selling to the Forest Industries (Travancore) Limited, a company engaged in the manufacture of wooden furniture and wooden structure, all the timber extracted from an area of 113 square miles of forest land on payment of royalty or seigniorage calculated on a percentage of average auction price of similar timber minus expenses towards extraction and delivery of timber incurred by the company. Royalty or seigniorage thus realised should be subjected to sales tax under the provisions of the Kerala General Sales Tax Act, 1963.

However, it was noticed in audit (May 1974) that sales tax was not assessed and levied on the above turnover in any of these years. Turnover thus escaping assessment for the years 1963-64 to 1974-75 alone, amounted to Rs. 83,61,864 involving tax effect of Rs. 2.70 lakhs (approximately). Figures for the earlier years are not readily available with the department. On this being pointed out in audit (January 1976), the Chief Conservator of Forests stated (February 1976) that the Divisional Forest Officer (Chalakudy) had been instructed to take urgent action for the recovery of sales tax. Particulars of collection are awaited (February 1977).

The matter was also reported to Government in April 1976; reply is awaited (February 1977).

(ii) It was noticed in audit (July 1975) of a Sales Tax Office (Alleppey) that in the case of an oil miller, for the assessment year 1972-73, purchase turnover in respect of coconut and copra necessary to produce oil and cake for Rs. 9,23,785 only was assessed to general sales tax, though the sales turnover in respect of coconut oil and cake sold by the assessee during the period amounted to Rs. 37,75,885. The discrepancy, suggesting that a substantial amount of purchases had escaped assessment, being pointed out in audit (July 1975), the department stated (December 1975) that the assessment was revised (October 1975) raising an additional demand of Rs. 54,055.

The matter was also reported to Government in March 1976. Government stated (August 1976) that the assessee was permitted

to pay off the additional tax in 12 equal monthly instalments starting from December 1975 and that an amount of Rs. 18,020 had since been realised. Report regarding collection of the balance amount is awaited (February 1977).

(iii) Under the Kerala General Sales Tax Act, 1963, as amended with effect from 1st July 1974, sales tax is leviable on the turnover of a business which includes any transaction made in connection with or incidental or ancillary to the trade, commerce, manufacture, adventure or concern in which the dealer is engaged. It was, however, noticed in audit (July 1975) that the Kerala State Road Transport Corporation operating road transport services in the State had sold unserviceable articles like old vehicles, old tyres, tubes and other scrap materials worth Rs. 8,32,533 in three Regional Workshops during the period between July 1974 and June 1975; but the sales tax, leviable on the sales turnover, amounting to Rs. 34,966 was not collected and credited to Government.

On this being pointed out in audit (August 1976), Government stated (October 1976) that the Assistant Commissioner (Assessment), Trivandrum had since been directed to take immediate action to get the Kerala State Road Transport Corporation registered under the Act and to complete the assessments for the years 1974-75 and 1975-76. Further report is awaited (February 1977).

(iv) It was seen in audit of a Sales Tax Office (Special Circle, Mattancherry), in July 1975 that in the monthly returns furnished for the year 1972-73 by an assessee, a total amount of Rs. 55,71,057 was shown as turnover on purchase of shrimps and frogs' legs from outside the State, not assessable under the Kerala General Sales Tax Act, 1963. In the final assessment, the assessing officer reckoned only Rs. 49,61,071 as turnover pertaining to inter-State purchase, but the disallowed portion of the inter-State purchase turnover amounting to Rs. 6,09,986 was omitted to be assessed under the Act.

On this being pointed out in audit (July 1975), the department revised the assessment (April 1976) raising an additional demand of Rs. 19,214.

The matter was also reported to Government in June 1976. Government stated (August 1976) that the facts were verified and

that collection of the tax additionally demanded would be intimated. Further report is awaited (February 1977).

(v) Under the Kerala General Sales Tax Act, 1963, timber is a commodity taxable at the general rate at all points of sale. It was seen in audit of a Timber Sales Division (Punalur) of the Forest Department in March 1976 that the department had not collected sales tax on the value of timber amounting to Rs. 3.37 lakhs sold to the Public Works Department Engineering Workshop during 1973-74 and 1974-75. This resulted in non-levy of sales tax amounting to Rs. 12,592. On this being pointed out in audit (August 1976), Government stated (October 1976) that the Chief Conservator of Forests had been instructed to realise all the arrears of sales tax from the workshop immediately. Further report is awaited (February 1977).

(vi) Under the Kerala General Sales Tax Act, 1963, the turnover in the case of goods sold by a dealer includes any sum charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof. It was, however, noticed in audit (February 1970) that in the case of sleepers supplied by the Forest Department to the Railways, the department was not levying sales tax on the cost of clamps affixed to the sleepers and the amount of overhead charges, which the department incurred before delivery of the sleepers, though both these charges were also to form part of the sales turnover.

On this being pointed out in audit (February 1970 and August 1970), the department informed the Railways (July 1971) that supplemental invoices claiming sales tax on overhead charges and cost of clamps were being preferred by the concerned Divisional Forest Officers. Though the department collected from the Railways sales tax amounting to Rs. 12,900 on overhead charges and cost of clamps in respect of sleepers supplied during the period 1972-73 to 1974-75, supplemental claims for Rs. 12,400 towards the tax due on this account in respect of supplies made during the period 1962-63 to 1971-72 had not been raised (February 1977).

The matter was also reported to Government in August 1975. Government stated (September 1975) that the Chief Conservator of Forests had been requested to take immediate steps to realise the tax due from the Railways. Further report is awaited (February 1977).

2.8. Irregular exemption

(i) Under the Central Sales Tax Act, 1956, transfer of goods to places outside the State is exempt from tax if it is proved that the movement of such goods was occasioned by reason of transfer of such goods to the assessee's agent and not by reason of sale. It was seen in audit (March 1976) that in the case of a company at Olavakode manufacturing and selling rubber products, the sales of their products to their agents outside the State were exempted from tax treating the movement of goods in these cases as occasioned otherwise than as a result of sale. The facts of the case, however, were that the assessee contended before the Central Excise authorities that the goods were actually sold to the selling agents outside the State and the selling agents were not selling the goods on behalf of the company and thus got the Central Excise duties assessed on the wholesale cash price which the company received from the selling agents, instead of on the higher price at which the selling agents sold the goods. As the sales were thus outright inter-State sales, the sales turnover was liable to be taxed at ten per cent under the Central Sales Tax Act. Turnover incorrectly exempted from tax for the years 1968-69 to 1974-75 amounted to Rs. 1,18,83,348, involving short levy of tax of Rs. 11,88,335.

The irregular exemption was reported to the Board of Revenue in April 1976 and to Government in June 1976; reply is awaited (February 1977).

(ii) Under the Kerala General Sales Tax Act, 1963, tax is leviable on purchase of goods on which no tax has been levied previously and when such goods are either consumed by the dealer in the process of manufacture of other goods or disposed of in any manner other than by way of sale within the State or despatched outside the State except as a direct result of inter-State sale. It was, however, seen in audit (December 1975) of a Sales Tax Office (First Circle, Kozhikode) that in the case of two assessees engaged in the manufacture and sale of fish manure, turnover amounting to Rs. 5,24,128 during the years 1970-71 to 1973-74 on purchase of waste fish and rejects of fish for use in the manufacture of manure was incorrectly exempted from levy of tax, treating the fish waste and rejects as dried fish. This resulted in short levy of tax of Rs. 18,917.

On this being pointed out in audit (December 1975), the department stated (July 1976) that instructions had been given to the assessing officer to revise the assessments.

The matter was also reported to Government in September 1976. Government stated (February 1977) that the assessments for the years 1970-71 and 1971-72 were barred by limitation of time and those for 1972-73 and 1973-74 had been revised (September and October 1976) raising an additional demand of Rs. 13,215. Particulars of collection are awaited (February 1977).

(iii) Government, by a notification issued in December 1971, exempted industrial co-operative societies from the levy of sales tax in regard to the turnover of the sale of goods produced by them for three years from the date of commencement of sale of such goods. It was noticed in audit (October 1975) of a Sales Tax Office (Palghat) that sales turnover amounting to Rs. 2,11,300 in one of the production units of an industrial co-operative society for the period November 1972 to March 1973 was exempted from levy of tax on the ground that the society purchased the unit (from a private party) only in January 1972 and the goods produced in the unit were, therefore, eligible for exemption for a period of three years from the date of taking over of the unit by the society. It was pointed out in audit (October 1975) that as the society had started functioning in September 1968, it was not eligible for exemption beyond three years of the date of commencement of the sale of goods produced by it, irrespective of the date of purchase of any additional production unit by it and hence the exemption granted was irregular.

The department stated (January 1976) that the assessment of the society for the year 1972-73 was revised (November 1975) raising an additional demand of Rs. 15,531. Particulars of collection are awaited (February 1977).

The matter was also reported to Government in February 1976; reply is awaited (February 1977).

2.9. Defective procedure followed in provisional assessments

Under the Act and the Rules made thereunder, tax for each year payable by an assessee who has been permitted to opt in this behalf, may be assessed, levied and collected in advance during the year in

monthly instalments. For this purpose, an assessee has to submit to the assessing authority, monthly, a return showing the total turnover and taxable turnover in the preceding month, the amount actually collected by way of tax during the month, and the amount of tax due on the taxable turnover for the month, together with proof of payment of the full amount of tax due for that month. If the return filed by the assessee is found to be incorrect or incomplete, the assessing authority should determine the turnover to the best of his judgement and provisionally assess the tax payable for the month by the assessee, who should pay the tax within the time specified in the demand notice.

It was, however, noticed in audit (September 1975) of a Sales Tax Office (Quilon) that the monthly returns submitted by four dealers in cashew for the different assessment years between 1971-72 and 1973-74 did not include turnover on purchase of African nuts imported through the Cashew Corporation of India. The department, however, did not assess the dealers monthly. In the final assessments made after the close of the year concerned a total turnover of Rs. 780 lakhs in respect of African nuts was assessed to tax. In this process the payment of tax by the dealers mentioned above to the extent of Rs. 3.25 lakhs every month was postponed for various periods from one month to twelve months. On this being pointed out in audit (September 1975), the assessing officer stated (December 1975) that provisional assessments were not made in these cases owing to pressure of work. The delay in collection of tax due to failure on the part of the assessing officer in making provisional assessments had adversely affected the ways and means position of Government. The amount of interest payable by Government on the amount of borrowed funds equal to the amount of tax which remained unpaid would come to Rs. 1.16 lakhs, on the basis of the borrowing rate of Government for the years 1971-72 to 1973-74 (5.5 per cent).

The issue regarding non-finalisation of provisional assessments was reported to the Board of Revenue in October 1975 and also to Government in August 1976. Government stated (November 1976) that, of the four assessees mentioned above, the facts in respect of one assessee only could be verified as the files in respect of the other assessees were with the legal wing of the department in connection with petitions filed by the assessees before the High Court.

2.10. Delay in completion of assessment

Under the Kerala General Sales Tax Act, 1963, tax is leviable on purchase of goods on which no tax has been levied previously and when such goods are consumed by the dealer in the process of manufacture of other goods for sale or otherwise in the State. It was, however, noticed in audit (August 1975) of a Sales Tax Office (Special Circle, Ernakulam) that purchase turnover of old jewellery for manufacture of ornaments and of timber used for manufacture of cases for clocks respectively, amounting to Rs. 5,52,489 which had not suffered tax earlier, was omitted to be assessed in the assessment for the year 1970-71 finalised in March 1972. Though a notice was issued in March 1973 to assess an escaped turnover of Rs. 5,49,347, it was not followed up.

On this being pointed out in audit (August 1975), the department assessed (December 1975) the escaped turnover of Rs. 5,52,489 raising an additional demand of Rs. 17,403. Report regarding collection is awaited (February 1977).

The matter was also reported to Government in June 1976. Government stated (September 1976) that the facts were verified and found correct.

OTHER TOPICS OF INTEREST

2.11. Exemption granted with retrospective effect

The Kerala General Sales Tax Act, 1963, empowers Government to grant exemption in respect of any tax payable under the Act, by notification in the Gazette, but does not confer any power on Government to give retrospective effect to such a notification. However, by a notification published in the Kerala Gazette on 6th March 1973, Government exempted with retrospective effect from 1st April 1971, the turnover of a bakery in the public sector, relating to sale of bread to certain Defence establishments for the use of Defence Services personnel. This resulted in exemption of a turnover of Rs. 6,46,533 in the assessment of the bakery for the years 1971-72 and 1972-73 (upto February 1973 inclusive) having a tax effect of Rs. 21,920.

On this being pointed out in audit (November 1975), Government stated (February 1976) that they were aware that there was

no specific provision under the Act to grant exemptions with retrospective effect but the notification was issued as Government considered it necessary in the public interest to do so. Every exemption notification issued under a fiscal statute is presumed to be in public interest, but such notifications should conform to and be within the powers conferred by law as passed by the Legislature.

2.12. Non-realisation of sales tax on rubber

Under the Rubber Act, 1947 and the Rules made thereunder, movement of rubber across the State border is possible only if a declaration is made by the consignor about the particulars of goods consigned, details of the consignee etc., in a prescribed form known as Form 'N'. The practice followed in the case of a dealer who applies for a 'N' form was for the Rubber Board to send a questionnaire to the Sales Tax Department for necessary recommendation by the latter. The questionnaire contained details as to whether the dealer had registered himself under the Kerala General Sales Tax Act, 1963. This questionnaire was being filled up and returned to the Rubber Board without even keeping a copy thereof. The system of sending the questionnaire was discontinued from April 1975. Under the present arrangement, a party applying for licence under the Rubber Act is required by the Rubber Board to produce a sales tax clearance certificate to indicate whether any sales tax arrears are outstanding against him.

A dealer, who had not taken sales tax registration was transporting rubber out of the State by using 'N' forms from 1969 onwards. Based on information collected by the Intelligence Wing of the department, the dealer was assessed to Central sales tax (Rs. 29,750) and general sales tax (Rs. 9,183) for the year 1970-71 by the assessing authority (Palai) in October 1973. The amount of tax could not, however, be recovered from the dealer as his whereabouts could not be traced. On this being pointed out in audit (June 1974), the Board of Revenue stated (November 1975) that the dealer resorted to large scale transport of rubber to a fictitious company at Calcutta and despite the elaborate enquiries conducted by the department, the dealer could not be identified.

The matter was reported to Government in August 1976; reply is awaited (February 1977).

CHAPTER III

AGRICULTURAL INCOME TAX

3.1. Introductory

The State Government is empowered under Entry 46 of the Second List in the Seventh Schedule to the Constitution to levy a tax on agricultural income in the State. The statutory basis for the levy and collection of tax on agricultural income is the Agricultural Income Tax Act, 1950, as amended from time to time and the Rules made thereunder.

3.2. Trend of revenue

A comparative table indicating the total tax revenue, revenue from agricultural income and percentage of revenue from agricultural income to the total tax revenue for the last five years is given below:—

Year	*Tax revenue raised by the State*	*Revenue from agricultural income*	*Percentage of revenue from agricultural income to total tax revenue*
(1)	(2)	(3)	(4)
	(in crores of rupees)		
1971-72	74.70	3.64	4.87
1972-73	82.80	3.12	3.77
1973-74	95.46	2.87	3.01
1974-75	123.56	4.02	3.25
1975-76	159.70	7.23	4.53

3.3. Organisation

The Agricultural Income Tax and Sales Tax Department is under the administrative control of the Board of Revenue. One of the Members of the Board of Revenue is the ex-officio Commissioner in charge of the Agricultural Income Tax and Sales Tax Department. Under the Commissioner, there are six Deputy Commissioners administering the powers vested in them under the Agricultural Income Tax and Sales Tax Acts. The bifurcation of functions between sales tax and agricultural income tax begins with the

Inspecting Assistant Commissioners. Inspecting Assistant Commissioners on the agricultural income tax side have, besides supervisory functions, powers to assess agricultural income exceeding Rs. 1 lakh. Under the Inspecting Assistant Commissioners, there are Agricultural Income Tax Officers in charge of separate agricultural income tax assessing units.

For prevention and detection of evasion in agricultural income tax and sales tax, there is a full-fledged Intelligence wing under the control of a Deputy Commissioner since August 1960. The Intelligence wing has all these years (till January 1975) detected only two cases of concealment of income on the agricultural income tax side, one in Thodupuzha and the other in Perinthalmanna.

It was seen in audit (September 1975) that the case of concealment of income detected by the Intelligence wing in Perinthalmanna did not yield any result due to delay on the part of the department to pursue further action. Details of the case are as under:—

In the case of an assessee who held an extensive area of agricultural land, the Intelligence Officer, Agricultural Income Tax and Sales Tax (Palghat) reported in February 1968 that the assessee was having more income than that returned and assessed to tax. The Intelligence Officer estimated the income for 1964-65 at Rs. 30,300 and stated that income for subsequent years should be more than this amount. However, it was noticed in audit (September 1975) that no action on the report of the Intelligence Officer was taken by the Agricultural Income Tax Officer (Perinthalmanna) to assess the escaped income to tax. Based on the income estimated by the Intelligence Officer for the year 1964-65, an income of Rs. 1,51,000 escaped assessment for the years 1964-65 to 1970-71, resulting in loss of revenue of Rs. 34,146.

