REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1996

No. 1

(REVENUE RECEIPTS)

GOVERNMENT OF KERALA

Presented to the legislature on 11.3.97

REPORT
OF THE
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CONTENTS

PREFATORY REMARKS

This report for the year ended 31 March 1996 has been prepared for submission to Governor under Article 151(2) of the Constitution.

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

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 1995-96 as well as those which came to notice in earlier years but could not be included in previous years' Reports.

Overview

OVERVIEW

This Report contains 47 paragraphs including 2 reviews relating to non-levy/short levy of tax, involving Rs 21.46 crores. Some of the major findings are mentioned below:

1. General

(i) During the year 1995-96, the Government of Kerala raised a total revenue of Rs 3918.17 crores comprising tax revenue of Rs 3382.68 crores and non-tax revenue of Rs 535.49 crores. The State Government received Rs 1036.96 crores by way of State's share of divisible Union taxes and Rs 468.43 crores as grants-in-aid from the Government of India. Sales Tax (Rs 2285.96 crores) formed a major portion (68%) of the tax revenue of the State. Receipts from Forestry and Wild Life (Rs 160.77 crores) formed a major portion (30%) of the non-tax revenue.

(Paragraph 1.1)

(ii) Test check of the records of Agricultural Income Tax and Sales Tax, State Excise, Land Revenue, Motor Vehicles, Registration and Forest Departments conducted during 1995-96, revealed under-assessments/short levy of revenue amounting to Rs 26.03 crores involved in 2,525 cases. During the course of the year 1995-96, the concerned departments accepted under-assessments etc., of Rs 3.7 crores involved in 923 cases of which 275 cases involving Rs 68.43 lakhs had been pointed out in audit during 1995-96 and the rest in earlier years.

(Paragraph 1.8)

(iii) As at the end of June 1996, 3,119 inspection reports containing 13,269 audit observations involving revenue effect of Rs 161.44 crores issued up to December 1995 were outstanding for want of final replies from the department.

(Paragraph 1.9)

2. *Sales Tax*

(i) Application of incorrect rate of tax resulted in short levy of sales tax of Rs 25.38 lakhs in eight cases.

(Paragraph 2.2)

(ii) Turnover escaping assessments in eight cases resulted in non-levy/short levy of tax of Rs 15.32 lakhs.

(Paragraph 2.3)

(iii) Non-levy of turnover tax in eight cases resulted in short levy of tax of Rs 4.28 lakhs.

(Paragraph 2.4)

(iv) Irregular grant of exemption from tax/concessional rate of tax in twelve cases resulted in short levy of tax of Rs 107.25 lakhs.

(Paragraphs 2.6 and 2.7)

(v) Irregular adjustment of cumulative tax concession resulted in short demand of tax of Rs 6.73 lakhs in four cases.

(Paragraph 2.9)

3. Agricultural Income Tax

(i) Omission to assess the income receivable by a company resulted in short levy of tax of Rs 7.71 lakhs.

(Paragraph 3.2)

(ii) Grant of inadmissible deduction in five cases resulted in short levy of tax of Rs 10.51 lakhs.

(Paragraph 3.3)

4. State Excise Duties

Excise duty of Rs 2.99 lakhs due on the medicinal preparation of a manufactory was not levied and demanded.

(Paragraph 4.2)

5. Land Revenue

A review on `Assessment and Collection of Building Tax' revealed the following:

(i) Failure on the part of the Village Officers/local authorities to furnish the returns showing details of buildings to be assessed to tax resulted in non-levy of tax of Rs 79.21 lakhs in 344 cases in two Corporations.

(Paragraph 5.2.5)

(ii) Failure to assess newly constructed portion of buildings already assessed and omission to make best judgement assessment where the assessees did

not submit the returns resulted in non-realisation of tax of Rs 9.28 lakhs in seventeen cases

(Paragraph 5.2.6)

(iii) Misclassification and incorrect assessments of buildings resulted in short levy of tax of Rs 25.61 lakhs in 128 cases.

(Paragraph 5.2.7)

(iv) Irregular exemption from tax amounting to Rs 12.78 lakhs was granted in six cases.

(Paragraph 5.2.8)

(v) Non-assessment of buildings owned by Public Sector Undertakings/Autonomous Bodies resulted in loss of revenue of Rs 53.83 lakhs in six Taluks.

(Paragraph 5.2.9)

6. Taxes on Vehicles

(i) There was short levy of applicaition fee for permit and short levy of tax amounting to Rs 34.73 lakhs on 836 private service vehicles.

(Paragraph 6.2)

(ii) Irregular reduction of seating capacity of 59 stage carriages resulted in short levy of tax of Rs 7.60 lakhs.

(Paragraph 6.3)

7. Stamp Duty and Registration Fees

There was short levy of stamp duty of Rs 10.55 lakhs on 283 documents registered in two Sub Registry Offices.

(Paragraph 7.2)

8. Forest Receipts

There was omission to demand penalty of Rs 5.17 lakhs due from a company for the belated removal of raw materials.

(Paragraph 8.2)

9. Other Non-Tax Receipts

A review on `Receipts of Legal Metrology Department' revealed the following:

(i) Delay in implementation of the provisions of the standards of Weights and Measures (Enforcement) Act, 1985, resulted in loss of revenue of more than Rs 15 lakhs towards fee for registration of users.

(Paragraph 9.7)

(ii) Failure to implement the provisions of the Act for the registration, verification and stamping of water meters and electricity meters resulted in an estimated loss of Rs 16.56 crores.

(Paragraph 9.12)

Chapter 1

General

CHAPTER 1

GENERAL

1.1. Trend of revenue receipts

The tax and non-tax revenue raised by Government of Kerala during the year 1995-96, the State's share of divisible Union taxes and grants-in-aid received from Government of India during the year and the corresponding figures for the preceding two years are given below and depicted in Chart I.

		1993-94	1994-95	1995-96
		(In crores of rupees)		
I.	Revenue raised by the State Government			
	a) Tax revenue	2344.86	2799.10	3382.68
	b) Non-tax revenue	322.93	396.35	535.49
	Total	2667.79	3195.45	3918.17
II.	Receipts from Government of India			
	a) State's share of divisible Union taxes	751.18	838.42	1036.96
	b) Grants-in-aid	502.78	632.55	468.43
	Total	1253.96	1470.97	1505.39
III.	Total receipts of the State Government (I and II)	3921.75	4666.42	5423.56*
IV	Percentage of I to III	68	68	72

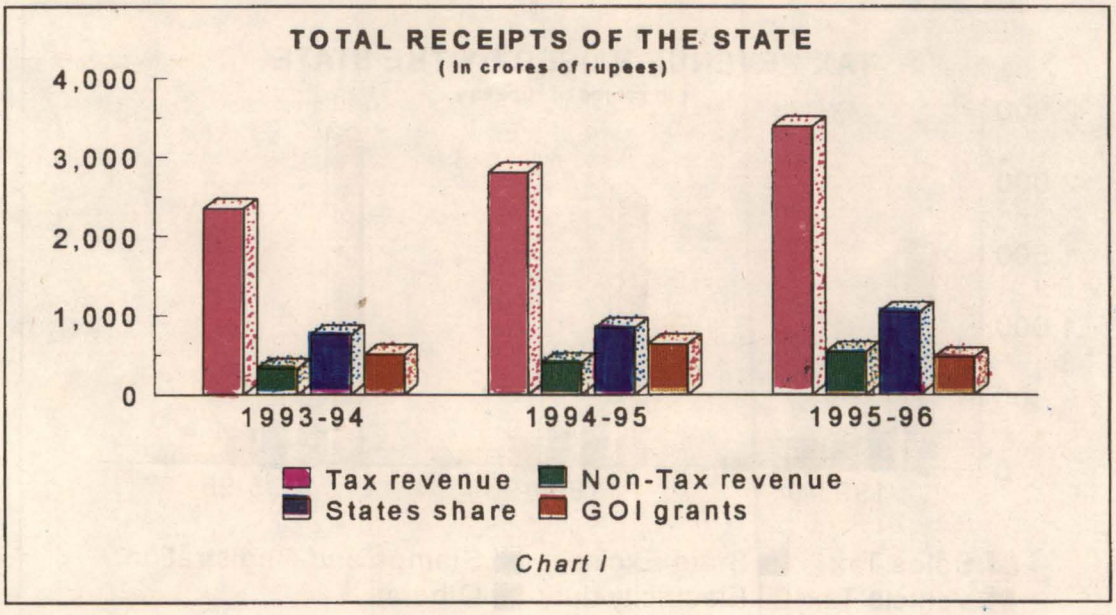

Chart I

* For details please see statement No.11 - Detailed Accounts of Revenue by Minor Heads in the Finance Accounts of Kerala for the year 1995-96. Figures under the Head "0021-Taxes on income other than Corporation tax-share of net proceeds assigned to States" booked in the Finance Accounts under `A-Tax Revenue' have been excluded from the revenue raised by the State and included in the State's share of divisible Union Taxes in this statement.

(i) The details of the tax revenue raised during the year 1995-96, along with the figures for the preceding two years, are given below and depicted in Chart II.

	Head of Revenue	1993-94	1994-95	1995-96	Percentage of increase (+)/ decrease (-) in 1995-96 over 1994-95
		(In crores of rupees)			
1.	Sales Tax	1533.24	1864.93	2285.96	(+) 22.58
2.	State Excise	330.95	353.21	449.29	(+) 27.20
3.	Stamps and Registration Fees				
	(a) Stamps - Judicial	11.65	13.05	17.82	(+) 36.55
	(b) Stamps - Non-Judicial	189.67	242.87	254.72	(+) 4.88
	(c) Registration Fees	28.84	39.89	81.25	(+)103.69
4.	Taxes and Duties on Electricity	44.46	49.99	7.51	(-) 84.98
5.	Taxes on Vehicles	151.06	183.90	222.87	(+) 21.19
6.	Taxes on Agricultural Income	20.88	17.24	26.08	(+) 51.28
7.	Land Revenue	19.80	22.65	23.71	(+)4.68
8.	Others	14.31	11.37	13.47	(+) 18.47
	Total	2344.86	2799.10	3382.68	(+) 20.85

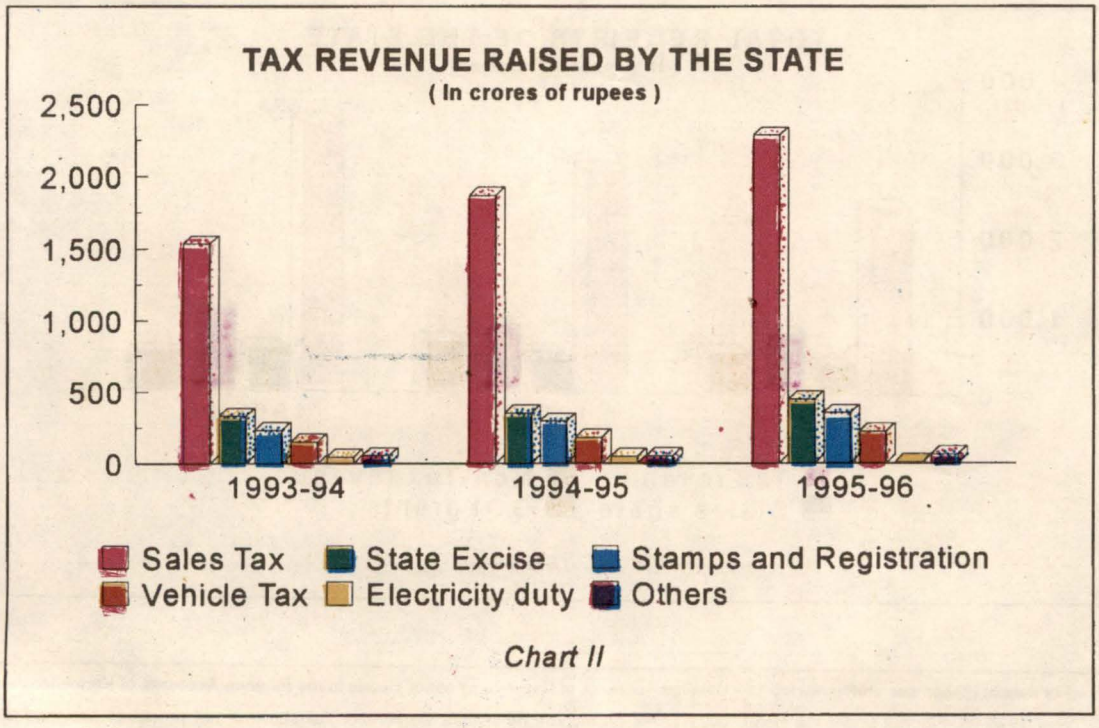

Chart II

(ii) The details of non-tax revenue realised during the years 1993-94 to 1995-96 are given below and depicted in Chart III.

	Head of Revenue	1993-94	1994-95	1995-96	Percentage of increase (+)/ decrease (-) in 1995-96 over 1994-95
		(In crores of rupees)			
1.	State Lotteries	62.83	72.19	92.58	(+) 28.24
2.	Forestry and Wild Life	102.96	136.88	160.77	(+) 17.45
3.	Interest Receipts	27.60	37.76	100.32	(+) 165.68
4.	Education,Sports,Art & Culture	21.77	28.32	29.08	(+) 2.68
5.	Medical and Public Health	15.31	11.38	23.53	(+) 106.77
6.	Crop Husbandry	7.58	14.93	11.88	(-) 20.43
7.	Animal Husbandry	3.50	3.56	4.21	(+) 18.26
8.	Stationery and Printing	2.71	2.97	2.89	(-) 2.69
9.	Public Works	1.32	1.57	1.77	(+) 12.74
10.	Others	77.35	86.79	108.46	(+) 24.97
	Total	322.93	396.35	535.49	(+) 35.11

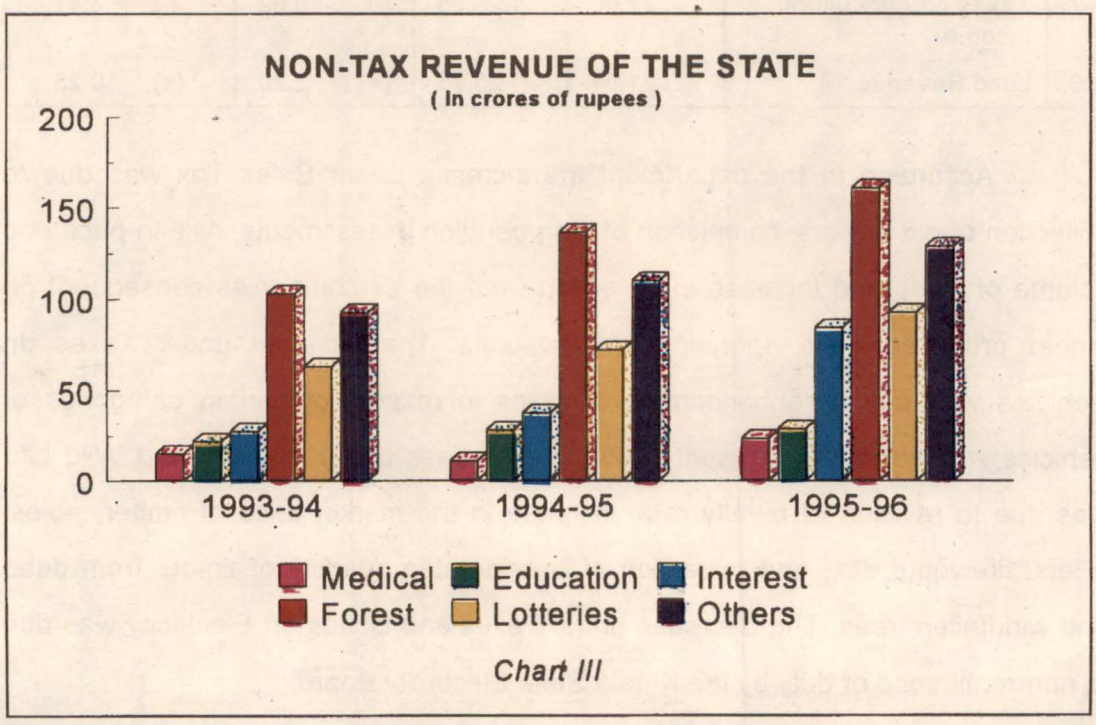

Chart III

1.2. Variation between the Budget estimates and actuals

The variation between the Budget estimates of revenue for the year 1995-96 and the actual receipts under principal heads of revenue are given below:

	Head of Revenue	Budget Estimates	Actual receipts	Variation increase (+) shortfall(-)	Percentage of variation
		(In crores of rupees)			
1.	Sales Tax	1930.16	2285.96	(+) 355.80	(+) 18.43
2.	State Excise	370.02	449.29	(+) 79.27	(+) 21.42
3.	Stamps and Registration Fees				
	(a) Stamps - Non judicial	201.82	254.72	(+) 52.90	(+) 26.21
	(b) Registration Fees	37.00	81.25	(+) 44.25	(+) 119.59
4.	Taxes on Vehicles	164.73	222.87	(+) 58.14	(+) 35.29
5.	Forestry and Wild Life	120.00	160.77	(+) 40.77	(+) 33.98
6.	Taxes and Duties on Electricity	76.17	7.51	(-) 68.66	(-) 90.14
7.	Taxes on Agricultural Income	27.00	26.08	(-) 0.92	(-) 3.41
8.	Land Revenue	21.51	23.71	(+) 2.20	(+) 10.23

According to the department the increase under Sales Tax was due to collection of old arrears, completion of long pending assessments, hike in price and volume of trade and increase in collection from the oil companies consequent on higher production and operation of new units. The increase under Taxes on Vehicles was due to enhancement of taxes in respect of certain categories of vehicles with effect from 1 April 1995. The increase under Forestry and Wild Life was due to revision of royalty rate, increase in the market price of timber, poles, billets, firewood, etc., and extraction of considerable quantity of timber from dead and windfallen trees. The decrease under Taxes and Duties on Electricity was due to non-remittance of duty by the Kerala State Electricity Board.

The reasons for variation called for (September 1996) from the heads of other departments have not been received (November 1996).

1.3. Cost of collection

The gross collections in respect of major revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collections during the years 1993-94, 1994-95 and 1995-96 along with the relevant all India average percentage of expenditure on collection to gross collections for 1994-95 are given below:

	Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the year 1994-95
			(In crores of rupees)			
1.	Sales Tax	1993-94	1533.24	18.61	1.21	
		1994-95	1864.93	21.42	1.15	1.25
		1995-96	2285.96	22.40	0.98	
2.	Stamps (Non- Judicial)	1993-94	218.51	15.99	7.32	
	and Registration Fees	1994-95	282.76	18.33	6.48	3.65
		1995-96	335.97	20.11	5.99	
3.	State Excise	1993-94	330.95	15.10	4.56	
		1994-95	353.21	18.37	5.20	3.12
		1995-96	449.29	20.25	4.51	
4.	Taxes on Vehicles	1993-94	151.06	5.14	3.40	
		1994-95	183.90	6.29	3.42	2.50
		1995-96	222.87	7.53	3.38	

1.4. Arrears of revenue

As on 31st March 1996, arrears of revenue under principal heads of revenue, as reported by the departments were as under:-

	Head of Revenue	Arrears	Amount of arrears outstanding for more than 5 years	Remarks
		(In crores of rupees)		
1.	Electricity Duty	106.20	9.40	Out of Rs 106.20 crores, a sum of Rs 105.72 crores was due from the Kerala State Electricity Board.
2.	Police	10.58	5.95	Out of Rs 10.58 crores, Rs 6.63 crores was due from Public Sector Undertakings of Government of Kerala and Rs 3.27 crores from Public Sector Undertakings of Government of India.
3	Local Fund Audit	4.55	1.27	The reason attributed by the department for the arrears was non-remittance by the auditee institutions.
4.	Mining and Geology	0.22	0.14	The reason attributed by the department for the arrears was dispute regarding rate of royalty on minerals despatched without permits. The department stated that the matter was under correspondence with the defaulters/ Government.

Details of arrears of revenue in respect of other departments though called for in June 1996 have not been furnished (November 1996).

1.5. Arrears in assessment of sales tax and agricultural income tax

The details of sales tax and agricultural income tax assessment cases pending at the beginning of the year, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of each year during 1993-94 to 1995-96, as furnished by the department, are given below:

Year	Opening balance	Cases due for assessment during the year	Total	Cases finalised during the year	Balance at the close of the year	Percentage of column 5 to 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales Tax						
1993-94	92,976	98,313	1,91,289	98,514	92,775	52
1994-95	97,565	1,01,377	1,98,942	1,02,572	96,370	52
1995-96	96,370	1,18,623	2,14,993	1,03,706	1,11,287	48
Agricultural Income Tax						
1993-94	16,034	14,094	30,128	18,519	11,609	61
1994-95	12,980	13,917	26,897	15,336	11,561	57
1995-96	11,561	13,616	25,177	13,170	12,007	52

The above table shows that the department was able to complete between forty eight to sixty one *per cent* of the assessments due for completion every year. The delay in finalisation of assessments resulted in delay in realisation of the revenue involved in those cases.

