



REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL OF INDIA
FOR THE YEAR ENDED 31 MARCH 1991

No. 2

(REVENUE RECEIPTS)

GOVERNMENT OF UTTAR PRADESH

ERRATA

Report of the Comptroller and Auditor General of India for the year ended 31 March 1991, No.2, (Revenue Receipts), Government of Uttar Pradesh

Page No.	Para No.	Line	For	Read
Vi	II	3rd from bottom	Ve-icles	vehicles
IX	2(iii)		reference of para 2.2.2(iv)(a)	2.2.11(iii)(a)
30	2.2.4(iv)	Below sub-para (iii)	sub-para (iv) may be pasted as under:	
	Highlights	Over the years 1987-88 to 1990-91 altogether 2,06,393 appeal cases were filed with the Assistant Commissioners(f), Dy. Commissioners (A) and the Commissioner. The number of cases disposed of over the same period was 1,68,981 which came to about 82 per cent of the number of cases added. Consequently, the over all pendency of cases with these authorities nearly doubled. Disposal by the Sales Tax Tribunal was marginally above fresh additions during the same period.		
-do-	2.2.4(v)	Renummer sub-para (iv) and delete the existing sub-para (v).		
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PREFATORY REMARKS

The Audit Report on Revenue Receipts of the Government of Uttar Pradesh for the year 1990-91 is presented in this separate volume No. 2. The material in the Report has been arranged in the following order:

(i) Chapter 1 deals with trend of revenue receipts, classifying them broadly under tax revenue and non-tax revenue. The variations between the Budget estimates and actuals in respect of the principal heads of revenue, the position of arrears of revenue etc., are also discussed in this chapter.

(ii) Chapters 2 to 9 set out certain cases and points of interest which came to notice during the audit of Sales Tax, State Excise, Taxes on Vehicles, goods and passengers, Stamp Duty and Registration fees, Land Revenue, Tax on Purchase of Sugarcane and Non-tax Receipts.

OVERVIEW

1. General

(a) The total revenue receipts of Government of Uttar Pradesh for the year 1990-91 were Rs. 8310.10 crores. Of the total receipts, Rs. 3162.12 crores (38 per cent) represent Tax revenue while Rs. 777.47 crores (9 per cent) relate to Non-tax revenue. Receipts from Government of India as grants-in-aid and share of Union taxes, amounted to Rs. 4370.51 crores (53 per cent). There was an over-all increase of 25 per cent in the total revenue receipts during 1990-91 as against 17 per cent rise during the previous year. The major increase in the State's own Tax revenue during 1990-91 as compared to 1989-90 was in Tax on Sale of Motor Spirits and Lubricants (230 per cent), State Excise (72 per cent), Tax on Purchase of Sugar Cane (40 per cent), Stamp Duty and Registration Fee (16 per cent) and Sales Tax (15 per cent). However, the rate of increase in collections under receipt head Sales Tax went down from 30 per cent (1989-90) to 15 per cent (1990-91) and in Stamp Duty and Registration Fee from 23 per cent (1989-90) to 16 per cent (1990-91). There was an increase of 48 per cent in 1989-90 under the head Land Revenue, whereas in 1990-91 it has declined by 25 per cent. The collections under Non-tax revenue have recorded a decrease of 6 per cent during 1990-91 as compared to 17 per cent rise in 1989-90.

[Para 1.1 and 1.2]

(b) The arrears of uncollected revenue in respect of Sales Tax have been rising continuously for the last three years (Rs. 951.46 crores in 1988-89, Rs. 1160.60 crores in 1989-90; and Rs. 1267.49 crores in 1990-91).

[Para 1.6]

(vii)

(c) There was a perceptible tendency to finalise Sales Tax assessments just before they became time-barred. Thus, 41 per cent of 5.28 lakh Sales Tax assessments finalised during 1990-91 were those which would have become time-barred in the next financial year.

[Para 1.5 (b) and (c)]

(d) As a result of a test audit conducted during 1990-91, under-assessments and loss of revenue aggregating Rs. 71.36 crores, was noticed. These related to Sales Tax (Rs. 9.18 crores), State Excise (Rs. 1.59 crores), Taxes on Vehicles, Goods and Passengers (Rs. 1.63 crores), Stamp Duty and Registration Fees (Rs. 1.76 crores), Land Revenue (Rs. 1.48 crores), Forest Receipts (Rs. 45.83 crores) and other Tax and Non-Tax Receipts (Rs. 9.89 crores).

[Para 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1]

(e) This report includes representative cases noticed during test check in 1990-91 and earlier years involving under-assessments/losses of revenue amounting to Rs.20.86 crores. Of this, under-assessments of Rs. 3.24 crores were accepted by the departments, out of which Rs. 0.09 crore was recovered till January 1992. The departments did not accept the audit findings in respect of Rs.1.78 crores for which refutations based on tax-law have been incorporated in the relevant paragraphs. For audit observations involving Rs 15.84 crores, final replies have not been received (April 1992).

(f) 2,330 Audit Inspection Reports comprising 5,375 paragraphs with money value of Rs. 71.56 crores, issued up to December 1990, were pending settlement at the end of June 1991. In respect of 553 Audit Inspection Reports, even first replies had not been received.

[Para 1.8]

2. Sales Tax

(a) A review on the "Pendency of appeals at various levels and its impact on revenue collection" revealed the following:

(i) Total amount of revenue involved in appeals up to 1990-91 was Rs. 210.90 crores which was 15 per cent of total revenue for the year 1990-91 and 17 per cent of total arrears at the end of that year.

[2.2.5]

(ii) Disposal of appeals by the departmental Appellate Authorities (Assistant Commissioners (J), Dy. Commissioners (A) and the Commissioner) over the 4 years 1987-88 to 1990-91 came to about 82 per cent of the fresh cases added during the period. Consequently, the overall pendency of appeals has been rising steadily.

[2.2.7(a)]

(iii) The failure of the Department to pursue an appeal in the High Court resulted in loss of revenue amounting to Rs. 13.86 lakhs.

[Para 2.2.2(iv)(a)]

(b) Review on "Working of Internal Audit Organisation in Sales Tax Department" revealed the following points:

(i) Although 66 per cent of the sanctioned strength of internal audit parties was deployed during the three years ending 1989-90, yet shortfall in internal audit of units ranged between 68 and 74 per cent.

[Para 2.3.4 (ii)]

(ii) 50 per cent of objections raised by internal audit (5049 cases) involving tax effect of Rs. 20.07 crores (being 79 per cent of the total revenue involved) were awaiting compliance and settlement.

[Para 2.3.6(d)(i)]

(x)

(iii) Internal audit failed to detect 37 cases of under-assessment, non-levy of penalty and loss of revenue aggregating Rs. 49.53 lakhs which were subsequently detected in statutory audit during 1990-91.

[Para 2.3.6 (d) (iii)]

(c) A Review on "Disposal of remanded cases under Sales Tax" revealed the following:

(i) The Department had no control on the movement of remand cases from the remanding authority to the Assessing Authority resulting in delays ranging from one month to over six months in their transmission.

[Para 2.4.4(i)]

(ii) The number of cases remanded increased from 4475 in 1987-88 to 5590 in 1990-91. One assessment case of a dealer was pending finalisation for over 15 years.

[Para 2.4.4(ii), (iv)]

(iii) Irregularities in re-assessment resulted in short levy of tax/penalty amounting to Rs. 3.93 lakhs in four cases.

[2.4.4(v)]

(d) This Report, *inter alia*, includes cases of the following nature:

(i) In the case of a dealer in silver ornaments of Kanpur, non-levy of penalty for not obtaining Registration and for concealment of turnover resulted in short levy of penalty amounting to Rs. 10.05 lakhs.

[Para 2.5]

(ii) Irregular authorisation of tax free purchase of packing material in recognition certificates granted to two dealers of vanaspati resulted in loss of revenue amounting to Rs. 23.21 lakhs during 1984-85 and 1985-86.

[Para 2.7.D(a) (i), (ii)]

(iii) In 15 cases of 9 districts, penalty on account of suppression/concealment of turnover amounting to Rs. 38.06 lakhs was leviable, but was not imposed while finalising assessments.

[Para 2.8.A]

(iv) A dealer in steel tubes was granted exemption from sales tax although the steel tubes were sold by him after electro-plating. This irregular exemption resulted in loss of revenue amounting to Rs. 3.10 lakhs in 1986-87.

[Para 2.10(i)]

(v) Purchase tax amounting to Rs. 4.38 lakhs though leviable for purchases of *babul* bark made without declaration forms by a dealer of Kanpur was not levied.

[Para 2.14]

3. State Excise

(a) Levy of duty on the basis of the minimum prescribed strength as indicated on the labels affixed to the bottles instead of on the actual apparent strength as indicated by hydrometer resulted in under-assessment of duty of Rs. 17.07 lakhs during the period April 1988 to March 1990 in respect of two distilleries at Rampur and Lucknow.

[Para 3.2]

(b) Application of incorrect rate of duty on the export of 1,67,728.80 A.L. of malt plain spirit by a distillery of Ghaziabad during the period 19 March 1990 to 10 September 1990 resulted in loss of revenue of Rs. 7.55 lakhs.

[Para 3.3]

(c) Interest amounting to Rs. 13.05 lakhs due on account of delays in payment of excise duty was not levied

and realised from various licensees at Varanasi, Nainital, Rae-Bareilly, Gorakhpur, and Lakhimpur Kheri.

[Para 3.6]

4. Taxes on Vehicles, Goods and Passengers

(a)(i) A review on the "Working of the Enforcement Wing of the Transport Department" revealed that during 1989-90 and 1990-91 there was shortfall in checking of vehicles by enforcement squads ranging from 7 to 206 days as against the prescribed 252 days in a year and that (ii) the percentage of checking also dropped down from 17.03 per cent in 1987-88 to 14.92 per cent in 1989-90.

The review also brings out delay in circulation of Government notification of 8 November 1990 resulting in loss of revenue of Rs. 6.72 lakhs on account of levy of compounding fees on cases of offences compounded between 8 November 1990 and 19 January 1991 at pre-revised lower rates.

[Para 4.2.4, 4.2.5(a), 4.2.9]

(b) Non-adoption of the prescribed minimum fare resulted in loss of passenger tax amounting to Rs. 6.39 lakhs in one sub-regional and three regional transport offices.

[para 4.3. A]

5. Stamp Duty and Registration Fees

(a) Under-valuation of the properties resulted in short levy of Stamp duty amounting to Rs.17.29 lakhs in 12 cases.

[Para 5.2(a) & (b)]

6. Forest Receipts

(a) A review on "Exploitation of Minor Forest Produce" revealed the following:

(i) Non-tapping of 30.98 lakh resin channels resulted in shortfall in yield of 64,906 quintals of resin valued at Rs 599.08 lakhs.

[Para 8.2.6.1]

(ii) Sale of resin from a forest at lower rate resulted in loss of revenue and administrative charges aggregating Rs. 57.87 lakhs.

[Para 8.2.6.2]

(iii) Late fee aggregating Rs. 208.13 lakhs was not realised from the Uttar Pradesh Forest Corporation and *Tarai Anusuchit Janjati Nigam*.

[Para 8.2.7.1]

(iv) Shortfall in achievement of target of bamboo felling during five years from 1985-86 to 1989-90 resulted in loss of revenue amounting to Rs. 46.24 lakhs.

[Para 8.2.8.1]

(v) Delay in finalisation of contract for collection of *Sal* seeds resulted in loss of Rs. 19.04 lakhs.

[Para 8.2.10.1 & 10.2]

(b) Failure to detect illicit felling of trees by the forest staff resulted in loss of trees worth Rs. 10.79 lakhs.

[Para 8.11]

7. Other Departmental Receipts

(a) In Irrigation Department, 1,874 cases of misuse of canal water covering unauthorised irrigation of 24,775 acres of land in five Irrigation Divisions involving

punitive charges amounting to Rs. 12.98 lakhs were not investigated and finalised.

[Para 9.2]

(b) Stamp Duty amounting to Rs. 29.27 lakhs on 14 lease agreements for collection of toll in five public works divisions were not levied and realised from contractors concerned.

[Para 9.6]

(c) Municipal charges amounting to Rs. 21.38 lakhs paid by the Public Works Department to local bodies on behalf of Government employees occupying Government residential buildings were not recovered from the occupants.

[Para 9.7]

CHAPTER-1

GENERAL

1.1 Trend of revenue receipts

The total revenue receipts of the Government of Uttar Pradesh for the year 1990-91 were Rs.8310.10 crores, against the anticipated receipts of Rs.7881.79 crores. Increase in total receipts during the year over the receipts of 1989-90 (Rs. 6623.17 crores) was 25 per cent as against the corresponding rise of 17 per cent during last year. Of the total receipts of Rs.8310.10 crores, revenue raised by the State Government amounted to Rs.3939.59 crores, of which Rs.3162.12 crores represented tax-revenue and the balance Rs.777.47 crores non-tax revenue. Receipts from the Government of India amounted to Rs.4370.51 crores.

1.2 Analysis of revenue receipts

(a) General analysis

An analysis of the revenue receipts for the year 1990-91 alongside those for the preceding two years, is given below:

	1988-89 (in crores of rupees)	1989-90	1990-91
I. Revenue raised by the State Government			
(a) Tax revenue	2065.74	2448.58	3162.12
(b) Non-tax revenue	704.65	823.56	777.47
	-----	-----	-----
	2770.39	3272.14	3939.59
II. Receipts from the Government of India			
(a) State's Share of divisible Union taxes	1766.09	2301.01	2305.65
(b) Grants in-aid	1115.72	1050.02	2064.86
	-----	-----	-----
	2881.81	3351.03	4370.51

III. Total receipts of the State (I+II)	5652.20	6623.17	8310.10*
IV. Percentage of I to III	49	49	47

(b) Tax revenue raised by the State Government

Receipts from tax-revenue (Rs.3162.12 crores) during the year 1990-91 constituted 80 per cent of the State's own revenue receipts (Rs. 3939.59 crores) and registered an increase of 29 per cent over the receipts of the previous year 1989-90 viz., Rs.2448.58 crores.