The matter was reported to the Board of Revenue in December 1975 and to Government in August 1976; reply is awaited (February 1977).

3.4. Assessees

The total number of assessees in the books of the department as on 31st March 1976 was 30,701. As compared to the previous year ending 31st March 1975, there was an increase of 846 assessees.

The status-wise details of the assessees during the years 1974-75 and 1975-76 are given below:—

Status	*No. of assessees as on 31st March*	
	1975	1976
1. Individuals	26,698	27,423
2. Hindu undivided families	1,963	2,042
3. Firms	121	133
4. Companies	262	268
5. Others	811	835
Total	29,855	30,701

(Figures are as furnished by the department)

The income-wise break-up of assessees during the years 1974-75 and 1975-76, is indicated in the following table:—

	Number of assessees as on 31st March	
	1975	1976
(a) Assessees having taxable income over Rs. 25,000	1,553	1,769
(b) Assessees having taxable income over Rs. 15,000 but not exceeding Rs. 25,000	2,688	3,248
(c) Assessees having taxable income over Rs. 5,000 but not exceeding Rs.15,000	17,718	18,744
(d) Assessees having taxable income of Rs. 5,000 and less	7,896	6,940
Total	29,855	30,701

(Figures are as furnished by the department).

3.5. Assessment procedure

Agricultural income is defined in the Act as any rent or revenue derived from land in the State which is used for agricultural purposes. Every person deriving agricultural income exceeding Rs. 5,000 is required to furnish a return in the prescribed form so as to reach the assessing authority before the Ist June of the assessment year.

After the assessing authority has determined the taxable income and the tax leviable thereon, a notice of demand specifying the sum payable by the assessee and the date within which it is to be paid is required to be issued. It was, however, noticed in audit (between 1st November 1974 and 31st March 1975) that in three assessing offices (Chittur, Kasaragod and Devicolam), out of 22,299 assessments finalised between 1st August 1970 and 31st August 1974, issue of demand notices was delayed for two months to six months in 14 cases (tax effect Rs. 84,609) and for over six months to thirteen months in another 15 cases (tax effect Rs. 1,18,343).

The matter was reported to Government in August 1976; reply is awaited (February 1977).

3.6. Results of test audit in general

During 1975-76, test audit of the documents of Agricultural Income Tax Offices revealed under-assessment of tax of Rs. 85.24 lakhs in 673 cases and over-assessment of tax of Rs. 2.43 lakhs in 58 cases.

The under-assessment of tax is categorised under the following heads:—

Nature of irregularity	*Number of cases*	*Amount (in lakhs of rupees)*
1. Under-assessment due to assignment of incorrect status	34	11.47
2. Under-assessment due to incorrect registration/renewal of registration of firm	16	9.84
3. Income escaping assessment	347	36.96
4. Under-assessment due to incorrect computation of income	60	5.58
5. Under-assessment due to grant of inadmissible deduction	64	11.16
6. Application of incorrect rate of tax	23	0.64
7. Other irregularities	129	9.59
	673	85.24

Some important cases are mentioned in paragraphs **3.7** to **3.22.**

3.7. Incorrect computation of income

(i) For the assessment years 1967-68 and 1968-69, an assessee returned net income of Rs. 1,50,689 and Rs. 1,03,596 respectively from properties held partly under trust, after deducting from the gross income, 33⅓ per cent of the income as applied for charitable purposes. According to a judicial pronouncement in respect of assessments for earlier years in the case of the same assessee, he was eligible for exemption of income derived from properties held under trust, only to the extent of 25 per cent of his total income as applied to charitable purposes. While completing the assessments for the two years mentioned above, the assessing officer (Alwaye) deducted from the net income returned by the assessee 25 per cent of this income as relating to charitable purposes, overlooking the fact that the net income returned by the assessee had already been computed after deducting from the total income 33⅓ per cent on that account. This resulted in under-assessment of tax of Rs. 66,083.

On this being pointed out in audit (February 1976), Government stated (April 1976) that action had been initiated for *suo motu* revision of assessments under Section 34 of the Act. Further report is awaited (February 1977).

(ii) In computing the taxable income of an assessee (individual) for the assessment year 1971-72, the Agricultural Income Tax Officer (Kottayam) incorrectly worked out the taxable income as Rs. 48,346 against the correct amount of Rs. 1,41,614. The mistake occurred due to reckoning incorrectly a loss of Rs. 39,799 against an income of Rs. 58,769, returned by the assessee and adding back incorrectly an amount of Rs. 5,300 towards income from minor produce to the total income, though the income returned by the assessee included this amount also. This resulted in under-assessment of income of Rs. 93,268, involving short levy of tax of Rs. 56,745.

The matter was reported to the department in September 1975 and to Government in February 1976. Government stated (April 1976) that the mistake was rectified by revising the assessment in October 1975. However, in the revised assessment, the assessing officer allowed certain additional exemptions and allowances (Rs. 10,355). The net additional tax demanded in the revised assessment amounted to Rs. 50,169, of which Rs. 20,000 was collected in February 1976. Particulars of collection of the balance amount are awaited (February 1977).

(iii) In the assessment for the year 1971-72 completed in March 1975 in respect of an assessee (individual), the Agricultural Income Tax Officer (Alwaye) incorrectly computed the total taxable income as Rs. 23,095 against the correct amount of Rs. 53,095. This resulted in an income of Rs. 30,000 escaping assessment, involving short levy of tax of Rs. 11,965.

On this being pointed out in audit (August 1975), the department revised the assessment in August 1975.

The matter was also reported to Government in June 1976. Government stated (July 1976) that an amount of Rs. 10,965 had since been collected towards the additional demand. Report regarding collection of the balance amount of Rs. 1,000 is awaited (February 1977).

3.8. Application of incorrect rate of depreciation

The Kerala Agricultural Income Tax Rules, 1951, provide for the grant of depreciation at varying rates on motor cars, tractors and other motor vehicles. However, in the case of assessments of a foreign company for the years 1968-69 to 1971-72, it was noticed in audit (April 1975) that depreciation at 20 per cent on the written down value of 'motors' was allowed as deduction, without ascertaining the details of vehicles in respect of which depreciation had been claimed by the assessee under 'motors'.

On ascertaining the details of vehicles from the assessee at the instance of audit (April 1975), the assessing officer found (July 1975) that 'motors' included tractors and trailers, the admissible rates of depreciation of which were only $12\frac{1}{4}$ per cent and $12\frac{1}{2}$ per cent respectively. The department stated (February 1976) that the assessments for the years 1969-70 to 1971-72 had been revised disallowing excess depreciation of Rs. 43,709 allowed earlier. The additional demand thus raised amounted to Rs. 32,782.

The matter was also reported to Government in June 1976. Government stated (January 1977) that the tax additionally demanded for the years 1969-70 to 1971-72 was Rs. 31,059 only and the amount of Rs. 32,782 reported by the department in February 1976 was in excess by Rs. 1,723 owing to a mistake in computation of tax in the revised assessment order for 1969-70 which the department rectified in March 1976 and the additional demand was collected in full in May 1976. It was further stated that on a general review of the assessments for previous years conducted at the instance of audit,

similar mistakes in assessments for the years 1966-67 to 1968-69 had been noticed and necessary directions issued to the assessing authority to examine the assessment records for all the previous years to locate similar omissions. Further report is awaited (February 1977).

3.9. Application of incorrect rate of tax

Under the Kerala Agricultural Income Tax Act, 1950, in the case of a domestic company, where its total agricultural income exceeds Rs. 1 lakh, tax is leviable at 55 per cent of the total income. However, in an Agricultural Income Tax Office (Alwaye), tax on agricultural income of Rs. 1,79,973 of a company for the assessment year 1971-72 was incorrectly computed at 45 per cent, resulting in short levy of tax of Rs. 17,997.

The matter was reported to the department in August 1975 and to Government in February 1976. Government stated (May 1976) that the mistake was rectified by revising the assessment in November 1975, but while revising the assessment, loss of Rs. 83,212 carried forward from the year 1969-70, which had been omitted to be set off against the income for the year 1971-72 in the original assessment, was allowed deduction and consequently tax already levied from the assessee was found to be in excess by Rs. 27,769.

On further verification in audit it was seen (August 1976) that in the revised assessment also, tax on the agricultural income of Rs. 96,761 (Rs. 1,79,973 minus Rs. 83,212) was computed applying an incorrect rate of 55 per cent against the correct rate of 50 per cent prescribed for income not exceeding Rs. 1 lakh, resulting in excess levy of tax of Rs. 4,839. The matter was reported to Government in October 1976; reply is awaited (February 1977).

3.10. Under-assessment due to inadmissible deduction

(i) Under the Kerala Agricultural Income Tax Act, 1950, a penalty imposed for breach of law by an assessee is not an admissible deduction, as it is not expended wholly and exclusively for the purpose of deriving agricultural income.

In an Agricultural Income Tax Office (Special, Kozhikode), it was noticed in audit (April 1976) that penal interest amounting to Rs. 28,868 paid by an assessee for belated payment of tax was allowed as deduction in the assessment for the year 1973-74, resulting in under-assessment of tax of Rs. 18,764.

The matter was reported to the department in April 1976 and to Government in June 1976. Government stated (December 1976) that the assessment had been revised (August 1976). Report regarding collection of additional demand raised is awaited (February 1977).

(ii) Under the Agricultural Income Tax Act, 1950 and the Rules made thereunder, all sums paid or credited to a partner should be disallowed in computing the profits or gains of a partnership and the sums so disallowed should be allocated to the partner who actually received them and taxed in his hands. However, in two assessing offices (Trichur and Kottarakkara), while assessing the income of four registered firms for the assessment years 1970-71 to 1973-74, a sum of Rs. 45,915 paid as salary and commission to the partners was not so disallowed and taxed. This resulted in short levy of tax of Rs. 13,320 in the hands of the partners.

On the mistake in respect of the firm in one of the assessing offices (Trichur), involving short levy of tax of Rs. 7,905, being pointed out in audit (September 1974), Government stated (February 1976) that the audit observation was correct and that the Agricultural Income Tax Officer had been directed to revise the assessment. Further report is awaited (February 1977).

Reply in regard to the short levy of Rs. 5,415 pointed out in audit (June 1974) in the case of the remaining firms in the other Agricultural Income Tax Office (Kottarakkara), is awaited from the department (February 1977). These cases were also reported to Government in September 1976; reply is awaited (February 1977).

3.11. Assessment in the hands of wrong assessees

In the case of income derived from properties owned by a Hindu bachelor who died *intestate* in 1963, the assessments for the years 1963-64 to 1974-75 were done in the hands of his three step-brothers, though according to the Hindu Succession Act, the father of the deceased who was alive was to succeed to the property. The omission to assess the income in the hands of the legal heir (father) all these years resulted in under-assessment of tax of Rs. 41,000 (approximately).

On this being pointed out in audit (March 1976), the assessing officer stated (March 1976) that action under Section 35 of the Act was initiated in respect of the assessments from 1970-71 which were open for rectification and that action would be taken for *suo motu* revision in respect of time-barred assessments. Further report is awaited (February 1977).

The matter was also reported to Government in September 1976; reply is awaited (February 1977).

3.12. Assignment of incorrect status

The rates of agricultural income tax applicable to taxable income vary according to the status assigned to assessees. Tax is leviable on the total income of an 'unregistered firm' or an 'association of individuals' as a single unit, whereas income of a 'registered firm' or 'tenants-in-common' is divided among the members/co-tenants in accordance with the ratio of their shares and assessed to tax individually on their share income. It was noticed in audit (August and October 1973) that criteria distinguishing an 'association of individuals' from 'tenants-in-common' or an 'unregistered firm' from a 'registered firm' were not correctly applied by the assessing authorities in determining the status of the assessees, resulting in short levy of tax. A few instances are given below:—

(i) Mention was made in paragraphs 27 (ii) and 53 (iii) of the Reports of the Comptroller and Auditor General of India on Revenue Receipts for the years 1973-74 and 1974-75 respectively about short levy of tax in three cases amounting to Rs. 1,49,069 due to assignment of incorrect status as 'tenants-in-common' to an 'association of individuals' by two assessing authorities. Similar cases of incorrect assignment of status as 'tenants-in-common' to an 'association of individuals' were also noticed (between September 1973 and October 1975) in thirty-four cases in twelve assessing offices, involving short levy of tax of Rs. 5,99,631. These cases were reported to the department between September 1973 and October 1975, and also to Governmet in April 1974; reply is awaited (February 1977).

(ii) Mention was made in paragraphs 25 and 26 and 58 of the Reports of the Comptroller and Auditor General of India on Revenue Receipts for the years 1973-74 and 1974-75 respectively about the short levy of tax of Rs. 5,55,972 in six assessing offices due to incorrect assignment of status of 'registered firm' to six firms which were correctly assessable as 'unregistered firms'. Details of two more cases seen in audit (February 1976) are given below:—

(a) A firm, constituted under an instrument of partnership dated 3rd August 1966 with five partners and a minor admitted to the benefits of partnership, was granted registration by the Agricultural Income Tax Officer, Devicolam for the first time for the

assessment year 1967-68 and renewal of registration in subsequent years. The minor admitted to the benefits of partnership attained majority on 24th March 1968 and consequently the constitution of the firm and the individual shares of the partners changed. The firm was, thus, not eligible for renewal of registration for the assessment years from 1969-70 onwards. The incorrect grant of renewal of registration to the firm for the assessment years 1969-70 to 1973-74 resulted in under-assessment of tax of Rs. 1,01,823.

The matter was reported to the department in February 1976 and to Government in June 1976. Government stated (October 1976) that the facts of the case were found correct and that necessary instructions had since been issued to the Inspecting Assistant Commissioner to rectify the mistake immediately. Further report is awaited (February 1977).

(b) A firm to whom a certificate of registration was granted may have the certificate of registration renewed for subsequent year(s) on application signed by all the partners (not being minors) declaring that the constitution of the firm and the individual shares of the partners as specified in the instrument of partnership remained unaltered. But in the case of a registered firm under the Agricultural Income Tax Office (Kumily), the certificate of registration granted for the assessment year 1968-69 was renewed for all subsequent years upto 1971-72, though there was a change in the constitution of the firm from the assessment year 1970-71 on account of the death of one of the partners and admission of another person to the partnership in the place of the deceased in the accounting year. The firm was, therefore, not eligible for renewal of registration for the respective years. The incorrect renewal of registration thus granted to the firm for the assessment years 1970-71 and 1971-72 resulted in under-assessment of tax of Rs. 74,100.

On this being pointed out in audit (February 1976), the Agricultural Income Tax Officer initiated action (February 1976) to revise the assessments. Further report is awaited (February 1977). The matter was also reported to Government in June 1976; reply is awaited (February 1977).

3.13. Failure to club income

(i) Under the Kerala Agricultural Income Tax Act, 1950, income arising from properties acquired by an assessee in favour of his minor children is to be included in his total

agricultural income and assessed to tax as such. It was, however, noticed in audit (October 1975) that in the case of an assessee, who purchased 6/51 share of a rubber estate (September 1962) in favour of his two minor children with his own funds, income therefrom was assessed separately in the hands of the minor children all the years from 1965-66 instead of including it in the total agricultural income of the assessee (father). This resulted in short levy of tax of Rs. 22,000 for the assessment years 1965-66 to 1969-70. The details of under-assessment in respect of the assessment years from 1970-71 are awaited (February 1977).

The matter was reported to the department in October 1975 and to Government in June 1976. Government stated (October 1976) that the facts of the case were found correct and that the Inspecting Assistant Commissioner (Special), Trichur had been directed to send up proposals for *suo motu* revision of the assessments for the years 1965-66 to 1969-70. Further report is awaited (February 1977).

(ii) Income of wife as arising from the membership of a firm in which the husband is also a partner is to be included in the total agricultural income of the husband and assessed to tax at his hands. It was, however, seen in audit (August 1975) of an Agricultural Income Tax Office (Trivandrum), that in the case of an assessee who was a partner in a registered firm in which his wife was also a partner, the share income received from the partnership by the wife was separately assessed to tax in her hands without clubbing it with the income of her husband. This resulted in short levy of tax of Rs. 16,836 for the assessment years 1964-65 to 1969-70.

The matter was reported to the department in August 1975 and to Government in June 1976; reply is awaited (February 1977).

(iii) Income of a minor child arising from assets transferred directly or indirectly by an individual, otherwise than for adequate consideration, is to be included in the total agricultural income of the individual and taxed in his hands. It was seen in audit (June 1974) that in the case of an assessee, who transferred in September 1969, all his properties without adequate consideration to his three sons, of whom one was a minor, income received by the minor child from the properties so transferred was assessed in the hands of the minor for the assessment years 1970-71 and 1971-72, instead of assessing it in the hands of the father.