The department had decided (June 1995) to complete, 70 *per cent* of the arrear assessments getting time-barred by 1997 during 1995-96.

1.6. Write-off, waiver and remission

During the year 1995-96, an amount of Rs 67.45 lakhs was waived by Government as detailed below.

(i) Forest and Wild Life Department

An amount of Rs 55.47 lakhs, being the penalty due from a Public Limited Company for non-removal of raw materials as per agreement, during 1981-1983, was waived (March 1996) as the non-removal was for reasons beyond their control and the Company had already remitted the value of the raw materials.

(ii) Taxes Department

(a) Penal interest of Rs 9.25 lakhs on sales tax imposed on a Government Company which went into voluntary winding up on 30 March 1993 was waived (May 1995) at the request of the liquidators.

(b) An amount of Rs 61,144 due from a private firm towards arrears of sales tax payable for the period from 15 May 1984 to 8 October 1985 was waived (May 1995) since the firm had been exempted from payment of sales tax both before 15 May 1984 and also after 8 October 1985.

(iii) State Excise Department

An amount of Rs 1.45 lakhs due from three contractors towards abkari arrears and interest thereon was written off (April 1995 and December 1995) since

the defaulters did not possess any property anywhere in the State and there was no possibility of realising the arrears.

(iv) Registration Department

An amount of Rs 67,618 being the amount of application fee omitted to be levied from co-operative societies was waived (May 1995) since the Inspector General of Registration who had issued a wrong circular resulting in the short levy, retired from service and expired.

1.7. Internal Audit

i) Land Revenue Department

The Internal Audit Unit of the Board of Revenue (Land Revenue) consists of one Junior Superintendent and three Upper Division Clerks. During 1995-96, the unit audited 22 Taluk Offices and 8 Revenue Divisional Offices. Inspection of 39 Taluk Offices, 12 Revenue Divisional Offices, 14 Collectorates and 1 Assistant Settlement Office was in arrears up to 1995-96. The department attributed the arrears to the inadequacy of staff. The department reported (July 1996) that proposal for the formation of one more audit wing in the department is pending with the Government.

During 1995-96, 467 audit observations involving money value of Rs 14.90 lakhs were made, out of which 455 observations involving money value of Rs 14.36 lakhs were yet to be settled as on 31 March 1996.

ii) **Chief Electrical Inspectorate**

No Internal Audit Wing has been constituted in the department so far. However, out of the 15 offices due for audit during 1995-96, audit of only one office was completed by diversion of staff. According to the department, the proposal for an independent audit cell put forward by the department is under consideration of the Government.

iii) Information regarding the organisational set up of Internal Audit Wing and its functioning, called for (June 1996) from State Excise, Motor Vehicles, Forest, Registration and Agricultural Income Tax and Sales Tax departments has not been furnished (November 1996).

1.8. Results of audit

Test check of the records of Sales Tax, Agricultural Income Tax, State Excise, Motor Vehicles, Forest and Other departmental offices conducted during the year 1995-96 revealed under-assessments/short levy/loss of revenue amounting to Rs 26.03 crores in 2,525 cases. During the course of the year 1995-96, the concerned Departments accepted under-assessments, etc., of Rs 3.70 crores involved in 923 cases of which 275 cases involving Rs 0.68 crore had been pointed out in audit during 1995-96 and the rest in earlier years.

This report contains 47 paragraphs including 2 reviews relating to non-levy, short levy of tax, duty and interest, penalty etc., involving financial effect of Rs 21.46 crores. The departments/Government have so far accepted the audit observations in 58 cases involving Rs 168.94 lakhs included in the Report. No final reply has been received in the remaining cases (November 1996).

1.9. Outstanding Inspection Reports and Audit Observations

Important irregularities and defects in assessments, demand and collection of State receipts, noticed during local audit but not settled on the spot, are communicated to the heads of the offices and to the next higher departmental authorities through inspection reports. The more important financial irregularities are also brought to the notice of the heads of departments and the Government for taking prompt corrective measures. According to the instructions issued by Government in November 1965, first replies to inspection reports are required to be sent within four weeks from the date of receipt of the inspection reports. In order to apprise the Government of the position of pending audit observations from time to time, statements of outstanding audit observations are forwarded to Government and their replies watched in audit.

As at the end of June 1996, 3,119 inspection reports containing 13,269 audit observations having money value of Rs 161.44 crores issued up to December 1995 were outstanding as shown below. Figures for the preceding two years are also given.

	As at the end of June 1994	As at the end of June 1995	As at the end of June 1996
Number of inspection reports	2811	2888	3119
Number of audit observations	11378	12123	13269
Amount involved (in crores of rupees)	104.18	126.18	161.44

An analysis of the outstanding inspection reports according to the revenue heads is given below:

	Revenue Head	Number of inspection reports	Number of audit observations	Amount (In crores of rupees)
		(as at the end of June 1996)		
1.	Sales Tax	1010	5617	82.50
2.	Agricultural Income Tax	367	2377	17.17
3.	State Excise Duties	637	1327	2.91
4.	Taxes on Vehicles	251	1504	3.99
5.	Land Revenue	190	728	2.99
6.	Forestry and Wild Life	218	687	51.35
7.	Stamps and Registration Fees	433	979	0.03
8.	Electricity Duty	10	42	0.39
9.	State Lotteries	3	8	0.11
	Total	3119	13269	161.44

Year-wise analysis of the outstanding inspection reports and audit observations is given below:

Year	Number of inspection reports	Number of audit observations	Amount (In crores of rupees)
	(as at the end of June 1996)		
Up to 1991-92	1288	4790	73.01
1992-93	377	1551	11.25
1993-94	426	1841	12.41
1994-95	468	2533	49.31
1995-96	560	2554	15.46
Total	3119	13269	161.44

First replies to 308 inspection reports issued up to December 1995 were not furnished by the departments till the end of June 1996.

The position was brought to the notice of the Chief Secretary to Government (July to September 1996).

Chapter 2

Sales Tax

CHAPTER 2

SALES TAX

2.1. Results of audit

Test check of Sales Tax assessments and refund cases and connected documents of Sales Tax Offices conducted in audit during the year 1995-96 revealed under-assessments of tax, non-levy of penalty etc., amounting to Rs 803.41 lakhs in 1,273 cases which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Turnover escaping assessment	203	85.59
2.	Irregular exemption from tax	156	130.68
3.	Application of incorrect rate/concessional rate of tax	222	102.78
4.	Non-levy of penalty	239	127.32
5.	Double accountal of remittance	6	2.20
6.	Other lapses	447	354.84
	Total	1,273	803.41

During the course of the year 1995-96, the department accepted under-assessment etc., of Rs 250.60 lakhs involved in 504 cases of which 204 cases involving Rs 31.85 lakhs had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs 173.73 lakhs are given in the following paragraphs.

In four cases the department recovered an amount of Rs 1.45 lakhs by raising additional demand as detailed below.

Sl. No.	Name of Office	Nature of the case	Tax short assessed Rs	Amount recovered Rs
1.	Special Circle Mattancherry	On diagnostic materials tax was levied at six per cent instead of eight per cent	36,672	36,672
2.	First Circle Palakkad	On second sale of electronic goods and last sale of arrack no turnover tax was levied	51,529	51,529
3.	Sales Tax Office Angamaly	On second sale turnover of scheduled goods no turnover tax was levied	26,527	26,527
4.	Sales Tax Office Chittur	On sales turnover of IMFL no turnover tax was levied	29,935	29,935
	Total		1,44,663	1,44,663

2.2. Application of incorrect rate of tax

(i) Under the Central Sales Tax Act, 1956, in the absence of declaration in Form `C', tax is leviable on goods, other than declared goods, at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the State, whichever is higher. Under Section 8(2A) of the Act, the tax payable by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale of or as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent shall be nil or as the case may be, shall be calculated at the lower rate. The Supreme Court held[1]

[1] Commissioner of Sales Tax, Jammu and Kashmir Vs M/s Pine Chemicals Limited and Others (1995)96STC 355(SC)

that such exemptions must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. By a notification (March 1991) Government reduced the tax payable on sale of composite diesel generator sets assembled within the State from ten per cent to one per cent for a period of three years from I April 1991.

(a) In Chittur, while finalising (December 1994) the assessment of a dealer for the year 1993-94, on turnover of Rs 2.03 crores relating to inter-State sale of diesel generator sets assembled within the State, without `C' form declarations, tax was levied at the rate of one per cent based on the notification. As the reduction granted was not a general one but was operative under specified condition that it would be applicable on sale of composite diesel generator sets assembled within the State, the application of the reduced rate was irregular. This resulted in short levy of tax of Rs 18.30 lakhs.

The case was pointed out (April 1995) and reported to Government in March 1996. Government stated that the assessment for the year 1993-94 had been revised (July 1995) by creating additional demand of Rs 18.20 lakhs and that collection particulars would be furnished by the Board of Revenue in due course.

(b) In Second Circle, Palakkad, while finalising (April 1994) the assessment of a dealer in diesel generator sets for the year 1992-93, on turnover of Rs 11.42 lakhs relating to inter-State sale of diesel generator sets assembled within the State without `C' form declarations, tax was levied at the reduced rate of one per cent treating the exemption as a general one, instead of levying tax at the rate of ten per cent. This resulted in short levy of tax of Rs 1.03 lakhs.

On this being pointed out (June 1995) in audit, the assessing authority stated (June 1995) that on the basis of a clarification issued by Government (July 1991) to an assessee inter-State sale of diesel generator sets assembled within the State attracted Central Sales Tax at the rate of one *per cent* only as per

Sn. 8(2A) of the Central Sales Tax Act and consequent on issue of the notification of March 1991 `C' or `D' forms also need not be collected for such sales. But in view of the decision by the Supreme Court, the clarification issued by Government to an assessee, without amending the notification, is not tenable.

The case was reported to Government in February 1996; their reply has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, tax was leviable on pepper and arecanut at the rate of six per cent at the point of last purchase in the State, up to 31 March 1992.

In Anchal, while finalising (October 1994) the assessment of a dealer for the years 1985-86 to 1987-88, on an aggregate turnover amounting to Rs 2.05 crores relating to purchase of pepper and arecanut during the period I April 1985 to 30 June 1987, tax was levied at the rate of five per cent instead of six per cent. This resulted in short levy of tax of Rs 2.63 lakhs (including additional sales tax and surcharge).

The matter was reported to the department in January 1996 and to Government in April 1996. Government stated (August 1996) that the assessments for the years 1985-86 and 1987-88 had been revised (January 1996) and the revised demand advised for collection under the Revenue Recovery Act.

(iii) Under the Kerala General Sales Tax Act, 1963, tax was leviable on `cement products including products in combination with other materials not elsewhere mentioned in the Schedule' at the rate of twelve and a half per cent at the point of first sale in the State.

(a) In First Circle, Kalamasserry, while finalising (April and August 1994) the assessments of a small scale industrial unit producing `cavity cement bricks' for the

years 1992-93 and 1993-94, on an aggregate sales turnover of cement bricks amounting to Rs 21.53 lakhs, tax was levied at the rate of eight per cent instead of twelve and a half per cent. This resulted in short levy of tax of Rs 1.05 lakhs.

The matter was reported to the department in November 1995 and to Government in March 1996. Government stated (August 1996) that the assessments for the years 1992-93 and 1993-94 had been revised (April and May 1996) creating an additional demand of Rs 1.05 lakhs.

(b) In Kuthuparamba, while finalising (November 1994) the assessment of a dealer for the years 1992-93 and 1993-94 on an aggregate sales turnover of `cement hollow bricks' amounting to Rs 10.77 lakhs, tax was levied at the rate of eight per cent instead of twelve and a half per cent. This resulted in short levy of tax of Rs 50,875 (including surcharge).

On this being pointed out (May 1995) in audit, the assessing authority stated (November 1995) that the proportion of cement consumed in the manufacture of hollow bricks was less than ten per cent. The major portion of the materials used in the process were stone powder and metal. As such the commodity could not be classified as cement product. But as the entry in the schedule covers all cement products, irrespective of the quantum of cement used, the reply of the department is not tenable. Further report has not been received (November 1996).

The case was reported to Government in December 1995; their reply has not been received (November 1996).

(iv) Under the Kerala General Sales Tax Act, 1963, "all other goods not coming under any entry in any of the Schedules" were taxable at the rate of eight per cent at the point of first sale in the State, from 1 April 1992 to 31 March 1994. `Maize pohwa' is not included in any of the Schedules.

In Second Circle, Ernakulam, while finalising (January 1995) the assessment of a dealer for the year 1993-94, on turnover of `maize pohwa' amounting to Rs 11.38 lakhs, tax was levied at the rate of one per cent instead of eight per cent, resulting in short levy of tax of Rs 87,635 (including surcharge). However, as the assessee had collected tax at the rate of five per cent the assessing authority has forfeited an amount of Rs 45,059 remitted by the assessee in excess. After adjusting this amount, the short demand worked out to Rs 42,576.

On this being pointed out (August 1995) in audit, the assessing authority stated (August 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

(v) Under the Kerala General Sales Tax Act, 1963, (as it stood up to 31 March 1992) tax was leviable on pickles and jam at the rate of ten per cent at the point of first sale in the State.

In Kothamangalam, while finalising (November 1991 and December 1994) the assessments of a dealer for the years 1990-91 and 1991-92, on an aggregate turnover of Rs 23.45 lakhs relating to sale of pickles and jam, tax was levied at the rate of eight per cent instead of ten per cent. This resulted in short levy of tax of Rs 62,385 (including additional sales tax and surcharge).

On this being pointed out (January 1996) in audit, the assessing authority stated that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government (March 1996); their reply has not been received (November 1996).

(vi) Under the Kerala General Sales Tax Act, 1963, on `all metals, alloys and metallic products or articles made of iron or steel in combination with other metals other than those specified elsewhere in the schedules', tax is leviable at the rate of ten per cent at the point of first sale in the State, with effect from 1 April 1992.

In Chalakudy, while finalising (August and December 1994) the assessments of a dealer for the years 1992-93 and 1993-94 on an aggregate turnover of aluminium circles, amounting to Rs 16.71 lakhs, tax was levied at the rate of eight per cent instead of ten per cent. This resulted in short levy of tax of Rs 36,347 (including surcharge).

The matter was reported to the department in November 1995 and to Government in April 1996. Government stated (August 1996) that the assessments for both the years had been revised levying tax at the rate of ten per cent.

2.3. Turnover escaping assessment

(i) Under the Kerala General Sales Tax Act, 1963, on groundnut purchased within the State, tax is leviable at the rate of four per cent at the point of last purchase in the State.

In Chittur, while finalising (December 1994) the assessment for the year 1991-92 under best judgement of a dealer in groundnut and groundnut oil, the assessing officer fixed the purchase turnover of groundnut, from which oil worth Rs 338.26 lakhs was extracted, at Rs 10 lakhs which was below the usual rate of fifty per cent of the turnover of groundnut oil. This resulted in purchase turnover of Rs 1.59 crores escaping assessment and consequent short levy of tax of Rs 6.37 lakhs.

On this being pointed out (April 1995) in audit, the assessing officer revised (July 1995) the assessment, raising additional demand of Rs 6.37 lakhs. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, `goods' means all kinds of movable property (other than newspaper, actionable claims, electricity, stocks and shares and securities). Accordingly, import replenishment licences/Exim scrip (REP licence) are `goods' taxable under the Act, at the rate of five per cent up to 31 March 1992 at all points of sale and at eight per cent at the point of first sale in the State from I April 1992.

(a) In Special Circle, Kollam, while finalising (June and December 1994) the assessment of a dealer for the years 1991-92 and 1992-93 on an aggregate sales turnover of REP licence/Exim scrip amounting to Rs 38.09 lakhs, no tax was levied. This resulted in short levy of tax of Rs 2.65 lakhs (including additional sales tax and surcharge).

On this being pointed out (May/June 1995) in audit, the assessing authority revised (June 1995) the assessments raising additional demand of Rs 2.65 lakhs. Further report has not been received (November 1996).

The case was reported to Government in March 1996.

(b) In Special Circle, Mattancherry, while finalising (April 1994) the assessments for the years 1988-89 to 1990-91 of an assessee, the assessing authority did not levy sales tax on an aggregate turnover of Rs 19.58 lakhs on sale

of REP licence. This resulted in short levy of tax of Rs 1.30 lakhs (including additional sales tax and surcharge).

On this being pointed out (August 1995) in audit, the assessing authority stated (August 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(c) In Second Circle, Perumbavoor, while finalising (December 1994) the assessment of a dealer for the year 1989-90, no tax was levied on sales turnover of REP licence amounting to Rs 9 lakhs. This resulted in short levy of tax of Rs 59,852 (including additional sales tax and surcharge).

On this being pointed out (December 1995) in audit, the assessing officer stated (December 1995) that the matter would be examined. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

(d) In First Circle, Kannur, while finalising the assessment of a dealer for the year 1990-91, the assessing authority did not levy sales tax on a turnover of Rs 7.63 lakhs relating to sale of REP licence. This resulted in short levy of tax of Rs 50,715 (including additional sales tax and surcharge).

On this being pointed out (May 1995) in audit, the assessing officer stated (June 1995) that action was being taken to revise the assessment.

Government to whom the case was reported (April 1996) confirmed the facts and stated (July 1996) that the assessment for the year 1990-91 had been

revised (May 1996) raising additional demand of Rs 50,715 and that the recovery particulars would be furnished by the Board of Revenue. Further report has not been received (November 1996).

(iii) Under the Kerala General Sales Tax Act, 1963, tax is leviable on readymade garments at the rate of six per cent on the taxable turnover at the point of first sale in the State.

In Third Circle, Kozhikode, while finalising (August 1994) the assessment of a dealer in readymade garments for the year 1992-93, a turnover amounting to Rs 27.85 lakhs was assessed short resulting in short levy of tax of Rs 1.80 lakhs (including surcharge).

On this being pointed out (April 1995) in audit, the department stated (October 1995) that an additional demand for Rs 1.80 lakhs was raised and the amount had been advised (August 1995) for recovery under Revenue Recovery Act. Further report has not been received (November 1996).

The case was reported to Government in March 1996.

(iv) Under the Kerala General Sales Tax Act, 1963, tax was leviable on `cashew nut with shell' at the rate of five per cent (up to 31 March 1992) at the point of last purchase in the State.

In Special Circle, Kollam, while finalising (May 1992) the assessment of a dealer for the year 1989-90, no tax was levied on a turnover of Rs 22.76 lakhs relating to the cashew nut with shell purchased locally and transferred to another State for processing. This resulted in short levy of tax of Rs 1.51 lakhs (including additional sales tax and surcharge).

On this being pointed out (September 1993) in audit, the assessing authority initiated (March 1996) action for *suo motu* revision of the assessment. Further developments in the matter have not been reported (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(v) Under the Kerala General Sales Tax Act, 1963, tax was leviable on cashewnut with shell at the rate of five per cent at the point of last purchase in the State up to 31 March 1992.

In Special Circle, Kollam, while finalising (October 1992) the assessment of a dealer for the year 1981-82, the assessing authority levied tax on unaccounted turnover of cashew kernels amounting to Rs 14.69 lakhs. However, the corresponding purchase turnover of cashew nut amounting to Rs 9.79 lakhs was not assessed to tax, resulting in short levy of tax of Rs 57,761 (including additional sales tax and surcharge).

On this being pointed out (September 1993) in audit, the assessing authority sent (February 1996) proposal to the Deputy Commissioner for *suo motu* revision of the assessment. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

2.4. Non-levy of turnover tax

(i) Under the Kerala General Sales Tax Act, 1963, as it stood during 1988-89, every dealer in arrack and Indian made foreign liquor whose total turnover exceeded Rs 50 lakhs in a year, had to pay turnover tax at the rate of half per cent.

In Karunagappally, while revising (October 1994) the assessment of a dealer for the year 1988-89 on the basis of an appellate order, no turnover tax was levied on second sale of arrack and Indian made foreign liquor amounting to Rs 2.21 crores. This resulted in non-levy of turnover tax of Rs 1.10 lakhs.

On this being pointed out (September 1995) in audit, the assessing officer stated (October 1995) that the assessee had remitted (October 1995) Rs 1.10 lakhs and that the error in the assessment order would be rectified and intimated later. Further report has not been received (November 1996)

The case was reported to Government in May 1996; their reply has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, as it stood during 1992-93, every dealer other than a dealer in petroleum products, foreign liquor including Indian made foreign liquor, jewellery, cooked food, medicines, drugs and tea, whose total turnover exceeds Rs 50 lakhs has to pay turnover tax at the rate of half per cent on the turnover of goods coming under the First or Fifth Schedule at all points of sale (except the first sale) and on the turnover of goods received on consignment or on branch transfer. Under the Act, arrack is taxable under the Fifth Schedule at two sale points.