An analysis of tax revenue for the year 1990-91 and for the preceding two years is given below:

Revenue Head	1988-89	1989-90	1990-91	Increase(+) or Decrease(-) in 1990-91 with refe- rence to 1989-90	Percen- tage of increase or dec- rease (-) over 1989-90
(1)	(2)	(3)	(4)	(5)	(6)
(in crores of rupees)					
1. Sales Tax	947.00	1235.30	1415.36	(+)180.06	15
2. State Excise	338.24	422.13	724.79	(+)302.66	72
3. Stamp duty and Registration fees	251.77	310.17	359.73	(+)49.56	16
4. Tax on Sale of Motor Spirits and Lubricants	116.03	64.17	211.97	(+)147.80	230
5. Taxes on Goods and Passengers	125.07	135.27	151.69	(+)16.42	12
6. Taxes on Vehicles	89.84	79.30	85.42	(+)6.12	8

*For details please see Statement No.11- Detailed Account of Revenue by Minor Heads in the Finance Account of Government of Uttar Pradesh 1990-91

7. Other Taxes and Duties on Commodities and Services-	72.76	60.11	67.34	(+)7.23	12
8. Taxes and Duties on Electricity	62.00	50.98	53.07	(+)2.09	4
9. Tax on Purchase of Sugarcane	27.18	37.93	53.04	(+)15.11	40
10. Land Revenue	35.77	53.16	39.65	(-)13.51	(-)25
11. Other Taxes on Income and Expenditure	0.01	0.05	0.05	--	--
12. Taxes on Immovable Properties other than Agricultural Land	0.07	0.01	0.01	--	--
Total	2065.74	2448.58	3162.12	(+)713.54	29

There has been abnormal rise under the heads Tax on Sale of Motor Spirits and Lubricants (230 per cent), State Excise (72 per cent), Tax on purchase of sugar cane (40 per cent) besides increase under the heads Stamp and Registration fee (16 per cent), Sales Tax (15 per cent) and Electricity Duty (2.09 per cent). Compared to the increase of last year, the increase in collections under heads, Sales Tax has gone down from 30 per cent (1989-90) to 15 per cent (1990-91), Stamp duty and Registration fees from 23 per cent (1989-90) to 16 per cent (1990-91). There was an increase of 48 per cent in 1989-90 under receipt head Land Revenue but this year (1990-91) there has been a decrease of 25 per cent.

The State Government has been requested (January 1992) to furnish the reasons for variation in excess of 10 per cent. Their reply has not been received (April 1992).

The growth of Tax Revenue during the last three years i.e. 1988-89 to 1990-91 is exhibited graphically in chart I.

(c) Non-tax revenue of the State

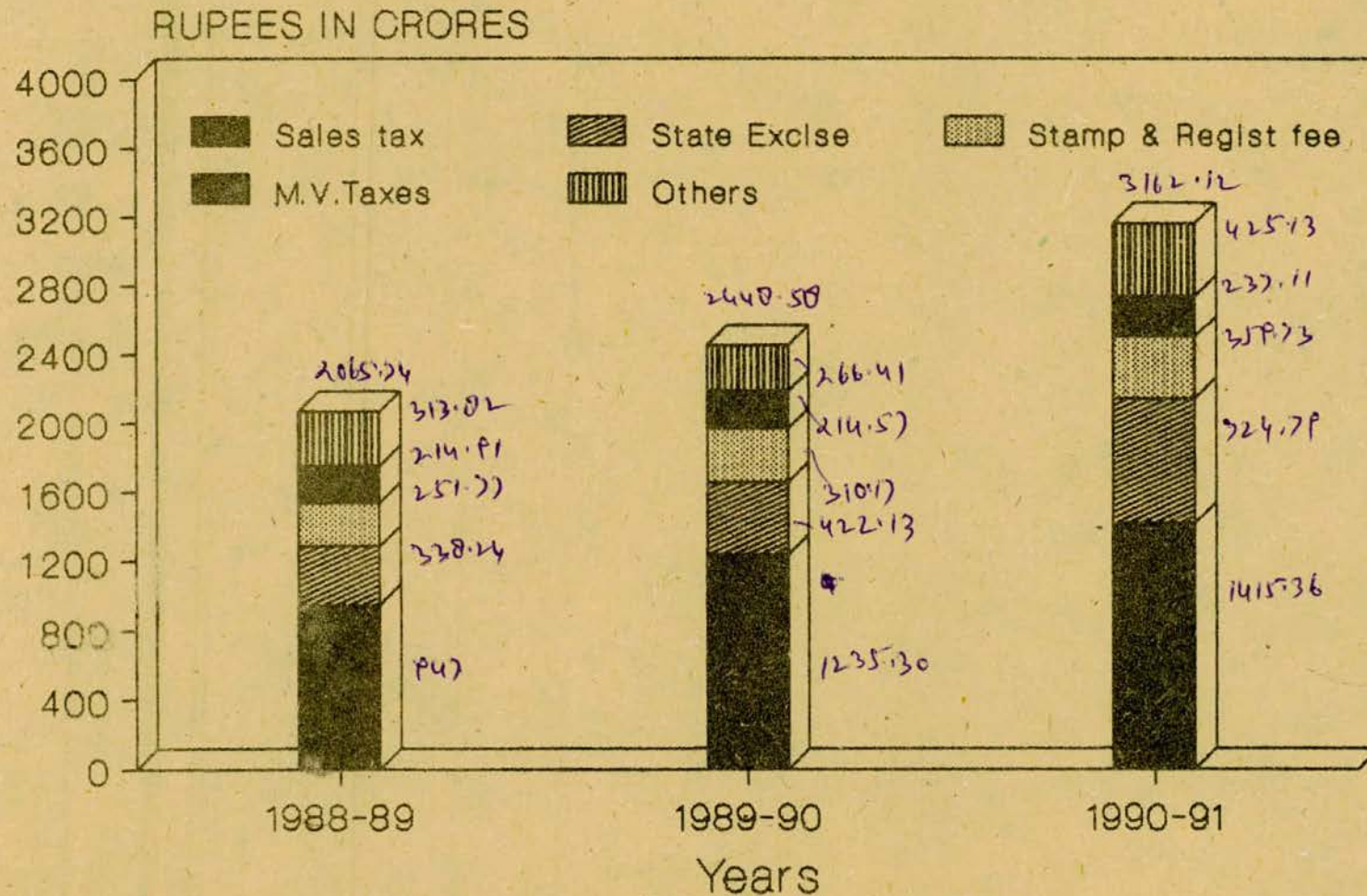
Receipts from non-tax revenue (Rs. 777.47 crores) during the year 1990-91 constituted 20 per cent of the State's own revenue receipts (Rs. 3939.59 crores) and registered a decrease of 6 per cent over the receipts of the previous year 1989-90 (Rs. 823.53 crores) as against the rise of 17 per cent last year.

Break-up of non-tax revenue for the year 1990-91 alongwith the figures for preceding two years in respect of departments having receipts of more than Rs. 10 crores is given below:

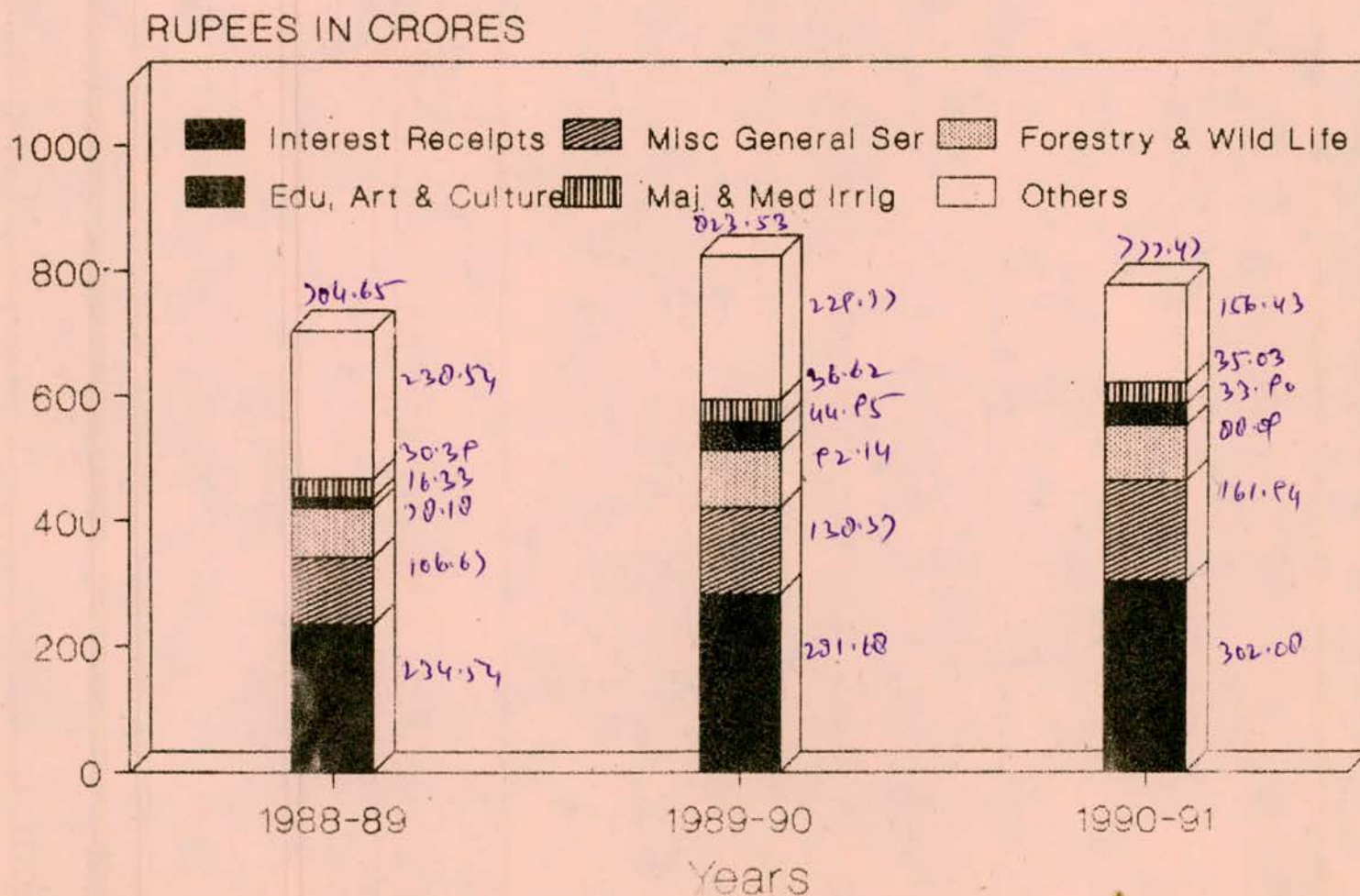
Revenue Head	1988-89	1989-90	1990-91	Increase(+) or decrease(-) in 1990-91 with reference to 1989-90	Percentage with reference to 1989-90
(1)	(2)	(3)	(4)	(5)	(6)
	(in crores		of rupees)		
1. Interest-Receipts	234.54	281.68	302.08	(+)20.40	7
2. Miscellaneous General Services	106.67	138.37	161.94	(+)23.57	17
3. Forestry and Wild Life	78.18	92.14	88.09	(-)4.05	(-)4
4. Major and Medium Irrigation	30.39	36.62	35.03	(-)1.59	(-)4
5. Education, Sports Art and Culture	16.33	44.95	33.90	(-)11.05	(-)25
6. Medical and Public Health	9.16	21.18	15.74	(-)5.44	(-)26
7. Police	16.39	11.76	15.17	(+)3.41	29

GROWTH OF TAX REVENUE

During 1988-89 to 1990-91



GROWTH OF NON-TAX REVENUE DURING 1988-89 to 1990-91



[Reference: Paragraph 1.2(c); Page No 5]

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8.Non-ferrous Mining and Metallurgical Industries	27.05	16.56	14.59	(-)1.97	(-)12
9.Other Adminis- trative Services	15.38	20.85	12.89	(-)7.96	(-)38
10.Roads and Bridges	10.21	10.79	11.79	(+)1.00	9
11.Public Works	13.01	13.73	10.43	(-)3.30	(-)24
12.Others	147.34	134.93	75.82	(-)59.11	(-)44
Total	704.65	823.56	777.47	(-)46.09	(-)6

Although receipts under head Interest Receipts and Miscellaneous General Services registered an increase of 7 per cent and 17 per cent respectively, but the growth was lower compared to the increase of 20 per cent and 30 per cent for the previous year (1989-90). There has been abnormal fall in receipts under the heads Education, Sports, Art and Culture (25 per cent decrease) as against 175 per cent increase in 1989-90, Medical and Public Health (26 per cent decrease) against 131 per cent rise in 1989-90, Other Administrative Services (38 per cent decrease) as against 36 per cent rise in 1989-90, Major and Medium Irrigation (4 per cent decrease) as against increase of 20 per cent in 1989-90 and Forestry and Wild life (4 per cent decrease) as against increase of 17 per cent in 1989-90.

The State Government has been requested (January 1992) to furnish the reasons for variation in excess of 10 per cent. Their reply has not been received (April 1992).

The growth of Non-tax Revenue during the last three years i.e. 1988-89 to 1990-91 is exhibited graphically in chart II.

Analysis of collection and detail of refunds as furnished by a few departments is given below:

Collection

	Sales Tax	Tax on purchase of sugarcane (Khandsari units)
	(in crores of rupees)	
1. Amount collected at pre-assessment stage	1265.93	1.39
2. Amount collected after regular assessment	76.33	9.30
3. Other receipts	32.54	--
4. Amount refunded	(-)5.14	(-)0.02
5. Net collection	1369.66	10.67

Refunds

Receipt Head	Claims outstand- ing at the beg- inning of the year		Claims received during the year		Refund made during the year		Balance outstand- ing at the end of the year	
	-----		-----		-----		-----	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
			(amount in lakhs of		rupees)			

1. Electricity Duty

1988-89	--	--	2	0.92	2	0.92	--	--
1989-90	--	--	1	0.16	1	0.16	--	--
1990-91	--	--	4	4.57	4	4.57	--	--

2. Tax on purchase of sugarcane (Khandsari units)

1988-89	7	0.98	17	0.70	15	0.67	9	1.01
1989-90	24	1.45	22	1.10	19	1.03	27	1.52
1990-91	1	0.08	38	1.63	19	0.79	20	0.92

1.3 Variations between Budget estimates and actuals

(a) The variations between budget estimates and actuals of tax revenue and non-tax revenue during the year 1990-91 are given below:

	Budget Estimates	Actual	Variation Increase(+) Shortfall(-)	Percentage of variation
(In crores of rupees)				
A. Tax Revenue	2569.68	3162.12	(+)592.44	23
B. Non-tax Revenue	803.06	777.47	(-)25.59	(-)3

(b) The break-up of the variations under the principal heads of revenue is given below:

Revenue Head	Budget esti- mates	Actuals	Vari- tion Increase (+)/short fall(-)	Percen- tage of varia- tion
(1)	(2)	(3)	(4)	(5)
(In crores of rupees)				
A. Tax Revenue				
1. Sales Tax	1159.40	1415.36	(+)255.96	22
2. State Excise	498.39	724.79	(+)226.40	45
3. Stamps & Registration	335.21	359.73	(+)24.52	7
4. Tax on Sale Motor Spirits and Lubricants	160.03	211.97	(+)51.94	32
5. Taxes on Goods and Passengers	145.13	151.69	(+)6.56	5
6. Taxes on Vehicles	85.34	85.41	(+)0.07	--
7. Other Taxes and Duties on commodi- ties and Services Entertainment tax.	64.14	67.34	(+)3.20	5
8. Taxes and Duties on Electricity	50.23	53.07	(+)2.84	6

9. Tax on Purchase of Sugarcane	41.75	53.04	(+)11.29	27
10. Land Revenue	30.00	39.65	(+)9.65	32
B. Non-Tax Revenue				
11. Interest Receipts	325.86	302.08	(-)23.78	(-)7
12. Miscellaneous General Services	139.84	161.94	(+)22.10	16
13. Forestry & Wild Life	83.59	88.09	(+)4.50	5
14. Major and Medium Irrigation	71.82	35.03	(-)36.79	(-)51
15. Education, Sports, Art and Culture	31.32	33.90	(+)2.58	P

It is evident that estimation of available tax resources have been far below actuals ranging from 45 per cent in the case of State Excise to 22 per cent in the case of Sales Tax. Besides, there was shortfall in actual realisation of revenue by 51 per cent against budget estimate under the head Major and Medium Irrigation. The State Government was requested (December 1991) to furnish reasons for such a steep shortfall in actual collection of revenue against budget estimates. Their reply has not been received (April 1992).