On this being pointed out in audit (August 1974), the Board of Revenue stated in January 1976 that the income was not assessable in the hands of the father as the father, after the transfer of the properties, did not own or hold any property and was, therefore, not a 'person' liable for assessment. However, the Kerala High Court had ruled in September 1975 itself that in such cases the individual is assessable on the income from the transferred assets. Thus, the reply of the Board of Revenue given in January 1976 is not in accordance with the law as judicially propounded by the High Court. Even otherwise, the law nowhere states that for the operation of the provisions of Section 9 of the Act, which corresponds to Section 64 of the Income Tax Act, the individual should have income of his own.

The matter was also reported to Government in July 1976; reply is awaited (February 1977).

3.14. Incorrect exemption of share income of firm

Share of income received by a person from an unregistered firm is not taxed when the unregistered firm has paid tax, but relief to the person on this account is limited to the extent of one-sixth of his total agricultural income or six thousand rupees whichever is less. However, in an Agricultural Income Tax Office (Special, Kozhikode) the entire share income received by three persons from an unregistered firm was exempted from tax in their hands during the assessment years 1972-73 to 1974-75 without applying the exemption limit. This resulted in under-assessment of income of Rs. 1,91,913, involving short levy of tax of Rs. 24,715.

On this being pointed out in audit (August 1974), the department stated (January 1976) that the partners have no agricultural income other than what they received from the firm and, therefore, the share income received from the firm was not assessable in their hands as it had been subjected to tax at the hands of the firm. According to the provisions of the Act, share income received by a person from a firm is assessable income in his hands irrespective of the fact whether the person is having income from other sources or not. This was brought to the notice of the department in March 1976 and reported to Government in July 1976; reply is awaited (February 1977).

3.15. Incorrect cancellation of best judgement assessment

Under the Kerala Agricultural Income Tax Act, 1950, assessment made by an Agricultural Income Tax Officer to the best of his judgement due to the failure on the part of the assessee to make a return or to comply with all the terms of a notice issued by the assessing officer is not appealable. In such a case the only remedy open to the assessee is to get the assessment cancelled by satisfying the assessing officer within one month from the date of service of the notice of demand that he was prevented by sufficient cause from making the return or from complying with terms of any such notice.

It was seen in audit (August 1975) of an Agricultural Income Tax Office (Trivandrum) that the assessments for the years 1969-70 and 1970-71 in the case of an assessee were originally completed on 1st March 1973 under the provisions for best judgement assessment and notices demanding a total tax of Rs. 65,244 were served on the assessee on 10th May 1973. However, the assessing officer cancelled the original assessments in September 1973 and issued fresh orders of assessment in December 1974 reducing the tax liability for both the years to Rs. 17,660 based on the representations for cancellation of the original assessments received from the assessee on 28th June 1973. Cancellation of the original assessment based on the representations received from the assessee after the prescribed period of one month from the date of service of the notices was beyond the assessing officer's competency and resulted in loss of revenue amounting to Rs. 47,584. On this being pointed out in audit (August 1975), the department stated (December 1975) that the objection raised in audit was correct, but the revised assessments had since been remanded in appeal.

The matter was also reported to Government in June 1976; reply is awaited (February 1977).

3.16. Uncollected revenue

Agricultural income tax demand raised but not collected as at the end of March 1976 amounted to Rs. 4.78 crores as against

Rs. 4.65 crores outstanding at the end of March 1975. Year-wise analysis of the outstanding amount is given below:—

Year	*Arrears as on*	
	31st March 1975	*31st March* 1976
	(*in crores of rupees*)	
Upto 1971-72	0.91	0.81
1972-73	0.48	0.35
1973-74	1.01	0.68
1974-75	2.25	0.65
1975-76	..	2.29
Total	4.65	4.78

The amount remaining uncollected as on 31st March 1976 was stated by the department (July 1976) to be in different stages of action as shown below:—

	Stages of action	*Amount of arrears* (*in lakhs of rupees*)
(i)	Revenue Recovery Proceedings	131.39
(ii)	Amount stayed by courts	46.45
(iii)	Amount stayed by Government	1.71
(iv)	Amount stayed by other authorities	102.05
(v)	Amount likely to be written off	1.23
(vi)	Other stages	195.61
	Total	478.44

3.17. Income escaping assessment

With a view to enabling the assessing authorities to make proper assessments and for locating new assessment cases, the departmental procedures prescribe internal and external surveys on a regular basis for collecting necessary data. The internal survey consists in gathering useful information from the records of the assessing office, whereas the external survey consists in collecting the necessary details from the publications, reports, registers, etc., of other departments, by inspection of agricultural holdings and also by preparing and maintaining a complete list of potential assessees in each village.

(a) The Rubber Board, which controls production, sale and manufacture of rubber, is having details about cultivators of rubber, stages of plantation, quantity of rubber produced, etc., which the agricultural income tax assessing authorities could profitably utilise in finalising assessment of income from rubber. But a procedure for collecting the necessary data from the records of the Rubber Board by assessing authorities and utilising them for the benefit of revenue is yet to be evolved (February 1977).

The matter was reported to Government in August 1976; reply is awaited (February 1977).

(b) Rubber plants start yielding in the sixth or seventh year of planting. There is progressive yield during the next five to six years and the yield becomes steady thereafter. It was noticed in audit (March 1973) of assessments that in some cases though inspection of rubber plantations of assessees was conducted by the departmental authorities earlier and particulars regarding the extent of plantations, number of yielding trees and the tapping stage of the trees, were available with the department, the particulars were not taken note of while finalising assessments in subsequent years.

That the internal and external surveys as contemplated by the departmental procedure have not been effective may be seen from the following illustrative cases:—

3.18. Income from rubber

(i) An inspection of plantations of an assessee conducted by an Agricultural Income Tax Officer (Perinthalmanna) in November 1966, showed that the assessee had planted rubber in an area of 730 acres on various dates between 1957 and 1962. Accordingly, the area of the plantation under tapping in 1966-67, 1967-68 and 1968-69 should have been about 451 acres, 531 acres and 730 acres respectively. However, in finalising the assessments for the years 1968-69 to 1971-72, income from an area of 400 acres of plantation only was considered by the assessing authority, with the result that an income of Rs. 8,02,982 (approximately), estimated to be derived from the remaining yielding areas, escaped assessment. The consequent short levy of tax amounted to Rs. 5,53,460. On this being pointed out in audit (June 1973), the department stated (February 1975) that out

of 730 acres of planted area, the assessee sold 151.08 acres of plantation in March 1966 (35 acres) and June 1967 (116.08 acres), leaving a balance of 578.92 acres of plantation.

However, the department had earlier (July 1974) informed Audit that the assessee himself had admitted in the returns for the years 1969-70 to 1971-72 (filed between May 1970 and November 1971) that he possessed plantation area to the extent of 730 acres. Apart from this, even according to the department's reply to Audit of February 1975 the assessee held 578.92 acres of plantation whereas only 400 acres of plantation was brought under assessment during the years 1968-69 to 1971-72.

(ii) In the case of an assessee, in another Agricultural Income Tax Office (Trivandrum), holding 100 acres of dry land, an inspection conducted by the assessing authority in 1964 showed that there were 7,000 rubber trees (five to six years old) in 80 acres, and the remaining area of 20 acres was kept vacant. Though all these 7,000 trees would have started yielding by 1965 (six to seven years after planting), income from a maximum number of 2,400 trees only was assessed to tax during the years 1968-69 to 1972-73. Income from the remaining trees which thus escaped assessment can be estimated to be Rs. 94,300 for the years 1970-71 to 1972-73 alone, involving short levy of tax of Rs. 36,450. On this being pointed out in audit (July 1973), the department stated (June 1974) that inspection of the plantation conducted in October 1973 and November 1973 showed that there were 7,000 tapping trees in 28 blocks, but of these only 2,500 in ten blocks had started yielding before September 1971 and hence the assessments already made were correct. It is not understood how the inspecting officer having gone on inspection after the lapse of 8 years (1973) could state affirmatively that only one-third of the plantation had started yielding before September 1971.

(iii) An inspection of the holdings of an assessee conducted by an Agricultural Income Tax Officer (Perinthalmanna) in December 1964 showed that the assessee's plantation in 25 acres (10 blocks) consisted of about 3,000 trees planted five to six years back and of these, 300 trees (1 block) started yielding in 1964. The yield from these 300 trees only was considered by the assessing authority in finalising the assessments for the years 1965-66 to 1970-71 (both inclusive). It was pointed out in audit (March 1973) that all the

trees in 25 acres of plantation would have started yielding by 1967 and there was, therefore, an under-assessment of tax amounting to Rs. 21,945 (approximately) for the years 1968-69 to 1970-71. The department stated (March 1974) that an inspection conducted in June 1973 disclosed that the immature trees found in the plantation during the inspection in December 1964 were tapped only in 1970-71 (i.e. assessment year 1971-72) and, therefore, there was no escapement of income from these trees. To a further reference made (December 1974), the Board of Revenue stated (January 1976) that another inspection of the estate of the assessee conducted by the department in September 1975 showed that in addition to the 300 trees in one block tapped from 1964, 850 trees in another three blocks started yielding in 1970, and in the remaining 13 acres, 7 acres were replanted with rubber in 1965, plants in 3 acres were of poor quality and the balance 3 acres of plantation was cleared one year back and hence the assessee did not receive any 'substantial income' from the trees reported to be immature in 1964. However, the fact that a belated inspection conducted by the department (at the instance of audit) would not disclose, with accuracy, the income derived by the assessee from the plantation several years back, was pointed out to the Board of Revenue in February 1976; reply is awaited (February 1977).

The cases at (i) to (iii) above were reported to Government in April 1975 and August 1976; reply is awaited (February 1977).

3.19. Other cases

(i) Under the Kerala Agricultural Income Tax Act, 1950, rent or revenue derived from land used for agricultural purpose is agricultural income. However, in an Agricultural Income Tax Office (Kumily), income received by four assessees (individuals) from a firm (assessee of the same office), by way of rent of land leased out to the firm by the individuals, was not taken into account in their assessments for the assessment years 1966-67 to 1972-73, despite the fact that in the assessments of the firm, the lease rent paid by the firm to the four assessees was treated as expense.

On this being pointed out in audit (May 1975), Government stated (December 1975 and March 1976) that the assessments for the years 1967-68 to 1972-73 in respect of three assessees (except the assessments for 1969-70 in respect of two assessees) and for the years 1971-72 and 1972-73 in the case of the other assessee had since

been revised and the additional tax of Rs. 15,200 collected (July 1975 and January 1976). Report regarding revision in respect of the remaining assessments is awaited (February 1977).

(ii) The total agricultural income of the previous year of any person comprises all agricultural income derived from land situated within the State. It was, however, noticed in audit (September 1975) of an Agricultural Income Tax Office (Alwaye) that in the case of two assessees, both of whom derived agricultural income from certain common properties held by them together, in addition to their individual properties, the income from the common properties was separately assessed without clubbing their share of the joint income with their individual incomes. This resulted in under-assessment of tax of Rs. 14,420 for assessment years 1969-70 to 1974-75 both inclusive (Rs. 6,306 in the case of one assessee for the years 1969-70 to 1971-72 and Rs. 8,114 in the case of the other assessee for the years 1971-72 to 1974-75).

The matter was reported to the department in September 1975 and to Government in June 1976. Government stated (February 1977) that facts of the case were verified and that the assessing authority had taken action to set right the irregularity in the assessments already made. Report regarding revision of assessments is awaited (February 1977).

(iii) A company returned for the assessment year 1971-72 a gross income of Rs. 3,56,321, which included sale proceeds of copra (Rs. 3,31,600) and income from other miscellaneous produces (Rs. 24,721). The assessing officer (Alwaye), however, rejected the accounts and assessed to tax an estimated income from copra amounting to Rs. 4,36,562. In the process, however, the income of Rs. 24,721 from other miscellaneous produces returned by the assessee escaped assessment, resulting in short levy of tax of Rs. 13,597.

Omission to assess income from other miscellaneous produces was also noticed in the assessment for the year 1970-71, the details of which are awaited (February 1977).

This was reported to the department in August 1975, and to Government in February 1976. Government stated (June 1976) that the audit objection in respect of the assessment years 1970-71 and 1971-72 was found correct and that on appeals filed by the assessee, the assessments were remanded (October 1975) by the Appellate Assistant Commissioner with directions to accept the accounts of the assessee company. The revision of assessments in the light of the appellate orders is awaited (February 1977).

3.20. Non-levy of penalty

The Act provides for imposition of penalty on assessees for (i) non-submission of returns, (ii) delayed submission and (iii) concealment of the particulars of income or furnishing of inaccurate particulars of such income. The amount of penalty leviable is a sum not exceeding the amount of agricultural income tax and super tax payable by the assessee as determined by the assessing authority. It was seen in audit (November 1974) that there had been omission on the part of the assessing authorities to invoke the penal provision against the assessees who violated the requirements of the Act in regard to submission of returns or furnishing of the particulars of income. A case noticed in audit (November 1974) is given below:—

An assessee derived agricultural income during the year 1970-71 from lands situated within the jurisdiction of two Agricultural Income Tax Officers (Chittur and Trichur). While finalising the assessment (February 1971) for the above year, the assessing authority (Chittur) considered the agricultural land within his jurisdiction only, as the return filed by the assessee had not shown the details of income derived by him elsewhere. However, later when the correct position was known to the assessing authority (February 1972), action was initiated (March 1972) to assess the escaped income also to tax. As the assessee did not comply with the notice issued under Section 35 (December 1973), the assessing authority finalised the assessment to the best of his judgement (March 1974) demanding an additional tax of Rs. 71,996 on an income of Rs. 1,35,736, which escaped assessment previously. The assessing officer, however, did not consider levying penalty for the concealment of particulars of income in the return submitted by the assessee and also for non-compliance with the terms of the notice issued by the assessing authority under Section 35. On this being pointed out in audit (November 1974), the department stated (August 1975) that action had since been initiated for levy of penalty also from the assessee. Further report is awaited (February 1977).

The matter was also reported to Government in August 1976; reply is awaited (February 1977).

3.21. Computation of income from tea

Agricultural income derived from cultivation of tea is taken to be that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purpose of enactments relating to Indian Income Tax. The Supreme Court of India in a judgement pronounced in 1968 pointed out that there was no provision in the Kerala Agricultural Income Tax Act, 1950, authorising the Agricultural Income Tax Officer to disregard the computation of the tea income made by the Income Tax authorities acting under the Central Income Tax Act and accordingly the Agricultural Income Tax Officer is bound to accept the computation of the tea income made by the Central Income Tax authorities and to assess only 60 per cent of the income so computed as agricultural income. Mention was made in paragraph 36 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1973-74 about two cases of under-assessment of tax due to adoption by the Agricultural Income Tax Officers of wrong figures of income computed by the Central Income Tax Officers and the consequent under-assessment of tax of Rs. 3,89,932. Though the need for initiating suitable remedial measures enabling the Agricultural Income Tax Officers to make independent computation of agricultural income was pointed out to the department in May 1974 and reported to Government in November 1974, there is no information (February 1977) that any action has been initiated in this direction. Similar cases of under-assessment of tax amounting to Rs. 1,94,841 were also noticed in the cases of 11 assessments in respect of 5 assessees in 2 offices (Special, Kottayam and Kozhikode) for the assessment years 1968-69 to 1973-74.

The matter was reported to Government in August 1976; reply is awaited (February 1977).

3.22. Application of the term 'individual'

Section 9(2) of the Act stipulates the circumstances under which the agricultural income of wife/minor child of an individual shall be included in the computation of the total agricultural income of the individual. The expression 'individual' used in this connection is restricted in its connotation to mean only a

male person—vide Supreme Court decision pronounced in May 1957. Consequently, income arising on account of transfer of assets by a mother to her minor child and admission of a minor child to the benefits of partnership in a firm, of which the mother is also a partner, could not be assessed in the hands of the mother. So also, income arising as a result of membership of the husband in a firm, of which his wife is a partner, and transfer of assets to the husband by the wife, could not be clubbed with the income of the wife and assessed in her hands. On this lacuna being pointed out in audit (July 1975), Government stated (April 1976) that the issue would be considered while finalising the question of replacing the existing Agricultural Income Tax Act by a new Act which was under consideration.

In the case of a group of five assessees, all of whom were minors, holding 82.13 acres of rubber estate gifted to them by their mother in June 1967, income derived from the property was assessed to tax separately in the hands of the minors assigning them the status of 'tenants-in-common' all the years from 1969-70 to 1972-73. The restricted application of the term 'individual' in these cases, thus, resulted in under-assessment of tax amounting to Rs. 55,300.

The matter was reported to Government in August 1976; reply is awaited (February 1977).

CHAPTER IV

STATE EXCISE DUTIES

4.1. Results of test audit in general

During the period 1975-76, test audit of documents of the departmental offices revealed under-assessment of tax of Rs. 117.79 lakhs in 193 cases.