(a) In First Circle, Kalamasserry, while finalising (February 1995) the assessment of a retail dealer in arrack at the second taxable point, for the year 1992-93, on turnover of arrack, amounting to Rs 1.47 crores, no turnover tax was levied. This resulted in non-levy of turnover tax of Rs 73,735.

On this being pointed out (December 1995) in audit, the assessing authority stated (December 1995) that turnover tax need not be paid on that part of the turnover of goods in the First or Fifth Schedule on which a dealer has to pay either sales tax or purchase tax under Section 5(1). But as per the amendments

made to the Section 5(2A) with effect from I April 1992, every dealer except the first dealer in the State, has to pay turnover tax. Hence the reply of the department is not tenable. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(b) In Second Circle, Palakkad, while finalising (April 1994) the assessment of a dealer in blades for the year 1992-93, no turnover tax was levied on sales turnover of blades received on branch transfer, amounting to Rs 1.34 crores. This resulted in non-levy of turnover tax of Rs 67,247.

On this being pointed out (June 1995) in audit, the assessing authority stated (June 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in February 1996; their reply has not been received (November 1996).

(c) Under the Act, refrigerators, water coolers, washing machines and dish washers are taxable at two sale points one at the point of first sale in the State and the other at the point of last sale in the State.

In Special Circle, Kollam, while finalising (July 1994) the assessment of a dealer for the year 1992-93, on turnover of refrigerators, washing machines etc., sold at the last sale point, amounting to Rs 1.04 crores, no turnover tax was levied. This resulted in non-levy of turnover tax of Rs 52,153.

The matter was reported to the department in May 1995 and to Government in March 1996. Government stated (July 1996) that the assessment for the year 1992-93 had been revised (May 1996) creating an additional demand of Rs 52,153.

(d) In Kuthuparamba, while finalising (January 1994) the assessment of a dealer in arrack at the second taxable point, for the year 1992-93, no turnover tax was levied. This resulted in non-levy of turnover tax of Rs 42,853.

On this being pointed out (May 1995) in audit, the assessing authority stated (December 1995) that if a commodity was compounded under Section 7 in Rule 5(1) no further levy was needed under Section 5(2) and hence there had been no loss of revenue. As the turnover tax is payable under Section 5(2A), compounding of tax under Section 7 does not do away with the liability of paying turnover tax. Hence the reply is not tenable. Further reply has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(e) In Fourth Circle, Thrissur, while finalising (November 1993) the assessment of a dealer for the year 1992-93, on second sales turnover of `maida' and `rava' amounting to Rs 70.95 lakhs, no turnover tax was levied. This resulted in non-levy of turnover tax of Rs 35,473.

On this being pointed out (March 1995) in audit, the department stated (October 1995) that the assessment had been revised (April 1995) by raising an additional demand of Rs 35,473.

Government to whom the case was reported (March 1996) confirmed the facts and stated (June 1996) that the additional demand had been advised for collection under the Revenue Recovery Act. Further report has not been received (November 1996).

(iii) Under the Kerala General Sales Tax Act, 1963, (as it stood up to 31 March 1992) a dealer in goods coming under the First or Fifth schedule with an

annual total turnover exceeding Rs 50 lakhs had to pay turnover tax at the rate of half per cent on the turnover of such goods on which he was not liable to pay sales tax under section 5(1) or (2) of the Act.

In Kothamangalam, while finalising (January 1995) the assessment of a dealer for the year 1990-91, on second sales turnover of cement, asbestos, etc., amounting to Rs 49.16 lakhs, no turnover tax was levied, resulting in non-levy of turnover tax of Rs 24,578.

On this being pointed out (January 1996) in audit, the assessing authority issued (January 1996) notice to revise the assessment. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(iv) Under the Kerala General Sales Tax Act, 1963, as it stood up to 31 March 1992, a dealer in goods, falling under the First or Fifth Schedule with annual turnover exceeding Rs 50 lakhs has to pay turnover tax at the rate of half per cent on the turnover of such goods on which he is not liable to pay sales tax under Section 5(1) or (2) of the Act. Under the Act, `arrack' was taxable at the point of First sale in the State up to 31 March 1992.

In Edathua, while finalising (June 1994) the assessment of a dealer in arrack for the year 1991-92, the assessing authority did not levy turnover tax on second sale turnover of arrack amounting to Rs 44.94 lakhs. This resulted in non-levy of turnover tax of Rs 22,470.

The case was pointed out (June 1995) to the department and reported to Government in March 1996. Government stated (June 1996) that the additional

demand raised had been advised (December 1995) for collection under the Revenue Recovery Act.

2.5. Short levy of turnover tax

(i) Under the Kerala General Sales Tax Act, 1963, with effect from I April 1992, every dealer other than a dealer in petroleum products, Foreign Liquor including Indian made Foreign Liquor, jewellery, cooked food, medicines, drugs and tea, whose total turnover exceeds Rs 50 lakhs has to pay turnover tax at the rate of half per cent on the turnover of goods coming under the First or Fifth Schedule at all points of sale (except the First sale) and on the turnover of goods received on consignment or on branch transfer.

In Special Circle II, Ernakulam, while finalising (November 1993) the assessment of a dealer for the year 1992-93, no turnover tax was levied on sales turnover of asbestos cement products, received on branch transfer, amounting to Rs 5.76 crores. This resulted in short levy of turnover tax of Rs 2.88 lakhs.

On this being pointed out (February 1995) in audit, the assessing officer stated (March 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in February 1996; their reply has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, (as it stood during 1992-93) any dealer in medicines and drugs including Allopathic, Ayurvedic, Homoeopathic, Sidha or Unani preparations or Glucose I.P. at the point of first sale in the State has to pay turnover tax at the rate of half per cent on the turnover of such goods.

In Special Circle, Alappuzha, while finalising (July 1994) the assessment of a dealer for the year 1992-93, on turnover of Ayurvedic medicines amounting to Rs 1.30 crores, no turnover tax was levied. This resulted in short levy of turnover tax of Rs 64,994.

On this being pointed out (November 1995) in audit, the assessing authority stated (November 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

2.6. Irregular grant of exemption from tax

(i) Under the Kerala General Sales Tax Act, 1963, where goods sold are contained in containers, the rate of tax and point of levy applicable to such containers shall, whether the price of the container is charged separately or not be the same as those applicable to goods contained, and in determining turnover of the goods, the turnover in respect of the containers shall be included therein. It was judicially held[2] (July 1989) that in the case of liquor manufacturers, the unrefunded portion of the security deposit remaining in the hands of the seller constitutes part of the price of bottles sold. Under the Act, tax was leviable on Indian made Foreign Liquor at the rate of fifty five per cent up to 30 June 1987 at the point of first sale and at the rate of forty five per cent and fifteen per cent at the point of first sale and last sale respectively from 1 July 1987 to 31 March 1988.

In Special Circle, Alappuzha, while finalising (April 1989) the assessment for 1987-88, of a manufacturer of Indian made Foreign Liquor the assessing officer omitted to levy tax on an aggregate amount of Rs 1.28 crores adjusted by the assessee during the year, out of the deposits collected by them, towards cost of bottles not returned for the period 1984-85 to 1987-88. The short levy on this

2 Kalyani Breweries Ltd Vs State of West Bengal 78 STC 441 (WBTT)

account for the years 1984-85 to 1987-88 works out approximately to Rs 90.20 lakhs (including additional sales tax and surcharge).

The case was pointed out (May 1990) in audit and reported to the Government in March 1992. Government stated in August 1994 that the assessment for 1987-88 revised in May 1991 by adding Rs 1.28 crores had been set aside by the Deputy Commissioner, Kollam for fresh assessment. Subsequently, the Deputy Commissioner (AIT & ST), Alappuzha reported (November 1995) that the remanded assessment had been completed in July 1995, bringing to tax the deposit of bottles received for 1987-88 raising additional demand of Rs 9.10 lakhs. Further report on revision of assessments relating to other periods has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, no tax is leviable on turnover relating to purchase in the course of import. Under the Act, tax was leviable on `cashew nut with shell' at the rate of five per cent at the point of last purchase in the State.

In Special Circle, Kollam, while finalising (May 1992) the assessment of a dealer for the year 1989-90, turnover of Rs 62.78 lakhs relating to local purchase of imported cashew nut by the dealer from an importer, was irregularly exempted from tax, considering it as a purchase in the course of import. This resulted in short levy of tax of Rs 4.17 lakhs (including additional sales tax and surcharge).

The case was reported to the department in September 1995 and to Government in March 1996; their replies have not been received (November 1996).

(iii) Under the Central Sales Tax Act, 1956, `sale' with its grammatical variations and cognate expression, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration.... and a sale or purchase of goods shall be deemed to take place in

the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another.

In Chittur, while finalising (November 1994 and January 1995) the assessments of a dealer in coffee seeds for the years 1984-85 to 1990-91, the assessing authority gave exemption to an aggregate turnover of Rs 40.20 lakhs relating to the coffee seeds sold to the pooling agent of Coffee Board, in Tamil Nadu on the ground that there was no sale of coffee seeds, despite the fact that tax was assessed on similar sales made during 1983-84. The irregular exemption resulted in short levy of tax of Rs 4.02 lakhs.

On this being pointed out (April 1995) in audit, the assessing authority stated (April 1995) that there had been no sale of coffee seeds by the dealer but had been only pooling to the Coffee Board. But the contention of the department is untenable because, there was movement of goods for consideration from one State to another. Hence the transaction effected between the dealer and the pooling agent in Tamil Nadu was an inter-State sale taxable at ten per cent in the absence of `C' form declaration. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

(iv) Under Section 5A of the Kerala General Sales Tax Act, 1963, every dealer who, in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under the Act, in circumstances in which no tax is payable and consumes such goods in the manufacture of other goods for sale or otherwise, shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5. Government by a notification issued (March 1990) had made an

exemption in respect of the tax payable under the Act by new industrial units under the Small Scale Industries and by such of the existing industrial units which effect diversification/expansion/modernisation, on the turnover of sale of goods manufactured and sold by such units and on the turnover of goods taxable at the point of last purchase in the State and used by such units in the manufacture of goods intended for sale within the State or inter-State, subject to certain conditions. This concession was not available for tax payable under Section 5A.

In Second Circle, Ernakulam, while finalising (December 1994) the assessment of a Small Scale Industrial Unit, enjoying tax concession, for the year 1992-93, the assessing authority fixed the taxable turnover at Rs 1.44 crores, which included a turnover of Rs 10.90 lakhs relating to purchase of PVC resins, granules, chemicals, etc., taxable under section 5A of the Act. The assessing authority computed the tax and instead of demanding it, it was set off against the tax concession available to the unit. This resulted in non-demand of tax of Rs 1.18 lakhs (including surcharge).

The case was pointed out (August 1995) to the department and reported to Government in March 1996. Government stated (June 1996) that the assessment for the year 1992-93 had been revised (March 1996) and that collection particulars of the additional demand would be intimated by the Board of Revenue in due course. Further report has not been received (November 1996).

(v) Under the Central Sales Tax Act, 1956, any dealer who claims that the movement of goods from one State to another was not by reason of sale, but was occasioned by the transfer of goods to any other place of his business or to his agent or principal, has to furnish to the assessing authority a declaration in Form F, duly filled in to prove his claim. The assessing authority after making such enquiry as he may deem necessary, make an order to the effect that the movement of goods to which the declaration relates, was occasioned otherwise than as a result of sale and can exempt the goods from levy of tax.

In Special Circle, Kollam, while finalising (July 1991) the assessment of a dealer for the year 1988-89, the assessing authority exempted turnover of Rs 24.38 lakhs by accepting the `F' forms furnished by the dealer. However, this exempted turnover included a sum of Rs 11.46 lakhs relating to the transfer of goods to two fictitious dealers in Delhi. Acceptance of `F' form issued by fictitious dealers resulted in irregular grant of exemption from tax and consequent short levy of tax of Rs 1.15 lakhs.

On this being pointed out (July 1994) in audit, the Deputy Commissioner (Agricultural Income Tax & Sales Tax) Kollam, set aside (January 1995) the original order and remanded the case to the assessing authority for fresh disposal.

Government to whom the matter was reported (March 1996) stated (July 1996) that the assessment for the year 1988-89 had been revised (April 1996) creating additional demand of Rs 1.23 lakhs.

(vi) Under the Kerala General Sales Tax Act, 1963, cooked food including beverages, sold or served in hotels and or restaurants, the turnover in respect of which is Rs 20 lakhs and above is taxable at the rate of ten per cent at the point of first sale in the State. Government by notification issued in March 1990 reduced the rate of tax on cooked food from ten per cent to five per cent with effect from I April 1990. Government by another notification (July 1991) exempted from tax cooked food sold or served in all hotels and restaurants other than bar attached or star hotels and restaurants with effect from I August 1991.

In Second Circle, Palakkad, while finalising (March 1993) the assessment of a dealer for the year 1991-92, sales turnover of cooked food for the period from I April 1991 to 31 July 1991, amounting to Rs 5.95 lakhs was irregularly exempted from tax. This resulted in short levy of tax of Rs 39,585 (including surcharge).

On this being pointed out (June 1995) in audit, the assessing authority stated (June 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government (February 1996); their reply has not been received (November 1996).

2.7. Irregular grant of concessional rate of tax.

(i) Under the Kerala General Sales Tax Act, 1963, tax was leviable on `electronic systems, instruments, apparatus and appliances and spare parts and accessories thereof' at the rate of fifteen per cent up to 31 March 1992 and at twenty per cent thereafter. Government vide notification issued in May 1989 reduced the rate of tax payable on the sale of television sets and electronic goods mentioned in the schedule attached to the notification from fifteen to four per cent up to 31 March 1992 and vide another notification issued (March 1992) this concessional rate was revised to five per cent. However, this concession is not available for accessories and spare parts of electronic goods.

(a) In Special Circle II, Ernakulam, while finalising (June 1993 and February 1994) the assessments of a dealer in Cash Registers (Electronic Cash Register Machines) for the years 1991-92 and 1992-93 on sales turnover of Cash Register spares and accessories aggregating to Rs 23.35 lakhs, tax was levied at the concessional rate of four per cent and five per cent instead of the correct rate of fifteen per cent and twenty per cent respectively. This resulted in short levy of tax of Rs 3.62 lakhs.

On this being pointed out (March 1995) in audit, the assessing authority stated (March 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in February 1996; their reply has not been received (November 1996).

(b) `Microwave Ovens - Industrial application' was one of the items included in the schedule.

In Special Circle II, Ernakulam, while finalising (July 1993) the assessment of a dealer in comsumer electronic goods for the year 1991-92, on turnover of microwave ovens amounting to Rs 9.30 lakhs, tax was levied at the concessional rate of four per cent instead of the correct rate of fifteen per cent as the owens were not sold for industrial application. This resulted in short levy of tax of Rs 1.36 lakhs (including additional sales tax and surcharge).

On this being pointed out (February 1995) in audit, the assessing authority stated (December 1995) that the assessment had since been revised.

Government to whom the case was reported (March 1996) stated (September 1996) that the additional demand of Rs 1.36 lakhs raised on revision of the assessment had been collected (March 1996) and that suitable action was being taken against the delinquent officer.

(c) `Fax machine' was not included in the Schedule up to 31 December 1993.

In Third Circle, Ernakulam, while finalising (August 1994) the assessment of a dealer for the year 1992-93, on turnover of Fax machine, amounting to Rs 2.12 lakhs, tax was levied at the concessional rate of five per cent instead of twenty per cent. This resulted in short levy of tax of Rs 33,450 (including surcharge).

On this being pointed out (June 1995) in audit, the assessing authority revised (June 1995) the assessment raising additional demand of Rs 33,450. Government to whom the case was reported in March 1996 stated (July 1996) that

the additional demand of Rs 33,450 advised for collection under the Revenue Recovery Act had been stayed (January 1996). Further report has not been received (November 1996).

(ii) Under the Kerala General Sales Tax Act, 1963, on electrical goods tax was leviable at the rate of twelve and a half per cent at the point of first sale in the State. Government of Kerala had reduced the rate of tax payable on the sale of goods to Military and Naval canteens in the State to fifty per cent of the prevailing rate of tax for the goods payable under the Act with effect from I April 1992.

In Special Circle II, Ernakulam, while finalising (December 1993) the assessment of a dealer in electrical goods for the year 1992-93, on sales turnover of goods sold to N.C.C. Headquarters canteen, amounting to Rs 4.74 lakhs, tax was levied at the concessional rate of 6.25 per cent eventhough the concessional rate was not applicable to sales effected to N.C.C. Headquarters canteens. This resulted in short levy of tax of Rs 32,021.

The case was pointed out (March 1995) to the department in audit and reported to Government in February 1996. Government stated (May 1996) that the assessment had been revised (August 1995) by creating additional demand of Rs 31,972 and that the collection particulars would be furnished by the Board of Revenue in due course. Further report has not been received (November 1996).

(iii) Under the Kerala General Sales Tax Act, 1963, with effect from I April 1992, tax is leviable on refrigerators at the rate of fifteen per cent at the point of first sale by a registered dealer to a person other than a registered dealer. Government by a notification (March 1992) reduced the tax payable under the Act on the sale of goods, other than petroleum products, to Central and State Government Departments and certain other Corporations/authorities specified in the notification to four per cent.

In Special Circle I, Ernakulam, while finalising (January 1995) the assessment of a dealer in refrigerators, for the year 1992-93 on sales amounting to Rs 2.18 lakhs, effected to 4 corporations not specified in the notification, tax was levied at the concessional rate of four per cent instead of fifteen per cent. This resulted in short levy of tax of Rs 25,881 (including surcharge).

On this being pointed out (August 1995) in audit, the assessing authority stated (January 1996) that the assessment had been revised and the additional demand of Rs 25,881 collected in October 1995.

The case was reported to Government in March 1996.

(iv) Under the Kerala General Sales Tax Act, 1963, tax is leviable on coconut oil and coconut oil cake at the rate of two and a half per cent at the point of first sale in the State. Government reduced (March 1992) the rate of tax payable by an oil miller in the State on the sale of coconut oil and coconut oil cake produced out of copra which is liable to tax, to two per cent.

In Special Circle, Thrissur, while finalising (August 1993) the assessment of an oil miller for the year 1992-93, on turnover of coconut oil and cake, amounting to Rs 48.90 lakhs, produced out of copra not liable to tax, tax was levied at the concessional rate of two per cent instead of two and a half per cent. This resulted in short levy of tax of Rs 24,452.

On this being pointed out (November 1995) in audit, the assessing officer stated that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

2.8. Non-levy of additional sales tax

(i) Under the Central Sales Tax Act, 1956, the rate of tax applicable to inter-State sales of goods other than declared goods not covered by `C' forms is ten per cent or the local rate of tax whichever is higher. Under the Kerala Additional Sales Tax Act, 1978, the tax payable for every financial year by an assessee under the Kerala General Sales Tax Act, 1963, shall be increased by a prescribed percentage of tax which was twenty per cent up to 31 March 1988. The Supreme Court had held[3] (January 1992) that the rate of tax applicable inside the State would include additional sales tax also. Under the State Act, tax was leviable on asbestos sheets at the rate of ten per cent at the point of first sale in the State.

(a) In Special Circle, Thrissur, while finalising (March 1995) the assessment of a dealer for the year 1987-88, on inter-State sales turnover of asbestos sheets without `C ' forms, amounting to Rs 66.32 lakhs, tax was levied at ten per cent instead of twelve per cent including additional sales tax. This resulted in short levy of tax of Rs 1.33 lakhs.

On this being pointed out (October 1995) in audit, the assessing officer stated (November 1995) that according to the assessee there was possibility to get `C' form for the entire sales and they were willing to produce the `C' forms, if they were given the required time and hence there was no question of levying additional sales tax. The reply of the assessing officer is not tenable as the inter-State sales not covered by prescribed declarations are not to be given the benefit of concessional rate of tax and also exemption from additional sales tax. When the assessing authority had levied tax at higher rates on sales not covered by prescribed declaration, he should have also levied additional sales tax prevalent in the State as per the decision of Supreme Court mentioned above.

3 Deputy Commissioner of Sales Tax Vs Aysha Hossiery Factory Pvt. Ltd and Others 85 STC 106(1992).

The case was reported to Government in May 1996; their reply has not been received (November 1996).

(b) Under the State Act, tax was leviable on tread rubber at the rate of twelve per cent up to 30 June 1987 and at ten per cent thereafter, at the point of first sale in the State.

In Third Circle, Thrissur, while finalising (February and March 1994) the assessments of a dealer for the years 1983-84 to 1988-89, on an aggregate turnover of Rs 15.16 lakhs, relating to inter-State sale of tread rubber without `C' forms, no additional sales tax was levied. This resulted in short levy of tax of Rs 61,793.