The State Government has been requested (January 1992) to furnish the reasons for variations between budget estimates and actuals in excess of 10 per cent in respect of concerned receipt heads. Their reply has not been received (April 1992).

1.4 Cost of Collection

Expenditure incurred on collection of receipts under the principal heads of revenue during the three years 1988-89 to 1990-91 is given below:

Revenue Heads	Year	Gross Collection	Expenditure on collection	Percentage of Expenditure to gross Collection	All India average for the year 1989-90
(1)	(2)	(3)	(4)	(5)	(6)
(in crores of rupees)					
1. Land Revenue	1988-89	35.77	40.24	112	
	1989-90	53.16	52.74	99	
	1990-91	39.65	67.24	170	
2. Sales Tax	1988-89	947.00	24.97	3	
	1989-90	1235.30	31.81	3	
	1990-91	1415.36	60.46	4	1.5
3. Taxes on vehicles	1988-89	89.84	2.21	2	
	1989-90	79.30	2.99	4	3
	1990-91	85.42	5.73	7	
4. Taxes on Goods and Passengers	1988-89	125.07	0.29	-	
	1989-90	135.27	0.39	-	
	1990-91	151.69	1.91	1	
5. Electricity Duty	1988-89	62.00	1.22	2	
	1989-90	50.98	1.67	3	
	1990-91	53.07	1.80	3	
6. Entertainment tax	1988-89	72.76	7.07	10	
	1989-90	60.12	9.68	16	
	1990-91	67.34	14.56	22	

There has been abnormal increase in expenditure (Rs. 67.24 Crores) as against gross collection of Rs. 39.65 crores in respect of Land Revenue. Reasons for the same as well as the reasons for increasing trend in expenditure in respect of Entertainment tax have been called for (January 1992) from the State Government. Their reply is awaited (April 1992).

1.5 Assessments in arrears

Performance of assessment work in Sales Tax Department

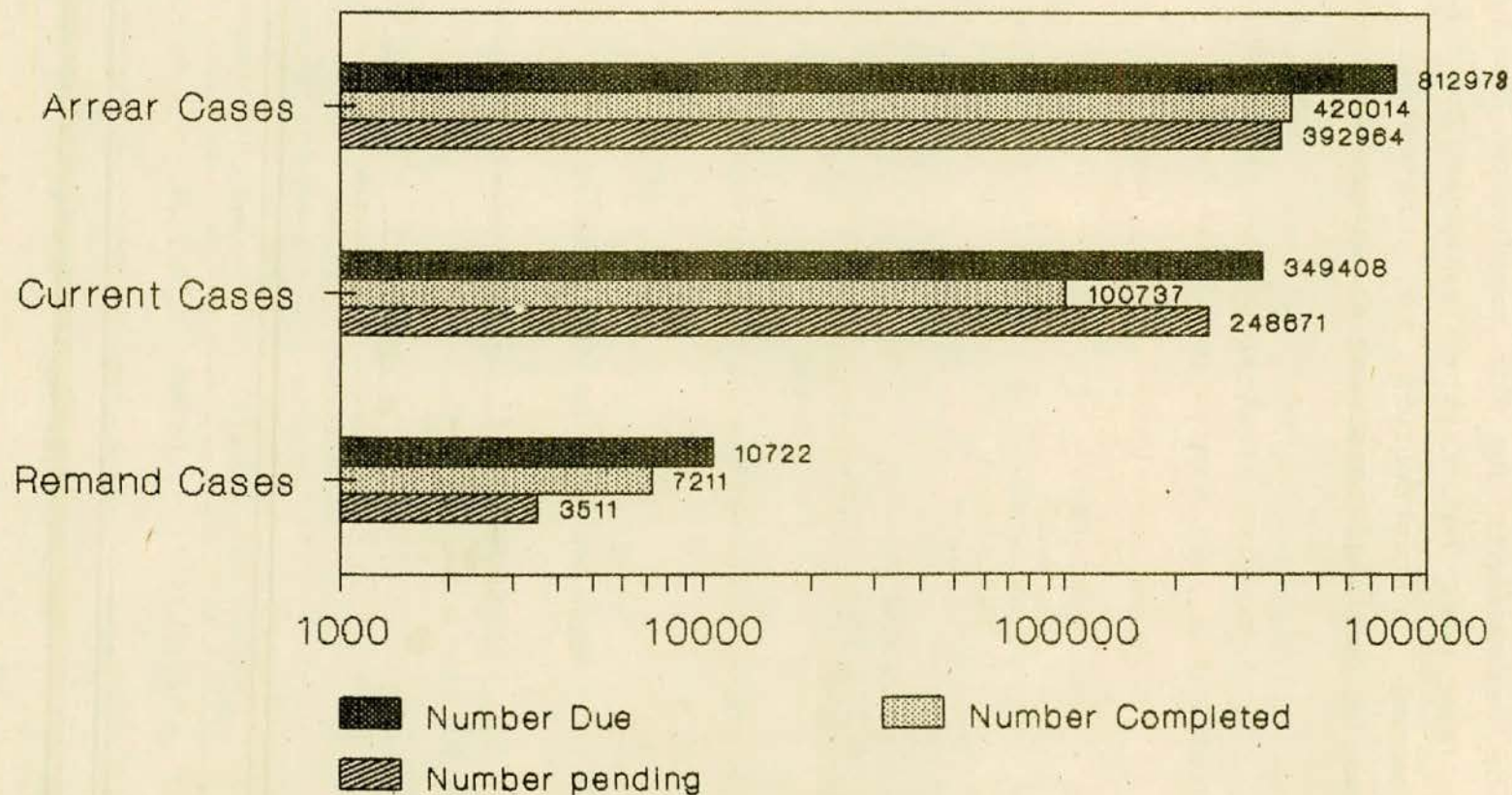
(a) The number of assessments due for completion and those finalised by the Sales Tax Department during the assessment years 1989-90 and 1990-91 together with the number of assessments pending finalisation at the end of March, as reported by the department, are indicated below:

	1989-90	1990-91
(i) Number of assessment due for completion during the year		
Arrear cases	8,15,564	8,12,978*
Current cases	3,26,876	3,49,408
Remand cases	9,984	10,722
Total	11,52,424	11,73,108
(ii) Number of assessments completed during the year		
Arrear cases	3,87,448	4,20,014
Current cases	15,762	1,00,737
Remand cases	6,572	7,211
Total	4,09,782	5,27,962
(iii) Number of assessments pending finalisation as on 31st March		
Arrear cases	4,28,116	3,92,964
Current cases	3,11,114	2,48,671
Remand cases	3,412	3,511
Total	7,42,642	6,45,146
(iv) Percentage of disposal to the number of assessments due for completion	36	45

(The above information is presented graphically in Chart III)

*The opening balance of 1990-91 has been revised by the department from 7,42,642 cases (closing balance of 1989-90) to 8,12,978 cases. Addition of 70,336 cases was stated to be due to inclusion of cases as a result of scrutiny of cases.

PERFORMANCE OF ASSESSMENT WORK (SALES TAX DEPARTMENT) 1990-91



(11)
Chart III

It will be seen that more than 69 per cent of the cases due for assessment were old or pending. Assessments carried out during the year 1990-91 constituted 45 per cent of the assessments due for completion, as against 36 per cent last year but further measures to strengthen the assessment infrastructure to substantially reduce the number of pending assessment cases are still required.

Year-wise break-up of the assessments pending as on 31st March 1991 was as per table below:

Assessment year	Number of cases
upto 1985-86	903
1986-87	22,923
1987-88	1,52,556
1988-89	2,16,582
1989-90	2,48,671
Cases remanded by courts for re-assessment	3,511
Total	6,45,146

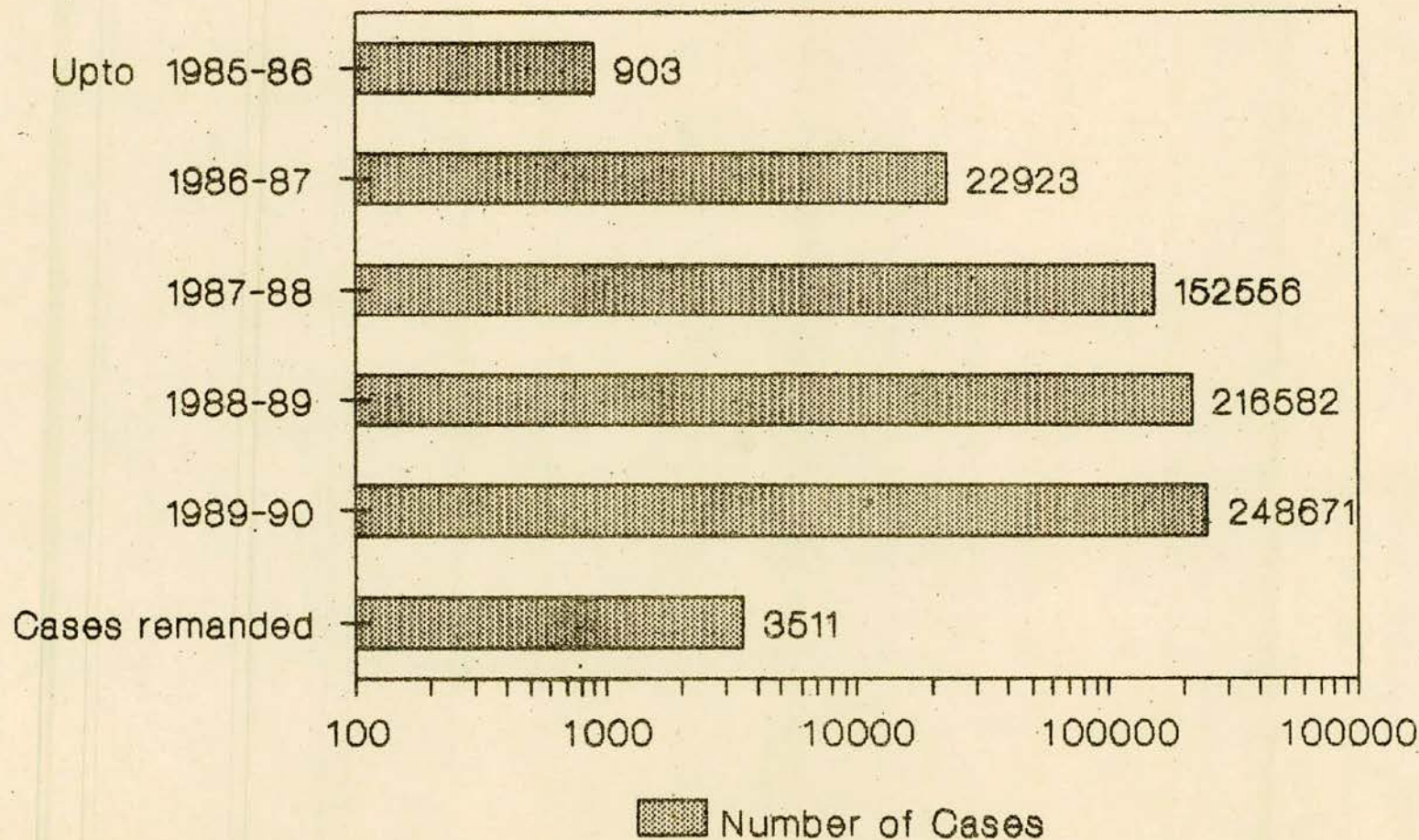
(The above information is presented graphically in Chart IV)

(b) Rush of work at the close of the year

Assessments finalised during the year 1989-90 and 1990-91 are given below:

Period	1989-90		1990-91	
	Number of assessments finalised	Demands raised (in crores of rupees)	Number of assessments finalised	Demands raised (in crores of rupees)
April to December	2,68,440	188.32	3,65,499	233.74
January to March	1,41,342	353.72	1,62,463	315.68
Total	4,09,782	542.04 (F)	5,27,962	549.42

Year-wise break-up of Assessment in S.T. Department pending on 31st March 1991



(13)
Chart IV

It will be seen that the rate of disposal of cases during April to December was much less (average 40,611 cases per month) than that during the last quarter of the year (average 54,154 cases per month). The additional demand (Rs. 233.74 crores) in first three quarters was also much less than the demand (Rs. 315.68 crores) raised during the last quarter of the year

(c) Heavy incidence of finalisation of cases towards the end of the limitation period

Break-up of cases disposed of according to the year to which they pertained, further indicates, as given below, that almost 41 per cent of the cases disposed of were more than 3 years old which were likely to get time barred if not disposed of during that year:

Year ending according 31st March -----	Break-up of cases disposed of to the year to which they pertained -----		
	Year	Number of cases	Percent- tage
1990- upto	1985-86	2,20,949	54
	1986-87	1,05,383	26
	1987-88	61,116	15
	1988-89	15,762	4
	Remand Cases	6,572	1
	Total	4,09,782	
1991- upto	1986-87	2,14,481	41
	1987-88	99,023	19
	1988-89	1,06,510	20
	1989-90	1,00,737	19
	Remand Cases	7,211	1
	Total	5,27,962	

(d) Appeal and revision cases

As in the case of assessment cases, the position of appeal and revision cases (2nd appeal) is no better.