The under-assessment of tax is categorised under the following heads:—

Nature of irregularity	*Number of cases*	*Amount (in lakhs of rupees)*
1. Short levy due to low yield of spirit	3	35.38
2. Short collection of duty on medicinal and toilet preparations	9	28.03
3. Short collection of tree tax	32	11.94
4. Unauthorised allowance of wastage in reducing and blending operations	2	4.46
5. Unauthorised remission of tree tax	2	1.79
6. Unauthorised allowance of wastage of arrack	15	0.95
7. Other lapses	130	35.24
	193	117.79

Some important cases are mentioned in paragraphs 4.2 to 4.9.

4.2. Non-levy of gallonage fee on rectified spirit imported

Mention was made in paragraph 29 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1974-75 about non-levy of duty and gallonage fee in the case of rectified spirit imported from Tamilnadu by a distillery in the State (Palghat), although the Abkari Act and Rectified Spirit Rules specifically provide for levy of duty and gallonage fee on rectified spirit imported into the State. By a notification issued in October 1975, Government amended the Rectified Spirit Rules exempting importers of rectified spirit from payment of gallonage fee on such spirit which was imported into the State under bond. It was seen in audit of the distillery mentioned above in April 1976 that in the case of 6,09,000 bulk litres of

rectified spirit imported by the distillery from Tamilnadu between October 1975 and March 1976, no gallonage fee was levied, though the distiller had not executed any bond in respect of the spirit imported. This resulted in non-levy of gallonage fee of Rs. 15,22,500.

The matter was reported to the department in April 1976 and to Government in July 1976; reply is awaited (February 1977).

4.3. Irregular allowance of wastage in reducing and blending operations

Reducing and blending operations carried out in distilleries do not affect the strength of spirit used and therefore, no allowance is prescribed for losses arising out of such operations. Mention was made in paragraph 32 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1974-75 about irregular grant of duty-free wastage in reducing and blending operations carried out in three distilleries during 1973-74 and the consequent short levy of duty of Rs. 5.79 lakhs. Subsequent audit of two of these distilleries (Thiruvalla and Palghat) in September 1975 and April 1976 revealed that duty-free wastage in reducing and blending operations was continued to be granted during 1974-75 and 1975-76 also, resulting in an additional short levy of duty amounting to Rs. 8.84 lakhs on wastage of 57,051.9 proof litres of spirit.

The matter was reported to the department in September 1975 and April 1976 and to Government in July 1976; reply is awaited (February 1977).

4.4. Incorrect assessment of duty

Under the Brewery Rules, 1967, duty to be levied on beer produced in breweries shall be calculated at the end of every quarter on the quantity produced in the quarter, as recorded at the time of production. No allowances are prescribed for losses arising in storage, bottling, etc. It was, however, seen in audit (between December 1974 and August 1975) of three breweries that instead of making a quarterly assessment of duty on the quantity of beer produced in the breweries during different periods between January 1972 and June 1975, duty had been levied only on the quantity actually released from there in bottles, resulting in non-levy of duty of Rs. 5.82 lakhs on 11.74 lakhs litres of beer lost in the breweries.

On this being pointed out in audit (April 1975), Government stated (November 1975) that the Board of Revenue had issued instructions to the Officers in charge of the breweries for re-assessment of duty according to rules. Further report is awaited (February 1977).

4.5. Unauthorised allowance of transit wastage

(i) Under the Kerala Distillery and Warehouse Rules, 1968, spirit can be removed from a distillery without payment of duty only under a bond executed by the distiller.

Mention was made in paragraph 31(i) of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1974-75 about the department having allowed a distillery (Thiruvalla) to remove large quantities of arrack to its warehouses in different parts of the State without collecting duty and also without getting bonds executed by the distiller. This distillery was not eligible for exemption from payment of duty on wastage of arrack in transit, as the arrack had not been removed under bond. It was, however, seen in audit (May 1976) that the department was not claiming from the distillery the duty on arrack lost in transit. The consequent loss of revenue amounted to Rs. 3,74,790 on a total quantity of 24,180 proof litres (32,240 bulk litres) of spirit lost in transit between 1st April 1973 and 31st March 1976 alone.

The matter was reported to the department in May 1976 and to Government in July 1976; reply is awaited (February 1977).

(ii) Under the Kerala Rectified Spirit Rules, 1972, the maximum permissible wastage, when spirits intended for manufacture of medicinal and toilet preparations are transported under bond to the bonded spirit stores of pharmaceuticals, is 0.5 per cent. If wastage exceeds this limit, duty on such excess wastage is to be levied at the rate prescribed for Indian made rectified spirit.

During audit of two bonded manufactories (Chalakudy and Quilon) in January-February 1976, it was noticed that no duty had been collected from the manufactories on an excess wastage of 8,269.23 proof litres of spirit that occurred while the spirit consignments were in transit to the bonded spirit stores during the period

August 1972 to February 1974, resulting in non-levy of duty amounting to Rs. 1.28 lakhs.

The matter was reported to Government in August 1976; reply is awaited (February 1977).

(iii) Under the Kerala Distillery and Warehouse Rules, the maximum permissible wastage when spirits are transported under bond in metallic receptacles is 0.5 per cent. If wastage exceeds this limit, duty on such excess wastage is to be collected at the tariff rate. During the audit of a distillery (Palghat) in April 1976, it was noticed that no duty had been collected from the distiller on an excess wastage of 2,800 proof litres of arrack under bond which occurred in transit from the distillery to its warehouses during the period 1st April 1975 to 31st March 1976, resulting in non-collection of duty amounting to Rs. 43,400.

The matter was reported to the department in April 1976 and to Government in June 1976; reply is awaited (February 1977).

4.6. Retention of spirit under bond in excess of the maximum permissible quantity

As per the terms of licence issued to bonded warehouse licensees under the Foreign Liquor (Storage in Bond) Rules, 1961, the quantity of liquors stored in a bonded warehouse on any occasion should not exceed the quantity specified in the licence. The department could enforce the above provision of the licence by arranging removal of the excess quantity stored by the bonded warehouse licensees after collection of duty. Government by an order issued on 9th March 1973, reduced the rate of duty on liquors from Rs. 18 per proof litre to Rs. 14 per proof litre with effect from 1st April 1973. In view of this, the department should have insisted on the removal by the licensees of excess quantity of liquor that was stored in the bonded warehouses in March 1973 itself so that the licensees did not take advantage of the concessional rates effective from 1st April 1973.

It was, however, seen in audit (July 1974) of three bonded warehouses at Ernakulam that 13,933.965 proof litres of spirit in excess of the maximum prescribed in the licences were stored in the warehouses as at the end of March 1973. The retention of the excess quantity of spirit under bond, without payment of duty,

resulted in loss of revenue of Rs. 65,768 (excise duty Rs. 55,736 and sales tax Rs. 10,032).

On this being pointed out in audit (September 1974), Government stated (May 1975 and May 1976) that the limit of possession of spirits at a time exceeded on certain occasions and that explanation of the inspectors responsible for the irregularity had been called for. Further report is awaited (February 1977).

4.7. Non-levy of interest on Abkari arrears

In terms of a specific clause in the notice (forming part of the agreement with the licensees) governing the sale of the privilege of vending toddy, arrack and foreign liquor in independent retail shops, the licensees are liable to pay interest at the prescribed rate on all Abkari arrears and whenever there is a remittance of arrears, interest should be liquidated first before credit is given towards principal. It was seen in audit of two Taluk Offices (Cannanore and Chirayinkil) in March 1976 and April 1976 that in the case of Abkari arrears recovered (between October 1969 and March 1976) in 23 cases by the revenue authorities under the Revenue Recovery Act, interest due on the arrears, from the date of issue of advices for recovery by the Excise Department to the date of realisation as a result of revenue recovery proceedings, was not collected or the remittances from the defaulters were not adjusted towards interest, in spite of there being a specific direction for recovery also of the interest in the advices for recovery. This resulted in non-levy of interest amounting to Rs. 59,030.

On this being pointed out in audit (March and April 1976), the Tahsildars stated (March and April 1976) that action would be taken to recover interest from the parties concerned. Further report is awaited (February 1977).

The matter was also reported to Government in July 1976; reply is awaited (February 1977).

4.8. Short levy of duty on medicines containing alcohol

Under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the Rules made thereunder, excise duty leviable on the spirit content in the medicinal preparations which are capable of being consumed as ordinary alcoholic beverages (termed

as 'restricted preparations') is Rs. 3.85 per proof litre and that in the case of other medicinal preparations is Rs. 1.10 per proof litre. By an order issued by the Government of India in March 1963, 'Tincture Chinenis' was declared an item to be included in the category of 'restricted preparations'.

It was, however, seen in audit of a pharmacy (Quilon) in February 1976 that duty in the case of 'Tincture Chinenis' prepared and sold by the pharmacy was being levied and collected only at the lower rate of duty applicable to the medicines falling under the 'unrestricted' category. This resulted in short levy of duty amounting to Rs. 19,169 on 6,992 proof litres of spirit in the preparation issued between March 1963 and March 1975.

The matter was reported to Government in March 1976. Government stated (October 1976) that the audit observation was found correct and that the Board of Revenue had since been requested to take immediate action to collect the amount short levied. Further report is awaited (February 1977).

4.9. Short levy of duty on spirit produced

Spirit is produced in distilleries by fermenting wash (i. e., a mixture of water and saccharine materials) with the aid of cultivated yeast. The fall in gravity of a particular quantity of wash subjected to fermentation, which is measured by means of saccharometer, indicates the quantity of spirit produced from that wash. In order to ensure that spirit given out by the entire quantity of wash subjected to fermentation is correctly accounted for, it is prescribed in the Distillery and Warehouse Rules that the distiller should declare the quantity of wash to be fermented and its gravity every day, and the distillery officer should, after due verification, enter these details as well as the degree of attenuation of the wash and the quantity of spirit produced from the wash, in the register 'Wash made and spirit obtained therefrom' maintained by him. It was seen in audit of a distillery (Shertallai) in May 1976 that 13,557 litres of wash, which were declared by the distiller to have been set up for fermentation and indicated in the records by the distillery officer as having been subjected to fermentation, between December 1974 and September 1975, were omitted to be entered in the register 'Wash made and spirit

obtained therefrom', with the result that about 1,188 proof litres of spirit, which the above quantity of wash would have yielded in the process of fermentation (based on the uniform rate of yield obtained from wash fermented in the distillery during the period) escaped levy of excise duty. The consequent short levy of duty amounted to Rs. 18,414. The matter was reported to the Board of Revenue in June 1976 and to Government in August 1976; reply is awaited (February 1977).

CHAPTER V

TAXES ON VEHICLES

5.1. Results of test audit in general

During the period 1975-76, test audit of documents of Motor Vehicles Department revealed under-assessment of tax of Rs. 61.74 lakhs in 7,905 cases.

The under-assessment of tax is categorised under the following heads:—

Nature of irregularity	*Number of cases*	*Amount (in lakhs of rupees)*
1. Loss of revenue due to non-maintenance of reserve buses	524	24.42
2. Irregular exemptions/concessions	1,240	14.57
3. Non-collection of tax	203	8.40
4. Other lapses	5,938	14.35
	7,905	61.74

Some important cases are mentioned in paragraphs 5.2 to 5.9.

5.2. Application of incorrect rate of tax

The Kerala Motor Vehicles (Taxation) Act, 1963, prescribes a higher rate of tax for stage carriages which are permitted to cover more than 200 kilometres in a day. It was, however, noticed in audit (between July 1974 and December 1975) that in the case of five stage carriages of the category mentioned above, in four Regional Transport Offices, tax was levied only at the lower rate applicable to vehicles permitted to cover daily a distance not exceeding 200 kilometres, for the period between May 1965 and September 1975, resulting in short levy of tax of Rs. 18,555.

On this being pointed out in audit (between July 1974 and December 1975), the department realised Rs. 12,655 (between April 1975 and February 1976) in the case of three vehicles.

The matter was also reported to Government in February 1976. Government stated (August 1976) that revenue recovery steps had been taken to recover the amount due (Rs. 2,336) in respect of the

fourth vehicle and an amount of Rs. 356 out of Rs. 3,564 due in respect of the remaining vehicle had been realised (December 1975). Further report is awaited (February 1977).

5.3. Short levy of tax

(i) Under the Kerala Motor Vehicles (Taxation) Act, 1963, tax in respect of a tractor employed to draw a trailer was to be assessed on the combined laden weight of both. Besides, the trailer by itself being a goods vehicle, it was also to be assessed separately to tax based on its laden weight. It was, however, seen in audit of all the eleven Regional Transport Offices conducted between December 1972 and April 1976 that there was no uniform procedure to assess tax on tractors and trailers correctly. In these offices, tractors were taxed on the combined laden weight of the tractor and the trailer without assessing the trailer to tax separately in 89 cases and on their laden weight alone in 184 cases. This incorrect determination of tax resulted in short levy of tax of Rs. 5,36,858 from July 1963 to September 1975.

Government have been requested (June 1976) to examine the factors which led to the short levy and to issue appropriate directions. Reply is awaited (February 1977).

(ii) By an order issued in August 1974, Government enhanced the rate of composition fee payable towards tax on passengers and goods in respect of stage carriages from 48 paise per seat per kilometre to 58 paise per seat per kilometre with effect from 1st September 1974. It was, however, noticed in audit (December 1975 and January 1976) of two Regional Transport Offices (Trivandrum and Kozhikode) that tax was not realised at the enhanced rate in respect of 18 stage carriages for the period September 1974 to September 1975, resulting in short levy of tax of Rs. 17,657.

On this being pointed out in audit (December 1975 and January 1976), the department stated that action would be taken to realise the amount short levied. The matter was also reported to Government in June 1976. Government stated (July 1976) that the short levy (Rs. 15,825) in respect of 15 stage carriages (Regional Transport Office, Trivandrum) had been realised between

April 1976 and June 1976 and in the case of the remaining three vehicles (Regional Transport Office, Kozhikode), the entire tax on passengers and goods amounting to Rs. 11,299 (including tax of Rs. 9,467 for different periods between April 1974 and September 1975 omitted to be demanded and collected even at the old rate) had been collected in June 1976.

(iii) Taxes on vehicles are to be computed on the registered laden weight in the case of goods vehicles and on the passenger capacity in the case of stage carriages. Thus, whenever there is an enhancement of the registered laden weight of goods vehicles or the passenger capacity of stage carriages, there should be a corresponding increase in the tax leviable in respect of such vehicles. It was, however, noticed in audit (between January 1973 and April 1976) that in 25 cases where the registered laden weights of goods vehicles or the passenger capacity of stage carriages were enhanced, corresponding revision of vehicle tax and tax on passengers and goods was not done. This resulted in short levy of tax of Rs. 10,922 for the period between July 1966 and September 1975 in the case of 25 vehicles registered in nine Regional Transport Offices.

On this being pointed out in audit (between January 1973 and April 1976), the department rectified (between March 1973 and October 1975) the mistake in 16 cases by recovering an amount of Rs. 6,650. Report regarding recovery of Rs. 4,272 in the remaining 9 cases, which is stated to be under various stages of action, is awaited (February 1977).

The matter was also reported to Government in August 1976; final reply is awaited (February 1977).

5.4. Irregular concession of tax

Under the Kerala Motor Vehicles (Taxation) Act, 1963, Government prescribed reduced rate of vehicle tax for reserve buses doing substitute service in the place of route buses and exempted them from payment of tax on passengers and goods subject to the condition that the period of substitute service in the place of route buses shall not exceed 20 days at a time and the reserve buses shall not be used for any purpose other than

substitute services during the entire quarter. Mention was made in paragraph 78 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1974-75 about the grant of irregular concession amounting to Rs. 42,774 in the case of 7 stage carriages, belonging to a transport undertaking, which had been conducting regular services in sanctioned routes without any limit of time. In that case, Government stated (November 1975) that action was being taken by the Regional Transport Officer to realise the dues after verifying the log books of the concerned vehicles.

It was noticed during the subsequent audit of the Regional Transport Office, (Trivandrum) in February 1976 that similar concession in the rate of tax had been granted in the case of another 40 stage carriages also of the same transport undertaking, in spite of the fact that these vehicles had been used for plying in regular sanctioned routes without any limit of time. The resultant short levy of tax amounted to Rs. 2,65,921 (vehicle tax Rs. 79,355 and tax on passengers and goods Rs. 1,86,566) for the period April 1971 to March 1974. The matter was reported to the assessing officer in February 1976 and to Government in April 1976. Government stated (November 1976) that the vehicles in question were not eligible for reduced rate of tax and that the amount of short levy had since been demanded (August 1976) from the undertaking. Report regarding collection is awaited (February 1977).

5.5. Irregular exemption

(i) Motor vehicles belonging to the State Government and the Central Government have been exempted from payment of vehicle tax and tax on passengers and goods. This exemption is not applicable to vehicles owned by autonomous bodies.