On this being pointed out (May 1995) in audit, the assessing authority stated (May 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

(ii) Under the Kerala Additional Sales Tax Act, 1978, which was in force up to 31 March 1992, the tax payable for every financial year by an assessee under the Kerala General Sales Tax Act, 1963, shall be increased by a prescribed percentage of tax which was twenty five per cent from 1 April 1988 to 31 March 1992.

(a) In Third Circle, Kozhikode, while finalising (November 1994) the assessment of a dealer for the year 1991-92, the assessing authority did not levy additional sales tax on the tax of Rs 3.95 lakhs demanded. This resulted in non-levy of additional sales tax of Rs 98,680.

On this being pointed out (April 1995) in audit, the assessing authority stated (October 1995) that the assessment had been revised in May 1995. Further report has not been received (November 1996).

The case was reported to Government in March 1996.

(b) In Special Circle, Alappuzha, while finalising (September 1994) the assessment of a dealer for the year 1991-92, the assessing officer fixed the sales tax due at Rs 2.28 lakhs. However, no additional sales tax was levied on this amount. This resulted in non-levy of additional sales tax of Rs 56,887.

On this being pointed out (October 1995) in audit, the assessing authority stated (October 1995) that notice had been issued to revise the assessment. Further report has not been received (November 1996).

The case was reported to Government (April 1996);their reply has not been received (November 1996).

(c) In Third Circle, Kozhikode, while finalising (January 1995) the assessments of a dealer for the years 1989-90 and 1990-91, the assessing authority did not levy additional sales tax on an aggregate sales tax due amounting to Rs 1.85 lakhs. This resulted in non-levy of additional sales tax of Rs 46,185.

On this being pointed out (April 1995) in audit, the assessing authority stated (October 1995) that the assessments had been revised levying additional sales tax of Rs 46,185. Further report has not been received (November 1996).

The case was reported to Government in March 1996.

2.9. Irregular adjustment of cumulative tax concession

By a notification issued (October 1980) under Section 10 of the Kerala General Sales Tax Act, 1963, Government exempted from payment, the tax due on goods produced and sold by new small scale industrial units for a period of five years from the date of commencement of sale of such goods, subject to certain conditions stipulated therein. The stipulations, inter alia, provide that the tax if any, collected by such units on their sales shall be paid over to Government, that the unit shall produce to the assessing authority the proceedings of the General Manager of the concerned District Industries Centre declaring the eligibility of the unit for claiming exemption from sales tax and that the cumulative sales tax concession granted to the unit at any point of time shall not exceed 90 per cent of the gross fixed capital investment of the unit. Government clarified (March 1987) that additional exemption on account of additional investment is admissible only from the date on which the additional investment has been made.

(a) In First Circle, Kollam, a small scale industrial unit was declared by the General Manager, District Industries Centre, Kollam, to be eligible for exemption from payment of tax due on the goods produced and sold during the period of five years from October 1987 to October 1992. The cumulative tax concession was fixed at Rs 16.20 lakhs. The assessing authority while finalising (between March 1994 and January 1995) the assessments for the years 1987-88 to 1992-93 granted a cumulative tax concession amounting to Rs 18.55 lakhs. This resulted in excess grant of tax concession of Rs 2.35 lakhs.

On this being pointed out (May 1995) in audit, the assessing authority stated (October 1995) that the assessment for 1992-93 had been revised (May 1995) rectifying the mistake and the additional demand had been collected (June and July 1995).

The case was reported to Government in March 1996.

(b) In Punalur, a small scale industrial unit was declared by the General Manager, District Industries Centre, Kollam, to be eligible for a tax concession of Rs 7.48 lakhs for a period of five years from January 1989 to January 1994. The unit was granted further additional tax concession amounting to Rs 1.77 lakhs, Rs 2.56 lakhs and Rs 1.81 lakhs on January 1993, July 1993 and January 1994 respectively. The assessing authority while finalising (January 1995) the assessments of the unit for the years 1992-93 and 1993-94 gave exemption to the tax due without limiting it to the specific period mentioned in the tax exemption orders issued by the General Manager, District Industries Centre, Kollam. This resulted in short demand of tax of Rs 2.09 lakhs.

The matter was reported to the department in August 1995 and to the Government in May 1996. Government stated (July 1996) that the assessments for the years 1992-93 and 1993-94 had been revised (February 1996) creating additional demand of Rs 2.09 lakhs and the demand had been advised for collection under the Revenue Recovery Act.

(c) In Second Circle, Kottayam, a small scale industrial unit was declared by the General Manager, District Industries Centre, Kottayam, to be eligible for a tax exemption of Rs 13.72 lakhs for a period of five years from 14 November 1988 to 13 November 1993. The unit was granted additional sales tax exemption of Rs 11.59 lakhs on the basis of additional investment made in December 1992. Out of the original exemption of Rs 13.72 lakhs the unit had availed itself of Rs 11.53 lakhs up to 31 March 1992 leaving a balance of Rs 2.19 lakhs for the period 1 April to December 1992. However, while finalising (March 1995) the assessment for the year 1992-93 the assessing authority granted tax exemption of Rs 3.84 lakhs up to December 1992. This resulted in short demand of tax of Rs 1.65 lakhs.

On this being pointed out (September 1995) in audit, the assessing authority stated that the case would be examined. Further report has not been received (November 1996).

The case was reported to the Government in April 1996; their reply has not been received (November 1996).

(d) In First Circle, Thalassery, a small scale industrial unit was declared by the General Manager, District Industries Centre, Kannur, to be eligible for sales tax exemption of Rs 1.92 lakhs for a period of five years from July 1987 to July 1992. The assessing authority while finalising (between January 1991 and May 1994) the assessments for the years 1987-88 to 1991-92, granted exemption amounting to Rs 2.56 lakhs instead of Rs 1.92 lakhs. This resulted in excess grant of tax concession of Rs 63,905.

The matter was reported to the department in June 1995 and to Government in April 1996. Government stated (August 1996) that the assessments for the years 1990-91 and 1991-92 had been revised (January 1996) creating additional demand of Rs 63,095 and the short levy had since been made good. It was also stated that an appeal filed before the Appellate Assistant Commissioner by the assessee against the revised assessment order was pending.

2.10. Misclassification of goods

Under the Kerala General Sales Tax Act, 1963, on `Chemicals not elsewhere specified in the Schedule' tax was leviable at the rate of eight per cent at the point of first sale in the State, up to 31 March 1992. `Hexane', being a chemical not specified anywhere, would come under this entry.

In Special Circle I, Ernakulam, while finalising (December 1984 and April 1986) the assessments of a dealer in petroleum products, for the years 1981-82 to 1983-84 on an aggregate turnover of hexane amounting to Rs 69.37 lakhs, tax was levied at the rate of four per cent, classifying it as an unclassified item instead of eight per cent. This resulted in short levy of tax of Rs 3.31 lakhs (including additional sales tax and surcharge).

On this being pointed out (November 1987) in audit, the department stated (November 1987) that it was not a chemical.

Government to whom the case was reported (March 1988) stated (December 1995), after repeated reminders, that hexane being a chemical compound could be classified under the item `chemicals' by virtue of the judicial decision[4] of 1988. Further report has not been received (November 1996).

2.11. Short levy of tax due to mistake in computation

Rule 20 of the Kerala General Sales Tax Rules, 1963, requires that the assessing authority while making a final assessment shall examine, inter alia, what amounts are due from the dealer on final assessment, after deducting the tax already paid and demand any amount found to be due from the dealer. Instructions issued (March 1970 and June 1989) by the Board of Revenue lay down departmental procedure for verifying and checking of all calculations of turnover and tax and credits given in an assessment order.

(a) In Chittur, while finalising (December 1994) the assessment of a dealer for the year 1991-92, the tax due at ten per cent on a turnover of Rs 8,95,260 was incorrectly worked out as Rs 8,953 instead of Rs 89,526. This resulted in short levy of tax of Rs 80,573.

On this being pointed out (April 1995) in audit, the assessing authority stated (July 1995) that the assessment had been revised in May 1995.

The case was reported to Government in March 1996.

(b) In Third Circle, Thrissur, while finalising (January 1995) the assessment of a dealer for the year 1993-94, due to mistakes in computations the tax due was short levied by Rs 73,848 (including surcharge).

[4] Minerals and Metals Trading Corporation of India Vs. Board of Revenue, Kerala, 69 STC 38 (Ker).

On this being pointed out (May 1995) in audit, the assessing officer stated (May 1995) that the short levy would be made good immediately. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

2.12. Short realisation of registration fee

Under the Kerala General Sales Tax Act, 1963, every dealer has to pay a prescribed fee for registration/renewal of registration. The prescribed fee, based on the annual turnover of the dealer was revised with effect from I April 1993.

A test check of the assessment records at the sales tax office, Changanassery in November 1995 revealed that for the year 1993-94, in 39 cases, the registration/renewal fee has been realised short by Rs 53,100.

On this being pointed out (November 1995) in audit, the assessing authority stated (November 1995) that action was being taken to make good the revenue. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

2.13. Non-levy of penal interest

Under Section 23(3) of the Kerala General Sales Tax Act, 1963, if the tax or any other amount assessed or due under the Act is not paid by any dealer or other person within the time prescribed, in the Act, or in any rule made thereunder the dealer or other person shall pay, by way of penal interest, in addition to the amount due, a sum equal to one per cent of such amount for each month or part thereof for the first three months after the due date specified for its payment and

two per cent of such amount for each month or part thereof subsequent to the first three months aforesaid.

In Special Circle I, Ernakulam, during 1983-84, an assessee had collected an amount of Rs 1.85 lakhs towards tax but remitted only Rs 1.67 lakhs. The assessing authority, however, while finalising (September 1994) the assessment did not levy penal interest on the balance amount of Rs 17,443 due from the dealer. This resulted in non-levy of penal interest of Rs 43,084.

On this being pointed out (August 1995) in audit , the department stated (January 1996) that an amount of Rs 43,084 had been collected (October 1995) towards penal interest.

The case was reported to Government in March 1996; their reply has not been received (November 1996).

Chapter 3

Agricultural Income Tax

CHAPTER 3

AGRICULTURAL INCOME TAX

3.1. Results of audit

Test check of the records of the Agricultural Income Tax Offices, conducted in audit during the year 1995-96, revealed under-assessment of tax amounting to Rs 332.65 lakhs in 272 cases which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Income escaping assessment	93	167.25
2.	Under-assessment due to assignment of incorrect status	12	4.22
3.	Under-assessment due to failure to club income	4	0.32
4.	Under-assessment due to incorrect computation of income	17	3.32
5.	Under-assessment due to grant of inadmissible deduction	27	47.30
6.	Under-assessment due to application of incorrect rate of tax/incorrect computation of tax	35	7.09
7.	Other irregularities	84	103.15
	Total	272	332.65

During the course of the year 1995-96, the department accepted under-assessments, etc., of Rs 51.65 lakhs involved in 171 cases of which 11 cases involving Rs 61,981 had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs 28.56 lakhs are given in the following paragraphs.

3.2. Income escaping assessment

Under the Agricultural Income-tax Act, 1950, any amount received in respect of insurance against loss or damage of crops or property from which agricultural income is derived or on insurance against loss or damage in respect of buildings, machinery, plant and furniture necessary for the purpose of deriving agricultural income, for which the premium paid was allowed deduction, shall be deemed to be agricultural income.

In Ernakulam, while finalising (July and September 1993) the assessment for 1990-91 and 1991-92 of a domestic company the assessing officer omitted to reckon the amounts shown in the accounts as insurance claims receivable. This resulted in escape of income of Rs 11.87 lakhs and short levy of tax of Rs 7.71 lakhs.

On this being pointed out (December 1994) in audit, the assessing officer revised (December 1995) the assessment raising an additional demand of Rs 7.71 lakhs. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

3.3. Short levy due to grant of inadmissible deduction

(a) Under the Kerala Agricultural Income Tax Act, 1991, the agricultural income of an assessee shall be computed after allowing deduction of any sum paid to employees as bonus and such deduction shall be allowed in the year in which actual payment is made irrespective of the method of accounting employed.

In Kozhikode, while finalising (July 1993) the assessment for 1991-92 of a domestic company the assessing authority allowed deduction of Rs 22.20 lakhs

claimed by the assessee towards provision for bonus instead of restricting the deduction to the amount of Rs 11.24 lakhs actually paid by the company during the year. This resulted in excess allowance of deduction of Rs 10.96 lakhs and consequent short levy of tax of Rs 7.13 lakhs.

On this being pointed out (March 1995) in audit, the assessing officer stated (March 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in October 1995; their reply has not been received (November 1996).

(b) Under the Agricultural Income-tax Act, 1950, and the Kerala Agricultural Income Tax Act, 1991, (which repealed the former Act with effect from 1 April 1991) any expenditure incurred in the previous year (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of deriving agricultural income is allowable as deduction in computing the agricultural income.

(i) In Ernakulam, while finalising (July 1993) the assessment of a domestic company for 1990-91, the assessing authority allowed deduction of Rs 3.48 lakhs towards loss on revaluation of empty barrels and tapping implements which was of capital nature. This resulted in short levy of tax of Rs 2.26 lakhs.

On this being pointed out (December 1994) in audit, the assessing officer revised (December 1995) the assessment raising an additional demand of Rs 2.26 lakhs. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

(ii) In another case in Ernakulam, while finalising (October 1993) the assessments of a domestic company for 1990-91 and 1991-92, the assessing officer allowed deduction of Rs 47,265 and Rs 28,325 respectively towards expenses on legal charges for income tax, sales tax paid on sale of rubber trees, stock exchange fee, etc, which were not expenditure incurred for deriving agricultural income. The grant of inadmissible deduction resulted in short levy of tax of Rs 49,141.

On this being pointed out (December 1994) in audit, the assessing officer revised (October 1995) the assessment raising an additional demand of Rs 49,141. Further report has not been received (November 1996).

The case was reported to Government (April 1996).

(c) Under the Agricultural Income-tax Rules, 1951, any sum paid in the previous year as gratuity under Payment of Gratuity Act, 1972, or any sum set apart for payment of such gratuity or any contributions or premium paid under any scheme including the Group Gratuity Scheme of the LIC of India for the payment of gratuity under the said Act shall be allowed deduction in computing the agricultural income of a person.

In Ernakulam, while finalising (July 1993) the assessment of a company for the year 1989-90, premium of Rs 20.15 lakhs paid under the Group Gratuity Scheme of the LIC of India and gratuity of Rs 55,010 actually paid to staff during the previous year were allowed as deduction. As it was the liability of the LIC to meet payment of gratuity

under the Group Gratuity Scheme, claim of Rs 55,010 should have been disallowed. Omission to do so resulted in short levy of tax of Rs 35,756.

On this being pointed out (January 1995) in audit, the assessing officer stated (January 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in November 1995; their reply has not been received (November 1996).

(d) The provisions of the Kerala Agricultural Income Tax Act, 1991, which enumerate the deductions to be allowed in computing the agricultural income of an assessee, specifically exclude expenditure of a capital nature from such deductions.

In Ernakulam, while finalising (September 1993) the assessment for 1991-92 of a domestic Company, the assessing officer allowed a deduction of Rs 41,627 towards expenditure, incurred on purchase of budded stumps and on nurseries of rubber plants. Allowance of the said capital expenditure resulted in short levy of tax of Rs 27,058.

On this being pointed out (December 1994) in audit, the assessing officer revised (December 1995) the assessment raising additional demand of Rs 27,058. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

3.4. Under-assessment of income

Under the Agricultural Income-tax Act, 1950, agricultural income means, inter alia, any income derived from land by agriculture or by the sale by a cultivator of the produce raised by him, in respect of which only a process ordinarily employed by a cultivator to render the produce raised by him fit to be taken to market has been performed. Under the Income Tax Rules, 1962, income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business and forty per cent of such income shall be deemed to be income liable to tax under the Income Tax Act, 1961. The remaining sixty per cent of the composite income so computed by the Income Tax Officer shall be reckoned as agricultural income from tea.

In Ernakulam, while finalising (March 1993) the assessment for 1988-89 of a domestic company deriving income from tea and rubber, the assessing officer erroneously reckoned a loss of Rs 2.25 lakhs from tea instead of income of Rs 31,164 as determined (December 1990) by the Income Tax Officer. This resulted in escapement of income of Rs 2.56 lakhs and short levy of tax of Rs 1.66 lakhs.

On this being pointed out (November 1995) in audit, the assessing officer stated (November 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

3.5. Irregular composition of agricultural income tax

As per provisions of the Kerala Agricultural Income Tax Act, 1991, any person who holds landed property within the State extending to not more than twenty hectares and deriving agricultural income may apply to the Agricultural Income Tax Officer for permission to compound the agricultural income tax payable by him and to pay in lieu thereof a lumpsum at the rates specified in the Act. The benefit of composition of tax was made applicable to persons holding property as tenants-in-common with effect from 1 April 1994 only and as such, for tenants-in-common, the tax up to the assessment year 1993-94 shall be assessed at the rate applicable to the agricultural income of each tenant-in-common.

(i) In Pathanapuram, the agricultural income tax from 16.93 acres of land jointly held by two assessees and assessed up to the assessment year 1990-91 in the status of `tenants-in-common', was permitted to be compounded during 1991-92 to 1993-94 assigning the status of `individual', and the assessments completed (March 1993 and September 1993) accordingly, though no change was effected in the ownership of the property. The irregular composition resulted in short levy of tax and surcharge of Rs 1.48 lakhs for the years 1991-92 to 1993-94.

On this being pointed out in audit (October 1994) the assessing officer stated (February 1995) that the assessments had been revised (January 1995). Further report has not been received (November 1996).

The case was reported to Government (March 1996); their reply has not been received (November 1996).

(ii) In Nedumangad, the agricultural income tax from 10 blocks of rubber trees jointly held by two assessees and assessed up to 1990-91 in the status of `tenants-in-common' was permitted to be compounded during 1991-92 to 1993-94 and

the assessments completed (August 1992 and May 1993) accordingly. The irregular composition resulted in short levy of tax and surcharge of Rs 1.15 lakhs for the years 1991-92 to 1993-94.

On this being pointed out (April 1995) in audit, the assessing officer stated (July 1995) that the case would be examined and the rectification report would be submitted. Further report has not been received (November 1996).

The case was reported to Government (March 1996); their reply has not been received (November 1996).

(iii) In Kottarakkara, the agricultural income tax from land jointly held by two assessees as `tenants-in-common' was permitted to be compounded during 1991-92 to 1993-94 and assessments completed (March 1994) accordingly. The irregular composition resulted in short levy of tax of Rs 63,438 for the years 1991-92 to 1993-94.

On this being pointed out (June 1994) in audit, the assessing officer stated (January 1995) that action was being taken to revise the assessment. Further report has not been received (November 1996).

The case was reported to Government in March 1995; their reply has not been received (November 1996).

(iv) In Kanjirappally, the agricultural income tax from 11.50 acres of land jointly held by three assessees and assessed up to the assessment year 1990-91 in the status of `tenants-in-common', was permitted to be compounded during 1991-92 to 1993-94 assigning the status of individual and the assessments completed (August 1992 and May 1993) accordingly, though no change was effected in the

ownership of the property. The irregular composition resulted in short levy of tax of Rs 39,995 for the year 1991-92 to 1993-94.

On this being pointed out (November 1994) in audit, the assessing officer stated (November 1994) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in November 1995; their reply has not been received (November 1996).

3.6. Incorrect computation of income

Under the Agricultural Income-tax Act, 1950, the total agricultural income of an assessee comprises all agricultural income of any previous year derived from land situated within the State and received by him.

In Vythiri, an assessee was deriving income from three sets of properties. While finalising (March 1995) his assessment for 1988-89 the assessing officer omitted to include income from one set of property in the total income though he listed out the income from all the three sets of properties in the assessment order itself. This resulted in escapement of income of Rs 1.73 lakhs and consequent short levy of tax of Rs 1.34 lakhs.

On this being pointed out (January 1996) in audit, the assessing officer stated (January 1996) that notice for rectification had been issued. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

3.7. Omission to club income

Under the Agricultural Income-tax Act, 1950, income arising from assets transferred directly or indirectly to the wife, by a person, otherwise than for adequate consideration or in connection with an agreement to live apart, shall be clubbed with his individual income and the total income assessed in his hands.

In Kozhikode, on the partition (October 1986) of an estate of 116 acres in which an individual assessee had 4/10th share, the individual and his wife, who had no right in the property, were allotted 15 acres each as their shares. As the transfer of property to the wife was neither for consideration nor in connection with an agreement to live apart, the income from the same was assessable in the hands of the husband, clubbing with his income. But while finalising (March 1993) the assessment for 1987-88 to 1989-90 of the individual, the assessing officer omitted to include therein the income from the property transferred to his wife. This resulted in short levy tax of Rs 1.15 lakhs.