Disposal of cases is less than even the current cases accruing each year as indicated below:

	<u>Number of Cases to be decided</u>			
	<u>Appeal Cases</u>		<u>Revision Cases</u>	
	1989-90	1990-91	1989-90	1990-91
Pending Cases	78,325	84,046	53,547	51,656
Current Cases	50,979	44,282	16,089	21,369
Total	1,29,304	1,28,328	69,636	73,025

<u>(ii) Number of Cases decided</u>				
Pending Cases	32,387	32,346	15,906	13,626
Current Cases	12,871	16,860	2,074	5,222
Total	45,258	49,206	17,980	18,848

<u>(iii) Number of pending Cases</u>				
Pending Cases	45,938	51,700	37,641	38,030
Current Cases	38,108	27,422	14,015	16,147
Total	84,046	79,122	51,656	54,177

Year-wise break-up of the appeal and revision cases pending as on 31st March 1991 was as under:

<u>1991</u>	Year	<u>Pending as on 31st March</u>	
		Appeal cases	2nd Appeal
Upto	1985	151	4,421
	1986	98	3,566
	1987	971	5,122
	1988	10,718	8,655
	1989	22,694	9,533
	1990	31,411	18,191
	1991 (January to March 1991)	13,079	4,689
	Total	79,122	54,177

The tendency to finalise a large number of cases at the fag end of the limitation period is fraught with the

risk of loss of revenue due to hurried assessment, inadequate scrutiny of records and dealers becoming insolvent or untraceable with the lapse of time. On the other hand, delay in finalisation of assessment cases and cases pending in appeal results in blocking of revenue (additional demand raised during assessment) for a period ranging from 1 to 4 years, which not only affects the ways and means position of Government but also results in accrual of fortuitous benefit to the dealers by way of interest.

(e) Frauds and evasions

The position of cases of frauds and evasions detected, finalised and pending as on 31st March 1991 was as under:

	Sales Tax		Entertainment Tax	
	No. of cases	Amount of revenue involved	No. of cases	Amount of revenue involved
(Amount in Crores of Rupees)				
(a) (i) Cases pending as on 1st April 1990	6841	NA	16	NA
(ii) Cases detected during the year 1990-91	1819	NA	198	NA
(b) Cases in which investigation/assessment were completed during the year				
(i) Out of cases at (a) (i)	2257*	45.20	7	NA
(ii) Out of cases at (a) (ii)			168	NA
(c) Cases which were pending at the end of the year				
(i) Out of cases at (a) (i)	6403*	NA	9	NA
(ii) Out of cases at (a) (ii)			30	NA
Amount of additional demand/penalties	NA	NA	NA	0.10

* Separate figures not available

The required information was called for from the Sales Tax Department in December 1991. The Department expressed inability to furnish the said information.

1.6 Arrears of Revenue

Details of the arrears of revenue pending collection at the end of the year 1990-91, as furnished by the departments in respect of some receipt heads are given in the table below:-

Year	Sales Tax	Cane purchase Tax Sugar Factories	Khandsari units	Forestry and wild life	Enterta- inment tax	Electri- city Duty	
(amount in crores of rupees)							
1. Total arrears with year-wise break-up							
Upto	1985-86	195.61	7.12	0.85	3.53	0.01	0.82
	1986-87	122.61	0.31	0.04	0.11	NA	NA
	1987-88	107.72	0.47	0.02	2.22	0.03	NA
	1988-89	143.10	0.54	0.04	2.85	NA	24.16
	1989-90	237.46	0.63	0.79	0.04	0.03	0.02
	1990-91	460.99	0.46	0.06	0.23	0.38	0.02
	Total	1267.49	9.53	1.80	8.98	0.45	25.02
2. Arrears outstanding (with year-wise break-up) for more than 5 years							
Upto	1980-81	56.41	6.25	--	NA	0.42	--
	1981-82	15.53	0.19	0.65	--	0.06	--
	1982-83	22.21	0.13	0.07	--	0.14	--
	1983-84	23.43	0.16	0.05	--	--	--
	1984-85	31.22	0.07	0.04	--	0.05	0.37
	1985-86	46.81	0.32	0.04	--	NA	0.45
	Total	195.61	7.12	0.85	NA	0.67	0.82
3. Stages of action							
(a) Demand covered by recovery certificates		482.51	2.46	0.54	6.04	0.13	0.13
(b) Recoveries stayed by:-							
(i) High Courts and other judicial authorities		210.90	0.42	1.15	0.67	0.28	24.88
(ii) Government		16.03	5.33	--	--	--	--

(c) Recovery held up due to:-

(i) Rectification/review of applications	36.38	--	--	--	--	
(ii) Dealers becoming insolvent	3.03	--	--	--	--	
(d) Amount likely to be written off	66.45	--	--	0.12	--	
(e) Other stages	452.19	1.32	0.10	0.17	0.04	0.01
(f) Amount to be adjusted against the security in hand or material in the custody of the department	--	--	--	1.98	--	--
Total	1267.49	9.53	1.80	8.98	0.45	25.02

Details of other stages in respect of Sales Tax and Tax on Purchase of Sugarcane

	Sales Tax	Tax on purchase of Sugarcane (Sugar factories) (in crores of rupees)
1. Immature demands	341.51	--
2. Lost/unavailable treasury challan	30.80	--
3. Others	15.32	--
4. Amounts where recovery certificates could not be issued for various reasons	0.79	--
5. Dues against Government departments	17.11	--
6. Dues against semi-Government firms/firms controlled by Government	31.73	--
7. Dues against transporters	14.93	--
8. Amount of which recoveries accepted in instalments	(negligible)	1.32
Total	452.19	1.32

The arrears of revenue in respect of Sales tax has been increasing continuously for the last three years. In 1988-89, 1989-90 and 1990-91 the amount of arrears were Rs. 951.46 crores, Rs. 1160.60 crores (Final) and Rs. 1267.49 crores respectively. The arrears of revenue in respect of Tax on Purchase of Sugarcane (Sugar Factories) have also registered increase from Rs. 9.15 crores in 1989-90 to Rs. 9.53 crores in 1990-91.

1.7- Write off and remission of revenue

Details of demands written off and remitted during 1990-91, as furnished by Sales Tax Department, are given below:

lakhs	No. of cases	Amount (in of rupees)
Reasons of write off:-		
1. Whereabouts of defaulter not known	7	0.68
2. Defaulters no longer alive	2	0.24
Total	9	0.92

1.8 Outstanding audit inspection reports

The number of inspection reports and audit objections issued up to December 1990 which were pending settlement as on 30th June 1991 are given below:

	<u>As at the end of June</u>		
	1989	1990	1991
1. Number of outstanding inspection reports	1855	2256	2330
2. Number of outstanding audit objections	5050	5771	5375
3. Amount of revenue involved (in crores of rupees)	82.03	108.11	71.56

The table below indicates receipt wise details of the inspection reports and audit objections issued upto December 1990 but remaining outstanding as on 30th June 1991.

Nature of Receipts	<u>Number of outstanding</u>			Year to which the earliest report pertains
	Inspection Reports	Paragraphs	Amount of Revenue involved (In crores of rupees)	
-----	-----	-----	-----	-----
(1)	(2)	(3)	(4)	(5)
1. Forestry and Wild Life	310	586	22.65	1979-80
2. Sales Tax	684	1416	14.91	1982-83
3. Irrigation	98	337	8.87	1984-85
4. Tax on Purchase of Sugarcane	124	126	8.40	1981-82
5. State Excise	187	254	4.41	1982-83
(i) Administrative charges on sale of Molasses	32	39	0.01	1989-90
6. Taxes on Vehicles, Goods and Passengers	110	764	4.65	1983-84
7. Public Works	71	267	2.44	1984-85
8. Land Revenue	169	384	1.93	1982-83
9. Stamp Duty and Registration Fees	399	957	2.15	1982-83
10. Crop Husbandry	32	77	0.63	1985-86
11. Electricity Duty	34	38	0.24	1982-83
12. Food and Civil Supplies	31	71	0.16	1985-86
13. Co-operation	29	35	0.08	1984-85
14. Entertainment Tax	20	24	0.03	1986-87
Total	2330	5375	71.56	

In respect of audit inspection reports pertaining to the following receipt heads, even first replies had not been received from the departments:

	Number of audit inspection reports outstanding for			Total
	Three years and more (issued upto March 1988)	Two years and more but less than 3 years (issued during 1988-89)	Less than two years (issued during 1989-90 and 1990-91) (upto 12/90)	
1.Tax on pur- chase of sugarcane	50	12	65	127
2.Sales Tax	3	5	89	97
3.Forestry and Wild Life	7	3	66	76
4.Taxes on Vehicles, Goods and Passengers	--	---	35	35
5.State Excise	--	---	28	28
(i)Administrative charges on sale of molasses	--	---	34	34
6.Stamp Duty and Registration Fees	--	---	32	32
7.Irrigation	3	10	15	28
8.Land Revenue	--	---	25	25
9.Food and Civil Supplies	2	5	14	21
10.Public Works	--	5	11	16
11.Electricity Duty	--	---	12	12
12.Crop Husbandry	---	--	11	11
13.Co-operation	1	1	9	11
Total	66	41	446	553

Year-wise analysis of outstanding paras in respect of a few important departments is as under:

Year	No of Reports	No of Paras	Amount involved (in crores of rupees)
-----	-----	-----	-----
Sales Tax			
Upto			
1987-88	116	370	2.11
1988-89	123	231	1.98
1989-90	279	423	7.26
1990-91	166	392	3.56
State Excise			
Upto			
1987-88	62	101	1.06
1988-89	37	38	0.50
1989-90	40	56	1.70
1990-91	48	59	1.15
Land Revenue			
Upto			
1987-88	46	96	0.62
1988-89	28	92	0.20
1989-90	43	102	0.31
1990-91	52	94	0.80
Stamp Duty and Registration Fees			
Upto			
1987-88	211	512	1.01
1988-89	59	159	0.21
1989-90	92	219	0.55
1990-91	37	67	0.38
Transport Department			
Upto			
1987-88	23	228	1.07
1988-89	25	188	1.16
1989-90	41	222	1.25
1990-91	21	126	1.17
Irrigation Department			
Upto			
1987-88	52	159	2.87
1988-89	23	89	2.07

(23)

1989-90	20	80	3.80
1990-91	3	9	0.13

Public Works Department
Upto

1987-88	36	139	0.84
1988-89	20	84	0.82
1989-90	13	38	0.74
1990-91	2	6	0.04

Forest Department
Upto

1987-88	123	181	2.79
1988-89	45	93	5.31
1989-90	70	129	5.65
1990-91	72	183	8.90

CHAPTER 2

SALES TAX

2.1 Results of Audit

Test check of the records of the Sales Tax offices conducted by Audit during 1990-91, revealed under-assessments of tax and non-levy or short levy of interest and penalty amounting to Rs. 917.89 lakhs in 1,174 cases which broadly fall under the following categories:

	Number of cases	Amount (in lakhs of rupees)
1. Non-levy or short levy of interest/penalty	362	327.64
2. Non-levy/short levy of additional tax	76	137.38
3. Irregular grant of exemption	180	127.52
4. Application of incorrect rate of tax	198	65.31
5. Incorrect classification of goods	27	35.41
6. Turnover escaping assessment and incorrect determination of turnover	36	19.57
7. Arithmetical mistakes	35	9.08
8. Other irregularities	260	195.98
Total	1174	917.89

Three reviews of sales tax on (a) "Pendency of appeals at various levels and its impact on revenue collection",

(b) "Working of the Internal Audit Organisation in Sales Tax Department" and

(c) "Disposal of remand cases under Sales Tax" and a few other important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

2.2. Pendency of appeals at various levels and its impact on revenue collection

2.2.1 Introduction

Sales tax is the major source of revenue to the State exchequer, constituting nearly 50 per cent of the State's tax revenue. It is levied and collected under the U.P. Sales Tax Act, 1948(Act) and Central Sales Tax Act, 1956.

The Act provides for appeals to/revision by the Appellate Authorities for the settlement of disputes arising out of assessment orders passed by assessing authorities. Appeals are disposed of under the provisions of the Act and the rules framed thereunder. Procedure for watching/monitoring of transmission of appeal cases, from the assessing officers to appellate/judicial authorities and back, are prescribed in the Departmental Manual of Appeals (Manual).

(a) Procedure for filing of appeals

(i) Any dealer aggrieved by an order of the assessing authority may, within 30 days of the service of assessment order, appeal to Appellate Authorities i.e. Assistant Commissioner (Judicial) (AC(J)) or Deputy Commissioner (Appeals) (DC(A)) as the case may be, after furnishing satisfactory proof of deposit of admitted tax in full, where all the returns have been filed, or where some of the returns have been filed or not filed at all, admitted tax or 20 per cent of the enhanced tax whichever

is greater. The Appellate Authority may for special and adequate reasons, to be recorded in writing, waive or relax the deposit of 20 per cent of the disputed tax.

(ii) Any person aggrieved by an order passed by the first Appellate Authority or by a decision given by the Commissioner of Sales Tax (Commissioner) under Section 35 may, within 6 months from the date of service of the copy of such order/decision on him, prefer an appeal to Sales Tax Tribunal (Tribunal).

(b) Powers of Appellate/Revising Authorities

The Appellate/Revising Authorities, after calling for and examining the relevant records and after giving reasonable opportunities of being heard to the parties concerned may:-

(i) dismiss the appeal;

(ii) confirm, cancel or vary such orders;

(iii) remand the case to concerned authorities for passing fresh orders after such enquiry as may be specified;

(iv) stay the operation of such orders after the dealer furnishes satisfactory proof of deposit of not less than $\frac{1}{3}$ of the disputed amount of tax, fee, or penalty, in addition to the tax admitted where all the returns have been filed or where some of the returns have been filed, or not filed at all, admitted tax or 20 per cent of the enhanced tax whichever is greater;

Provided no stay order shall remain in force for more than 30 days unless the appellant has furnished security for payment of amount stayed before the expiry of the said period.

(v) waive or relax the requirement of 1/3 of the disputed tax;

(vi) order the refund of excess amount realised.

(c) Constitution of Special Appellate Tribunal

Article 323-B of the Constitution of India provides for constitution of a Special Appellate Tribunal, to deal exclusively with the sales tax matters which are being reviewed at present by the High Courts. The powers and privileges of the Special Appellate Tribunals are at par with those of the High Courts and disputes not settled at their level can be appealed against in the Supreme Court only. However, no such tribunal has been set-up in the State with the result that the pendency of such cases at the level of High Court is quite high (8611 cases involving Rs. 50.12 crores as at the end of March 1991).

The formation of such tribunal could have speeded up disposal and substantially reduced the number of appeals pending at the level of the High Court.

2.2.2 Scope of Audit

With a view to assessing the impact of pendency of appeals on the collection of revenue, and also to verify the efficacy of system of monitoring/watching of transmission of appeal cases from the assessing officers to the Appellate Authorities and back, a review was conducted from April 1991 to September 1991.