It was noticed in audit (between January and November 1975) of three Regional Transport Offices (Trivandrum, Trichur and Kozhikode) that in the case of nine vehicles belonging to two autonomous bodies, exemption from payment of tax was incorrectly allowed treating them as Government vehicles. The consequent non-levy of tax for the period between August 1963 and September 1975 amounted to Rs. 45,808.

The matter was reported to the department between January 1975 and November 1975 and to Government in February 1976. Government stated (November 1976) that tax in respect of three vehicles amounting to Rs. 30,395 was realised in April and May 1976 and action had been taken to realise the tax due in respect of the remaining six vehicles. Further report is awaited (February 1977).

(ii) Under the Kerala Motor Vehicles (Taxation) Act, 1963, fleet owners were entitled to a proportionate reduction in the amount of tax payable in respect of vehicles which were certified by the Regional Transport Officers as not used for a period of one calendar month or more. A test check conducted (February 1976) of a Regional Transport Office (Nationalised Sector, Trivandrum), however, revealed that exemption from payment of vehicle tax and tax on passengers and goods was granted in respect of 21 vehicles belonging to a transport undertaking for the period April 1971 to March 1974, though during the periods the vehicles were actually in service. This irregular exemption resulted in short levy of tax of Rs. 24,891.

The matter was reported to Government in April 1976. Government stated (August 1976) that it was on the incorrect information given by the undertaking that the Regional Transport Officer granted exemption to the vehicles and that the Transport Commissioner had given instructions to the Regional Transport Officer to verify the case in detail and to take necessary steps to make good the loss. Further report is awaited (February 1977).

(iii) In the case of six motor vehicles owned by a Research Institute (Kasaragod) functioning as a unit of the Indian Council of Agricultural Research (an autonomous body) from 1st April 1966 onwards, exemption from payment of vehicle tax and tax on passengers and goods was incorrectly allowed by the department treating them as vehicles owned by the Central Government. This resulted in short levy of tax of Rs. 21,047, during the period April 1966 to September 1975.

On this being pointed out in audit (February 1976), Government forwarded (April 1976) a copy of a communication of March 1976 received by them from the Transport Commissioner, in which

the Transport Commissioner admitted that the department had no information about the taking over of the Institute by the Indian Council of Agricultural Research from the Central Government, till it was pointed out in audit. Report regarding rectification of the mistake is awaited (February 1977).

5.6. Non-revision of registered laden weight

Under Section 36(1) of the Motor Vehicles Act, 1939, the Government of Kerala issued a notification in June 1964 directing that the registered laden weight of transport vehicles, except the light motor vehicles, should be fixed at 112½ per cent of the gross vehicle weight and axle weight for vehicles manufactured prior to 1953 and at 125 per cent of such gross vehicle weight and axle weight for vehicles in other cases, as certified by the manufacturer. By another notification issued in May 1974, Government extended the benefit of such enhancement in weight to light motor vehicles as well. It was, however, noticed in audit of ten Regional Transport Offices conducted between June 1975 and May 1976 that tax in respect of 473 light motor vehicles was not levied on the basis of the revised laden weight of the vehicles, with effect from May 1974. This resulted in short levy of tax of Rs. 1,40,312 for the period May 1974 to March 1976.

On this being pointed out in audit (August 1975), Government stated (January 1976) that there had been some delay in communicating the notification of May 1974 to the Regional Transport Officers and that steps had been taken to realise the tax due without delay. In regard to the short levy of Rs. 39,533 in respect of 149 vehicles pointed out (June 1975) in the Regional Transport Office, Ernakulam, the department stated (February 1976) that tax due on 69 vehicles amounting to Rs. 18,147 had since been recovered and that action had since been taken to recover the balance amount. Replies in regard to the non-levy pointed out in other Regional Transport Offices are awaited (February 1977).

5.7. Irregular refund of tax

Under the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 and the Rules made thereunder, the operators of stage carriages and goods vehicles, who have been permitted to

compound the tax on passengers and goods due in respect of the vehicles, by paying in lieu of the tax a fixed fee, should remit the fee within the first fourteen days of every quarter. In case the composition fee is not remitted by an operator within the prescribed period, the application for permission to compound the tax should be deemed to have been rejected and the tax at the usual rates assessed for the period for which the composition fee was due. There is no provision in the Act or in the Rules to allow an operator to claim exemption from payment of composition fee for the whole or a portion of the quarter for non-use of the vehicles. However, if the assessing officer is satisfied of a claim made by the operator that a motor vehicle was not used as a taxable vehicle in the State during the whole of one month or two months in a quarter, a refund is allowed at the rate of one-fourth or three-fifths respectively of the fee paid for the quarter. It was seen during audit (between June 1974 and June 1976) that in many cases, the operators who made belated remittances of composition fee, were not only incorrectly allowed the benefit of the composition fee for the period for which the fee was due but were further exempted from payment of the fee on account of non-use of vehicles for one month or two months in a quarter, at the rate of one-third or two-thirds respectively of the fee fixed for the quarter. The loss of revenue caused due to grant of exemption for non-use of vehicles at a rate higher than the rate prescribed for the refund of fee alone worked out to Rs. 58,192, for the period between April 1967 and August 1975, in the case of 1,185 vehicles in all the eleven Regional Transport Offices.

The matter was reported to Government in November 1975 and July 1976. Government stated (December 1976) that action had been taken in eight Regional Transport Offices in the case of 676 vehicles to realise the short levy. Further report is awaited (February 1977).

5.8. Non-levy of tax

Under the Kerala Motor Vehicles (Taxation) Act, 1963, tax at the prescribed rates is leviable on all motor vehicles used or kept for use in the State. It was, however, noticed in audit (between August 1974 and December 1975) of three Regional Transport Offices (Trivandrum, Quilon and Trichur) that 13 vehicles (tractor/

power-tiller/tractor-trailer combinations) were assessed to tax not from the date of taking delivery of them by the owners in the State, but from dates of registration of the vehicles by the department, with the result that the vehicles escaped levy of tax during periods between the dates of the delivery and the dates of registration, ranging from 4 months to 26 months. The resultant non-levy of tax amounted to Rs. 11,747.

The matter was reported to the department between August 1974 and December 1975 and to Government in July 1976. Government stated (November 1976) that the service of 12 vehicles (tax effect Rs. 10,398) belonging to the districts of Trivandrum and Quilon prior to the dates of registration was under verification and that action had been taken to realise the tax (Rs. 1,349) in respect of another vehicle pertaining to Trichur. Further report is awaited (February 1977).

5.9. Defective maintenance of accounts relating to demand and collection of tax

(i) Demand, Collection and Balance register is the basic record maintained in Regional Transport Offices to watch the collection of vehicle tax/tax on passengers and goods, in respect of the transport vehicles (including goods vehicles and stage carriages) plying in the State. As and when an endorsement of tax payable is made by the department in the registration certificate of a vehicle, an entry to that effect is to be made in the register and remittances of tax by registered owner of the vehicle are also to be indicated therein against the demand, so that the register serves the purpose of giving a correct statement of accounts of the vehicle for an entire financial year. It was seen in audit (between December 1972 and May 1976) that this register had not been maintained properly in the Regional Transport Offices, resulting in non-levy of tax on vehicles and non-accounting of tax remitted by the operators.

(ii) It was seen in audit (between December 1974 and July 1975) of three Regional Transport Offices (Quilon, Kottayam and Idukki) that 39 vehicles registered in these regions were not entered in the Demand, Collection and Balance Register and also no tax in respect of these vehicles was demanded/collected from the

registered owners. Vehicle tax and tax on passengers and goods omitted to be demanded and collected in respect of these vehicles worked out to Rs. 1,94,930 (vehicle tax Rs. 1,37,226 and tax on passengers and goods Rs. 57,704) for the period between June 1961 and September 1975.

The matter was reported to Government in May 1975 and December 1975. Government stated (August 1975 and April 1976) that in the case of one vehicle in Quilon region, demand of tax (Rs. 481) was raised in December 1974 and the amount collected in February and May 1976 and that action was in progress to collect the tax in the remaining cases. Further report is awaited (February 1977).

(iii) Under the Kerala Financial Code (Volume I), all officers entrusted with the collection of revenue are to reconcile the departmental figures of receipts (as entered in the Demand, Collection and Balance register) with the treasury figures, before the accounts are submitted to the controlling officers. It was, however, seen in audit (between September 1974 and May 1976) that in all the Regional Transport Offices, the work connected with reconciliation of remittances of tax made by the operators directly into the treasuries (as accounted for in the Demand, Collection and Balance register) with those booked by treasuries had not been effected with treasury records. On this being pointed out in audit (July 1976), Government stated (July 1976) that the Regional Transport Officers had been directed to furnish reports regarding reconciliation of figures in each quarter to the Transport Commissioner.

(iv) A scrutiny in audit of the particulars of remittances of tax as recorded by the departmental officers in the Demand, Collection and Balance register with those appearing in the treasury records revealed the following:—

(a) In 8 Regional Transport Offices particulars of remittance of Rs. 94,857 in 168 cases noted in the Demand, Collection and Balance register between 1st January 1973 and 31st October 1975 were not traceable in the records of the treasuries. The chalans, in support of these remittances were also not available in the Regional Transport Offices for verification. The matter was reported to the department between July 1974 and June 1976; reply is awaited (February 1977).

(b) In 36 cases in three Regional Transport Offices, the remittances as per the records of the treasuries were less than those accounted for in the Demand, Collection and Balance registers by Rs. 3,169 and in another 10 cases in three offices, remittances as per the records of the treasury were in excess of the figures of the department by Rs. 1,852.50. This was reported to the department between November 1974 and March 1976; reply is awaited (February 1977).

(c) In the case of 17 vehicles in 3 Regional Transport Offices, the chalans for tax remitted between July 1973 and April 1975 were posted in the Demand, Collection and Balance register against vehicles other than those in respect of which tax had been remitted. The discrepancy was reported to the department between November 1974 and April 1976; reply is awaited (February 1977).

(v) Other defects of a general nature in the maintenance of Demand, Collection and Balance register by the Regional Transport Officers, noticed in audit (between January 1973 and May 1975), were as follows:—

(a) Certificate to the effect that all the vehicles and the arrears outstanding against the vehicles in the Demand, Collection and Balance register for the previous year had been carried over, was not recorded in the current register.

(b) The particulars of remittance noted in the register were not verified and attested by any responsible officer.

(c) The registered laden weight of the goods vehicles and the passenger capacity of the stage carriages, with reference to which tax is levied from the owners of the vehicles, were not noted in the register.

(d) The number and date of chalans for remittance of tax were not noted in the register.

(e) In cases where demands for tax were not raised, the reasons therefor were not noted in the register.

(f) Total number of vehicles as per the Tax Endorsement register did not agree with the number of vehicles noted in the Demand, Collection and Balance register.

On the omissions being pointed out in audit (between April 1973 and May 1975), the Transport Commissioner issued

(June 1975) circular instructions to the Regional Transport Officers for the correct maintenance of the Demand, Collection and Balance register. It was, however, seen during subsequent audit between August 1975 and May 1976 that the omissions continued to exist. This was reported to the department between August 1975 and June 1976; reply is awaited (February 1977).

The above points were also reported to Government in August 1976; reply is awaited (February 1977).

CHAPTER VI

STAMP DUTY AND REGISTRATION FEES

6.1. Introductory

Stamp duty falls under two categories—judicial and non-judicial. Judicial stamp duty represents fee payable by persons in connection with legal proceedings, while non-judicial stamp duty is levied on instruments executed for giving legal validity to the transactions dealt with therein. The basis for the levy of non-judicial stamp duty (which is dealt with in this chapter) is the Indian Stamp Act, 1899 (Central Act), as adopted by the Government of Kerala and amendments made thereto from time to time. According to Entry 91 of the First List of Seventh Schedule to the Constitution of India, the stamp duty leviable on instruments like bills of exchange, promissory notes, letters of credit, transfer of shares, cheques, bills of lading, insurance policies, debentures etc., are governed by the Central Act. The proceeds of duties in these cases are, however, assigned to the State. The duties leviable in respect of other instruments are governed by the Kerala Stamp Act, 1959.

The Indian Registration Act, 1908, confers powers on the State Government to prescribe the rates of fees payable for registration of documents, for searching registers, for making or granting copies of documents, etc.

6.2. Trend of revenue

A comparative table indicating the number of documents registered, total tax revenue, stamp duty and registration fees collections and percentage of stamp duty and registration fees collections to the total tax revenue, for the last five years, is given below:—

Year	*Number of documents registered*	*Total tax revenue raised by the State*	*Stamp duty and registration fees collections*	*Percentage of stamp duty and registration fees collections to the total tax revenue*
(1)	(2)	(3)	(4)	(5)
		(in crores of rupees)		
1971-72	6,15,786	74.70	5.84	7.8
1972-73	6,23,661	82.80	6.91	8.3
1973-74	7,29,635	95.46	8.61	9.1
1974-75	8,28,669	123.56	10.45	8.4
1975-76	7,10,704	159.70	11.82	7.4

6.3. Organisation

The Registration Department administers the enactments relating to the levy of stamp duty and registration fees. The Board of Revenue exercises a general supervision over the department. The Inspector General of Registration is the head of the department. He is assisted in inspection work by three Inspectors of Registration Offices. There are ten Registration Districts in the State, each under the charge of a District Registrar. Each district is sub-divided into several sub-districts, each under the jurisdiction of a Sub-Registrar.

6.4. Results of test audit in general

During the period 1975-76, test audit of documents registered in the offices of the Registration Department revealed under-assessment of stamp duty and registration fees of Rs. 52.97 lakhs in 1,283 cases.

The under-assessment of tax is categorised under the following heads:—

Nature of irregularity	*Number of cases*	*Amount (in lakhs of rupees)*
1. Under-valuation of instruments	168	7.87
2. Incorrect classification of instruments	339	10.58
3. Other lapses	776	34.52
	1,283	52.97

Some important cases are mentioned in paragraphs 6.5 to 6.10.

6.5. Under-valuation of instruments

Under the Kerala Stamp Act, 1959, stamp duty is leviable on an instrument of conveyance, gift, settlement, partition, transfer of lease, mortgage with possession or any other instrument of transfer of property *inter vivos*. The duty is *advalorem* on the basis of value determined or declared in the instruments.

Under Section 45 A of the Kerala Stamp Act, 1959 and the Rules made thereunder, the party executing an instrument has to furnish along with the instrument a separate statement in a prescribed form containing information about various items of properties involved and his own assessment of the value of such properties. In order

to ensure that the party does not evade paying the full amount of stamp duty, the registering officer, while registering an instrument, has to find out, after necessary enquiries, whether the value or the consideration, as the case may be, has been correctly furnished in the instrument. If the registering officer has reasons to believe that the value of the property or the consideration has not been truly set forth in the instrument, he may, after registering the instrument, refer the same to the Collector for determination of the value or the consideration and the proper stamp duty payable thereon. The Collector can also *suo motu* call for a document, suspected to have been under-valued, within two years from the date of registration and determine the value or the consideration, as the case may be, and the duty payable thereon.

On a test audit of the Sub-Registry Offices, the following deficiencies in the administration of the duty came to notice:—

(a) The registering officers were accepting the value or consideration, as set forth in instruments by the executants, as correct without conducting enquiries.

(b) There was delay ranging from six months to two years on the part of registering officers in reporting cases of under-valuation to the Collectors.

(c) There was also delay ranging from two to five years on the part of the Collectors in determination of value or consideration and the proper stamp duty in respect of under-valued documents, reported to them by the registering officers.

The following table indicates year-wise details of number of documents registered during 1972 to 1975 which were found under-valued during test check in audit, with reference to the value of adjacent lands or lands in the vicinity, value shown in other documents relating to the same land executed previously etc., which have a bearing on the value of the property, as laid down in the Kerala Stamp (Prevention of Under-Valuation of Instruments) Rules: —

Year of registration	*Number of documents*	*Value or consideration exhibited in the documents*	*Value worked out with reference to the value of nearby lands or the value of the same land shown in documents registered previously etc.*	*Short levy*		
				Stamp duty	*Registration fees*	*Total*
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		Rs.	Rs.	Rs.	Rs.	Rs.
1972	170	19,48,915	70,09,467	2,15,981	49,454	2,65,435
1973	135	12,43,733	76,37,788	1,97,460	51,010	2,48,470
1974	169	36,37,436	1,35,74,650	4,84,706	80,336	5,65,042
1975	28	18,71,611	35,22,736	88,134	15,400	1,03,534
Total	502	87,01,695	3,17,44,641	9,86,281	1,96,200	11,82,481

Out of the above 502 cases of under-valued documents pointed out in audit (between May 1973 and July 1976), the registering officers have so far (February 1977) referred 397 cases to the Collectors for action under Section 45A. The Inspector General of Registration stated (October 1974) that most of the under-valued documents were not being referred to Collectors by registering officers.