On this being pointed out (July 1994) in audit, the assessing officer stated (July 1994) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in November 1995; their reply has not been received (November 1996).

3.8. Incorrect assessment of firm

As per the provisions of the Agricultural Income-tax Act, 1950, where at the time of making an assessment, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment.

In Vythiri, a registered firm with 9 partners was reconstituted with effect from 1st April 1986 with 4 partners and one minor admitted to the benefits of the partnership. The reconstituted firm applied for renewal of registration for assessment year 1988-89. However, while finalising (March 1994) the assessment of the firm for 1988-89, the assessing officer apportioned the net agricultural income of Rs 9,95,030 among the 9 partners of the erstwhile firm instead of among 5 partners of the reconstituted firm. The mistake resulted in short levy of tax and surcharge of Rs 1.03 lakhs.

The case was pointed out in audit in February 1995; and reported to Government in July 1995; their replies have not been received (November 1996).

3.9. Omission to assess income from different sources

Under the Kerala Agricultural Income tax Act, 1991, the total agricultural income of the previous year of any person comprises all agricultural income derived from land situated within the State and received by him and tax at the rates specified in the Schedule to the Act shall be charged on the total agriculture income.

In Chengannur, while finalising (March 1995) the assessments for 1993-94 and 1994-95, of three individual assessees, each deriving one fourth share of income from certain properties held by them jointly with another individual, in addition to the income from individual properties, the assessing officer did not include the share of income from joint properties for computing the total agricultural income of each assessee. The omission resulted in an estimated income of Rs 3.16 lakhs escaping assessment with tax effect of Rs 51,141.

On this being pointed out (May 1995) in audit, the assessing officer stated (July 1995) that notice had been issued to assess the escaped income. Further developments have not been intimated (November 1996).

The case was reported to Government in July 1995; their reply has not been received (November 1996).

3.10. Mistake in computation of income

In Vythiri, while finalising (April 1993) the assessment for 1989-90, of the agricultural income derived by four co-tenants from the property held by them, the assessing officer proposed to disallow and add back, for want of evidence, an amount of Rs 1,22,562 claimed by the assessee towards interest. But while computing the income the assessing officer added back only Rs 22,562 to the gross income. This resulted in under assessment of income by Rs 1 lakh and consequent short levy of tax of Rs 44,522.

On this being pointed out (February 1995) in audit, the assessing officer revised (December 1995) the assessment and raised an additional demand of Rs 12,540 in the case of two co-tenants. The details of revision of assessments of the other two co-tenants have not been received (November 1996).

The case was reported to Government in July 1995; their reply has not been received (November 1996).

3.11. Incorrect computation of depreciation

According to the provisions of the Kerala Agricultural Income Tax Act, 1991, in computing the agricultural income of an assessee, deduction towards depreciation on the written down value of the assets owned by the assessee and used by him for the purpose of deriving the agricultural income is admissible. For arriving at the written

down value in the case of assets acquired as replacement of the old one, the value realised on the sale of the old assets shall be deducted from the value of the asset acquired.

In Kozhikode, while finalising (July 1993) the assessment of a domestic company for the year 1991-92, the assessing officer failed to deduct the value realised on sale of old assets amounting to Rs 2.42 lakhs from the value of new assets acquired for Rs 3.84 lakhs for arriving at the written down value of the asset for allowing the deduction towards depreciation. This resulted in escapement of income of Rs 46,179 and consequent short levy of tax of Rs 30,016.

On this being pointed out (March 1995) in audit, the assessing officer stated (March 1995) that the case would be examined. Further report has not been received (November 1996).

The case was reported to Government in July 1995; their reply has not been received (November 1996).

3.12. Under-assessment due to failure to utilise available information

With a view to enabling the assessing authorities to make proper assessments, the departmental procedures prescribe, inter alia, internal and external surveys on a regular basis for collecting necessary data. Internal survey consists of gathering useful information from records of the assessing office, whereas external survey consists of collection of necessary details from publications, reports, registers of other departments and inspection of agricultural holdings, etc.

In Aluva, while finalising (March 1994) the assessment of an individual for 1988-89, the assessing officer computed yield from 1,650 yielding rubber trees at 700 kg per block of 300 rubber trees instead of 700 kg per block of 200 rubber trees on the basis

of the results of inspection of the holdings conducted by the assessing officer during September 1984. This resulted in escapement of income of Rs 33,688 with a tax effect of Rs 24,088.

On this being pointed out (May 1994) in audit, the assessing officer stated (September 1994) that the assessment had been revised (May 1994) creating an additional demand for Rs 24,088.

Government, to whom the case was reported in March 1995 stated (January 1996) that the additional demand had been collected in June 1995 and that the reported escape of income was presumably due to the deliberate omission of the assessing officer and that action was under way for getting the explanation of the officer. Further report has not been received (November 1996).

Chapter 4

State Excise Duties

CHAPTER 4

STATE EXCISE DUTIES

4.1. Results of audit

Test check of the accounts of offices of the State Excise Department conducted in audit during the year 1995-96 revealed under-assessments of tax/loss of revenue amounting to Rs 46.49 lakhs in 101 cases, which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Short collection of duty on spirit/IMFL	32	15.38
2.	Loss of revenue due to short accounting of spirit/IMFL	4	8.48
3.	Loss of revenue due to allowance of excess wastage of spirit/IMFL	10	1.11
4.	Loss of revenue due to other lapses	55	21.52
	Total	101	46.49

During the course of the year 1995-96, the department accepted under-assessments, etc., of Rs 9.29 lakhs involved in 49 cases of which 35 cases involving Rs 5.62 lakhs had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs.5.48 lakhs highlighting important observations are given in the following paragraphs.

4.2. Non-levy of excise duty on medicinal preparation

Under Rule 6 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, every person who manufactures any dutiable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods under Section 3 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. As per

item 1(a) of the Schedule to the Act, the duty payable for patent or proprietary medicines is twenty *per cent ad valorem* or Rs 10 per litre of pure alcohol content whichever is higher.

During local audit of Central Excise Office, Ottappalam, it was noticed (October 1993) that a non- bonded manufactory in Palakkad manufactured two patent and proprietary medicines containing alcohol and sold the preparations worth Rs 14.93 lakhs during the period from 1 April 1991 to 30 September 1993. But no excise duty was demanded/remitted on such preparations. This resulted in non-levy of excise duty of Rs 2.99 lakhs.

The case was brought to the notice of the Board of Revenue and Government in January 1994. Board of Revenue accepted the facts and stated (February 1996) that disciplinary action was being initiated against the officers who were responsible for the loss sustained by Government. Further report has not been received (November 1996).

4.3. Short realisation of cost of establishment

Under the Abkari Act, 1077 (Malabar Era), the Excise Commissioner may, with the approval of the Government, prescribe the mode of supervision that may be necessary in a distillery, brewery, winery or warehouse or in any other manufactory where preparations containing liquor or intoxicating drugs are manufactured. The cost of establishment and other incidental charges in connection with such supervision are to be realised from the licensees concerned. According to the Kerala Service Rules, the rates of recovery of cost of establishment are to be revised whenever there is a revision of scales of pay or other conditions of service. Consequent on the pay revision of State Government employees with effect from 1 March 1992, the Board of Revenue revised (September 1994), with effect from 1 March 1992, the rate of average cost of establishment of excise staff posted for supervision of distilleries, blending units, bonded warehouses etc.

In a bonded warehouse (Thrissur) where cost of establishment in respect of the excise supervisory staff for March 1992 to July 1995 was realised at the pre-revised rates no action was initiated (till August 1995) to collect the balance amount due on revision of the rates. This resulted in the short realisation of cost of establishment of Rs 1.59 lakhs.

On this being pointed out (August 1995) in audit, the excise officer in charge of the bonded warehouse stated that demand notice would be issued and collection particulars intimated. Further report has not been received (November 1996).

The case was reported to Government in April 1996; their reply has not been received (November 1996).

4.4. Short realisation of excise duty on imported rectified spirit

Under the Kerala Abkari Shops (Disposal in Auction) Rules 1974, the contractors are permitted to import/purchase a designated quantum of Rectified Spirit on payment of excise duty at the rate of Rs 25.73 per bulk litre of spirit having a strength of 66^{o} OP from the Distilleries, in the State or in other States. It is provided that if the strength of Rectified Spirit purchased/imported is found lower than the prescribed strength (66^{o} OP) on analysis by the Chemical Examiner, the licensee will not be entitled for refund or abatement of the duty already remitted. However, if the strength is found higher than the prescribed strength the licensee is liable to remit the differential duty on the Rectified Spirit at the tariff rate of Rs 15.50 per proof litre before the release of Spirit.

In Attingal Excise Circle, during 1994-95, contractors in two ranges imported 3.68 lakh bulk litres of duty paid Rectified Spirit. On chemical examination it was found that the strength of Rectified Spirit imported was higher than that prescribed. However, the differential duty leviable on the imported Spirit was not levied. This resulted in short levy of excise duty of Rs 61,025.

On this being pointed out (July 1995) in audit, the department stated (July 1995) that the differential duty would be collected soon. Further report has not been received (November 1996).

The case was reported (April 1996) to Government; their reply has not been received (November 1996).

4.5. Short recovery of abkari arrears

Under Rule 6(25) of the Abkari Shops (Disposal in Auction) Rules, 1974, the monthly instalment of rentals of abkari shops should be paid on or before 10th of each month. In case of failure of payment, interest at the rate of 18 *per cent* shall be payable from 11th of the month. The amount remitted by a defaulter towards arrears shall be adjusted towards interest due at the first instance and the balance shall be credited towards the principal amount.

In Vaikom, in the case of an abkari contractor, arrears amounting to Rs 5.79 lakhs was recommended (April 1990) for recovery under Revenue Recovery Act. The contractor remitted a total sum of Rs 9.18 lakhs during the period from October 1991 to March 1995. The Tahsildar, Vaikom, reported (May 1995) that the entire dues had been collected and the case closed. However, the department did not appropriate the remittances at the first instance for liquidating the interest accrued, but credited the entire amount towards principal. The irregular adjustment of remittance resulted in short recovery of Rs 28,889.

On this being pointed out (June 1995) in audit, the department stated (November 1995) that action for recovery of the amount due, with future interest, had been initiated. Further report has not been received (November 1996).

The case was reported (February 1996) to Government; their reply has not been received (November 1996).

Chapter 5

Land Revenue

CHAPTER 5

LAND REVENUE

5.1. Results of audit

Test check of the records of the offices of the Land Revenue Department conducted in audit during 1995-96 revealed under-assessments of taxes or loss of revenue amounting to Rs 86.63 lakhs in 221 cases which may broadly be classified as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Short levy and losses under building tax	108	22.13
2.	Short levy and losses under plantation tax	9	3.64
3.	Short levy and losses under other items	104	60.86
	Total	221	86.63

During the course of the year 1995-96, the department accepted under-assessments, etc., of Rs 15.09 lakhs involved in 72 cases of which 10 cases involving Rs 4.22 lakhs had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases and the results of a review on `Assessment and Collection of Building Tax' involving Rs195.02 lakhs are given in the following paragraphs.

5.2. Assessment and Collection of Building Tax

5.2.1. Introduction

The Kerala Building Tax Act, 1975, which repealed the Ordinance issued in 1974, the Kerala Building Tax Rules, 1974 and the Kerala Building Tax (Plinth Area)

Rules, 1992, govern the levy and collection of a non-recurring tax on buildings, the construction of which has been completed on or after April 1973. Till 9 February 1992 the tax was leviable on buildings on capital value if it exceeded Rs 75,000. From 10 February 1992, the Act was amended to make the tax leviable on the basis of the plinth area of the building at slab rates on every building the construction of which was completed on or after 10 February 1992 . In respect of building completed prior to 10 February 1992 the assessee was liable to pay tax based on capital value till 28 February 1993. But in cases where assessment was not initiated or completed before 10 February 1992 the assessee was allowed to exercise his option in writing for assessment on plinth area basis. From 1 March 1993, for buildings completed prior to 10 February 1992 but assessments of which had not been initiated or completed or assessments against which appeal or revision had been filed building tax should be assessed on the basis of plinth area.

There is no provision in the Act to reopen assessments for rectification in cases other than mistake apparent from the face of the records.

5.2.2. Organisational set up

The Land Revenue Department which administers the Building Tax Act is under the control and supervision of the Board of Revenue. The Government by a notification appointed the Tahsildars of the Taluks as assessing authorities, the Revenue Divisional Officers as appellate authorities and District Collectors as revisional authorities in their respective jurisdiction.

5.2.3. Scope of audit

A review on assessment and collection of building tax was conducted (December 1995 and January 1996) covering the period from 1992-93 to 1994-95, in

the office of the Board of Revenue (LR), 6 out of 14 District Collectorates* , 6 out of 20 Revenue Divisional Offices# , 13 out of 61 Taluk Offices$, and 3 to 4 selected Village Offices under each Taluk Office to ascertain the implementation of the provisions of the Acts and Rules and the functioning of the existing control mechanism in the department. The results of the review are given in the ensuing paragraphs.

5.2.4. Highlights

(i) Failure on the part of the Village Officers/local authorities to furnish the returns showing the details of buildings to be assessed to tax resulted in non-levy of tax of Rs 79.21 lakhs in 344 cases in two Corporations.

(Paragraph 5.2.5)

(ii) (a) The control mechanism prescribed for watching receipt of returns, enquiry and assessment is not working properly resulting in large number of cases remaining un-assessed.

(b) Delay extending up to 117 months in finalising assessments resulting in delay in collecting the tax due has been noticed.

(c) Failure to assess newly constructed portion of buildings already assessed resulted in non-realisation of tax of Rs 4.05 lakhs in two cases.

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* Ernakulam. Kollam, Kottayam, Kozhikode Thiruvananthapuram and Thrissur

\# Fort Kochi, Kollam, Kottayam, Kozhikode, Thiruvananthapuram and Thrissur

$ Aluva, Chavakkad, Changanassery, Chirayinkil, Kanayannur, Kollam, Kottayam, Kozhikode, Nedumangad, Neyyattinkara, Punalur, Koyilandy and Thrissur

(d) Omission to make assessment on best of judgement basis where the assessees did not furnish returns resulted in blocking up of substantial revenue which in 15 cases alone worked out to Rs 5.23 lakhs.

(Paragraph 5.2.6)

(iii) (a) Misclassification of buildings for determination of tax resulted in short levy of tax of Rs 10.43 lakhs in 93 cases.

(b) Assessment of tax based on capital value instead of plinth area resulted in short levy of tax of Rs 4.28 lakhs in 22 cases.

(c) Incorrect assessment of apartments/flats resulted in short levy of tax of Rs 10.9 lakhs.

(Paragraph 5.2.7)

(iv) (a) Irregular grant of exemption by authorities not empowered to grant exemption amounted to Rs 2.92 lakhs in five cases.

(b) Incorrect grant of exemption to a hotel building resulted in escape of tax of Rs 9.86 lakhs.

(Paragraph 5.2.8)

(v) Non-assessment of buildings owned by Public Sector Undertakings/Autonomous Bodies resulted in loss of revenue of Rs 53.82 lakhs in six Taluks.

(Paragraph 5.2.9)

(vi) Laxity on the part of the assessing authority in conducting proper verification of the returns and absence of provision in the Act to revise the assessments to make good the short levy resulted in loss of revenue of Rs 7.24 lakhs in two cases.

(Paragraph 5.2.10)

(vii) (a) Appeal petitions were admitted without payment of tax of Rs 2.09 lakhs in seven cases.

(b) Failure to collect fifty *per cent* of the tax due for admitting revision petitions and delay in disposal of such petitions resulted in delay in collection of tax.

(c) Failure to assess tax based on plinth area in two cases in which revision petitions had been filed resulted in loss of revenue of Rs 2.02 lakhs.

(Paragraph 5.2.11)

5.2.5. Non-submission of statements by Village Offices and Local Bodies

(i) The Kerala Building Tax Rules, 1974 and the Kerala Building Tax (Plinth Area) Rules, 1992 require every Village Officer to prepare, in Form I, a monthly list of buildings (in duplicate) liable to assessment under the Act and transmit it to the assessing authority not later than 5 days after the expiry of every month with extracts from the building application register of the local authority within whose jurisdiction the buildings included in the list are situated for determining the capital value/plinth area of the building and to maintain a register in Form C showing the details of buildings so reported.

These requirements had not been followed by any Village Officer in the 41 offices test checked in audit.

(ii) Government directed (November 1994) the local authorities to forward, a monthly statement of buildings which are assigned new door numbers and which are assessed/re-assessed for property tax by such local authority, to the Tahsildar of the concerned Taluk not later than the 15th of the succeeding month. Such statements were not furnished regularly by the local authorities in the districts covered by the review.

A cross verification of the information collected from the assessment records of two Corporations (Kochi and Thiruvananthapuram) and 11 Municipalities@ with the assessment records of Taluk Offices revealed that out of 384 buildings assessed to house tax by local authorities only 40 buildings were assessed to building tax in Taluk Offices and the remaining 344 buildings escaped assessment as no information regarding the construction of the buildings was received in Taluk Offices. The tax effect involved in the 344 cases worked out to Rs 79.21 lakhs.

5.2.6. Assessments

The Kerala Building Tax Act, 1975, and the Rules made thereunder require the owner of every building the construction of which is completed or to which major repair or improvement is made on or after 1 April 1973, to furnish to the assessing authority a return. If no such return is furnished by the assessee, the assessing authority shall require him through a notice to furnish the return within 30 days of the service of the notice. If the assessing authority is satisfied, he shall assess the tax payable by him. If he is not satisfied he may serve a notice to produce the records and after observing prescribed formalities, shall assess the tax and if the person fails to make a return in response to any notice, he shall assess the tax to the best of his judgement.

A review of the assessments brought out the following irregularities.

@ Aluva,Attingal, Chavakkad, Guruvayoor, Kollam, Kottayam, Koyilandy, Nedumangad, Neyyattinkara, Punalur and Thrissur

(i) Non-submission of approved plan.

The owner of every building the construction of which is completed or to which major repair or improvement is made on or after the appointed day shall furnish to the assessing authority a return along with a copy of the plan approved by the local authority or such other authority as may be specified by the Government in this behalf.

A cross verification of the assessment records of 2 Taluk Offices (Kanayannur and Pathanapuram) with those of local bodies by Audit revealed that copies of the approved plan of the buildings were not insisted as required and the assessments were completed on the basis of sketches prepared by the Revenue Inspectors during the course of their enquiry. This resulted in levying tax on an area lesser than the actual area and consequent loss of revenue of Rs 44,710 in 8 cases.

(ii) Delay in conducting enquiries and assessments

The Form II returns received in Taluk Offices whose records were test checked were not entered in the Register of Assessments (Form A) as soon as they were received. Instead they were endorsed to the Revenue Inspectors for enquiry and report. As a result the Taluk Offices were not able to ensure that all returns endorsed to Revenue Inspectors had been received back and assessments made in time. In Chavakkad Taluk out of 2,165 cases including returns filed from 1985 onwards pending with the Revenue Inspectors for enquiry and report the office could trace out and produce only 124 cases. In Taluk Office, Chirayinkil the assessment of a building, involving tax of Rs 22,800, construction of which was completed during February 1993 was not done (November 1995) in spite of receipt of Revenue Inspector's report in October 1993. Thus the control mechanism prescribed for watching receipt of returns, enquiry and assessment is not working properly.

(iii) Non-prescription of time limit for assessment

(a) The Kerala Building Tax Act, 1975 and the Rules made thereunder had not prescribed any time limit for finalisation of assessment after receipt of returns (Form II). In 11 Taluk Offices, in 129 cases, delay ranging from 1 month to 117 months was noticed. In Aluva, in 4 cases involving tax effect of Rs 2.96 lakhs it took 14 months to finalise the assessments. In Nedumangad it took 18 months to assess two buildings to tax involving Rs 3.58 lakhs. This had resulted in blockage of revenue for a considerable period of time.

(b) Further, no time limit has been prescribed for finalising the assessments remanded back to the assessing authorities by appellate/revisional authorities. No record was also maintained in Taluk Offices to watch re-assessment of such remanded cases leading to inordinate delay/omission in making re-assessment. Five cases remanded by Revenue Divisional Officers were still pending un-assessed (December 1995) in Taluk Offices, Kollam (2 cases of May 1994) and Thrissur (2 cases of September 1993 and 1 case of January 1995). This resulted in blockage of the balance tax as per the original assessments of the above cases amounting to Rs 1.53 lakhs.

(iv) Failure to assess newly constructed portion of buildings

According to Section 5(4) of the Act where the plinth area of a building is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.

A few individual cases where new extensions or improvements were made on or after the appointed day to buildings but were not assessed to tax are detailed below.