Scrutiny of records relating to overall statistical information/data on appeals of the State as a whole for the period from 1987-88 to 1989-90, was carried

out in the Office of the Commissioner. Test check of appeal cases, maintenance of registers and records for watching/monitoring appeal cases and follow-up action for recovery of revenue after the finalisation of appeals for the period mentioned above was also conducted in four more industrialised and trade rich districts (Lucknow, Kanpur, Bareilly and Ghaziabad including NOIDA) of the State. The test check covered offices of 8 out of 38 ACs(J), 4 out of 11 DCs(A) and 9 out of 31 benches of Tribunal and also records relating to appeals maintained in the concerned offices of the Sales Tax Officers (STOs) and the Assistant Commissioners (Assessment) (ACs (A)).

2.2.3 Organisational set up

(a) First Appellate Authority

(i) A.Cs.(J) have been empowered to hear and decide disputes arising out of assessment orders passed by STOs grades I&II.

(ii) DCs(A) have been empowered to hear and decide disputes arising out of assessment orders passed by ACs(A).

(iii) If any question arises as to whether, for the purpose of this Act, a person, association, club, society, firm, company, corporation, undertaking of Government department is a dealer, or any activity amounts to manufacture, or any transaction is sale or purchase and price therefor, or a dealer is required to obtain registration or any tax is payable in respect of a particular sale/purchase and the rate of tax applicable to it, the Commissioner shall after giving the applicant an opportunity of being heard, decide it as he deems fit under Section 35 of the Act.

(b) Second Appellate/Revising Authority Sales Tax Tribunal

Section 10 of the Act empowers the Government to establish Tribunal consisting of a President and other members. The Tribunal has been empowered to hear and decide appeals against an order passed by the first Appellate Authorities and also orders/decisions of Commissioner under Section 35 of the Act. The Tribunal came into existence with effect from 3 October 1980 and 31 benches of the Tribunal were established in the State up to 31 March 1990.

(c) High Court

Under Section 11 of the Act, in special cases any person aggrieved by an order of the Tribunal may appeal to the High Court for revision of such order on the ground that the case involves a question of law.

The chain of Assessing and Appellate/Revising Authorities is given in the following chart:

<u>Assessing Authority</u>	<u>Ist Appellate authority</u>	<u>IIInd Appellate authority</u>	<u>Revising authority</u>
S.T.Os.Grade-I & II	A.C.(J)	Sales Tax Tribunal	High Court
A.C.(A)	D.C. (A)	-do-	Supreme Court
			-do-

2.2.4. Highlights

(i) No provision was made in the Act regarding establishment of Special Sales Tax Tribunal despite the Constitutional provision therefor.

(ii) Total amount of revenue involved in appeals upto 1990-91 was Rs. 210.90 crores which was 15 per cent of total revenue for the year 1990-91 and 17 per cent of total arrears as at the end of that year.

(iii) Average disposal by Appellate Authorities was about 34 per cent and pendency of appeals about 66 per cent.

(iv) Strength of Appellate Authorities on an average was raised by about 42 per cent whereas average disposal increased by about 26 per cent.

(v) The representation of the Department before the Appellate/Revising Authorities is not adequate.

(vi) No specific provision was made in the Act to safeguard the interest of Government revenue after finalisation of appeals as bank guarantees expired on the dates appeals were finalised.

(vii) Prescribed registers and other records were not maintained properly and the entries were not authenticated by Officers in-Charge. Surety bonds accepted in some cases were not verified by the competent authority.

(viii) The Department did not bring to the notice of appellate/revising authority the fact of non-deposit of admitted tax in a case where the dealer's appeal against assessment order was admitted even though tax was not deposited in full on accepted turnover.

(ix) The failure of the Department to pursue an appeal in the High Court resulted in loss of revenue of Rs. 13.86 lakhs.

(x) Failure of the Department to apprise the Appellate Authority of rejection of dealer's appeal by the High Court resulted in loss of revenue of Rs. 1.21 lakhs

2.2.5 Position of arrears of revenue pending collection on account of appeals

Year-wise arrears of revenue remaining uncollected on account of appeal as compared with total arrears pending collection and also with the total receipts for the four years upto 1990-91 is given below:

Year	Total arrears	Totals receipt	Revenue involved in appeals	Percentage of col. 4 to 3	Perce- tage of col.4 to 2
(1)	(2)	(3)	(4)	(5)	(6)
(in crores of rupees)					
upto					
1987-88	783.69	799.42	98.99	12	13
1988-89	951.74	947.00	207.12	22	22
1989-90	1151.37	1235.30	188.83	15	16
1990-91	1267.49	1415.36	210.90	15	17

The above figures show that revenue involved in appeals during the years 1987-88 to 1990-91 ranged between 13 per cent and 22 per cent of the total arrears pending collection and was between 12 per cent to 22 per cent of the total sales tax receipts.

While the overall arrears involved in appeals was fairly high, it was highest during 1990-91.

2.2.6. Norms/quota for disposal of appeals

The Department has fixed the following quota of appeals for disposal by Appellate Authorities:

- (i) A.C.(J) 8 cases per day
- (ii) D.C.(A) 1.5 cases per day

This quota remained in force upto 30 September 1990. With effect from 1 October 1990 the quota had been raised to 10 cases per A.C.(J) per day and 2 cases per

D.C.(A) per day The targets and achievements in disposal of appeals for the three years upto 1989-90 are shown below:

Year	<u>Targets and achievements of disposal of cases per day</u>			
	<u>A.C.(J)</u>		<u>D.C.(A)</u>	
	Targets	Achievements	Targets	Achievements
1987-88	8	8.2	1.5	1.71
1988-89	8	8.5	1.5	1.54
1989-90	8	8.5	1.5	1.71

There is also provision for weightage in disposal of appeals by A.C.(J) as given below:

Cases involving tax value of:-

- (1) Upto Rs. 10,000- One case.
- (2) Rs. 10,000 and above- One case is equal to two cases.
- (3) Rs. 25,000 and above- One case is equal to three cases.
- (4) Rs. 1 lakh and above- One case is equal to 4 cases.
- (5) Rs. 2 lakhs and above- One case is equal to 5 cases.

No such weightage is given to D.C.(A) as cases involving amounts of more than Rs. 20 lakhs come under their purview.

The chart given below shows the disposal of appeals and weightage allowed to A.C.(J) during the last three years.

Year	No. of cases disposed	Weightage allowed	Total No. of cases disposed	No. of officers AC(J)	No. of working days	Average disposal per day
1987-88	36,652	13,965	50,617	26	6,168.0	8.2
1988-89	32,190	15,470	47,660	27	5,612.5	8.5
1989-90	41,903	19,403	61,306	38	7,201.5	8.5
Total	1,10,745	48,838	1,59,583		18,982.0	8.4

Weightage given does not reflect the correct position of disposals. As evident from the above table, during the last 3 years, total disposals were shown as 1,59,583 in 18,982 working days, an average of 8.4 cases per day per officer against the quota of 8 cases per day, whereas the number of cases actually disposed off during the same period and in the same number of working days was 1,10,745 cases. If the weightage of 48,838 cases allowed is excluded, the actual disposal per AC(J) per day works out to only 5.8 cases instead of 8.4 cases as per data given by the Department.

2.2.7 Performance

(a) Disposal of appeals

Details of receipts and disposals of appeals by the Appellate/Revising Authorities and pendency for the four years upto 1990-91 is as below:

Appellate authority	Year	Opening balance	Additions during the year	Total	Disposals during the year	Closing balance (Pend-ency)	Percentage of col 6 to 5	No of officers on duty
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	upto							
1.Asstt. Commiss- ioners (Judicial)	1987-88	39309	53289	92598	36652	55946	40	26
	1988-89	55946	51188	107134	32190*	74370	31	27
					+574			
	1989-90	74370	46812	121182	41903	79279	35	38
	1990-91	79279	38870	118149	44901	73248	38	38
			190159		156220			
2.	upto							
Deputy Commiss- ioners (appeal)	1987-88	2438	2899	5337	2387	2950	45	7
	1988-89	2950	3467	6417	2462	3955	38	7
	1989-90	3955	4167	8122	3355	4767	41	11
	1990-91	4767	5418	10185	4311	5874	42	11
			15951		12515			

*Actual disposal 32,190. Reduced from pendency after departmental scrutiny 574 cases.

3.	upto							
Commiss-	1987-88	135	45	180	86	94	48	1
ioner of	1988-89	94	59	153	24	129	16	1
Sales	1989-90	129	85	214	58	156	28	1
Tax	1990-91	156	94	250	78	172	31	1

		283	246
		-----	-----
	Total	206393	168981
			(81.87%)

4.	upto							
Sales	1987-88	57114	18253	75367	18476	56891	25	23
Tax	1988-89	56891	17302	74193	20646	53547	28	30
Tribunal	1989-90	53547	16089	69636	17980	51656	26	29
	1990-91	51656	21369	73025	18848	54177	26	31
			73013	75950				

5.	Add Pendency in High Court as on 31 March 1991	8611

		142082

The above figures show that the average disposal during the four years from 1987-88 to 1990-91 was 34 per cent of the total cases in appeal with ACs(J), DCs(A), Commissioner and the Tribunal.

A perusal of the data given above would show that during the three years (1987-88 to 1989-90) except in the case of Tribunal, the average yearly disposals were far less than the average yearly additions of fresh appeals with the result that the arrears are increasing year by year.

The number of ACs(A) and DCs(A) increased by 11 and 4 during the year 1989-90, an increase of 40 per cent and 57 per cent respectively but the disposal of cases increased by only 30 per cent and 36 per cent.

Similarly, the number of members of Tribunal was increased by 7 during 1988-89, an increase of 30 per cent, but the disposal increased only by 12 per cent.

The Department was requested (September 1991) to intimate action taken to analyse the reasons for the arrears and also steps taken to arrest the increase every year. No reply has been received (January 1992).

(b) Details of disposal of appeal by AC(J) and DC(A)

Year	Total No. of appeals disposed	No. of appeals rejected	No. of appeals amended	No. of appeals accepted	No. of appeals remanded	Amount of tax reduced	Amount of tax enhanced	Total dispu- ted Tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
(In lakhs of rupees)								
<u>AC(J)</u>								
1987-88	36652	13420 (36)	9774 (27)	9448 (26)	4010 (11)	1478	01	5567
1988-89	32190	11042 (34)	9016 (28)	7641 (24)	4491 (14)	1558	4	5827
1989-90	41903	15120 (36)	11306 (27)	10414 (25)	5063 (12)	2487	6	8872
1990-91	44895	17509	4961	10342	5083	3340	4	12911
		(39)	(27)	(23)	(11)			
Average in percentage		36	27	25	12			
<u>DC(A)</u>								
1987-88	2387	843 (35)	584 (25)	495 (21)	465 (19)	998	01	17373
1988-89	2462	837 (34)	661 (27)	454 (18)	510 (21)	847	10	20371
1989-90	3355	1188 (35)	774 (23)	840 (25)	553 (17)	1217	4	19918
1990-91	4311	1709 (40)	1095 (25)	940 (22)	567 (13)	1897	3	24897
Average in percentage		36	25	22	17			

Note: 1. Amount in respect of columns 3,4,5 and 6 not available separately

2. Figures within brackets denote percentages which are in relation to total number of cases disposed.

A scrutiny of break-up of disposals in table given above reveals that on an average, 36 per cent of appeals were set aside and more than 15 per cent were remanded by the first Appellate Authorities.

No special efforts in this regard were undertaken for liquidation of the arrears and for ensuring speedy disposal of cases as no time limit has been fixed in the Act for disposal of remanded cases.

2.2.8 Pendency of appeals

(a) Year-wise break-up of the total number of 73248 cases pending at the level of A.Cs.(J) at the end of March 1991 was as under:

	Year (1)	Number of cases (2)
upto	1986-87	1139
	1987-88	10524
	1988-89	21924
	1989-90	28336
	1990-91	11325
	Total	73248

Year-wise break-up of the appeals pending at the level of D.Cs.(A), Commissioner of Sales Tax Tribunal and High Court as at the end of March 1991 were not separately available. It would, however, be seen that more than 50 per cent of the appeals pending at the end of March 1991 were at the level of A.Cs.(J).

(b) Year-wise break-up of pendency of appeals at the beginning of the year, appeals filed during the year,

clearance during the year and closing balance at the level of A.C.(J) for the years 1987-88 to 1989-90 is shown below:

Year	Pendency at the beginning of the year	Appeals filed during the year	Total	Clearance during the year	Pendency at the end of the year	<u>Year-wise break-up of pendency</u>			
						1989-90	1988-89	1987-88	upto 1986-87
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1987-88	39309	53289	92598	36652	55946	--	---	16819	39127
1988-89	55946	51188	107134	32190* +574	74370	--	14379	39234	20757
1989-90	74370	46812	121182	41903	79279	15591	34398	22393	6897

A scrutiny of the break-up of the pendency, as given by the Department in their records, would show that while the number of cases pending upto 1986-87 had declined in subsequent years, the number of cases shown as pending as at the end of 1987-88 and 1988-89 had increased in subsequent years. The department was requested (September 1991) to furnish reasons for increase which has not been received so far (January 1992).

The number of cases pending which was 16819 at the end of March 1988 went up to 39234 at the end of March 1989. Similarly 14,379 cases which were pending at the end of March 1989 went up to 34,398 at the end of March 1990. Reasons for subsequent increase in pendency relating to 1987-88 and 1988-89 has, however, not been furnished (April 1992).

This would indicate that compilation of statistics/figures of filing of appeals, their disposals and pendencies by the Department does not actually reflect the correct position.

*1. cleared after departmental scrutiny (2) columns 1-6 are duly reconciled with Audit Report (3) Figures under columns 7-10 have been taken from Administrative Reports of the department.

2.2.9. Non-implementation of instructions for coverage by adequate securities to safeguard revenue after the decision of appeal

Appellate Authorities have powers to stay the recovery of tax, fee or penalty till the disposal of the appeals. For this purpose, the dealer has to furnish security to the satisfaction of assessing officers within 30 days of the stay order, otherwise the stay order automatically lapses. There is no specific provision in the Act that the securities given shall cover not only the period of pendency of appeals but also the period till the tax, fee or penalty is paid, in case the decision goes against the dealer.

Even though the Commissioner had directed (August 1988) that the securities should also cover the period beyond the date of decision on the appeals yet the dealers are giving securities only for the period till the appeals are pending, with the result that realisation of the balance amount of revenue is not secured.

2.2.10 Maintenance of Records for watching/monitoring appeal cases

(a) The main records relating to appeal/revision to be maintained in the offices of the assessing officers i.e. STOs/ACs(A) are as under:-

(i) Register of Sent Out Records

The register is maintained in Form R-25 as prescribed in Departmental Sales Tax Manual (Manual). It is to be submitted to the officers-incharge quarterly and letters are required to be sent to the concerned officers(Appellate Authority) in case the files have not been returned by them after three months.