Mention was made in paragraphs 46 and 55 of the Reports of the Comptroller and Auditor General of India on Revenue Receipts for the years 1972-73 and 1973-74 respectively about the short levy of stamp duty and registration fees amounting to Rs. 47,527 in 61 deeds of settlement registered in various registering offices, which were found in audit to have been under-valued to the extent of Rs. 13,57,671 with reference to the value accepted by the settlers in proceedings of the Central Direct Taxes. Details of a few more cases of the kind, noticed in audit (between May 1973 and July 1976) are given below:--

Year of registration	*No. of settlement deeds*	*Value shown in the documents*	*Value accepted by the settlers in proceedings of Central Direct taxes*	*Short levy*		
				Stamp duty	*Registration fees*	*Total*
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		Rs.	Rs.	Rs.	Rs.	Rs.
1969	17	1,79,000	5,98,628	10,492.50	4,197	14,689.50
1970	12	47,200	1,92,090	3,622.50	1,449	5,071.50
1971	5	70,670	2,59,840	4,730.00	1,892	6,622.00
1972	13	1,51,000	5,13,486	9,062.50	3,625	12,687.50
1973	9	65,500	2,06,590	3,527.50	1,410	4,937.50
1974	4	58,000	1,57,480	2,485.00	995	3,480.00
Total	60	5,71,370	19,28,114	33,920.00	13,568	47,488.00

The following table shows the number of under-valued documents referred to the Collectors by registering officers under Section 45 A of the Act, short levy of stamp duty and registration fees involved, number of cases disposed of by the Collectors and the amount of duty and registration fees leviable and collected in these cases, for the years 1968 to 1974:—

* Number of documents referred to the Collectors

Year	*Number*	*Value exhibited*	*Value assessed by the registering Officer*	*Short levy of*		
				Stamp duty	*Registration fees*	*Total*
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		Rs.	Rs.	Rs.	Rs.	Rs.
1968 to 1972	1,589	37,64,078	1,03,82,846	3,20,901	62,826	3,83,727
1973	3,073	70,17,936	1,72,74,203	5,59,423	79,424	6,38,847
1974	44,078	10,35,49,202	13,15,49,274	87,14,155	4,30,536	91,44,691
Total	48,740	11,43,31,216	15,92,06,323	95,94,479	5,72,786	1,01,67,265

* Figures are provisional

*Number of documents disposed of by the Collectors.

Total number of documents disposed of in each year	*Stamp duty and registration fees collectable*			*Amount collected*	
	Stamp duty	*Registration fees*	*Total*	*Stamp duty*	*Registration fees*
(8)	(9)	(10)	(11)	(12)	(13)
	Rs.	Rs.	Rs.	Rs.	Rs.
408	85,629	...	85,629	8,128	...
486	1,29,573	...	1,29,573	7,475	...
268	32,293	...	32,293	683	...
1,162	2,47,495	...	2,47,495	16,286	...

The statement above would indicate that a large number of documents relating to old periods and involving large amounts of short levy, remained without final action. It was noticed in audit (December 1975) from a reference made (September 1975) by a Collector (Trivandrum) to the Board of Revenue that due to inadequacy of staff, more than 50 per cent of the "10,000 documents" received by him could not be entered in the office registers. In a note submitted to the Public Accounts Committee in connection with examination by the Committee of paragraph 46 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1972-73, Government stated (April 1976) that though the documents in question had been referred to the Collectors by the registering officers, action under Section 45A by the Collectors was not possible in those cases, as the statutory period of two years from the date of registration of documents within which action was to be taken by the Collectors was already over. In the circumstances, the duty amounting to Rs. 93,46,984 due in respect of 47,578 documents referred to in the statement above, which are pending with the Collectors for action under Section 45A can be considered to have been lost to Government, as they were registered more than two years back. The Inspector General of Registration stated (October 1974) that "loss due to under-valuation per year as computed by this department is Rs. 5 crores" and "the loss during the years from 1969 to 30th June 1974 would be about Rs. 30 crores".

The Taxation Enquiry Committee appointed by the State Government (December 1967), while examining the question of under-valuation of documents, felt that the most effective method of dealing with evasion would be to relate the stamp duty on conveyance of immovable properties to their capital value. The Committee, therefore, recommended (December 1968) that all the landed properties in the State might be valued by employing a suitable valuation machinery, so that duty could be imposed on the basis of capital value of properties. Government have not taken a final decision on this recommendation (February 1977). Having found in test audit of Sub-Registry Offices that the executants of instruments evaded payment of stamp duty by understating value or consideration in the instruments, the question regarding fixation of minimum value in respect of land in each survey number and amending the relevant article of the Schedule to the Act

to substitute the term 'consideration' with 'market value' was taken up in audit with Government in November 1973 and May 1974. Government stated (January 1976 and March 1976) that action had already been initiated for amending the Stamp Act with a view to preventing under-valuation of documents and that the question of substituting the term 'consideration' in the Stamp Act with 'market value' was also under active consideration.

There is provision in the Kerala Stamp Act, 1959, to realise from the parties executing documents, deficiency in stamp duty subsequent to the registration of the documents. However, a corresponding provision for the realisation of deficiency in registration fees does not exist in the Indian Registration Act. As such the department will not be able to collect amounts by way of registration fees found due in respect of under-valued documents on fixation of the correct value or consideration by the Collectors under Section 45A of the Kerala Stamp Act, 1959. On this being pointed out in audit (January 1974), Government stated (February 1974) that action was being taken to amend Section 80 of the Indian Registration Act. Further report is awaited (February 1977).

6.6. Incorrect classification of instruments

(i) Under the Kerala Stamp Act, 'release' means an instrument by which a co-owner renounces a claim against any specified property in favour of the other co-owners. A 'release deed' attracts levy of stamp duty of a fixed amount of Rs. 30 each, when the amount or value of the claim exceeds Rs. 1,000.

It was found during audit (April 1973) that taking advantage of the provisions permitting release of property among co-owners, in a number of cases the co-owners were transferring the entire property jointly owned by them to outsiders, by executing release deeds, although the transactions involved satisfied all the characteristics of a 'sale', requiring the levy of higher rate of stamp duty applicable to 'conveyance'. The *modus operandi* followed in these cases was that one of the co-owners of a property would first transfer his interest or a fraction thereof in the property to an outsider for consideration, treating the transfer as a 'sale' and also paying stamp duty as for 'conveyance'. Thereafter, all the co-owners, one after the other, transfer their share in the property to the same person for

consideration, treating the transaction as release and paying duty as for release deeds. Short levy of duty on account of such incorrect classification of 'sale deeds' as 'release deeds' amounted to Rs. 8.11 lakhs in respect of 362 documents registered in 53 offices between 1st October 1971 and 31st December 1975. The irregular practice, widely followed in the State, was pointed out to Government in audit in August 1973 and August 1974, for taking suitable remedial steps. The Inspector General of Registration stated (July 1974) that when the first co-owner sells his share in the property to an outsider, the purchaser cannot be deemed to be a co-owner as the registration of the sale deed by the co-owner has the effect of giving public notice for division of property to other co-owners and consequently a division of status takes place among the co-owners. As such, execution of deeds by the co-owners releasing property in favour of the outsider was a clear case of manipulation for evading payment of higher rate of stamp duty. However, Government stated (July 1976) that the provisions of the Act were being amended with a view to preventing evasion of stamp duty by release of right by the real co-owners to created co-owners. It was pointed out in audit (August 1976) that as the right enjoyed by the co-owners on a property gets extinguished on the division of status among the co-owners by the execution of a sale deed by the first co-owner in favour of an outsider, the latter can get the share of the other co-owners in the property only by means of a conveyance and hence an amendment to the Act would not be necessary for checking evasion of stamp duty; reply is awaited (February 1977).

(ii) Under the Kerala Stamp Act as clarified by judicial decisions, an instrument whereby a retiring partner of a firm transfers his interest in the assets of the partnership to the continuing partner for a consideration is a conveyance. It was seen in audit (June 1974) of a Sub-Registry Office (Feroke) that an instrument purporting to transfer the right, title and interest of two persons claiming to be partners in a business association carried on by the said two persons and a company, in the movable and immovable properties for a consideration of Rs. 1,75,000 to the said company, was classified as a release deed instead of as a conveyance.

On this being pointed out in audit (July 1974), the Inspector General of Registration agreed (April 1975) that there was not a full and true statement of the relevant facts and circumstances of the case in the document and this led to the mis-classification. The District Registrar (Kozhikode) has since sent up the case to the District Collector (Kozhikode) in January 1975 for taking penal action against the executants in terms of Section 62 of the Act. Further report on this as well as the action taken to demand the differential duty is awaited (February 1977).

The case was reported to Government in July 1976; reply is awaited (February 1977).

(iii) Under the Act, 'instrument of partition' means any instrument whereby co-owners of any property divide such property in severalty, whereas 'conveyance' includes a conveyance on sale and other instrument by which property is transferred *inter vivos* and which is not otherwise specifically provided for in the Schedule to the Act. It was seen during audit of a Sub-Registry Office (Manjeri) in April 1975 that an instrument purported to transfer properties valued at Rs. 1,67,300 *inter vivos* executed by five persons was classified by the Sub-Registrar as an instrument of partition, though the executants lacked the right of co-ownership over the properties agreed to be transferred. This instrument was to be rightly classified as conveyance and subjected to higher rates of stamp duty and registration fees. The incorrect classification of the document resulted in short levy of stamp duty and registration fees amounting to Rs. 7,917.

On this being pointed out in audit (May 1975), the District Registrar stated (September 1975) that the document did not bring out in clear terms the right of co-ownership of the executants over the properties or that the executants were enjoying the properties as co-owners and hence, the remarks of the audit were correct.

The matter was also reported to the Board of Revenue in September 1975 and to Government in July 1976; reply is awaited (February 1977).

(iv) Under the provisions of the Act, as clarified by judicial decisions, the relinquishment of claim against a property by one of its co-owners in favour of another co-owner is 'release', if the

transfer is made for consideration (i.e., the amount or value of the claim), and it is a 'gift', if the transfer is made without consideration. It was, however, noticed in audit (between October 1973 and March 1976) that in four Sub-Registry Offices, eight instruments evidencing relinquishment of claim against properties by one of the co-owners in favour of another co-owner without consideration, were assessed to stamp duty at lower rates applicable to 'release deeds' instead of at rates applicable to 'gift deeds', resulting in short levy of stamp duty amounting to Rs. 7,447. These cases were reported to the department between December 1973 and April 1976; reply is awaited (February 1977).

The matter was also reported to Government in March 1976; reply is awaited (February 1977).

6.7. Non-levy of 'duty on transfer of property' in the case of transfer of lease

Under the Kerala Municipal Corporations Act, 1961, the Kerala Municipalities Act, 1960 and the Kerala Panchayats Act, 1960, a duty on transfer of property (surcharge on stamp duty) on instruments purporting to effect sale, exchange, gift, mortgage with possession and lease in perpetuity of immovable property situated within the limits of the area of a corporation, municipality or panchayat, is levied at the rate of five per cent of the value or the consideration as set forth in the instrument relating to property in corporation areas and at the rate of four per cent in municipal and Panchayat areas.

Government ordered (between August 1963 and October 1967) that instruments intended to effect transfer of the right of mortgage with possession, perpetual lease etc., over immovable property would also attract levy of surcharge. The reason which weighed with Government for treating an instrument of the above description as leviable with surcharge was that the right of the mortgagee, the lessee etc., over the property could be deemed as immovable property and hence transfer of the right was, in effect, a transfer of immovable property attracting levy of surcharge under the Acts mentioned above. According to a judicial decision, transfer of immovable property includes a transfer of lease also. Also

under the Kerala Registration Manual, the interest of a lessee on land under any kind of lease is to be treated as immovable property. It would, thus, appear that transfer of the right of a lessee (whether the lease is perpetual or not) in an immovable property is sale of immovable property and surcharge is leviable on instruments effecting such transfer. It was, however, seen in audit (July 1973) that transfer duty was not being levied by registering officers on instruments executed to effect transfer of the right of lease (known under different names like 'Kuzhikkanam', 'Verumpattom', 'Paliyam pattom', 'Vadakkumnathan pattom' etc.) other than perpetual leases.

The department stated (June 1974) that duty on transfer of property was not levied on transfer of lease other than perpetual lease for want of specific orders of Government to that effect. The non-levy by the department of 'duty on transfer of property' on instruments effecting transfer of the right of lessees on lands under lease (excepting perpetual lease, in respect of which 'duty on transfer of property' is levied) resulted in loss of duty amounting to Rs. 32.81 lakhs in respect of 20,711 documents registered in 192 Sub-Registry Offices between 1st October 1971 and 31st December 1975. The position was reported to Government in August 1973, January 1974 and August 1974; reply is awaited (February 1977). However, in an individual case of non-levy of duty on transfer of property in the case of transfer of lease right, reported in audit (October 1974), Government agreed (December 1975) with the views expressed in audit that the duty was leviable on instruments effecting transfer of lease also.

6.8. Incorrect calculation of 'duty on transfer of property' allocated to local bodies

The 'duty on transfer of property' (surcharge on stamp duty), mentioned in paragraph 6.7, is levied by means of stamp impressed on instruments, as in the case of stamp duty. Stamps of denominations above Rs. 400 are sold to the public by treasuries. Stamps of denominations of and below Rs. 400 are sold to the public by licensed vendors who are allowed discount at certain prescribed percentage of the face value of the stamps.

The entire duty on transfer of property levied (as accounted for by registering officers) is paid to local bodies, after deducting collection charges of three per cent of the amount of duty levied. The payment of this amount to local bodies is made by the treasury, every quarter, based on consolidated statements of the proceeds on account of duty, furnished by the Inspector General of Registration. It was seen during audit (November 1975) that the Inspector General of Registration was computing the amount of duty payable to local bodies with reference to the face value of stamps, without deducting from such value, the amount of discount allowed to vendors. Thus, in the process of collection of 'duty on transfer of property' and its payment to local bodies, approximately an amount equal to the amount of discount allowed to vendors was lost to Government. The loss sustained by Government could not be ascertained in the absence of proper accounts in registering offices to show the details of stamps issued to the executants of instruments through vendors.

On this being pointed out in audit (December 1975), the Board of Revenue informed Government (June 1976) that the point raised in audit was correct and Government might issue necessary direction for allocating 'duty on transfer of property' among the local bodies, after deducting the discount paid to vendors and also collection charges from the total amount of duty levied on instruments, in future.

The matter was also reported to Government in May 1976; reply is awaited (February 1977).

6.9 . Application of incorrect rate of duty

Under the Indian Stamp Act, bonds, debentures or other securities issued by a 'local authority' in respect of loan raised by it are chargeable with stamp duty at the rate of one per centum on the amount of document, but a higher rate of stamp duty would apply to such documents when its executant is other than a 'local authority'. Mention was made in paragraph 81 of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1974-75 about short levy of stamp duty due to application of lower rate of duty (1 per cent) in the case of promissory

notes and debentures issued in connection with raising of loans by the State Electricity Board and the State Transport Corporation, which are not 'local authorities'. It was subsequently seen in audit (June 1976) that in the case of promissory notes issued (June 1976) by the State Housing Board (which is not a 'local authority') also, stamp duty was remitted by the Board only at the rate of 1 per cent, instead of at the slab rates applicable to promissory notes. Application of incorrect rate of stamp duty in this case resulted in short levy of duty of Rs. 1.10 lakhs.

The matter was reported to Government in July 1976. Government accepted (December 1976) that the State Housing Board would not come under the definition of 'local authority' given in Kerala Local Authorities Loans Act, 1963 and it was for this reason that a specific provision had been included in Section 159 of the Kerala State Housing Board Act, 1971, in order to provide that the Board should be deemed to be a 'local authority' for the purposes of Kerala Local Authorities Loans Act, 1963. Government further conceded that the Legislature while enacting Section 159 of the Kerala State Housing Board Act may not have specifically intended that the Board should be deemed to be a 'local authority' for the purposes of Section 8 of the Indian Stamp Act. On being pointed out (October 1976) by Audit that the expression 'local authority' occurring in Section 8 of the Indian Stamp Act has to be interpreted with reference to the definition of 'local authority' contained in the General Clauses Act, 1897 (Central Act) alone and that Section 159 of the Kerala State Housing Board Act cannot enlarge the definition of 'local authority' given in the General Clauses Act, Government stated (December 1976) that whether the State Housing Board would be a 'local authority' for the purposes of Section 8 (1) of the Indian Stamp Act had to be decided with reference to the definition of 'local authority' given in Kerala Local Authorities Loans Act, 1963 and as, by Section 159 of the Kerala State Housing Board Act, the Board has been deemed to be a 'local authority' for the purposes of the Kerala Local Authorities Loans Act, 1963, Government viewed that the State Housing Board would be eligible for the concessional rate of stamp duty specified in Section 8 (1) of the Indian Stamp Act, while raising a loan by issuing promissory notes.

The views of Government appear to be open to question for the following reasons:—

(1) The Kerala Local Authorities Loans Act, 1963 defines in Section 2 (1) a 'local authority' as any person legally entitled to the control or management of any local, panchayat or municipal fund or legally entitled to impose any cess, rate, duty or tax within any local area.