(a) In Chavakkad, a tourist lodge having a plinth area of 1,384.87 m^2 was assessed to tax for a plinth area of 860.56 m^2 in January 1993 when its two floors were completed. Although the entire building stood completed, the remaining portion had not been assessed to tax so far (January 1996) resulting in non- realisation of tax amounting to Rs 62,400.

(b) In Kozhikode, the ground floor of a 7 storeyed tourist home was assessed (August 1992) to tax fixing plinth area at 464.28 m^2. The assessee had stated in the return that the construction of first to sixth floors was going on. The building had been subsequently completed. But no attempt was made(February 1996) to assess the remaining area to tax. Tax not realised worked out to Rs 3.43 lakhs.

(v) Failure to make best judgement assessments.

The Act provides that if any person fails to make a return in response to any notice, the assessing authority shall assess the building tax to the best of its judgement.

A few illustrative cases where the assessing authorities did not exercise the powers of making best judgement assessments are detailed below.

(a) In Kozhikode, a building comprising of 32 flats having total plinth area of 3,672.91 m^2 was completed in December 1994. The Corporation of Kozhikode had assessed the flats to property tax and assigned door numbers in December 1994. Though notice to furnish return was issued, the assessee had not furnished the return in Form II and the assessing authority did not take any action (February 1996) to assess building tax on the best of its judgement. Tax leviable on this building works out

to Rs 3.48 lakhs. In another 14 cases also, though the assessees had not responded to notices for furnishing Form II returns, those buildings were not assessed (February 1996) under best of judgement basis resulting in non-realisation of tax of Rs 1.75 lakhs.

(b) In Changanassery, though notice was issued in August 1990 to the owner of a hotel the construction of which was completed during June 1989, yet the assessee did not file the return. The assessee failed to furnish return even after a second notice was issued in April 1994. Failure of the assessing authority to assess the building tax on best of judgement basis resulted in blocking of substantial amount of revenue since 1989.

(vi) Improper/non-maintenance of records

The Rules provide that a Register of Assessment (Form A) shall be maintained by each assessing authority.

In the Register of Assessment maintained in Taluk Offices whose records were reviewed in audit it was noticed that vital information of amount collected, chalan number and date, name of treasury, details of cases, if any, under appeal/revision etc., was not recorded.

Register to enter details of exemption certificates granted under the provisions of the Act and Rules had not been maintained in any of the offices subjected to review. There was also no mechanism in Taluk Offices to review exemptions already granted under Section 3B of the Act to find out violation of conditions of exemption for further action.

5.2.7. Short assessment of building tax.

The Kerala Building Tax Act, 1975 and the Rules made thereunder prescribe that building tax based on plinth area shall be charged on every building at the rates specified in the Schedule appended to the Act.

A review of the assessments made revealed the following irregularities.

(i) Incorrect classification of buildings

The Act provides that buildings, the construction of which have been completed on or after 10 February 1992 should be assessed on the basis of plinth area at the rates specified in the Schedule appended to the Act. Rates have been prescribed for assessment either as 'Residential buildings' or as 'Other buildings'. It was, however, noticed that in respect of buildings a portion of which was used for residential purposes and other portion for other purposes, tax was assessed separately applying rates applicable to residential building for residential portion and other buildings for other portion. As these buildings were not exclusively used for residential purposes, they should have been assessed at the rate applicable to other buildings. Failure to do so resulted in short levy of tax of Rs 10.43 lakhs in 93 cases test checked in ten Taluk Officers+ .

(ii) Assessment based on capital value instead of plinth area

The Act provides that in the case of buildings, the construction of which was completed prior to 10 February 1992 but assessment of which had not been initiated or completed or against which appeal or revision had been filed, building tax should be assessed only on the basis of plinth area at the rates specified in the Schedule from

+ Aluva, Chirayinkil, Changanassery, Kanayannur,Kollam, Kottayam, Nedumangad, Neyyattinkara, Pathanapuram and Thrissur.

1 March 1993. It was however noticed that in 22 cases in 8 Taluks* even after 1 March 1993 the buildings were assessed based on capital value resulting in short levy of tax of Rs 4.28 lakhs.

Further, in another 330 cases in Thrissur and Koyilandy, where building tax was assessed on capital value basis even after 1 March 1993, the correctness of assessment could not be verified in audit for want of details regarding plinth area of the buildings.

(iii) Short assessment due to omission to include certain areas

Section 5 (5) of the Act requires that in respect of buildings other than residential buildings where there are outhouses, garages or other structures appurtenant to the building for more convenient enjoyment of the building, the plinth area of such structures shall be added to the plinth area of main building and tax assessed accordingly.

However, it was noticed in audit that in Nedumangad, the assessing authority excluded such area from the total area of the buildings while finalising assessments (April and May 1995). This resulted in a short levy of tax of Rs 67,200 in 2 cases.

(iv) Incorrect assessment of apartments/flats

As per explanation 2 to Section 2(e) of the Act, where a building consists of different apartments or flats owned by different persons and the cost of construction is met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. Government had clarified (December 1990) that mere assignment of more than one house number to a building by the local authority does not permit the assessing authority to assess the building having more than one flat or apartment as a

* Kanayannur, Kollam, Kottayam, Nedumangad, Neyyattinkara,Punalur, Koyilandy and Thrissur

separate unit and the ownership of each person should be proved right from the purchase of land and also there should be a registered document, to prove that the cost of construction would be met by all such persons, prior to the commencement of the construction work.

In Kanayannur and Kottayam, tax in respect of 13 buildings consisting of several apartments or flats was assessed treating each flat/apartment as separate unit instead of as single unit. This resulted in short levy of tax of Rs 10.9 lakhs.

5.2.8. Irregular grant of exemptions

(i) Section 3(1)(b) of the Act allows exemptions to buildings used principally for religious, charitable or educational purposes or as factories or workshops. The Act further stipulates that if any question arises as to whether a building attracts exemption from tax, it shall be referred to Government for orders. Kerala High Court had also held# that the power to grant exemption rests only with the Government.

A review of cases where exemption from building tax was granted to the type of buildings stated above, had, however, revealed in audit that in several cases involving substantial amount of revenue as building tax, the assessing authorities, appellate authorities and the revisional authorities granted exemption without making any reference to Government as required under the Act. A few instances are cited below.

(a) Tahsildar, Kothamangalam allowed exemption to a residential building having an area of 1,310.74 m^2 owned by a convent at Kothamangalam on the ground that building was used for religious purposes. This resulted in irregular exemption of tax amounting Rs 1.12 lakhs.

Tellicherry Madrasa Darusalam Vs the Assessing Authority and others 1989 KLJ 783

(b) On the basis of an appeal filed by the assessee against an original assessment, the Revenue Divisional Officer, Kottayam allowed exemption from payment of tax of Rs 27,600 to a building owned by a charitable society.

(c) In another case, in Kottayam, the assessing authority levied tax of Rs 1.02 lakhs on a building used as hospital. On appeal, the Revenue Divisional Officer, Kottayam remanded the assessment for fresh disposal. In spite of the report of the Revenue Inspector that the hospital was not principally for charitable purpose, the assessing authority granted exemption from tax of Rs 1.02 lakhs instead of referring the case to Government for decision.

(d) The Revenue Divisional Officer, Thrissur, on appeal, exempted a building already assessed to tax of Rs 19,200 by Tahsildar, Thrissur on the ground that the building was being used for industrial purposes.

(e) The District Collector, Thrissur, on a revision petition against the order of Revenue Divisional Officer, Thrissur, exempted (March 1991) a portion of a working women's hostel, which was assessed to tax of Rs 31,200, from building tax on the ground that it was being used for religious purposes.

(ii) With a view to developing tourism in the State, Government ordered (July 1986) certain concessions, to those engaged in tourism promotion activities, which included exemption from building tax. A provision for this purpose made in the Act from 6 November 1990 empowering the Government to grant such exemptions by notifications was withdrawn with effect from 1 March 1993. Government also clarified (September 1995) that hotel buildings in the State could not be exempted from building tax. It was, however, noticed that in Kanayannur and Chavakkad, exemption to two hotel buildings was incorrectly granted (March 1993 and November 1992) resulting in loss of revenue of Rs 9.86 lakhs.

5.2.9. Non-assessment of buildings owned by Public Sector Undertakings/ Autonomous Bodies.

Section 3(1) of the Act allows exemption from payment of building tax in respect of buildings owned by Government of Kerala, Government of India and local authorities. However, the Act does not provide exemption for buildings constructed and owned by Public Sector Undertakings, Banks or Autonomous Bodies from building tax.

A cross verification of information collected from certain Public Sector Undertakings with that of local authorities revealed that such buildings have not so far been assessed to tax. Loss of revenue due to non- assessment of 25 such buildings amounted to Rs 53.83 lakhs in 6 Taluks@ as shown below.

	Name of body	Nature of building			
		Residential		Other building	
		No. of buildings	Amount of non-levy of tax (Rupees in lakhs)	No.of buildings	Amount of non-levy of tax (Rupees in lakhs)
1.	Kerala State Housing Board	10	35.65	3	7.64
2.	Greater Cochin Development Authority	1	1.74	6	0.44
3.	Kerala State Electricity Board			1	4.60
4.	Indian Bank, Quilon			1	2.45
5.	Rehabilitation Plantation Ltd, Pathanapuram			3	1.31
	Total	11	37.39	14	16.44

5.2.10. Rectification of mistake

According to the Kerala Building Tax Act, 1975, the appellate authority or the revisional authority may at any time within 3 years from the date of an order passed by it on appeal or revision as the case may be, and the assessing authority at any time

@ Kanayannur, Kollam,Kozhikode,Pathanapuram, Thiruvananthapuram and Thrissur

within three years from the date of any assessment or order passed by it, of its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or order as the case may be, and shall within the like period, rectify any such mistake which has been brought to its notice by an assessee. The Act does not contain any provision to revise the assessment to make good the tax short levied due to any reason.

Instances, where orders of rectification made were quashed by High Court of Kerala on various grounds and consequent loss of revenue are given below.

(a) The Tahsildar, Chavakkad, assessed (August 1988) a building owned by Guruvayoor Devaswom at Rs 7.67 lakhs accepting as capital value, the amount stated by the Devaswom. On the direction of the High Court the District Collector, Thrissur considered the revision petition of the assessee and on the basis of report of the Revenue Inspector the capital value of the building was revised and demand of Rs 6.27 lakhs was ordered (June 1991) additionally. The order was quashed (February 1994) by the High Court on the ground that the information based on which the assessment was revised was not in the file at the time of original assessment. Under the Act, assessments can be reopened only to rectify a mistake apparent from the face of the records. It was evident from the assessment order dated 4 June 1991 that the assessing authority did not verify the capital value after exercising prompt check while assessing (August 1988) this building completed and occupied during 1984-85. Lack of proper verification before original assessment resulted in loss of tax of Rs 6.27 lakhs.

(b) In Taluk office, Kottayam, tax on a hotel building which was originally assessed (1990) to tax of Rs 66,690 was reassessed (1991) for Rs 1,63,363. The reassessment was quashed (February 1994) by the Kerala High Court as it was not to

rectify a mistake apparent from the records. Incorrect fixation of capital value at the time of original assessment resulted in loss of revenue of Rs 96,673 .

The laxity on the part of the assessing authority in exercising proper verification of the capital value furnished in the returns and absence of enabling provision in the Act to revise the assessments to make good the short levy resulted in the above loss.

5.2.11. Appeals and Revision

(i) Appeals

As per Section 11 of the Act, any assessee objecting to the amount of building tax assessed or to any order of the assessing authority may appeal to the appellate authority viz., the Revenue Divisional Officer, against the assessment or against such order. But no such appeal shall lie unless the building tax has been paid. The High Court of Kerala had held** that only one instalment will be due at the time of filing appeal as the appeal should be filed within 30 days from the date of demand notice. No time limit has been prescribed for the disposal of appeals.

A test check of the records maintained by the Revenue Divisional Offices at Thiruvananthapuram, Kollam, Kottayam, Fort Kochi and Thrissur revealed that:

(a) in 5 Revenue Divisional Offices[3] , 7 appeal petitions were admitted without satisfying the requirement of payment of tax amounting Rs 2.09 lakhs due,

(b) in 79 cases delay ranging from 5 to 58 months was noticed in the disposal of appeals. In the Revenue Divisional Office, Thiruvananthapuram, out of 14

** KP Francis Vs RDO, Fort Kochi. 1989(1)KLJ 395.

3 Fort Kochi, KottayamKozhikode, Thiruvananthapuram and Thrissur

cases checked a delay of 8 to 58 months to dismiss 9 appeal cases involving a tax effect of Rs 1.15 lakhs was noticed, and

(c) in Fort Kochi, as on 31 March 1995, 91 cases were pending disposal of which 49 cases were more than one year old and included cases from 1988 onwards.

(ii) Revision

According to Section 13 of the Act, the District Collector, may either *suo motu* or on application by any aggrieved person call for and examine the record of any order passed by the appellate authority or the assessing authority and may pass such order in reference thereto as he thinks fit. No application for revision shall lie unless 50 *per cent* of the building tax had been paid.

Test check of the records of Offices of District Collectors at Thiruvananthapuram, Kollam, Kottayam, Ernakulam, Thrissur and Kozhikode revealed that

(a) proper records for noting revision cases and their disposal had not been maintained in any of the Collectorates stated above.

(b) the Collectors did not take even a single case of assessment/appellate order for *suo motu* revision up to January 1996.

(c) the requirement of remittance of 50 *per cent* of the tax while admitting revision application was not fulfilled in 13 cases in 4 offices (Thiruvananthapuram, Kollam, Kottayam and Thrissur) resulting in non-realisation of tax of Rs 1.18 lakhs.

(d) in 5 Collectorates (Thiruvananthapuram, Kollam, Ernakulam, Thrissur and Kozhikode), in respect of 35 cases there was delay ranging from 5 to 76 months to dispose of the revision cases.

(e) High Court of Kerala stayed (February 1992) revenue recovery steps initiated (February 1992) for failure of an assessee to remit first instalment (as permitted under Rule) of building tax of Rs 1.86 lakhs assessed (January 1992) by Tahsildar, Kottarakara, provided the assessee remitted Rs 20,000 within one month. The court directed the District Collector, Kollam to dispose of the revision petition as expeditiously as possible. But only after 44 months delay the District Collector ordered (November 1995), the remand of the case for fresh disposal by the Tahsildar.

However, it was noticed in audit that the actual plinth area subject to tax was 1,464.4 m^2 on which tax works out to Rs 1.58 lakhs. After adjusting Rs 20,000 (the amount paid on court direction) the balance tax blocked due to non-disposal of revision petition works out to Rs 1.38 lakhs.

(f) 46 cases from 1989 onwards were pending disposal in 3 Collectorates (Kollam, Ernakulam and Thrissur) as on 31 March 1995. Amount involved in 7 out of 9 pending cases at Kollam works out to Rs 9.98 lakhs and 13 out of 15 cases at Thrissur to Rs 10.65 lakhs and

(g) As per Section 5(2) of the Act, in case of assessments against which revision petition has been filed, building tax shall be assessed on the basis of plinth area from 1 March 1993. Hence cases assessed on capital value method against which revision application had been filed and were pending disposal as on 1 March 1993 were to be reassessed on plinth area basis.

In Collectorate, Thiruvananthapuram, in 7 such cases assessment on the basis of plinth area was not made. The loss of tax on this account in two cases worked out to Rs 2.02 lakhs. The loss of revenue in the remaining 5 cases could not be worked out for want of details of plinth area.

(iii) Delay in rejecting of revision application for exemption from tax

Section 3A of the Act empowering Government to grant exemption to hotel buildings in specified areas was deleted with effect from 1 March 1993. The Government also clarified (September 1995) that hotel buildings in the State could not be exempted from building tax.

A few illustrative cases where delay in rejection of revision application seeking exemption from tax resulted in blocking of substantial revenue are detailed below.

(i) District Collector, Thrissur, admitted (October 1995) a revision petition claiming exemption of a hotel building even without remittance of 50 *per cent* of the tax as required under the rules resulted in blockage of tax of Rs 1.19 lakhs.

(ii) No decision was taken till January 1996 on a petition filed (November 1994) before the Chief Secretary claiming tax exemption to a hotel building though the High Court directed (May 1995) the disposal of the case within 2 months. Delay in rejecting the application resulted in blockage of tax of Rs 55,835 due.

5.2.12. Collection and remittance of building tax

The Building Tax Act and Rules provide that the building tax payable by an assessee shall be paid to the Village Officer at the place and within the time specified

in the order of assessment in four equal quarterly instalments. The first instalment shall be paid within 30 days from the date of service of the assessment order on the assessee and the subsequent instalments shall be paid within the corresponding dates of the succeeding quarters. The assessee shall also be at liberty to pay the entire amount in lump or in lesser number of instalments than fixed if he so desires. By a notification in March 1994, Government was empowered to step up the number of instalments in respect of a residential building up to a maximum of 10 in deserving cases. Interest at the rate of 18 *per cent* per annum for belated payments was also to be charged. Rules provide for the maintenance of a register of persons assessed in Form B in each Village Office.

A review of records relating to collection and remittance of building tax revealed that the above provisions of the Building Tax Act and Rules were not followed properly resulting in non-collection and delay in collection of tax. A few illustrative cases are detailed below.

(i) there is no mechanism to ensure that all assessment orders issued from the Taluk Office are received in the Village Offices.

(a) In Chirayinkil, 4 assessment orders issued to 4 Village Offices were omitted to be included in the registers (Form B) of the concerned villages resulting in non-collection of tax of Rs 3,700 assessed.

(b) In Kollam, assessment order issued in February 1994 was entered in the register (Form B) maintained by Kollam East Village Officer only in September 1995. The tax involved in the case was Rs 79,200.

(c) 5 assessment orders issued from Pathanapuram Taluk Office were not recorded in the register (Form B) maintained in Punalur village resulting in non-collection of tax amounting Rs 5,522.

(ii) the District Collector, Thiruvananthapuram, while deciding on a revision petition allowed an assessee to remit the balance tax of Rs 33,435 in 7 equal monthly instalments for which the Government was only competent.

5.2.13. Arrears of Revenue

(i) To ensure that tax assesed has been collected correctly a statement showing the tax due, tax collected and the balance tax to be collected (DCB) is required to be maintained. Scrutiny of the DCB statement of building tax prepared by the 5 Taluk Offices (Aluva, Kollam, Pathanapuram, Chirayinkil and Koyilandy) revealed the following.

(a) In Aluva, 3 items relating to Aluva East Village amounting to Rs 57,090 which were under stay had not been included in the statement for 31 March 1994.

(b) In Kollam, in respect of 3 cases amounting to Rs 7,13,217 though stay orders were not in force, the amount was classified as under stay.

(c) The DCB statements prepared by Tahsildar, Pathanapuram for the years 1993-94 and 1994-95 did not show any amount under stay or as collectable balance.

(d) In Punalur and Pathanapuram Villages Rs 15,299 was under stay and Rs 8,386 was pending collection.

(ii) In 4 taluks (Chirayinkil, Pathanapuram, Kollam, Koyilandy), in 27 cases alone Rs 5.74 lakhs relating to the period from January 1992 to March 1995 was pending collection.

The above points were reported to the Board of Revenue(LR) and Government in April 1996; their replies have not been received (November 1996).

5.3. Irregular exemption from building tax

Under the Kerala Building Tax Act, 1975, as amended by the Kerala Finance Act, 1993, building tax based on the plinth area at the rate specified in the schedule to the Act is leviable on every building, the construction of which is completed on or after 10 February 1992 and the plinth area of which exceeded 100 m^2 in the case of residential buildings and 50 m^2 in the case of other buildings. Buildings used principally for religious, charitable and educational purposes are exempted from payment of tax. An assessee objecting to the assessment may appeal to the appellate authority against the order within a period of 30 days from the date of service of order provided that no such appeal shall lie unless building tax assessed has been paid. The appellate authority can at any time within 3 years from date of order passed by it on appeal rectify any mistake apparent from the record of appeal.

In Taliparamba Taluk, two buildings of a hospital complex were assessed (May 1993) to building tax of Rs 57,600 and Rs 43,200 on plinth area of 627 m^2 and 502 m^2 respectively. After the expiry of the prescribed time limit of thirty days and without paying the tax demanded the assessee filed an appeal seeking exemption from payment of building tax claiming that the hospital was run for charitable purpose. The appeal filed after the expiry of the time limit and without the payment of tax demanded was irregularly admitted and the assessee was exempted from payment of tax even

without any evidence to prove that the hospital was run for charitable purpose. The irregular action of the appellate authority resulted in unauthorised exemption from tax of Rs 1.01 lakhs.

On this being pointed out (August 1995) in audit, the department stated (February 1996) that the order of the appellate authority exempting from payment of building tax had been cancelled (November 1995) as there was a mistake apparent from the record and no valid principle of law was applied in the order and the assessee had been directed to remit the tax. Further report has not been received (November 1996).