The register in Form R-25 was, however, not submitted to the officers-incharge quarterly during test check in 80 offices(18 ACs A) and 62 STOs). In all cases seen during audit no letters were issued for return of the files even after three months.

Out of 6470 files shown as having been sent out, in 762 cases no cross referencing was made about their return. Therefore, it was not possible to find out whether cases sent out to the Appellate/Revising Authority were returned or not.

(ii) Register of Stay and Instalments

The register is maintained in Form R-6 as prescribed in the manual for ensuring initiation of action against dealers who have not fulfilled the conditions of the order of stay/instalments. At the end of each month an abstract showing the amount covered by the stay order is to be prepared in the register to ensure the recovery of dues from the dealers.

No abstracts showing the amounts covered by stay order were prepared at the end of each month in any of the offices (18 ACs(A) and 62 STOs) test checked in audit.

(iii) Register of Securities

(a) The register is required to be maintained in the offices of the assessing officers in the prescribed proforma. It should be checked by the concerned officers fortnightly who should also physically verify the sureties to ensure that these are available.

The register maintained in all the offices test checked, was not in the prescribed proforma. Periodical

checking of the same was not done by the officers concerned and the entries made were not authenticated. No certificate regarding physical verification of surety bonds was recorded.

(b) With a view to safeguarding Government revenue, provision for demanding security has been made in Section 8(c) of the Act.

The dealer himself should give the surety bonds duly verified by the Tehsildar concerned. If it has not been verified, it should be returned to the dealers for getting it verified within 15 days, with a copy of the forwarding letter to the Tehsildar for information and necessary action. If the dealer fails to do so, it should be treated as violation of conditions of stay order and action should be taken to get the revenue realised through collection authorities.

It is necessary to enter all the surety bonds in a register (in prescribed proforma) as and when received.

The main purpose for accepting the verified sureties is to safeguard and ensure the recovery of Government revenue. If the surety bonds are not verified by the Tehsildar and in case the dealers fail to pay the revenue, there is a possibility of the sureties going back on their commitments thereby jeopardising the recovery of Government revenue.

During audit scrutiny, it was found that out of 126 cases, in 16 cases (Rs. 2.70 lakhs) surety bonds, were not verified by the Tehsildars.

2.2.11 Other points of interest

- (i) Appeal entertained without deposit of the admitted tax by the dealer**

As per provisions in the Act, no appeal shall be entertained unless the dealer has deposited the admitted tax in full. Further, under the Central Sales Tax Act, tax is leviable on the sale of goods at the rate of 4 per cent if supported by declarations (Form 'C' or 'D') but if the sales are not supported by declaration, tax is leviable at the rate of 10 per cent, or the rate of tax applicable to the goods in the State, whichever is higher.

A manufacturer of pistons and rings in Ghaziabad, declared his turnover of sales under State Act and Central Sales Tax Act for the year 1982-83 as Rs. 1.31 crores and Rs. 8.56 crores respectively and deposited tax of Rs. 8.25 lakhs and Rs. 41.63 lakhs respectively on his admitted turnover. His declared turnover of sales was not accepted by the assessing officer, who fixed his turnover under State Act and Central Sales Tax Act at Rs. 1.5 crores and Rs. 9 crores respectively on best judgement basis and levied tax of Rs. 11 lakhs and Rs. 54.10 lakhs respectively, thereby creating additional demands for Rs. 2.75 lakhs and Rs. 12.47 lakhs. Moreover, while assessing the dealer's turnover, it was found by the assessing officer that the dealer had incorrectly deposited tax on the sale of motor parts at the rate of 6 per cent on sales within the State and 4 per cent on inter-State sales not supported by Form 'C', instead of the correct rate of 10 per cent in both the cases. Thus the tax payable by the dealer on his admitted turnover of State and Central sales, amounted to Rs. 8.99 lakhs and Rs. 49.71 lakhs respectively, against which the dealer had deposited only Rs. 8.25 lakhs and Rs. 41.63 lakhs. Thus Rs. 8.83 lakhs being admitted tax was short deposited by him.

The dealer went in appeal to D.C.(A) against the assessment order and was asked to deposit 10 per cent of the disputed tax, which was done before the stay order for recovery was granted. His appeal was finally rejected in September 1990 and assessment orders were confirmed.

The dealer went in second appeal to the Tribunal which stayed the recovery of 90 per cent of the tax till the decision on appeal. The dealer furnished bank guarantees for Rs. 2.49 lakhs and Rs. 11.41 lakhs in December 1990 and the appeal was still pending (June 1991).

Though the dealer had not deposited the admitted tax in full, yet the stay was granted which resulted in undue benefit to the dealer in as much as even the recovery of admitted tax of Rs. 8.83 lakhs was stayed along with the enhanced tax. The department also failed to bring to the notice of the Tribunal the fact of non-deposit of admitted tax even after the stay was granted. No action was taken to get the stay vacated or to get the appeals decided early with the result the revenue remains locked in appeal.

(ii) Loss of revenue due to non-compliance of Supreme Court/High Court orders

Any dealer who imports or attempts to import or otherwise receives from out of State any goods liable to tax in the State without valid declaration (Form 31) shall, after obtaining the delivery of such goods, submit to the assessing authority one copy of the declaration by the next working day. Failing that and for violation of provision of Section 28-A of the Act, he is liable to pay penalty upto 40 per cent of the value of goods so imported under Section 15-A(1)(O) of the Act. It has been judicially held* (November 1986) that violation of the provisions of Section

*Allahabad High Court in the case of CST v/s Bulakidas Vinod Kumar (1987-UPTC-154)

28-A of the Act alone is material and proving the mensrea is not necessary. The Supreme Court has also held* similar views. A circular was issued by the Commissioner of Sales Tax on 9 November 1989 to adhere to the above verdict of the courts.

(a) A dealer of New Okhla Industrial Development Authority (NOIDA) brought goods worth Rs. 2.46 lakhs without declaration (Form 31) in April 1983 and also did not declare it to the Sales Tax authorities by the next working day. The assessing officer imposed maximum penalty of Rs.98,408 under the provisions of the Act on the dealer, who went in appeal against the order.

The Department did not stress the contents of the judgements of the High Court/Supreme Court in this regard, which led the AC(J) to observe that the dealer had no malafide intention and accordingly reduced the penalty to Rs 5000. This resulted in loss of revenue amounting to Rs. 93,408.

(b) A dealer of Kanpur received catechu (Katha) on consignment basis for sale, in his commission Agency from a dealer belonging to another State (Gwalior M.P.). He imported, by rail, 97 boxes of catechu on prescribed declaration form (Form 31) in January 1991. The check post authorities found that the declared rate per kilogram of catechu ranged from Rs. 75 to Rs. 85 as against the market rate of Rs. 150 to 300. The check post authorities assessed the imported goods at market rate of Rs. 300 per Kg. and determined the value at Rs. 5.82 lakhs. After giving benefit of declared value of Rs. 1.54 lakhs, the undeclared value of the goods was fixed at Rs. 4.28 lakhs and surety of Rs. 2.14 lakhs for importing the excess amount of goods without Form 31, was demanded.

The dealer appealed to the Commissioner of Sales Tax U.P. who directed the assessing officer concerned (STO) to verify the quality of catechu from the market and to determine the value thereafter. He also directed the check post authorities to release the goods without surety after taking samples (February 1991).

After verification of the quality and rates of the sample of catechu received from the check post with prevalent rates in the market, the total value of the imported catechu was determined by the assessing officer at Rs. 3.20 lakhs and after giving the benefit of the declared value of goods, (Rs 1.54 lakhs), undeclared value of the goods amounting to Rs. 1.66 lakhs was treated as imported without prescribed declaration form. Therefore, for violation of the provisions of Section 28-A of the Act, the assessing officer levied (March 1991) maximum penalty of 40 per cent amounting to Rs. 66,280 under Section 15-A(1)(0) of the Act.

The dealer filed an appeal before the A.C.(J) against the penalty order (May 1991), who stayed (May 1991) 95 per cent of amount of penalty (Rs. 62,966) till the decision of appeal.

(iii) **Loss of revenue due to non-representation of cases by the department**

(a) A Government factory of Bareilly, manufactures vegetable turpentine oil. The bulk of this oil is purchased by a private factory of Bareilly which utilises the same in manufacturing camphor.

Prior to 7 September 1981 vegetable turpentine oil was taxable at the rate of 4 per cent as "oils of all kinds". With effect from 7 September 1981, vegetable

turpentine oil was made taxable at the rate of 10 per cent upto 5 June 1985 and thereafter at the rate of 12 per cent under the entry "Paints and Varnishes etc".

On the purchasing dealer's request regarding the rate of tax applicable to turpentine oil after 7 September 1981, the Commissioner under Section 35 of the Act held that it was taxable at the rate of 10 per cent. The purchasing dealer went in appeal to Tribunal against the above order and the Tribunal held that turpentine oil sold to the dealer (applicant) is taxable at the rate of 4 per cent as oils of all kinds.

The Department filed an appeal in the High Court against the order of the Tribunal. The High Court in the judgement dated 15 January 1986, observed that "before coming to the merit of the case I would like to say that none has appeared on behalf of the Commissioner to press this revision and it is unfortunate that no assistance has been rendered to the Court on his behalf".

Accordingly the Court rejected the revision application of the Department and held that vegetable turpentine oil sold to this particular purchaser is liable to be taxed at the rate of 4 per cent as oils of all kinds. It was, however, seen that except this dealer, tax is being levied at 10/12 per cent on all other dealers by the Department.

Department's failure to present its case before the High Court resulted in loss of revenue of Rs. 13.86 lakhs for the period from 1984-85 to 1986-87. The loss of revenue on future sales would be much more. The Department has not taken any action so far (January 1992) to appeal to the Supreme Court against the orders of the High Court.

(b) A dealer of NOIDA was found on 9th August 1988 by Check Post authorities to have been importing PVC pipes without valid declaration (Form 31). It also noticed that the goods were undervalued. Accordingly, the sale value of the goods was determined at Rs. 60,000 and a penalty of Rs. 7920 (13 per cent) was levied on him for under valuation. Later on, the assessing authority determined the purchase value of the goods imported at Rs. 55000 and the maximum penalty of 40 per cent amounting to Rs. 22,000 was levied for having imported goods without the prescribed declaration forms.

The dealer went in appeal to the A.C.(J) who decided the case in favour of the dealer in May 1989 and ordered the refund of the total amount levied as penalty as no one on behalf of the department represented the case before the A.C.(J).

(iv) Stay of Sales Tax demands against bank guarantees by Appellate Authorities

In the matters of grant of stay on acceptance of bank guarantees the Supreme Court had, in 1985, observed* that "Governments are run on public funds and if large amounts all over the country are held up during the pendency of litigation, it becomes difficult for the Government to run. Government's expenditure cannot be made on bank guarantees or securities. This court should refrain from passing any interim orders staying realisation of indirect taxes or passing such orders which may have the effect of non-realisation of indirect taxes. This will be healthy for country and courts".

During test check it was noticed that bank guarantees were allowed in the following cases involving

* (1) Empire Industries Ltd. Vs Union of India (1985) 20 E.L.T. 179 (SC)

(2) Assistant Collector of Central Excise, West Bengal Vs Dunlop India Ltd. (1985) 1 SCC 260 (SC)

huge amount of revenue. No action was taken by the department to get the stay orders vacated early.

Dealer's Name	Year	Amount due	Appellate authority	Date of stay	Amount stayed against bank guarantee (Rs. in lakhs)
Firm 'A'	1980-81	60653	S.T.Tri-bunal Ghaziabad	28.8.86	0.2
	1981-82	86079	-do-	23.1.89	0.31
	1982-83 (U.P)	275810	-do-	27.11.90	2.49
	1982-83 (Central)	1268263	-do-	-do-	11.40
Firm 'B'	1979-80	97608	-do-	27.6.88	0.88
	1980-81	89890	-do-	20.7.88	0.81
	1981-82	159054	-do-	26.8.88	1.59
	1983-84	210783	-do-	26.8.88	1.40
	1984-85	302933	-do-	26.8.88	1.79
	1985-86	242845	-do-	11.10.90	1.80
Firm 'C'	1986-87	128000	A.C. (J)	13.9.89	1.28
Firm 'D'	1984-85	588837	D.C. (A)	3.6.89	3.42
Firm 'E'	1984-85	655640	-do-	-do-	4.92
Firm 'F'	1977-78	387255	-do-	22.1.90	2.58
Firm 'G'	1985-86	214195	-do-	29.7.91	1.71

Firm B at Ghaziabad was declared a sick unit by BIFR in October 1990.

(v) **Loss of revenue due to irregular admission of appeal**

Rule 65 of the Uttar Pradesh Sales Tax Rules, 1948 provides that appeal against the order of the S.T.O. grade I and II shall lie to the A.C.(J) and appeal against the orders of A.C.(A) shall lie to the D.C.(A).

Sales Tax Officer, Mobile Squad, Ghaziabad, found on 10 February 1987 that a bullion dealer of Kanpur was importing silver ornaments worth Rs 3.85 lakhs by car without the appropriate declaration form (Form 31). It was also found that the dealer had not declared the same at the check-post while crossing into the State.

Accordingly, the goods were seized and released only after the dealer gave cash surety of Rs. 1.54 lakhs on 13th February 1987. On being informed, the assessing officer concerned (STO Kanpur) levied penalty at 40 per cent of the value of the goods amounting to Rs. 1.54 lakhs under Section 15-A (1)(0) of the Act and converted the cash surety into penalty on 7 March 1987.

The dealer filed an appeal in the High Court at Allahabad during 1987 against the order of penalty which was rejected on 9 October 1990. Thereafter, he filed an appeal (No. 130/91) before the D.C.(A) instead of A.C.(J). The failure of the Department in not apprising the Appellate Authority about rejection of dealer's appeal by the High Court, resulted in the admission of dealer's appeal by D.C.(A) and reduction (March 1991) in the amount of penalty to Rs.32900 .

The department is contemplating to file second appeal before the Tribunal (August 1991).

The above audit observations were reported to Government in September 1991; reply has not been received (October 1991).

2.3 Working of Internal Audit Organisation in Sales Tax Department

2.3.1 Introduction

Sales Tax is the largest source of revenue (50 per cent of the tax revenue of the State in the year 1989-90) for the State Government. With a view to improving the quality of assessment, ensuring implementation of Sales Tax statutes, executive orders and instructions, better collection of revenue and plugging various loopholes, an Internal Audit Organisation (I.A.O.) was set up in the Sales Tax Department in 1965.

Inspection reports are issued by the Internal audit parties on return to their headquarter. Follow up action on these reports is also watched by the same parties. A quarterly report showing the position of objections raised is required to be sent by all Regional Deputy Commissioners (Executive) to the Commissioner.