(2) Under Section 159 of the Kerala State Housing Board Act, 1971, the Board has been deemed to be a 'local authority' for the purposes of Kerala Land Acquisition Act, 1961 and the Kerala Local Authorities Loans Act, 1963 only. The Kerala State Housing Board Act obviously cannot provide that the Board shall be deemed to be a local authority for the purposes of Section 8 of the Indian Stamp Act which is the relevant law.

(3) The State Housing Board would not come under the definition of a 'local authority' under the General Clauses Act, 1897 (Central Act), which defines 'local authority' as a municipal committee, a district board, a body of port commissioners or other authority legally entitled to or entrusted by Government with the control and management of a municipal or local fund. Government have also conceded that the State Housing Board would not be a 'local authority' according to General Clauses Act, 1897.

6.10. Incorrect computation of duty

During audit of a Sub-Registry Office (Trichur), it was noticed that in the case of a document executed in October 1973, for sale of immovable properties valued at Rs. 2,75,000 and movable properties valued at Rs. 25,000, stamp duty was incorrectly worked out to Rs. 26,160 against the correct duty of Rs. 32,875 leviable in terms of the provisions contained in Articles 21 and 22 of the Schedule to the Stamp Act and Section 125 of the Kerala Municipalities Act, 1960. This resulted in short levy of stamp duty of Rs. 6,715.

On this being pointed out in audit (October 1974), Government stated (December 1975) that action had been initiated to levy the deficit stamp duty. Report regarding recovery is awaited (February 1977).

CHAPTER VII

OTHER TAX RECEIPTS

A. LAND REVENUE

7.1 · Short levy of plantation tax

Under the Kerala Plantation Tax Act, 1960, plantation tax is charged for every financial year in respect of the lands comprised in plantations held by a person on the first day of April of the financial year. The extent of any plantation liable to tax is determined with reference to the number of yielding trees/ plants on all lands held by its owner or to the extent of land on which yielding cardamom/tea plants are grown. The assessing authority could, at any time, revise *suo motu* the extent of plantation already determined and assess plantation tax on the basis of the revised extent. It was seen in audit that in many cases the extent of plantation fixed by the assessing authorities in earlier assessments were not revised taking into account the additional trees/plants started yielding subsequently. This resulted in non-revision of assessments based on the actual extent of plantation and the consequent short levy of plantation tax. Details of a few such cases are given below:—

(i) In the Taluk Office, Taliparamba, assessments in the case of 18 assessees were finalised without reference to the correct number of yielding trees and plants standing on the concerned plantations, even though the particulars thereof were available in the returns filed by the assessees between February 1965 and September 1965, resulting in short levy of tax of Rs. 14,889 during the period between 1966-67 and 1972-73.

On this being pointed out in audit (January 1975), the Board of Revenue stated (October 1975) that the assessments would be revised after getting detailed verification reports from Village Officers. Further report is awaited (February 1977).

(ii) In the Taluk Office, Chittur, in the case of three assessees, the assessments for the period 1970-71 to 1973-74 were finalised without taking into account the actual number of yielding trees/plants standing on the plantation owned by them, although the details thereof were available in the reports prepared by the

department (March 1966 and August 1971) after inspection of the plantations.

On this being pointed out in audit (June 1974), the assessments were revised (August 1974 and September 1975) and an additional demand of Rs. 14,154 collected (between November 1974 and December 1975).

The cases at (i) and (ii) above were also reported to Government in May 1976 and April 1976 respectively; reply is awaited (February 1977).

(iii) Plantation tax assessments for the years 1970-71 to 1974-75 in the case of an assessee in the Taluk Office, Talappilly and those for 1971-72 to 1974-75 in the case of another assessee in the Taluk Office, Hosdrug were finalised without taking into account the number of trees expected to yield from 1970-71 and 1971-72 onwards, though details thereof were available in the returns filed by the assessees themselves (between August 1965 and February 1966). On this being pointed out in audit (December 1974 and June 1974) the assessments were revised in both the cases and additional demands amounting to Rs. 11,637 were raised (August 1975 and April 1975), out of which Rs. 6,137 were collected (January 1976).

The matter was also reported to Government in June 1976. Government stated (September 1976) that the balance amount of Rs. 5,500 had also been recovered (January 1976 and March 1976).

(iv) In the case of eight assessees in the Taluk Office, North Wynad, the verification of the plantations conducted by the department during the period December 1970 to November 1972 revealed that a number of plants/trees would start yielding in 1972, 1973 and 1974, thereby increasing the plantation extent considerably. However, the assessing officer did not revise the assessments taking into account the additional number of trees/plants in all these cases for the years 1972-73 to 1974-75, which resulted in short levy of tax amounting to Rs. 10,443.

On this being pointed out in audit (January 1976), the assessing officer agreed (January 1976) to revise the assessments in all the cases. The matter was also reported to the Board of Revenue in February 1976 and to Government in July 1976; reply is awaited (February 1977).

7.2. Loss of revenue

(i) It was seen in audit of the Taluk Office, Nedumangad (July 1975) that in the case of an assessee company holding tea plantations to the extent of 500.89 acres from April 1960 onwards, plantation tax had been levied during the period 1st April 1960 to 31st March 1970, only on 369.85 acres till 31st March 1968 and on 380.70 acres thereafter till 31st March 1970, after giving allowance of 20 per cent of the area towards vacancy in the estate and also the area occupied by the inter-planted coconut trees and pepper vines. Grant of the deduction from the total area towards vacancy in the estate and space occupied by the inter-planted trees and vines was not in order as the Act did not provide for such deduction and also in view of a report of the Village Officer (October 1971) that the assessee's yielding tea plantations covered an actual area of 500.89 acres. The omission to assess the entire area of the plantations to tax resulted in short levy of tax amounting to Rs. 13,772 for the period 1st April 1960 to 31st March 1970.

On this being pointed out in audit (July 1975), the department conducted (August 1975) another verification of the plantations, which showed that the entire tea plantations of 500.89 acres had been yielding from a period prior to 1960 and there was no vacancy in that area. The department in September 1975 revised the assessments for the years 1968-69 and 1969-70 raising a demand of Rs. 4,864 in respect of the area that escaped from the original assessments, and the assessee paid the amount in October 1975. The Board of Revenue stated (October 1975) that the assessments for the years 1960-61 to 1967-68 (tax effect Rs. 8,908) could not be revised as they were barred by limitation of time.

The matter was also reported to Government in June 1976; reply is awaited (February 1977).

(ii) Plantation tax is leviable for every financial year in respect of all the lands comprised in the plantations held by a person. If the whole or any portion of plantation chargeable to the plantation tax for any financial year has escaped assessment for that year, the assessing authority could at any time within seven years from the end of the financial year assess the amount of tax payable in respect thereof. In the Taluk Office, Devicolam, the plantations extending to about 240 acres held by a company even before

1960 were assessed to tax only in November 1974 and that too for the years from 1968-69 onwards only. The non-assessment of the company in time resulted in loss of revenue of about Rs. 10,000 for the period 1st April 1960 to 31st March 1968.

On this being pointed out in audit (April 1975), Government stated (May 1976) that the estate of the assessee was in existence before 1960 and that the list of assessees in the concerned village prepared by the Village Officer in 1962 did not include the name of this assessee and also that the plantation could have been brought to assessment had action been taken in 1962. Government also added that the loss on this account was being worked out by the District Collector so as to assess the liability against the officers for action by the Board of Revenue. Further report is awaited (February 1977).

B. ELECTRICITY DUTY

7.3. Short levy of interest

Under the Kerala Electricity Duty Act, 1963 and the Rules made thereunder, electricity duty collected by licensees from the consumers in a month should be remitted by them into a Government treasury before the expiry of the following month. Interest, not exceeding twelve per cent per annum, which Government might by general or special order fix is also leviable on the amount of duty collected by the licensees but not remitted to Government within the prescribed time. By an order issued on 2nd December 1967, Government fixed the rate of interest leviable for belated remittance by the licensees of duty collected by them from the consumers, at twelve per cent.

The Kerala High Court has ruled (July 1973) that a licensee, who defaulted in remittance of the collections from a date prior to 2nd December 1967, was liable for payment of interest on such collections not from 2nd December 1967, but from the date on which the amount fell into arrears.

It was found during audit of the Chief Electrical Inspectorate (Trivandrum) in June 1976 that in the case of two Revenue Billing Units of a licensee which had defaulted payment to Government of the duty amounting to Rs. 2,23,998 collected by them from the consumers between 1st December 1966 and 31st October 1967, till

March 1969, no interest was demanded from the respective dates of default to 1st December 1967, resulting in short levy of interest of Rs. 11,369 from the licensee.

The matter was reported to the department in June 1976 and to Government in July 1976. Government stated (October 1976) that the amount had since been demanded in September 1976. Report regarding recovery is awaited (February 1977).

C. ENTERTAINMENTS TAX

7.4. Sale of unauthorised tickets

Under the Kerala Additional Tax on Entertainments and Surcharge on Show Tax Act, 1963, an additional tax on entertainment is leviable on each payment of admission to any entertainment. The proprietor could admit to the entertainment, a person, only with a ticket impressed with the official seal of the local authority concerned. The tax due in respect of the sealed tickets issued to the proprietor is collected by the local authority either in advance or on the basis of the Daily Collection Reports, for remittance to Government before the tenth of the month following the month of collection. During audit of the accounts kept by the local authorities in respect of collection of additional entertainment tax, various irregularities like sale of unsealed tickets, sale of the same series of tickets more than once, etc., in the theatres were noticed (between April 1974 and July 1974). On this being pointed out in audit (August 1974), Government issued (May 1975) instructions for conducting frequent inspections of the theatres and checking of the accounts of the theatres by the officials of the local authorities to detect malpractices, if any, in the issue of tickets.

It was noticed in audit (between September 1974 and May 1976) of 32 panchayats that there had been evasion of tax by the theatre owners by selling the same series of tickets more than once or selling unauthorised tickets. The consequent short levy of additional entertainment tax amounted to Rs. 26,800 for the years 1973-74 to 1975-76.

On this being pointed out in audit (between October 1974 and May 1976), the department agreed to recover the amount (Rs. 7,192) in seven cases. The matter was reported to Government in June

1976. Government stated (September 1976) that malpractices alleged to have been committed by the theatre owners in the sale of duplicate series of tickets were being investigated and necessary action taken in deserving cases to recover the loss of revenue sustained by the sale of duplicate series of tickets. Government also added that in the case of some of the panchayats, there was no foolproof evidence to show that the sale of duplicate series of tickets had happened. Action taken against persons in whose cases the malpractice of issuing duplicate tickets has been established is awaited (February 1977).

CHAPTER VIII

NON-TAX RECEIPTS

A. FOREST DEPARTMENT

8.1. Unauthorised occupation of forest land

(i) An inspection by the Forest Department in 1953, of the holdings of a private estate (at Nelliampathy within the jurisdiction of the Divisional Forest Officer, Nemmara), which had been allotted an area of 486.63 acres of forest land on lease as per five lease deeds executed between 1932 and 1949, showed that the estate was in possession of areas in excess of those covered by the lease deeds. During a survey of the area conducted by the Divisional Forest Officer in 1956, the area unauthorisedly occupied by the estate was estimated by him to be 121.90 acres. However, the Divisional Forest Officer reported to the Chief Conservator of Forests (September 1956) that it would be better to have a joint verification by himself and the Assistant Director of Survey and Land Records to determine the exact encroachment. Thereupon, the Chief Conservator of Forests requested (November 1957) the Director of Survey and Land Records to depute a surveyor to refix the boundaries of the estate. The Director of Survey and Land Records replied to the Chief Conservator of Forests (July 1958) that for taking up the survey work at the instance of the Forest Department, sanction of Government was necessary. Accordingly, the Chief Conservator of Forests sought (July 1959) sanction of Government for verifying the boundaries. The sanction was issued by Government in May 1961. The Survey Department completed the field work of surveying the estate in October 1963 and sent the survey records to the Divisional Forest Officer in May 1966. The survey report disclosed that the estate had unauthorisedly occupied 215.10 acres of reserve forest. The Divisional Forest Officer, however, did not accept (January 1969) the correctness of the survey report, since according to him the survey records showed certain unencroached reserve forest as having been under occupation of the estate, while certain portions of the areas actually taken on lease and subsequently abandoned by the estate was left out from the records. As a sequel to the report made by the Divisional Forest Officer, a joint verification of the outer boundaries of the estate by the Survey Department and the Forest Department was ordered by the

Member, Board of Revenue in June 1970. The District Collector (Palghat) informed the Board of Revenue (December 1970) that the verification made in September 1970 showed the area unauthorisedly occupied by the estate as 215.10 acres. On the delay on the part of the department in settling the issues connected with the encroachment of forest land by the estate being pointed out in audit (June 1970), Government stated (July 1971) that it was found necessary to refix the boundary of the area leased out to the estate in order to ascertain the extent of land encroached by the estate and the Chief Conservator of Forests had since been directed to finalise the matter in consultation with the Survey Department, within three months. To an enquiry made in audit (October 1974) about further developments in regard to refixation of the boundary, Government stated (February 1976) that it was proposed to have a joint inspection of the site by the Divisional Forest Officer and the Assistant Director of Survey and Land Records. However, Government informed audit in August 1976 that the Assistant Director of Survey and Land Records had since informed the Divisional Forest Officer that no further survey was necessary to locate the encroachment and that the area encroached upon by the lessee viz., 215.10 acres had been shown in the sketch furnished by the Survey Department.

(ii) Any person unauthorisedly occupying Government land is liable to be proceeded against for eviction under the provisions of the Land Conservancy Act. In this case, it is apparent that the party was in unauthorised occupation of forest land. But, owing to dilatory procedures adopted at various levels, the extent of such unauthorised occupation remained to be determined even upto 1970. But in any event, this should not have prevented the authorities from putting the law into operation against the delinquent party.

The Forest Range Officer, in June 1971, issued an order under the Land Conservancy Act, directing the estate authorities to vacate the 215.10 acres of encroached forest land and also to pay an amount of Rs. 1,39,660, towards fine (Rs. 200) and prohibitory assessment for the period upto 1971-72 (Rs. 1,39,460 at the rate of 50 paise per cent per year) on 121.90 acres and 93.20 acres of land occupied by the estate in 1956-57 and 1963-64 respectively. However, in an appeal filed by the estate authorities, the Revenue Divisional Officer

set aside (December 1971) the above orders of the Range Officer on account of certain procedural flaws, for *denovo* action to evict the unauthorised occupants. Thereupon, the Range Officer issued (February 1972) a fresh notice to the estate authorities for action under the Land Conservancy Act. Against this notice, the estate authorities filed a petition before the High Court (March 1972) for the issue of a writ of prohibition. The High Court, while dismissing the petition held (May 1972) that the Range Officer who himself was a witness should not have heard the disputed matter on the ground of the principles of natural justice. On the decision of the Court, a review petition was filed by the department (July 1972) on the ground that the Range Officer (and not the Divisional Forest Officer) is the authority competent to hear a matter like this under the Land Conservancy Act. The Court, therefore, held (March 1975) that the Range Officer could proceed with the enquiry. To a reference in the matter made by audit (October 1974) to ascertain the progress of action under the Land Conservancy Act, Government stated (February 1976) that since the issue involved legal aspects also, the Divisional Forest Officer required discussion with the Government Pleader, and the Chief Conservator of Forests would be sending a report soon after the discussion. But Government stated in August 1976 that subsequently it was decided that the encroached area could be resumed by invoking the provisions of the Kerala Forest Act, instead of proceeding under the Land Conservancy Act. Government added that the Divisional Forest Officer had since been directed (August 1976) to resume the encroached area and a proposal sent by the Chief Conservator of Forests for the realisation of arrears of penal lease rent from the estate was under consideration. Further report is awaited (February 1977).

The 486.63 acres of land held by the estate under lease included 157.68 acres of land forming part of an estate known as 'valavachan'. The survey report prepared by the Survey Department in May 1966 showed that the estate was under possession of 397.72 acres of land from the 'valavachan' and a piece of land of 1.32 acres, in addition to the encroached forest area of 215.10 acres. The estate is, therefore, to be considered to have possessed unauthorisedly not only the 215.10 acres of forest land, but also 240.04 acres of land forming part of 'valavachan'. On this being

pointed out in audit (July 1976), Government stated (August 1976) that it was 'presumed that an area of 21.05 acres is also in the possession of the lessee in addition to the encroachment located over 215.10 acres' and 'this 21.05 acres could be located only after a survey and refixation of the boundary of the individual estates leased out to him with reference to the original sketches'.