The case was reported to Government (March 1996); their reply has not been received (November 1996).

5.4. Incorrect computation of capital value

Under the Kerala Building Tax Act, 1975, (as it stood up to 10 February 1992) building tax at the prescribed rate was leviable in respect of every building, the construction of which was completed on or after 1 April 1973 and the capital value of which exceeded Rs 75,000. Capital value is determined at ten times the annual value fixed for that building in the assessment books of the local authority within whose jurisdiction the building is situated. However, if the assessing authority is of the opinion that the annual value fixed by the local authority is too low, it may fix the annual value independently after taking into account various factors including the location of the building, amenities provided in the building, estimated cost of construction of the building, etc. For estimating the cost of construction the assessing authority may adopt current PWD Schedule of rates applicable as on the date of completion/occupation of the building. The PWD Schedule of rates were revised with effect from 1 June 1990.

(i) In Kanjirappally Taluk, the assessing authority fixed the capital value of buildings which were completed after 1 June 1990 estimating the cost of construction based on the PWD Schedule of rates in force prior to 1 June 1990 instead of applying the Schedule of rates effective from 1 June 1990. The application of incorrect rates in the estimation of capital value of buildings resulted in under-assessment of building tax of Rs 89,316 in three cases.

On this being pointed out (May 1993) in audit, the department stated (March 1996) that the assessments had been revised in December 1995. Details regarding recovery has not been furnished (November 1996).

The case was reported to Government in April 1996.

(ii) In Taluk Office, Perinthalmanna, the assessing authority fixed (November 1991) the capital value of a building completed during August 1990, estimating cost of construction based on PWD Schedule of rates in force prior to 1 June 1990 instead of applying the rates effective from 1 June 1990. The application of old rates in the estimation of capital value of the building resulted in under-assessment of building tax of Rs 67,506.

On this being pointed out (January 1994) in audit, the department stated (April 1996) that the assessment had been revised (May 1995) and additional demand collected (between October 1995 and March 1996).

The case was reported to Government in February 1996.

5.5. Incorrect assessment of building owned by partnership

Government clarified (September 1990 and December 1990) that a building consisting of more than one flat or apartment owned by a partnership firm should be assessed as a single unit in the name of the firm or in the name of the Managing Partner of the firm; all the partners being jointly and severally liable for the tax assessed in terms of the partnership deed. A building owned by a firm consisting of several apartments or flats should not be assessed in the name of each partner separately by giving exemption at each case.

In Taluk Office, Kanjirappally, in the case of a three storeyed building owned by a partnership firm, building tax for each floor was assessed (November 1991) in the name of each partner separately thereby giving exemption at each case. This resulted in under-assessment of building tax of Rs 38,000.

On this being pointed out (May 1993) in audit, the assessing officer stated (March 1996) that revised assessment assessing all the three floors in the name of single person had been finalised in December 1995. Details of collection of additional demand have not been furnished (November 1996).

The case was reported to Government in February 1996.

5.6. Failure to assess tax on the basis of plinth area

Under the Kerala Building Tax Act, 1975, as it stood up to 10 February 1992, building tax at the prescribed rate was leviable in respect of every building the construction of which was completed on or after 1 April 1973 and the capital value of which, determined in accordance with the provisions of the Act, exceeded Rs 75,000. With the coming into force of the Kerala Building Tax (Amendment) Act, 1992, tax

based on plinth area at the rate specified in the Schedule to the Act shall be charged on every building the construction of which is completed on or after 10 February 1992 and the plinth area of which exceeded 75 m^2 in the case of residential buildings and 50 m^2 in the case of other buildings. Each apartment or flat of a building shall be deemed to be a separate building only in cases where it consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly.

In Mavelikara, while finalising (January 1993) the assessments of two double storeyed commercial buildings the construction of which was completed in October 1992, tax was levied in both the cases on the capital value of the ground floor and on the plinth area of the first floor instead of on the total plinth area of both the floors. This resulted in short levy of building tax of Rs 38,000.

On this being pointed out (March 1994) in audit, the department stated (November 1995) that the assessments had been revised. Further report has not been received (November 1996).

The case was reported to Government in February 1996.

5.7. Incorrect computation of tax on additional construction

Under the Kerala Building Tax Act, 1975, when the capital value of the building which had already been taxed is subsequently increased by more than Rs 25,000 by new constructions or additions or combinations or as a result of repairs or improvement, building tax shall be computed on the capital value of the building including that of new constructions or additions or combinations or as the case may be of the building as so repaired or improved and credit shall be given to the tax already levied.

In Taluk Office, Neyyattinkara, certain additional constructions were made (May 1990) to a commercial building which was originally assessed (April 1989) to building tax of Rs 63,990 on the then computed capital value of Rs 9.02 lakhs. However, while finalising the assessment (September 1991) consequent to the additional construction tax was levied separately on the capital value of additional construction alone instead of on the capital value of the entire building including the additional construction and giving credit to the tax already demanded. Also, the capital value of such additional construction was computed incorrectly. These resulted in under-assessment of tax of Rs 28,302.

On this being pointed out (April 1993) in audit, the assessing officer stated (April 1993) that the case would be examined. Further reply has not been received (November 1996).

The case was reported to Government (March 1996); their reply has not been received (November 1996).

Chapter 6

Taxes on Vehicles

CHAPTER 6

TAXES ON VEHICLES

6.1. Results of audit

Test check of the records of the Motor Vehicles Department conducted in audit during 1995-96 revealed non-levy/short levy of tax/fees and other lapses amounting to Rs 281.81 lakhs in 101 cases, which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Non-levy/short levy of tax	67	266.47
2.	Non-levy/short levy of fees	14	3.62
3.	Irregular exemption/concession	4	1.63
4.	Other lapses	16	10.09
	Total	101	281.81

During the course of the year 1995-96, the department accepted under-assessments, etc., of Rs 15.94 lakhs involved in 69 cases of which 2 cases involving Rs 2,870 were pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs 44.60 lakhs are given in the following paragraphs.

6.2. Non-levy of application fee for permit and short levy of tax on private service vehicle

Under the Motor Vehicles Act, 1988, Government of India shall specify the type of motor vehicle having regard to the design, construction and use of the vehicle. By the notifications issued in June 1992 and November 1992 omnibuses were generally classified as transport vehicles and those omnibuses meant for private use were classified as non-transport vehicles. Accordingly, all omnibuses other than those

specifically altered in their registration particulars as meant for private use, shall be treated as transport vehicles requiring permits. The fee in respect of an application for grant of private service vehicle permit is Rs 250. The tax leviable from 1 April 1993 for private service vehicle under the Kerala Motor Vehicles Taxation Act, 1976 was revised to Rs 100 per quarter per every seated passenger instead of the tax at different rates based on unladen weight. Additional surcharge at the rate of 10 *per cent* of the tax in the case of any transport vehicle fitted with diesel engine was also introduced from 1 April 1993.

(i) In six Regional Transport Offices (Ernakulam, Malappuram, Pathanamthitta, Kottayam, Kannur and Kasaragode) and five Sub Regional Transport Offices (Tirur, Thaliparamba, Thiruvalla, Thalassery and Pala) on 689 omnibuses which remained unaltered as omnibuses for private use, neither the registered owners applied for permits nor did the department take steps to issue permits. Tax at the enhanced rates and additional surcharge leviable from 1 April 1993 were also not demanded. The omission resulted in non-levy of application fee of Rs 1.72 lakhs and short levy of tax (including surcharge and additional surcharge) of Rs 26.48 lakhs.

On this being pointed out (between May 1994 and February 1995) in audit, the department stated (between April 1995 and January 1996) that tax of Rs 1.99 lakhs had been collected in 28 cases and that collection of enhanced tax in 21 cases had been stayed by the Court. Further report has not been received (November 1996).

The matter was reported to Government in November and December 1995; their reply has not been received (November 1996).

(ii) In five Regional Transport Offices (Thiruvananthapuram, Palakkad, Kannur, Kottayam and Wayanad) and four Sub Regional Transport Offices

(Kayamkulam, Pala, Vandiperiyar and Thalassery) it was noticed that in respect of 147 private service vehicles, fitted with diesel engine, used by certain organisations in connection with their business, tax at the enhanced rate and additional surcharge were not collected. This resulted in short levy of tax, surcharge and additional surcharge amounting to Rs 6.53 lakhs for the period from April 1993 to March 1994.

On the omission being pointed out (between August 1994 and January 1995) in audit, the department stated that reply would be furnished later. Further report has not been received (November 1996).

The case was reported to Government in December 1995; their reply has not been received (November 1996).

6.3. Short levy of tax due to reduction in seating capacity

Under the Kerala Motor Vehicle Rules, 1989, the minimum seating capacity of a stage carriage shall be directly proportionate to the wheel base of the vehicle and shall not be less than the minimum prescribed therein subject to allowance of a reduction of 2 seats in the case of a carriage having separate entrance and exit and a further reduction by one fifth for those carriages operating as city /town services.

(i) In Regional Transport Office (Nationalised Sector), Thiruvananthapuram, registration was granted during 1993-94 to seven stage carriages each of which provided five seats below the prescribed minimum number and two stage carriages with thirteen seats below such minimum. This resulted in short levy of vehicle tax (including surcharge and additional surcharge) of Rs 1.42 lakhs for the period between July 1993 to March 1995.

On this being pointed out (March 1995) in audit the department stated (May 1996) that tax endorsement at revised rate had been issued for five vehicles and that the party had been directed to produce the other registration certificates for tax endorsement at the revised rate. Further report has not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

(ii) In Regional Transport Office (Nationalised Sector), Thiruvananthapuram, it was further noticed (March 1995) that reduction in seating capacity below the minimum limits prescribed was permitted while converting Express Service/Fast Passenger buses into ordinary type with single door. The irregular reduction in seating capacity resulted in short levy of tax of Rs 6.18 lakhs on 50 buses during the period from 1 June 1993 to 31 March 1995.

On this being pointed out (March 1995) in audit, the Regional Transport Officer stated (March 1995) that reply would be furnished later. Further report has not been received (November 1996).

The case was reported to Government in March 1996; their reply has not been received (November 1996).

6.4. Irregular exemption from tax

By a notification issued (September 1975) under the Kerala Motor Vehicles Taxation Ordinance, 1975 (repealed by the Kerala Motor Vehicle Taxation Act, 1976) Government had exempted all motor vehicles owned by or on behalf of Government from payment of tax. District Rural Development Agency (DRDA), being an agency registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, was not eligible for exemption from payment of tax on vehicles owned by it.

In Regional Transport Offices, Kollam and Kottayam irregular grant of exemption to six vehicles owned by the DRDAs, resulting in non-levy of tax of Rs 28,295 for the period from September 1981 to December 1993, was pointed out (between November 1992 and December 1993) in audit and reported to Government in February 1994. The department, however, continued with the grant of irregular exemption to the vehicles of DRDAs resulting in non-levy of tax of Rs 1.10 lakhs for the period from April 1981 to March 1995 in respect of 19 more vehicles under the jurisdiction of the Regional Transport Offices, Alappuzha, Wayanad and Kozhikode.

Government stated in July 1995 that the vehicles owned by DRDAs were not eligible for tax exemption and directed the Transport Commissioner to withdraw the exemption already granted, but the department did not take any action in this regard.

The matter was again pointed out to the department (between August 1995 and January 1996) in audit; final reply has not been received (November 1996).

The case was reported to Government (May 1996); their reply has not been received (November 1996).

6.5. Short levy of application fee for grant of temporary permits

Under the Motor Vehicles Act, 1988, temporary permits for the use of a motor vehicle as a transport vehicle for limited period for specified purposes can be issued by the Regional Transport Authority. As per the Kerala Motor Vehicles Rules, 1989, the application fee for grant or renewal of temporary permits for transport vehicles permitted to carry passengers for hire or reward and having seating capacity of more than 20 is Rs 150.

In three Regional Transport Offices (Alappuzha, Kannur and Kasaragode) it was noticed (October 1994 to August 1995) that in respect of 1,780 temporary permits issued, during 1992-93 to 1994-95 to transport vehicles having seating capacity of more than 20, to carry passengers for hire or reward application fee was realised at the rate of Rs 100 instead of Rs 150 per permit. This resulted in short levy of fee of Rs 89,000.

On this being pointed out (October 1994 to August 1995) in audit, the Regional Transport Officers of Kannur and Kasaragode stated (October 1994 and February 1995) that the short levy would be made good while the Regional Transport Officer, Alappuzha stated (October 1994 and August 1995) that final reply would be furnished later. No further reply has been received so far (November 1996).

The cases were reported to Government in November 1995; their reply has not been received (November 1996).

Chapter 7

Stamp Duty and Registration Fees

CHAPTER 7

STAMP DUTY AND REGISTRATION FEES

7.1. Results of audit

Test check of the records of the Registration Department conducted during 1995-96 revealed under-assessment/loss of revenue due to misclassification of documents, etc., under stamp duty and registration fee amounting to Rs 512.19 lakhs in 446 cases which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1	Misclassification of documents	39	2.52
2	Under-valuation of documents	5	2.03
3	Irregular determination of separated share of partition deeds	166	21.26
4	Other lapses	236	486.38
	Total	446	512.19

During the course of the year 1995-96, the department accepted under assessment, etc., of Rs 1.58 lakhs involved in 43 cases of which one case involving Rs 28,227 had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs 15.50 lakhs are given in the following paragraphs.

7.2. Short levy of stamp duty on conveyance deeds

Under the Kerala Stamp Act, 1959, the stamp duty leviable, for every Rs 100 or part thereof of the amount or value of consideration for conveyances purporting to

transfer immovable property is at the rate of rupees eight and paise fifty in respect of the property situated within Municipal Corporations and Municipalities and at the rate of rupees six in respect of the property situated outside such Municipal Corporations and Municipalities. Under the Indian Registration Act, 1908, every document that affects immovable property shall be presented for registration in the office of the Sub Registrar within whose sub-district the whole or some portion of the property to which such document relates is situated.

In Sub Registry Offices, Kulathoor and Parassala certain documents were registered for the conveyance of land situated within the limits of Municipal Corporations and Municipalities of Tamil Nadu/Karnataka along with certain pieces of land situated within the registration sub-districts of Kulathoor and Parassala. The stamp duty levied on the property situated in Tamil Nadu/Karnataka was at the lower rate of rupees six as against the higher rate of rupees eight and paise fifty applicable to the conveyance of property situated in Municipal Corporations/Municipalities. This resulted in short levy of stamp duty of Rs 10.55 lakhs in 283 documents (Rs 6.21 lakhs in 191 documents in Kulathoor and Rs 4.34 lakhs in 92 documents in Parassala) registered in 1994.

The cases were pointed out to the department in audit in June 1995 and reported to Government in January 1996. Their final replies have not been received (November 1996).

7.3. Omission to initiate action on under-valued document

As per Section 28 of the Kerala Stamp Act, 1959, the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in the document. Section 45 B of the Act provides that where the Registering Officer has reason to believe that the value of the property or the consideration has not been fully and truly set forth in the document, he may, after registering such document, refer the same to the Collector for determination of the value or consideration and the proper duty payable thereon.

A document was registered (January 1994) in Principal Sub Registry Office, Thiruvananthapuram for the conveyance of a property with buildings situated in Attingal Municipality levying stamp duty and registration fee on the consideration of Rs 21 lakhs shown in the document. Although the income tax clearance certificate produced by the vendor showed the value of the property as Rs 33.07 lakhs the Sub Registrar did not initiate any action for the determination of the consideration and the proper duty payable thereon. This resulted in short levy of stamp duty and registration fee of Rs 1.63 lakhs.

On this being pointed out (July 1995) in audit, the department stated (June 1996) that notice had been issued (May 1996) to the party for remittance of the deficit stamp duty and registration fee. Further developments have not been reported (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

7.4. Omission to levy stamp duty on the minimum value of property

According to the provisions of the Kerala Stamp Act, 1959, the Rules made thereunder and the Table of Fees prescribed for registration of documents as they stood from 12 November 1990 to 10 January 1991 stamp duty and registration fee on documents for the conveyance/settlement of land at the rates prescribed therein were payable based on the minimum value of land fixed under the Act.

In 5 Sub Registry Offices (Anchal, Chalai, Eravipuram, Koduvally and Vadakkancherry) while registering (between 12 November 1990 and 31 December 1990) 30 documents for the conveyance/settlement of land, stamp duty and registration fee were levied incorrectly based on the consideration shown in the documents instead of on the minimum value fixed for the purpose. This resulted in short levy of stamp duty and registration fee of Rs 1.57 lakhs.

On this being pointed out (between June and September 1991) the department accepted (March 1996) the short collection in Sub Registry Vadakkancherry and decided to recover the deficit amount of Rs 9,485 from the concerned Sub Registrar. Final replies in respect of the remaining cases have not been received (November 1996).

The case was reported to Government in July 1995; their reply has not been received (November 1996).

7.5. Levy of incorrect rate of duty on partition deeds

Under the Kerala Stamp Act, 1959, the stamp duty leviable on partition deeds where the partition is among the family members is two rupees fifty paise for every Rs 100 or part thereof of the value of separated share(s) of the property whereas in other cases of partition, it is five rupees for every Rs 100 or part thereof of the value of separated share(s).

In 24 Sub Registry Offices* while registering (between 1991 to 1994) deeds for partition of properties among co-owners who were not members of family, stamp duty at two rupees fifty paise was levied instead of at the correct rate of five rupees for every Rs 100 or part thereof on the separated shares. This resulted in short levy of stamp duty amounting to Rs 1.47 lakhs in 62 documents.

On this being pointed out (between June 1992 and August 1995) in audit, the department accepted (between August 1993 and December 1995) short levy of Rs 72,435 in 29 documents. Final replies in respect of remaining cases have not been received (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

Principal SRO, Fort, Thiruvananthapuram and SROs, Balaramapuram, Balal, Chathamangalam, Chengannur,Cheppad, Chirayinkeezhu, Edappal, Ernakulam, Kallara Kareelakulangara, Kottapadi, Kuthiyathodu,Mathamangalam, Mattannur, Mavelikkara, Mavoor, Pandalam, Paravur, Perambra, Ponnani, Pothancode, Thrippunithura and Vaikom

7.6. Short levy of registration fee

The fee prescribed by Government under Section 78 of the Indian Registration Act, 1908, for registration of lease deeds is one per cent of the amount or value of consideration and such value has to be determined depending on the period of lease, the amount of rent, fine or premium or money advanced, etc. Accordingly, when a lease is granted for a period exceeding 30 years but not exceeding 100 years for a fine or premium or money advanced, in addition to rent reserved, the amount or value of consideration for assessment of fee shall be four times the amount of the annual rent reserved in addition to the fine or premium or money advanced.

In Sub Registry Office, Kannur, while registering (December 1993) a deed of lease granted for sixty years for an average annual rent of Rs 9.41 lakhs and security (money advanced) of Rs 5 lakhs, registration fee of Rs 14,410 was levied against Rs 42,637 due, resulting in short levy of Rs 28,227. The short levy occurred due to failure to compute the value of consideration at four times the annual rent reserved.

On this being pointed out (June 1995) in audit, the department stated (November 1995) that the short levy was caused due to oversight. Further developments have not been reported (November 1996).

The case was reported to Government (February 1996); their reply has not been received (November 1996).

Chapter 8

Forest Receipts

CHAPTER 8

FOREST RECEIPTS

8.1. Results of audit

Test check of the records of Forest Offices conducted in audit during 1995-96 revealed non-levy/short realisation of revenue amounting to Rs 539.59 lakhs in 111 cases which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In lakhs of rupees)
1.	Non/short realisation of value of forest produce	13	153.05
2.	Non/short realisation of sales tax and income tax	33	167.87
3.	Non-demand/short demand of penalty for belated removal of raw materials	18	47.15
4.	Loss in auction/re-auction disposal of forest produce, short/non-realisation of penalty and other charges	24	130.48
5.	Other lapses	23	41.04
	Total	111	539.59

During the course of the year 1995-96, the department accepted under assessments, etc., of Rs 25.89 lakhs involved in 15 cases, of which 12 cases involving Rs 25.81 lakhs had been pointed out in audit during 1995-96 and the rest in earlier years. A few illustrative cases involving Rs 7.51 lakhs are given in the following paragraphs.

8.2. Non-levy of penalty

Under an agreement executed (October 1988) between the Government of Kerala and a private limited company, the company was permitted to extract and remove two lakh tonnes of raw materials annually from specified forest lands for five years. As the company could not complete the extraction of the allotted quantity within the contract period which ended on 31 May 1994, Government directed (June 1994) the department to grant extension of time up to 31 August 1994 for the extraction and removal of the raw materials and stated that orders regarding the rate of penalty to be levied for the extended period would be issued later. It was decided (20 July 1994) in a meeting of the representatives of the Government and the company that the penalty would be Rs 50 per tonne.