2.3.2 Scope of Audit

A review was conducted in audit to study the working, performance and effectiveness of the internal audit system. The review was undertaken during the period March, April and July 1991 and covered the Office of the Commissioner of Sales Tax, Uttar Pradesh and six out of the 12 circles (14 circles from 1991-92).

2.3.3. Organisational setup

The I.A.O. functions independently under the overall control of the Commissioner, Sales Tax (Commissioner) who is being assisted since 1978, by an Additional Commissioner/Deputy Commissioner (Accounts). As on 1st. April 1991, there were 15 audit parties consisting

of 3 Audit Officers, 36 Senior Auditors and 33 Auditors against the sanctioned strength of 13 Audit Officers, 43 Senior Auditors and 60 Auditors. Of these, three audit parties are operated from the Commissioner's office and the remaining 12 parties work under the control of Regional Deputy Commissioners (Executive).

2.3.4 Highlights

(i) Although 66 per cent of the sanctioned strength of Internal Audit Parties was deployed during the three years ending 1989-90, shortfall in audit of units ranged between 68 and 74 per cent.

(ii) Out of the total objections raised by the I.A.O. during the three years ending 1989-90, almost 50 per cent cases involving 79 per cent of the total revenue involved were still awaiting compliance and settlement. Test check of small sample of such cases showed that some had already become time-barred.

(iii) 37 cases of under assessment, non-levy of penalty and loss of revenue aggregating Rs. 49.53 lakhs were detected in statutory audit during 1990-91 relating to assessment already checked by I.A.O.

(iv) No control and monitoring over important/ordinary audit observations was done through Objection Books in the Commissioner's office.

(v) Staff was not provided according to requirement or even according to the sanctioned strength. Yet despite shortage of audit staff in I.A.O., their services were utilised for work not included in the duties of the I.A.O.

(vi) Supervision of Audit Parties was not carried out by Additional Commissioner/Deputy Commissioner (Accounts).

(vii) There was no provision for training of the staff to enhance their knowledge and efficiency.

2.3.5 Norms and working of I.A.O.

Detailed instructions regarding the periodicity of audit, quantum of checks to be exercised etc. to give effect to the scheme of Internal Audit were issued in 1978. Manual of Internal Audit, was not prepared by the Department. However, the scheme, *inter alia* provided as under:-

(i) Audit of assessment cases finalised by all the Assistant Commissioners/Sales Tax Officers was to be completed annually preferably before the statutory audit, to the following extent:-

(a)	Cases with turnover Rupees 2 lakhs	100 percent
(b)	Cases with turnover exceeding Rupees 1 lakh but not exceeding Rupees 2 lakhs	50 percent
(c)	Cases with turnover of Rupees one lakh and below	25 percent

(ii) Auditors and Senior Auditors were expected to complete certain quota of cases daily (the number depending upon the turnover involved).

(iii) Audit Inspection Reports incorporating irregularities detected by Internal Audit Parties were required to be issued within 15 days to the assessing officers by the Commissioner's office/Regional Deputy

Commissioners. The assessing officers were required to submit compliance report within one month of their receipt to the next higher authorities who in turn were expected to submit the same within 15 days to the Regional Deputy Commissioners. Irregularities having tax effect of Rs. 10,000 and above or embezzlement or defalcations were to be reported to the Commissioner separately.

(iv) The Additional Commissioner/ Deputy Commissioner (Accounts) is required to review the work of the Internal Audit parties twice a year by visiting the units during the currency of audit.

2.3.6 Performance

(a) Number of units due for audit and units actually audited during 1987-88, 1988-89 and 1989-90 was as under:-

Year	No. of units in arrears at the beginning of the year	No. of units due for audit	Total	No. of units audited	No. of units in arrears	percentage of short-fall
1987-88	not available*	331	331	86	245	74
1988-89	245	347	592	190	402	68
1989-90	402	354	756	216	540	71

It would be seen from the above that arrears have been increasing substantially year after year. The shortfall during 1987-88 to 1989-90 ranged between 74 and 68 per cent. The units which could not be audited in the previous year were not being exhibited as arrears and

*These figures were called for (March 1991) but have not been received so far (January 1992)

included in the units due for audit in the current year by the Deputy Commissioners. It followed that many units had not been programmed for audit and hence escaped I.A.O.'s scrutiny for more than two years. Thus the target of covering all the units each year was not achieved even in a single year.

(b) The Public Accounts Committee in Paragraph 26 of their Report No. 1 of 1986-87, recommended 100 per cent checking of cases by I.A.O. This, however, was not being done for the three years ending 1989-90, the position of the total number of assessment cases due for audit and the cases audited by the I.A.O. was as under:-

Year	Total number of cases assessed	Number of cases due for audit on the basis of 100% audit	Number of cases actually audited	Percentage of shortfall
1987-88	3,22,589	2,64,058	20,097	93
1988-89	3,44,140	3,22,589	13,372	96
1989-90	4,09,782	3,44,140	51,390	85
Total	10,76,511	9,30,787	84,859	Ave 91

From the above it would be seen that on the basis of 100 per cent audit by I.A.O. the percentage of cases unaudited during all the three years remained very high and ranged between 85 and 96.

(c) Assessments of the big dealers having turnover of Rs. 25 lakhs and above (contributing about 50 per cent of the total sales tax revenue) are finalised by Assistant Commissioner (Assessment). Internal Audit of all these units was to be completed on priority basis as these

were high revenue yielding units. The details of such units due for audit and those audited and units remaining in arrears are given below:

Year	Opening balance	Units due for audit	Total	Units actually audited	Balance of un-audited units	Percentage of shortfall
1987-88	--	50	50	49	1	2
1988-89	1	63	64	49	15	24
1989-90	15	59	74	46	28	47

Audit of only 49, 49 and 46 units as against 50, 63 and 59 units due for audit in 1987-88, 1988-89 and 1989-90 respectively was conducted. The Department also did not conduct any effective review of the arrears in Internal Audit and initiate remedial measures.

On the above shortcomings being pointed out in audit (March 1991), the Department stated (April 1991) that the audit parties, besides doing audit work, were being deployed for (i) checking of eligibility certificate of new units and (ii) imparting financial advice on matters referred by the departmental officers. The reasons advanced by the Department are not tenable as the I.A.O. must first complete the work for which it has been constituted and any extra or other work required to be done should not be at its cost. Deployment of I.A.O staff for other itmes of work was not appropriate specially when internal audit was in arrears.

(d) (i) Detection of irregularities

During the three years up to 1989-90 the I.A.O. detected 10,231 cases (out of the total 84,859 cases checked by them during these 3 years) of underassessment, escapement of turnover, non-charging of interest, non-imposition of penalties, etc. involving revenue effect of

Rs. 25.28 crores. Out of these, 2,558 cases involving revenue of Rs. 3.92 crores were settled without creating any demand, while additional demand of Rs. 1.29 crores was created in 2,624 cases. Out of the total additional demand created at the instance of Internal Audit, Rs. 1.13 crores in 1,163 cases was recovered (May 1991). 5,049 cases (about 50 per cent of total number of cases detected) involving revenue of Rs. 20.07 crores were still awaiting compliance and settlement. Possibility of these cases becoming time-barred cannot be ruled out as under U.P. Sales Tax Act, 1948 cases become time barred if no action is taken to reassess or revise the amount of tax due from a dealer, within 4 years from the end of the assessment year to which they relate.

A test-check of about 60 outstanding objections raised by I.A.O. in six circles, revealed that in Varanasi and Allahabad circles, 12 of these cases involving a tax effect of 0.12 lakh had already become time-barred for want of timely action by the Department.

(d) (ii) Irregularities detected by statutory audit after the checking of cases by Internal Audit Organisation

As per Government orders, audit of assessment cases finalised by the assessing officers was to be completed by I.A.O. before the Statutory Audit. During the year 1990-91, 37 cases of underassessment/non-levy of penalty/loss of revenue, etc. involving Rs. 49.53 lakhs in 35 units were noticed in audit although these cases had already been checked and admitted by the I.A.O.

(e) Non-maintenance of records and insufficient follow-up action

Quarterly statements received in the Commissioner's Office, were neither consolidated nor

analysed to ascertain the progress of clearance of objections, especially of old items, and to maintain watch on cases likely to become time-barred so that timely remedial measures could be taken. No consolidated control register (Objection Book) was maintained at the Commissioner's Office showing the latest position of outstanding objections raised by all field parties working in the various regions of the State and the Commissioner's Office. There was no staff separately posted at the headquarters of the Department, for effective editing and pursuance of inspection reports as well as for compiling and monitoring the outstanding objections.

(f) Shortage of staff

(i) The Public Accounts Committee in Paragraph 26 of their Report No. 1 of 1986-87, had recommended 100 per cent audit of all cases by I.A.O. and the Department's requirement of additional staff was to be made available to the Finance Department. The recommendations of the Public Accounts committee were not, however, implemented and the Department continued to follow the norms laid-down in the year 1978.

(ii) The Government decided (1984) that audit of cases of Rs. 25 lakhs and above assessed by the Assistant Commissioner (Assessment) was to be done by Senior Auditors, for which 90 more posts of Senior Auditors would be provided in three consecutive years. Only 30 posts of Senior Auditors could be provided by 1986-87. Thereafter no further posts were made available to the Department. As on 1st April 1991 against the sanctioned strength of 13 Audit Officers, 43 Senior auditors and 60 Auditors only 3 Audit Officers, 36 Senior Auditors and 33 Auditors were posted.

2.3.7 Review of work of Internal Audit parties

As per the scheme of I.A.O., the Additional Commissioner/Deputy Commissioner (Accounts) was required to review the working of all the parties twice a year by visiting the units during the currency of audit. However, it was noticed that review of work of Internal Audit of 15 regional parties (twice of 12 parties and once of 3 parties in the year 1987-88, twice of 13 parties and once of 2 parties in 1988-89 and twice of 13 parties and twice of 2 parties in 1989-90) was done by the Audit Officers of the Organisation instead of by Additional Commissioner/Deputy Commissioner (Accounts). The reasons for non-conducting of review by Additional Commissioner/Deputy Commissioner (Accounts), though called for in audit (March 1991), were not furnished by the department (January 1992).

2.3.8 Training and Supervision

With a view to improving the efficiency of the I.A.O. and acquainting its audit personnel with changes in law and interpretation of the Act as made by Government or held in judicial pronouncements by Courts, it is essential that these personnel be imparted training periodically. Further, supervision of audit parties by senior officers during the audit of important units like Assistant Commissioner (Assessment) can provide essential guidance, besides improvement in the quality of audit. However, no provision has been made for the training of I.A.O. personnel.

The audit observations were reported to Government in July 1991; their reply has not been received (October 1991).

2.4. Disposal of Remanded cases Under Sales Tax

2.4.1 Introduction

Under the provisions of the Uttar Pradesh Sales Tax Act, 1948 (Act) and Central Sales Tax Act, 1956, any dealer aggrieved by an order of assessment made by the Assessing Authority may appeal against such order and the appellate authority may, after calling for and examining the relevant records, confirm or annul such order or vary such order by reducing or enhancing the amount of assessment or set aside the order of assessment and remand the case back to the assessing authority for reassessment after such enquiry as may be specified.

No appeal against an assessment order shall be entertained unless the amount of admitted tax due under the Act on the turnover of sales or purchases as the case may be or 20 per cent of the amount of tax or fee assessed where all the returns have not been filed, whichever is greater, has been deposited by the appellant.

2.4.2 Scope of Audit

The review was undertaken with a view to examining whether the remanded cases had been reassessed expeditiously as per the directions of the appellate authorities and in accordance with the provisions of the Act and rules made thereunder. The remanded cases for the 3 years 1988-89 to 1990-91 in respect of 58 out of 366 assessing units in 5 out of 12 circles at Agra, Ghaziabad, Meerut, Lucknow and Varanasi in the State, were subjected to test-check between April and June 1991.

2.4.3 Organisational set up

The Department has 11 Deputy Commissioners (Appeal) and 38 Assistant Commissioners (Judicial) besides 31 Benches of the Tribunal spread through out the State. They function as judicial authorities in respect of appeal cases which originate in their respective jurisdiction.

An appeal against the assessment order passed by the Assistant Commissioner (Assessment) shall lie to the Deputy Commissioner (Appeal) and in respect of Sales Tax Officers Grade I and II to the Assistant Commissioner (Judicial). However, any dealer aggrieved by an order passed by the first appellate authority may prefer an appeal to the Sales Tax Tribunal(Tribunal) which acts as a second appellate authority. The Tribunal may also remand cases to the assessing authorities for reassessment as directed.

2.4.4 Highlights

(i) The Department had no control on the movement of remanded cases from the remanding authority to the assessing authority with the result that in the transmission of cases there was delay ranging between one month to more than 6 months.

(ii) The number of cases remanded increased from 4475 in 1987-88 to 5001 in 1988-89 and 5616 in 1989-90 and 5590 in 1990-91.

(iii) Assessments made ex-parte against 5 dealers were found to be defective and were remanded as show cause notices were not issued as per judicial pronouncement. Consequently there was postponement of recovery of tax amounting to Rs. 11.59 lakhs.

(iv) Irregularities in re-assessment resulted in short levy of tax/penalty amounting to Rs. 3.93 lakhs in 4 cases.

(v) Despite repeated remanding, the assessment case of a dealer has been pending for over 15 years.

2.4.5 Control record of remand cases

According to the provisions of the Act, when an order of assessment is set aside and the case is remanded to the assessing authority for reassessment by an appellate authority, the order of reassessment is to be completed within one year from the date of receipt by the assessing authority of the copy of the order remanding the case. For this purpose, the Department has prescribed a Register of Appeals and Revisions (Form R-12) and a Pendency Register (Form R-5A) to be maintained by each assessing authority to watch the receipt and disposal of remand cases.

(a)(i) During the course of review, it was noticed that none of the aforesaid registers contained any column for indicating the date of actual receipt of the remand cases by the assessing authorities. There was no uniformity in the procedure of recording the actual date of receipt of the remand cases by the assessing authorities. While some offices noted only the month of receipt some others noted only the letter numbers and date through which the remand cases had been despatched by the appellate authorities.

(ii) In the absence of any specific provisions in the rules or Departmental instructions, no periodical review was ever conducted to check and ensure that the cases remanded by the appellate authorities were properly entered in the Register of Appeals. The possibility of remanded cases escaping the attention of assessing officers for an indefinite period can not, therefore, be ruled out.

(b)(i) In Lucknow Circle, it was noticed that remand orders were passed for re-assessment in two cases on 5th May 1989 by the Tribunal, Lucknow Bench, but these cases were not found noted in the Register of Appeals maintained in that office by the concerned authority, with the result that re-assessment could not be finalised (June 1991).