8.2. Loss of revenue

In a Forest Division (Trichur), in the case of teak poles collected from a teak plantation in March 1974, a check measurement conducted by the Divisional Forest Officer in August 1974 showed that there were only 5,121 poles available for disposal, though the Range Officer in charge of the plantation claimed expenditure for collecting 8,100 poles. Calculated at the highest sale price of Rs. 8.60 per pole obtained for similar poles in the auction held in the division in August 1974, the value of 2,979 poles found not available during the check measurement amounted to Rs. 26,644 (inclusive of sales tax). To an enquiry made in audit (October 1974), the Conservator of Forests stated (December 1975) that:—

(i) explanation of the concerned Range Officer was called for by the Divisional Forest Officer in January 1975;

(ii) though the Divisional Forest Officer proposed that the Range Officer might be held liable only for an amount of Rs. 546.15, being the expenditure claimed by him as incurred for the collection of 2,979 poles without actually executing the work, the proposal was not accepted by the Conservator of Forests as according to the departmental estimation, the total number of poles in the plantation was 10,000 and the contention that only 5,121 poles out of the above were collected did not stand to reason and, therefore, the Range Officer should be considered to have worked down all the 8,100 poles for which he had claimed collection charges; and

(iii) the Chief Conservator of Forests had been requested to take suitable action against the Range Officer.

The matter was also reported to Government in August 1975. Government stated (August 1976) that the Chief Conservator of Forests had initiated disciplinary action against the officials responsible for the loss. Further report is awaited (February 1977).

B. IRRIGATION DEPARTMENT

8.3. Non-collection of entry fee in Malampuzha Gardens

Based on a proposal sent by the Chief Engineer (Irrigation) in November 1970, Government sanctioned (January 1971) the collection of an admission fee of 10 paise per person for entry into the Malampuzha Gardens. It was seen in audit of the Irrigation Division, Malampuzha (January 1974) that the Government order was not implemented by the department. In July 1974, Government revised the admission fee to 25 paise per adult and 15 paise per person below 15 years and also sanctioned staff (one clerk and two watchmen) for the purpose. However, the scheme of collection of admission fee for entry into the Gardens was implemented only from October 1974. Based on a departmental estimation made in August 1970, about 5 lakhs visitors would be visiting the Gardens in a year. Computed on this basis, the delay in implementation of the scheme from January 1971 to September 1974 resulted in loss of revenue of about Rs. 1.46 lakhs.

On this being pointed out in audit (March 1974), Government stated (November 1975) that their orders of January 1971 could not be implemented due to insufficiency of staff and non-completion of security arrangements.

Government added (November 1976) that for the purpose of calculating the loss of admission fee, the number of children below 5 years, who had been exempted from payment of fee for admission to the Gardens, was to be excluded from the total number of persons expected to visit the Gardens every year and also the pay and allowances of 9 more watchmen sanctioned to the Gardens from July 1976 were to be deducted from the estimated receipt on account of admission fee from January 1971 to September 1974. It was pointed out to Government (December 1976) that the number of persons estimated by the department (August 1970) to visit the Gardens in one year (5 lakhs) was after excluding free admissions

and as the scheme had been working from October 1974 to June 1976 with one clerk and 2 watchmen sanctioned in July 1974, it would not be correct to reckon the cost of the additional establishment sanctioned from July 1976, for working out the loss of admission fee during the period from January 1971 to September 1974.

C. PUBLIC HEALTH ENGINEERING DEPARTMENT

8.4. Introductory

The Public Health Engineering Department is responsible for the execution of water supply and drainage schemes in the State. Under the Kerala Municipalities Act, 1960, the water supply systems constructed by Government in a municipal area may be handed over to the Municipal council subject to such terms as may be settled between Government and the council. In cases where the water supply system in a municipality is worked by Government through their own officers, an annual contribution of such amount as may be fixed by Government shall be paid by the municipality to Government. Under the Kerala Panchayats Act, 1960, all water works in the panchayat areas whether made at the cost of the panchayats or otherwise shall vest in the panchayats. In actual practice, the entire water supply systems in panchayat areas and the water supply systems, excluding the distribution systems, in municipal areas are controlled by Government . The department carries out the maintenance of the water supply systems and recovers, annually from the local bodies, the cost of maintenance (in the case of both municipalities and panchayats) and centage charges (in the case of municipalities alone). In addition, the Willingdon Water Supply Scheme in Trivandrum and the Ernakulam-Chowwara Water Supply Scheme and the Ernakulam-Mattancherry Water Supply Scheme in Ernakulam are managed by the department. In the case of the two water supply schemes in Ernakulam, the distribution system in the Cochin Corporation area is managed by the Corporation. The main items of receipts (excluding recoveries effected from local bodies towards cost of the systems, taken under the capital head of account) of the department are the following:—

(i) water charges and meter hire charges from the water supply schemes owned and managed by the department;

(ii) cost of maintenance and centage charges recovered from local bodies;

(iii) water tax and drainage contribution payable by the Corporation of Trivandrum; and

(iv) miscellaneous receipts.

Some of the points noticed during test audit conducted during March 1976 to July 1976 are set out below:—

8.5. Delayed revision of rates of water charges

In terms of an agreement executed in January 1966, between Government and a company (a public sector undertaking) engaged in the manufacture of machine tools (Kalamassery), the department was supplying water to the company from 1st February 1966 onwards at the rate of Rs. 1.65 per 1,000 gallons (36 paise per 1,000 litres). The agreement was to remain in force for a period of three years (ie. upto 31st January 1969) and thereafter, it could be terminated at any time by either party after giving six months' notice in writing.

Based on a proposal for the revision of rates of water charges to 66 paise per 1,000 litres of water supplied to commercial concerns sent by the Chief Engineer, Government directed the Chief Engineer to obtain the concurrence of various consumers for the revision of rates and in pursuance of this, the Executive Engineer (Ernakulam) sought (December 1971) the company's concurrence for the revision of rates. The company, however, wrote to Government in January 1972 that retrospective revision of rates came as a surprise to it and that according to the terms of agreement, enhancement of rate of water charges could only be arrived at by a mutual consensus. The company requested Government not to enhance the rate till a mutually agreed rate was determined. This stand was accepted by Government. Subsequently, the revised rate was accepted (October 1973) by the company with effect from 1st November 1973. Non-revision of the rate of water charges in the case of the company during the period 1st October 1972 to 31st October 1973 resulted in the Government forgoing revenue of Rs. 1.02 lakhs. Government stated (September 1976) that the question of terminating the agreement would arise only when a revision of rate became impossible by mutual discussions and the company's proposal to have the revised rates from 1st November 1973 was accepted by

Government without prejudice to the Government's claim to demand the rate from 1st October 1972 and the issue was still under consideration. Further report is awaited (February 1977).

8.6. Uncollected revenue

(i) *Collection of water and drainage contribution from Trivandrum Corporation*

(a) The entire water supply and drainage schemes in the Trivandrum City are provided, controlled and maintained by the department. Under the Kerala Municipal Corporations Act, 1961, the property tax levied by a Corporation includes water and drainage tax for the purpose of defraying the expenses connected with the water and drainage systems of the city, existing or to be provided for. The Act also provides that Government can realise from the Corporation a contribution towards any expenditure incurred by it for the benefit of the inhabitants of the city. Government, by an order issued in August 1946, fixed the drainage contribution due from the Corporation with reference to the cost of maintenance of the drainage system, at Rs. 75.000 per annum. In December 1966, Government informed the Corporation of their intention to enhance the annual drainage contribution to Rs. 2.25 lakhs, being the average maintenance charges incurred during the previous five years and also proposed to review the position every five years. However, the Corporation did not agree to the proposal, without assigning any specific reason. Although the cost of maintenance of the scheme increased from Rs. 2.76 lakhs in 1965-66 to Rs. 4 lakhs in 1975-76, the proposal to refix the amount of contribution has not been revived. Meanwhile, the Corporation, which had been levying drainage tax at the rate of three per cent of the annual value of the properties from 1958-59, revised the rate to five per cent from 1964-65 onwards.

It was also noticed in audit (March 1976) that even the amount of contribution fixed by Government was not being collected from the Corporation. The Examiner of Local Fund Accounts stated (June 1976) that the Corporation had not remitted the drainage contribution for the period between 1st April 1958 and 31st March 1976 amounting to Rs. 13.50 lakhs.

(b) The Corporation collects water tax at the rate of three per cent of the annual value of properties. Though the amount of

water tax collected less seven per cent thereof towards collection charges was payable to Government by the Corporation every year, the Corporation was not remitting any amount on this account from 1958-59 onwards. Demand on this account is raised by the department against the Corporation for each year based on the amount of tax collected by the Corporation, as certified by the Examiner of Local Fund Accounts. The amount of tax collections demanded by the department for the period 1958-59 to 1971-72 (i.e., the year up to which the audit of the accounts of the Corporation has been completed by the Examiner of Local Fund Accounts), which is pending remittance, came to Rs. 45.93 lakhs. The Examiner of Local Fund Accounts stated (March 1976) that the amount of arrears due from the Corporation till the end of March 1974 would be Rs. 53.68 lakhs (approximately).

On this being pointed out in audit (August 1976), Government stated (September 1976) that a proposal for re-organising the working of the Trivandrum Water Supply System and a suggestion to demand the drainage tax collected by the Corporation every year, after allowing a reasonable percentage as collection charges, were under consideration. Government added that in spite of the direction issued, the Corporation was not remitting the arrears of drainage contribution and water tax due, on the plea of financial difficulties and that the question of recovering the arrears from the loans, grants and property tax due to the Corporation, was being examined. Further report is awaited (February 1977).

(ii) *Maintenance and centage charges*

Arrears of maintenance and centage charges pending collection in respect of water supply schemes handed over to the local bodies as at the end of March 1976 amounted to Rs. 237.42 lakhs. Year-wise analysis of the outstanding amounts is given below:—

Year	*Arrears as on 31st March 1976 (in lakhs of rupees)*
Upto 1971-72	66.04
1972-73	20.92
1973-74	34.33
1974-75	51.89
1975-76	64.24
Total	237.42

Government stated (September 1976) that as regards the maintenance and centage charges due from Urban Water Supply Schemes (Rs. 101.49 lakhs), the outstandings upto 31st March 1975 had been communicated to the Director of Municipalities and to the Local Administration and Social Welfare Department of the Government for adjusting the amounts from the grants payable to the local bodies and as regards the recovery of maintenance charges due from the panchayats (Rs. 135.93 lakhs), the annual maintenance charges and the total arrears as at the end of an year were being communicated to the Director of Panchayats and Local Administration and Social Welfare Department of the Government for similar action. Information regarding the reasons for not adjusting the dues is awaited (February 1977).

(iii) *Water charges and other miscellaneous receipts*

Arrears of water charges and miscellaneous items of revenue pending collection as at the end of March 1976 in the department amounted to Rs. 172.67* lakhs. Year-wise analysis of the outstanding amount is given below:—

Year	*Amount due as on 31st March 1976 (in lakhs of rupees)*
Upto 1971-72	75.70
1972-73	18.32
1973-74	23.41
1974-75	24.15
1975-76	31.09
Total	172.67

The amount of revenue pending collection in the department has been on the increase year after year. As against Rs. 63.66 lakhs which remained to be collected as at the end of March 1969, the arrears as at the end of March 1976 amounted to Rs. 172.67 lakhs.

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* The figure does not include the maintenance and centage charges due from the local bodies in respect of water supply schemes and the arrears of water tax and drainage contribution due from the Corporation of Trivandrum.

The successive Public Accounts Committees (Public Accounts Committee 1967-68 in paragraph 2 (ix) of its First Report, Public Accounts Committee 1970-71 in paragraph 5.42 of its First Report and Public Accounts Committee 1972-73 in Paragraph 1.79 of its Tenth Report) expressed concern over the accumulation of large arrears and the department's failure to take coercive steps against the defaulters and to bring down the outstandings.

The arrears represented the amounts due from the Government of India, Public Sector Undertakings of the Central Government and the State Government, Local bodies and private parties.

The break up of the arrears is given below:—

	Amount due as on 31st March 1976 (in lakhs of rupees)
Government of India	8.54
Other State Governments	1.39
Public Sector Undertakings of the Central Government	5.72
Public Sector Undertakings of the State Government	15.07
Local bodies	136.38
Private parties	5.57
Total	172.67

Out of the total arrears of Rs. 172.67 lakhs, Rs. 126.81 lakhs is due from the Cochin Corporation, the year-wise details of which are given below:—

Year	*Amount (in lakhs of rupees)*
Upto 1971-72	63.53
1972-73	17.11
1973-74	17.16
1974-75	16.15
1975-76	12.86
Total	126.81

The question of payment by the Corporation of arrears of water charges amounting to Rs. 117.86 lakhs as on 31st March

1975 was discussed by Government with the Corporation in October 1975 and it was decided that the Corporation could defer, for the time being, payment of arrears of Rs. 43.79 lakhs for the period upto 31st July 1970, and it should remit the balance amount of Rs. 74.07 lakhs at the rate of Rs. 1 lakh per month along with the current dues. It was, however, noticed in audit (October 1976) that the Corporation paid only a sum of Rs. 5 lakhs in five instalments between November 1975 and September 1976 against an amount of Rs. 11 lakhs agreed to be paid.

As per the Demand, Collection and Balance statements, water charges amounting to Rs. 18.84 lakhs were pending collection in the Public Health Division, Trivandrum as on 31st March 1976, as shown below:—

	Amount (in lakhs of rupees)
Government buildings	14.37
Casual connections	2.13
Trivandrum Corporation	2.07
Private parties	0.27
Total	18.84

8.7. Maintenance of *proforma* accounts of the water supply Schemes

The need for maintenance of *proforma*, capital and revenue accounts in respect of the water supply installations owned by Government, was pointed out to Government in audit as early as in June 1953. Government in July 1966 ordered the maintenance of *proforma* accounts in respect of all the urban water supply schemes with effect from 1st April 1966. It was seen in audit (August 1976) that the *proforma* accounts in respect of Willingdon Water Works, Trivandrum had not been prepared at all. Information regarding the period up to which accounts in respect of the Water Works in Ernakulam were prepared is awaited (February 1977). Government stated (September 1976) that the non-maintenance of the *proforma* accounts was due to paucity of staff and in respect of Trivandrum and Ernakulam Water Supply Schemes, the question of maintaining *proforma* accounts would be taken up again on completion of the augmentation works.

8.8. Non-execution of agreements

Agreements specifying the terms of supply of water and recovery of water charges have not been got executed by a number of consumers, to whom water is supplied by the department in bulk. Details of a few such important cases indicating the name of the consumer, period from which the supply commenced and the amount of water charges due as arrears, are given below:—

Name of consumer	*Date from which supply commenced*	*Arrears of water charges due as on 31st March 1976 (in lakhs of rupees)*
Corporation of Cochin	(Before 1958)	126.81
Cochin Port Trust	(do.)	5.10
Cochin Shipyard	10-4-1972	2.66
Alwaye Municipality	(Before 1958)	2.64

On this being pointed out in audit (August 1976), Government stated (September 1976) that the agreement had been got executed by the Cochin Shipyard in September 1976, the terms of agreement to be executed with the Alwaye Municipality and the Corporation of Cochin were pending approval and the question of execution of agreement with Cochin Port Trust was under consideration. Further report is awaited (February 1977).

M. P. Singh

Trivandrum,
The 5TH APRIL 1977

(M. P. SINGH JAIN)
Accountant General, Kerala.

Countersigned

A. Baksi

New Delhi,
The 11TH APRIL 1977

(A. BAKSI)
Comptroller and Auditor General of India.

102/9040/MC.

APPENDIX

APPENDIX

Statement showing cost of collection under the principal heads of revenue

(*Reference: Paragraph* 1.4 *Page* 6 *of Chapter I*)

	Head of Account	*Year*	*Gross collection*	*Expenditure on collection*	*Percentage of expenditure on gross collection*
			(*in crores of rupees*)		
1.	Taxes on Agricultural Income	1973-74	2.87	0.07	2.44
		1974-75	4.02	0.09	2.24
		1975-76	7.23	0.16	2.21
2.	Land Revenue	1973-74	3.08	4.67	*
		1974-75	2.92	5.67	*
		1975-76	3.50	6.35	*
3.	Stamps and Registration Fees				
	(a) Stamps—Non-judicial	1973-74	6.85	0.29	4.23
		1974-75	8.39	0.35	4.17
		1975-76	9.36	0.40	4.27
	(b) Registration fees	1973-74	1.76	0.98	55.68
		1974-75	2.06	1.25	60.68
		1975-76	2.46	1.46	59.35
4.	State Excise	1973-74	12.06	0.86	7.13
		1974-75	15.55	1.09	7.01
		1975-76	21.54	1.32	6.13
5.	Sales Tax	1973-74	53.80	1.32	2.45
		1974-75	75.32	1.65	2.19
		1975-76	97.92	2.12	2.17
6.	Taxes on Vehicles	1973-74	6.75	0.27@	4.00
		1974-75	6.68	0.36@	5.39
		1975-76	9.25	0.44@	4.76
7.	Forest	1973-74	14.57	3.78	25.94
		1974-75	18.17	4.56	25.10
		1975-76	21.92	6.28	28.65

* The expenditure incurred under 'Land Revenue' cannot be considered as having been incurred solely for collecting land revenue as the department has several other administrative functions.

@ Expenditure under 'Taxes on Vehicles' includes expenditure incurred on collection of 'Taxes on Goods and Passengers' also.