The company extracted and removed 10,347 tonnes of raw materials from Thrissur Forest Division between June and August of 1994 (during the extended period) but the penalty of Rs 5.17 lakhs due was not demanded from the company.

On this being pointed out (May 1995) in audit, the department stated (October 1995) that the demand was not made as Government order fixing the penalty had not yet been received. Further developments have not been reported (November 1996).

The case was reported to Government (April 1996); their reply has not been received (November 1996).

8.3. Loss on sale of elephant

The practice usually followed in the Forest Department for realising maximum revenue to the State from the sale of forest produces, live stock, etc. is to sell them through public auction. Government had also been following a policy of sale of elephants to charitable and religious institutions for non-commercial purposes by collecting their book value and taxes thereon.

It was, however, noticed (August 1994) that an elephant of Konni Division with market value of Rs 3.5 lakhs was sold (January 1994) to an individual of Kottarakkara for the book value of Rs 2 lakhs stating it to be for donation to a specific temple. This resulted in loss of revenue of Rs 1.70 lakhs including taxes. As the sale was not to any religious or charitable institution but to an individual just to fulfill his desire of donating one elephant to a particular temple there was no justification in the sale of the elephant at a price lower than the market value.

The case was pointed out in audit and brought to the notice of Government in November 1994; their final reply has not been received (November 1996).

8.4. Incorrect computation of loss

The Conservator of Forests, Kozhikode, on finding that there was certain loss of revenue due to deterioration caused by the delay in registration and auction sale of 189 m^3 of soft wood logs collected from a selection felling coupe in North Wayanad Division, directed (February 1990) the loss of Rs 64,946 to be recovered

from the officers responsible for the delay. However, omission on the part of the department in reckoning the charges paid for working down the timber for computing the loss resulted in short computation of the loss by Rs 64,058.

On this being pointed out (March 1991) in audit, the department stated (December 1994) that Government have been addressed (October 1994) seeking sanction for the write off of the entire loss of Rs 1.29 lakhs. Further developments have not been reported (November 1996).

The case was reported to Government (May 1996); their reply has not been received (November 1996).

Chapter 9

Other Non-tax Receipts

CHAPTER 9

OTHER NON-TAX RECEIPTS

Receipts of Legal Metrology Department

9.1. Introductory

The Standards of Weights and Measures (Enforcement) Act, 1985, enacted by Parliament to ensure country-wide uniformity in the enforcement of the standards established by the Standards of Weights and Measures Act, 1976, was brought into force from 4 September 1985. The Act of 1985 contains provisions for better protection to consumers by ensuring metrological accuracy in commercial transactions, industrial measurements and measurements needed for ensuring public and human safety. Provisions also exist for initial verification, subsequent periodical verification, inspection in use, verification after repair, registration of users, etc.

The State Government issued (July 1992) two notifications making all the provisions of the Act applicable in the State from 24 July 1992 and framing Rules for the enforcement of the provisions of the Act. Till then the provisions of the Standards of Weights and Measures Act, 1976, the Kerala Weights and Measures (Enforcement) Act, 1958 and the Kerala Weights and Measures Rules, 1964 regulated the implementation, enforcement and collection of revenue in the State.

Receipts of the department comprise fee for registration of users of weights and measures, verification and stamping of weights and measures and weighing and measuring instruments, and for issue and renewal of licences for manufacturers, repairers and dealers of weights and measures, besides fines and compounding fee for various offences committed by the users.

9.2. Organisational set up

For the administration of the Act and Rules, there is a Controller of Legal Metrology with headquarters at Thiruvananthapuram, one Assistant Controller in each of the 14 Districts and 69 Senior Inspectors/ Inspectors.

9.3. Scope of Audit

Mention was made in paragraph 7.3. of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year 1985-86 about the loss of revenue due to non-verification of water meters, taxi meters and autorickshaw meters. A further review was conducted during August to October 1995 covering the period 1992-93 to 1994-95 with a view to examine whether the Standards of Weights and Measures (Enforcement) Act, 1985 and the Rules made thereunder in 1992 are properly implemented, whether the system in the department is adequate for the collection and accounting of revenue and also whether there is an effective internal control machinery.The review was conducted in the Office of the Controller, 5* out of 14 Offices of Assistant Controllers and 18@ out of 69 Offices of the Inspectors of Legal Metrology. Following paragraphs contain important observations in the course of the review.

9.4. Highlights

(i) Delay in implementation of the provisions of the Standards of Weights and Measures(Enforcement) Act, 1985, resulted in loss of revenue of more than Rs 15 lakhs towards fee for the registration/renewal of registration of users.

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* Ernakulam, Kottayam, Kozhikode, Thiruvananthapuram and Thrissur.

@ Sr.Inspectors, Ernakulam (Auto), Ernakulam (Vehicle Tank) Kottayam, Kozhikode, Thiruvananthapuram, Thiruvananthapuram (Auto), Thrissur;
Inspectors, Aluva, Attingal, Changanassery, Chavakkad, Kanjirappally, Koyilandy, Nedumangad, Neyyattinkara, Pala, Wadakkancherry;
Additional Inspector, Kozhikode.

(Paragraph 9.7)

(ii) Register of defaulters was not maintained properly. In 19 offices an amount of Rs 2.82 lakhs was due by way of stamping fee and additional fee from defaulters.

(Paragraph 9.9)

(iv) There was failure on the part of the department to collect the actual number of autorickshaw meters and to get them registered, stamped and re-stamped.

(Paragraph 9.10)

(v) There was inordinate delay in commencing registration, verification and stamping of weights and measures of post offices and railway stations and in collecting the registration and stamping fee due.

(Paragraph 9.11)

(vi) (a) Failure to implement the provisions of the Act for the registration and stamping of water meters resulted in the loss of revenue of Rs 1.75 crores for the years 1992-93 to 1994-95.

(b) Failure to start original verification of the water meters manufactured in the State results in recurring loss of Rs 10 lakhs per annum.

(c) Failure to commence registration and verification of electricity meters resulted in loss of revenue of Rs 14.71 crores for the years 1992-93 to 1994-95.

(Paragraph 9.12)

(vii) There is lot of delay in issuing orders by the Controller for compounding offences for which compounding fee had already been collected by the subordinate officers.

(Paragraph 9.13)

9.5. Delay in implementation of the Act in the State.

Section 1(3) of the Standards of Weights and Measures (Enforcement) Act, 1985, empowered State Government to implement the Act in the State on such date as the Government may by notification appoint. But the Government implemented the provisions of the Act and made Rules to carry out the provisions of the Act in the State only from 24 July 1992. Hence the progressive measures viz., registration of users of weights and measures, making obligatory the verificaiton of the weight or measure used in any transaction or for industrial production or for protection and stringent punishment and enhanced penalty for offences, etc., envisaged in the Act could be implemented in the State only after 7 years from the commencement of the Act of 1985.

9.6. Target and achievement of revenue

The target of revenue collection and achievement for three years from 1992-93 to 1994-95 were as follows:

Year	Target	Achievement	Out of 3 fine collected	Revenue excluding fine	Percentage of achievement to target	
	(In lakhs of rupees)				Including fine	excluding fine
1	2	3	4	5	6	7
1992-93	155.00	163.12	39.33	123.79	105	80
1993-94	198.00	209.72	62.88	146.84	106	74
1994-95	198.00	243.55	83.25	160.29	123	81

Achievement in collection of revenue was higher than the target fixed. This was due to the inclusion of revenue collected as fines and compounding fee which amounts to 24 *per cent*, 30 *per cent* and 34 *per cent* of the total collection during 1992-93, 1993-94 and 1994-95 respectively. The actual collection (excluding fines and compounding fee) was below the target. It was noticed that the target fixed for 1994-95 was the same as that fixed for 1993-94 even for offices which achieved collection (excluding compounding fee) far above the target fixed. This would indicate that the target was not fixed in a scientific way and that no internal control machinery was existing in the department.

9.7. Registration of users

Prior to the implementation of the Act, the users of weights and measures were not required to be registered. Section 16 and 17 of the Act of 1985 and Rule 10 of the Kerala Standards of Weights and Measures (Enforcement) Rules, 1992, required that every person who intends to commence or carry on the use of any weight or measure in any transaction or for industrial production or protection, shall make an application accompanied by a fee of Rs 5 to the Controller or such other authorised officer for the registration of his name; and every such application shall be made, -

(i) in the case of an applicant using any weight or measure after the commencement of the rules within 90 days from such commencement, or

(ii) in the case of an applicant who commences use of any weight or measure after the commencement of rules within 90 days from the date on which he commences such use.

The Controller or the officers authorised by him shall include the name of the applicant in the prescribed register to be known as Register of Users and issue him a certificate in the prescribed form. The registration is renewable every five years by paying the prescribed fee.

Had the provisions of the Act of 1985 been implemented in the State in 1985 itself Government could have collected the registration fee of Rs 5 from the users in 1985 and again in 1990. Based on the information available with the department there were nearly three lakh trading establishments in the State in the year 1989 and registration fee of at least Rs 15 lakhs over and above the fee for annual verification could have been collected in 1990 from them. Information, regarding the number of trading establishments in 1985, to work out the loss and the reasons for the delay in implementation of the provisions of the Act though called for (December 1995) from Government have not been furnished (November 1996).

A test check of the records in the offices of five Assistant Controllers and eighteen Inspectors revealed the following.

(i) The Register of users which is the basic record of the users of weights and measures prescribed in the Rules 1992 for registration and renewal was not maintained in any of the offices. Instead the 'Census Register' prescribed under 1958 Act is still being used. The department printed 2,500 copies of the Census Register in 1993 and supplied to the field offices though the register became obsolete from 24 July 1992.

(ii) The department started registration under Rule 10 only after 1 April 1993 that too when the existing users turned up for re-stamping of the weights and measures already in use and where the new users voluntarily came for registration. This would

indicate that there is no effective mechanism in the department to ensure that all those users who existed prior to 24 July 1992 were registered as required under the new rules. Further no survey was conducted to identify new users. During test check of defaulters register in 13** offices, it was found that 846 dealers registerable under the Act were not registered and the relevant fee collected. The actual number of defaulters could not be assessed as the entries in the registers were incomplete. Non-registration within the stipulated date resulted in loss of revenue by way of registration fee and also fine applicable under Section 18 of the Act.

(iii) Since the certificate/forms prescribed were not printed and supplied to the Assistant Controllers and Inspectors even after the lapse of 3 years from the implementation of the Act/Rules no registration certificate could be issued to the users as envisaged in the Act. As such the department could not enforce the provisions of Sub-Rules 10(7) and (8) of the Standards of Weights and Measures Rules relating to the discontinuance of use or transfer of weights and measures. A test check of the census register revealed that 1210 users in 10@@ offices either discontinued or stopped business without intimating the department as required in the Rules. The department could not, therefore, ascertain whether the weights and measures used by them were transferred to some other user and were being used without periodical verification.

**	Sr. Inspectors	Kottayam, Kozhikode, Thiruvananthapuram, Thrissur
	Inspectors	Aluva, Aitingal,Changanassery, Chavakkad, Kanjirapally, Koyilandy, Nedumangad, Neyyattinkara, Wadakkancherry.
@@	Asst. Controller	Kottayam
	Sr.Inspector	Kottayam, Thrissur
	Inpector	Aluva, Attingal, Changanassery, Chavakkad, Koyilandy, Nedumangad, Wadakkancherry.

9.8. Licensing of repairers of weights and measures.

Under Rule 12 of the Kerala Standards of Weights and Measures Rules, 1992, every repairer of weights and measures including weighing and measuring instruments licensed under the Act and Rules shall furnish to the State Government a security deposit of Rs 200.

The Controller issued 615 licenses up to 31 March 1995 to such repairers but did not collect security deposit in any case. This resulted in non-realisation of security deposit of Rs 1.23 lakhs. The reason for non collection of security deposit though called for (December 1995) has not been furnished (November 1996).

9.9. Verification and stamping of weights and measures

As per Section 24 of the Act and Rules 14 to 17 of the Rules, every weight or measure used or intended to be used in any transaction or for industrial production or for protection shall be verified/re-verified and stamped at least once in a year. Storage tanks including vats shall be re-verified or re-calibrated and stamped at least once in five years. The fee payable for verification and stamping of weights and measures are prescribed in Schedule XII of the Rules. If any weight or measure is presented for re-verification after the validity period of the previous stamp, an additional fee at half the rate prescribed shall be payable for every quarter of the year or part thereof. Further, failure to present weight or measure for verification/re-verification is an offence under Section 47 of the Act. A test check in the offices of the Assistant Controllers and Inspectors revealed the following.

In the absence of the prescribed register of users a test check of the census registers, in 3 District Offices (Thiruvananthapuram, Kottayam, Thrissur) was conducted which revealed that:

(i) details of 21 measures/storage tanks were not entered in the census register after original verification,

(ii) in 3 cases, out of 16 pumps originally verified, only 9 pumps were re-verified during 1992, 1993 and 1994, and

(iii) in two cases the number of pumps re-verified and stamped were more than the cases originally verified.

At the close of every quarter, a list of defaulters is prepared in the 'Defaulters Register' to pursue the measures which were due for re-stamping in that quarter. A test check of the register maintained in 23 offices revealed that:

a) the register had not been maintained from 1989 to 1993 in the office of the Senior Inspector, Kozhikode and up to 1994 in the Office of the Inspector, Nedumangad,

b) in the registers maintained in the Offices of the Senior Inspector,Kottayam,Additional Inspector, Kozhikode and Inspectors, Wadakkancherry, Chavakkad and Changanassery, the details relating to the users in all the Panchayats under the jurisdiction of the respective office had not been recorded thereby making not possible to watch the re-verification of weights and measures of the users of these Panchayats.

c) in respect of 1,210 users whose names were deleted from the register due to the closing of business, the date of inspection conducted by the Inspector was not noted as required in circular issued on 23 September 1971, and

d) in 19 offices an amount of Rs 2.82 lakhs was due by way of fee for re-stamping and additional fee in 2,145 cases as on 30 June 1995.

9.10. Registration and stamping of Autorickshaw meters

Mention was made in paragraph 7.3.5 of the Report of the Comptroller and Auditor General of India (Revenue Receipts), 1985-86 about the non-realisation of fee for stamping of autorickshaw meters due to non-carrying out of the testing of taxi/autorickshaw meters. The Kerala Standards of Weights and Measures (Enforcement) Rules, 1992, prescribed registration fee of Rs 5 per meter renewable every five years besides the annual stamping fee of Rs 10. Though the Rules came into force in July 1992 registration and stamping of autorickshaw meters were started in the State only after April 1993. Number of autorickshaw meters registered with the Legal Metrology Department and stamped in the State during 1993-94 and 1994-95 collected from the office of the Controller are as follows.

Year	No. of meters registered	No. of meters stamped	Stamping fee collected (rupees in lakhs)
1993-94	23316	20908	2.09
1994-95	12923	30029	3.00

A test check of the records of the offices subjected to review revealed that:

(i) The actual number of autorickshaw meters to be registered was not collected from the Motor Vehicles Department by any of the offices. Registration and

stamping were done as and when the autorickshaw meters were voluntarily brought for registration and stamping.

(ii) In Thrissur (Assistant Controller's Office) 33 autorickshaw meters were not stamped so far even though registered with the department. In the office of the Inspector, Chavakkad, though 398 meters were registered during 1993 no stamping was done during that year as test bench was supplied only in May 1994 and stamping started in August 1994. However, only 243 meters were brought for stamping during 1994. No action was, however, initiated to re-stamp the remaining 155 meters registered in 1993.

(iii) In the office of the Inspector, Changanassery, registration of 359 autorickshaw meters was done only during September 1993. Thereafter no autorickshaw meter was registered in that office. Out of 359 meters 225 meters were not brought for re-verification and no action was initiated to get the remaining 134 meters stamped.

(iv) In Pala and Neyyattinkara, registration started only in April 1994 and September 1994 respectively.

(v) In 7 offices re-stamping due in 1994 and 1995 was not done in 1,289 cases. Loss of revenue is Rs 0.37 lakh.

9.11. Registration/verification of weights and measures of Post Offices and Railways in the State.

According to Rule 18 of the Kerala Standards of Weights and Measures (Enforcement) Rules, 1992, and the instructions issued by the State Government during September and October 1993, the weights and measures used by Postal and Railway Departments shall be verified, *in situ*, by recovering, in addition to the prescribed stamping fee, 50 *per cent* of the stamping fee, conveyance charges and daily allowance.

A test check of records of 7 offices revealed that:

(i) Rs 1.25 lakhs towards fee for stamping of weights and measures in post offices done in 1994 by four offices (Assistant Controller, Kozhikode, Senior Inspector, Kottayam, Inspector, Pala and Inspector, Nedumangad) was not paid by the Postal Department (September 1995).

(ii) In 3 offices (Aluva, Kanjirappally and Changanassery), though the stamping of weights and measures of post offices was completed in 1994 the fee amounting to Rs 33,678 was collected only after a lapse of 8 to 17 months.

(iii) Verification and stamping of weights and measures belonging to post offices in the State for the year 1995 have not been commenced till October 1995.

(iv) In Kozhikode, though registration and stamping were completed in 1994, registration and stamping fee of Rs 5,070 had not been realised from the Railways.

(v) The weights and measures of Railway Station, Aluva have not been registered and stamped till November 1995. The loss of revenue could not be quantified in the absence of the number of weights and measures used at this station.

Details regarding the verification done/stamping fee due from other railway stations in the State though called for (December 1995) have not been furnished (November 1996).

9.12. Non-verification of water/electricity meters

Mention was made in paragraph 7.3.4. of the Report of the Comptroller and Auditor General of India (Revenue Receipts), 1985-86 about the failure on the part of the Government and the department to carry out testing of water meters. In reply, the Government had stated that action for such verification/re-verification would be taken. The department has, however, not started this work so far. As assessed by the Legal Metrology Department, there are about 5 lakh water meters in the State. The revenue realisable on account of registration fee, stamping and re-stamping fee for the years 1992-93, 1993-94 and 1994-95 for these would work out to Rs 1.75 crores.

It was further noticed that even original verification of more than one lakh meters manufactured by a company at Ernakulam was not done for want of staff leading to a loss of verificaiton fee amounting to Rs 10 lakhs per annum.

Similarly, it was observed that registration/annual verification of electricity meters was not conducted resulting in a loss of revenue of Rs 14.71 crores as detailed below.

Year	No. of meters (In lakhs)	Loss (rupees in crores)
1992-93	39.30	3.93
1993-94	41.54	4.15
1994-95	44.17	4.42
Registration fee		2.21
Total		14.71

Verification of these meters would require evolution of a mechanism whereby the Government determine appropriate periodicity and percentage of verification and officials of Legal Metrology Department, Kerala Water Authority and the Kerala State Electricity Board join together to strictly adhere to this periodicity/percentage in the conduct of verification of meters.

9.13. Offences and penalties

Sections 36 to 66 of the Act deal with various categories of offences and the penalties to be levied. The Act empowers the Controller, or such other officer authorised by the Controller to compound certain offences subject to the condition that the amount compounded shall not, in any case, exceed the maximum amount of the fine which may be imposed under the Act for the offence so compounded. The number of offences booked and compounded by the department during the period 1992-93 to

1994-95 and the amount of compounding fee collected as furnished by the department are as follows.

Year	Offences under Section 39		Offences under other Sections		Total	
	No. of cases	Amount of compounding fee Rs	No.of cases	Amount of compounding fee Rs.	No of cases	Amount of compounding fee Rs.
1992-93	822	4,05,775	19,441	28,04,615	20,263	32,10,390
1993-94	624	3,28,500	28,654	39,20,785	29,278	42,49,285
1994-95	195	1,29,500	32,451	50,18,926	32,646	51,48,426

A scrutiny of the records relating to compounding of the offences revealed the following:

(i) The powers for compounding of offences vested in the Controller have not been delegated to the subordinates. But the practice now being followed is that if the offenders agree in writing to compound the case, advance collection of the compounding fee at the discretion of the Assistant Controllers and the Inspectors is made by issuing receipts and the cases are subsequently reported to the Controller for orders. Information furnished by the department revealed that final orders in respect of cases received from 1989 were pending issue by the Controller. Number of cases in which the final orders were pending issue as on 31 March 1995 and their details called for (August 1995) from the Controller have not been furnished (November 1996).

As the orders compounding the offences are pending with the Controller for years together and are not being issued within the time limit available for prosecution, Assistant Controllers, Senior Inspectors and Inspectors in effect exercise *de facto* the powers of the Controller for compounding of offences envisaged in the Act.

The above points were brought to the notice of the department and Government in December 1995; their replies have not been received (November 1996).

Thiruvananthapuram,
The 3.3.97

(SHANKAR NARAYAN)
Accountant General (Audit), Kerala

Countersigned

New Delhi,
The 10.3.97

(V.K. SHUNGLU)
Comptroller and Auditor General of India