(ii) In another case, the remand order was passed on 11 December 1987 but the same was received by the assessing authority on 2 November 1989 i.e. after 23 months.

2.4.6 Lack of administrative control over the movement of remand cases

It was noticed that after the remand orders were passed, there were abnormal delays in the transmission of cases from the appellate authority to the assessing authority for reassessment. In the 5 circles test checked delay in transmission during the period from 1988-89 to 1990-91 ranged between 1 month to more than six months as indicated below:

Circle	Time taken to reach assessing authority			
	within 1 month	1-3 months	4-6 months	more than 6 months
-----	-----	-----	-----	-----
Agra	323	181	27	5
Ghaziabad	293	253	97	7
Meerut	242	130	3	2
Lucknow	163	355	13	32
Varanasi	195	86	17	6
Total	1216	1005	157	52

From the above it is apparent that there was no effective control mechanism to watch the movement of cases whereby it could be ensured that all remanded cases despatched by different appellate authorities reached the

concerned assessing authorities in time and were taken on their books for expeditious disposal.

Inordinate delay of more than 6 months in transmission of 52 cases as indicated in the above table, resulted in delay in reassessment and thereby affected the revenue of the Government amounting to Rs. 1.36 crores, where demands were required to be raised after reassessment as indicated in the table below.

No. of cases trans- mitted after more than 6 months from the date of orders of remand	Amount of tax originally assessed	Amount of tax paid against original assessment	Amount of tax levied in re- assessment	Amount of tax paid after reassess- ment	Amount of demand created late
		(In crores of rupees)			
1	2	3	4	5	6
52	3.64	1.97	3.57	0.24	1.36

2.4.7. Remand cases vis-a-vis appeal cases

The information regarding the number of appeal cases that were pending with the appellate authorities at the beginning of the year, number of appeals received, number of cases disposed of, number of cases remanded for reassessment and the number of cases pending as at the end of each of the four years 1987-88 to 1990-91 is given below:

	1987-88	1988-89	1989-90	1990-91
(i) Number of appeal cases brought forward from previous year	41,747	58,896	78,325	84,046
(ii) Number of cases arising during the year	56,188	54,655	50,979	44,282

(63)

(iii) Total number of cases due for disposal	97,935	1,13,551	1,29,304	128,328
(iv) Number of appeal cases disposed off	39,039	34,652	45,258	49,206
(v) Number of cases remanded for fresh assessment/disposal (included in iv)	4,475	5,001	5,616	5590
(vi) Number of cases pending at the end of the year	58,896	78,325	84,046	79,122
(vii) Percentage of cases remanded	11.5	14.4	12.4	11.4

The above figures do not include the cases remanded by the Tribunals.

2.4.8.(a) Defective assessment leading to remand

It has been judicially held* that a show cause notice is essential to be issued to the dealer while making assessment/reassessment on exparte basis. In 5 cases of Agra, Ghaziabad and Lucknow, assessments were made exparte in the year 1988-89 to 1989-90, imposing tax amounting to Rs. 42.48 lakhs against which the dealers paid Rs. 22.01 lakhs. Since show cause notices had not been issued, all these cases were remanded back to the assessing authorities in the year 1989-90 for reassessment. The reassessments were made in the years 1989-90 to 1990-91 and tax amounting to Rs. 33.60 lakhs was levied. Although the amount of tax was reduced to Rs. 33.60 lakhs from Rs. 42.48 lakhs, yet there was postponement of recovery of tax amounting to Rs. 11.59 lakhs created against the dealers.

*Allahabad High Court Judgement in the case of S/Shri Munshi Singh Ashok Kumar v/s Commissioner of Sales Tax (1988) U.P.T.C.-942

(b) **Erroneous exemption while re-assessing remanded cases**

Under Section 7(3) of the Act, if no return is submitted by the dealer or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgement and assess the tax thereof. In doing so, the total investment in the business, the contract money, the purchase price and business expenses and a fair amount of margin of profit, should be taken into consideration to determine the taxable turnover. This was also held by the Allahabad, High Court, in the case of Smt. Dharma Devi Umashankar Vs-C.S.T.(1982) U.P.T.C. 434.

(i) A Bhang dealer in Agra was originally assessed, on best judgement basis to tax amounting to Rs. 1.97 lakhs for the assessment year 1984-85 in August 1987, on the sales turnover of Rs. 13 lakhs as against the turnover of Rs. 40,250 admitted by the dealer. Being aggrieved, the dealer filed an appeal in May 1989 and the Appellate Authority remanded the case in October 1989. While making reassessment (September 1990) the Assessing Authority, finding the dealer's declared turnover below the taxable limit, exempted him from payment of tax. The amount of contract money of Rs. 2.11 lakhs paid by the dealer at the time of auction which formed part of the sales turnover was, however, not taken into account for determining tax at the time of reassessment. Thus, tax amounting to Rs. 35,175 which was leviable on the total sales turnover of Rs. 2.51 lakhs at the rate of 14 per cent was omitted to be levied.

(ii) In the case of another Bhang shop, the same dealer was originally assessed on best judgement basis in August 1987 to tax amounting to Rs. 80,850 for the assessment year 1984-85, on the sales turnover of Rs 5.25

lakhs as against the turnover of Rs. 40,250 admitted by the dealer. Being aggrieved the dealer filed an appeal and the appellate authority remanded the case in June 1988. While making reassessment the assessing authority, finding the dealer's declared turnover below the taxable limit, exempted him from payment of tax though the contract money amounting to Rs. 3 lakhs paid by the dealer was a part of the sales turnover. Tax amounting to Rs. 47,635 was thus short levied in this case also.

On this being pointed out (April 1991), the assessing authority justified the action in view of the judgement delivered by the honourable High Court of Allahabad in the case of Shri Mukut Behari Lal v/s Commissioner of Sales Tax (U.P.T.C-1979-p.7) which was not relevant in this case as in the above judgement, the turnover of Bhang presumed to have been procured from outside, was not allowed whereas in both the above cases, it was a question of inclusion in the turnover of the contract moneys paid by the dealer.

(c) Irregularities in reassessment

(i) On the basis of adverse findings at the time of survey, a dealer of building material at Varanasi was assessed to tax of Rs. 1.43 lakhs in October 1985 on best judgement basis, for the assessment years 1981-82 to 1983-84. Subsequently, a penalty of Rs. 67,590 was also imposed in March 1987 for concealment of the turnover in the aforesaid assessment years. Aggrieved by the assessment order passed in October 1985, the dealer went in appeal and his appeal was rejected. The dealer preferred a second appeal (May 1988) and the second appellate authority, while confirming the fact of concealment of turnover, remanded the case in September 1988 for reassessment after proper scrutiny of the records of the dealer. Meanwhile, the dealer had gone in appeal in August 1987 against the

penalty order passed in March 1987 and the appellate authority annulled the said orders of penalty in December 1988 as the original assessment order was not in operation due to remand of the case by the second appellate authority in September 1988.

The reassessment of the remanded case was finalised in February 1990 and tax of Rs. 24,068 was levied on the concealed turnover. However, penalty for concealment of turnover amounting to Rs. 36,100, was not imposed.

(ii) In Sales Tax Circle, Ghaziabad, a dealer holding Recognition Certificate to purchase raw material at the concessional rate of tax for the manufacture of oil engines and spare parts, was assessed (November 1986) ex-parte, after having been given four opportunities in October/November 1986 for the assessment years 1982-83 and 1983-84. The dealer filed an appeal (1987) and the appellate authority remanded the case in September 1988 on the ground that the dealer be given adequate opportunity for presenting his case. The case was reassessed again in September 1989.

During scrutiny of the reassessment order passed in September 1989 for remand cases of both the years 1982-83 and 1983-84, it was noticed that the dealer had purchased on the strength of declaration in Form III-B, iron and steel, paints and varnishes (not mentioned in the Recognition Certificate) worth Rs. 5.34 lakhs and Rs. 5.64 lakhs free of tax during 1982-83 and 1983-84 respectively.

On these unauthorised purchases, an amount equal to tax amounting to Rs. 47,676 was leviable which was not levied either in the initial assessment order or in the reassessment order. Further, penalty of Rs. 71,514 upto one and half times of the amount of tax which would thereby

have been avoided should have been levied for misuse of declaration forms under section 15A(I)(1) of the Act. No action was, however, initiated till the date of test check (April 1991) to levy the tax and penalty as required under the provisions of the Act.

(iii) Against an assessment order passed exparte in December 1983 for the year 1981-82 levying tax of Rs. 3.12 lakhs on assessed turnover of sales of foreign liquor amounting to Rs.12 lakhs, a dealer of Lucknow moved an application under section 30 of the Act to the assessing authority to re-open his case which was accepted. The dealer was again assessed to the same amount of tax as was originally levied in December 1983. On appeal, the appellate authority remanded the case and the case was again decided exparte as the dealer failed to co-operate despite being given 15 opportunities to appear. The case was once again remanded on further appeal and finally reassessed in November 1988 imposing tax of Rs. 3.90 lakhs on the sales turnover assessed at Rs. 15 lakhs. As worked out in audit, the actual turnover was of Rs. 24.36 lakhs on the basis of fixed fee, cost of liquor imported from out of State, import duty, assessed fee, transportation charges and profit etc. resulting in short levy of tax amounting to Rs. 2.50 lakhs.

On the omission being pointed out in audit (June 1991) the Department stated that out of the total amount of contract money of Rs. 10.93 lakhs, a sum of Rs. 1.52 lakhs would be considered taxable sales turnover on the basis of proportionate purchase value of Indian made foreign liquor purchased within the State and out of the State.

The reply of the Department is not tenable in view of the fact that in the instant case the total contract money of Rs. 10.93 lakhs would be considered

taxable sales turnover as per judicial pronouncement* wherein it was clarified that while computing the quantum of sales turnover, expenses incurred by way of contract money should be taken into account.

(iv) A dealer of Ghaziabad was assessed (December 1983) to a total tax of Rs. 1.40 lakhs (for both State and inter-State sales) for the year 1980-81 on exparte basis. In December 1983, the dealer moved an application for reopening the case under section 30 of the Act but the same was rejected by the assessing authority in October 1984. The dealer simultaneously filed an appeal against the original assessment order and the appellate authority confirmed (July 1984) the levy of tax as assessed earlier. Not being satisfied, another appeal was preferred (1985) by the dealer against the rejection order under section 30 and the same appellate authority directed (1986) for re-opening of the case under section 30 of the Act. The assessing authority while contesting the case under section 30 did not bring to the notice of appellate authority that the original assessment done by the assessing authority had been confirmed by the appellate authority earlier after going through the evidence produced by the dealer. During reassessment, the assessing authority reduced the amount of tax from Rs. 1.40 lakhs originally levied to Rs. 80,636 even though the earliest assessment of tax had been confirmed by the same appellate authority.

(d) Abnormal delay in finalisation of assessment case

In the assessment order of a dealer under Central Sales Tax Act, 1956 tax amounting to Rs. 5.25 lakhs was levied in March 1976 on a turnover of Rs. 61.19 lakhs for the year 1971-72 on inter-State sales against which the dealer went in appeal (May 1976). The recovery of the

*Allahabad High Court judgement in the case of Smt Dharma Devi Umashankar vs Commissioner of Sales Tax(CST-1982-UPTC 434)

demand was stayed by the appellate authority (May 1976). When the case was later remanded in April 1978 for reassessment, the assessing authority (May 1978) again levied tax on the same turnover as was decided in March 1976. The dealer moved another appeal before Assistant Commissioner (Judicial) who decided the case in August 1978 fixing taxable turnover as Rs. 61.29 lakhs. On being aggrieved, another appeal was preferred by the dealer before the Tribunal which in September 1985 reduced the sales turnover by Rs. 1.29 lakhs. Not being satisfied even with the decision of the Tribunal, the dealer filed a revision application before the Allahabad, High court, which remanded the case back to the Tribunal in August 1986 for rehearing but the Tribunal in turn remanded the case to the assessing authority in May 1989 which was received by him in August 1989, for reassessment after verification of some disputed amount under stock transfer. As the case was likely to become time-barred soon by August 1990, the assessing authority decided the case *ex parte* by issuing 3 notices within a month and levied tax amounting to Rs. 3.71 lakhs in July 1990. Against the assessment order, the dealer filed another appeal before Deputy Commissioner (Appeal) who remanded the case again in April 1991 for reassessment. Thus, the case despite being remanded repeatedly remained undecided even after 15 years.

The audit observations were reported to the Department and Government in August 1991; their replies have not been received (January 1992).

2.5 Loss of revenue due to non initiation of prompt action

Under Section 15 A (i) (c) and (g) of the U.P. Sales Tax Act, 1948, if a dealer liable to registration under the Act carries on business without obtaining registration and has concealed particulars of turnover, he

shall be liable to pay, by way of penalty, at the rate of Rs. one hundred per month for first three months and Rs.500 per month thereafter for not obtaining registration and not less than 50 per cent but not exceeding one and half times of tax of which was thereby avoided for concealment of turnover.

During audit of Sales Tax Circle, Kanpur, it was noticed (June 1990) that a dealer was carrying on business in purchase and sale of silver ornaments, without obtaining registration. The Special Investigation Branch of the Department detected in February 1986 that the dealer brought 29 kg. of silver ornaments by air and 4514.26 kg. of silver ornaments by post from outside the State during 1985-86. On enquiry, it was stated by him that he was carrying on such business from May 1985. Notice was issued to the dealer by the assessing officer on 28 July 1989. As he did not turn up, the assessment was finalised in January 1990 and suppressed sales were determined at Rs. 2.80 crores and tax amounting to Rs. 13.70 lakhs was levied. The dealer was also liable to pay penalty for not obtaining registration. In addition he was liable to pay penalty upto Rs.20.55 lakhs for concealment of turnover. The penalty was omitted to be imposed.

On the omission being pointed out in audit (August 1990) the Department stated in November 1991 that penalty amounting to Rs. 4800 for not obtaining registration and Rs. 10 lakhs for suppression of turnover had since been imposed (February 1991).

The case was reported to Government in August 1990.

2.6 Failure to observe prescribed procedure

Every dealer who sells or purchases goods liable to tax under the U.P. Sales Tax Act, 1948 (Act) is required

to obtain Registration Certificate under the Act. The Act and the Departmental Manual provide for the concerned Sales Tax officer to, inter-alia, verify the identity of the dealer, his and his partner's local and permanent addresses, his financial position, location of his fixed and floating assets and their value to ensure that balance of tax will be recoverable in the event of closure of the firm. After satisfying himself by spot enquiry the Sales Tax Officer will grant Registration Certificate within 30 days from the date of the dealer making application.

In Sales Tax Circle, Agra, a dealer applied for grant of Registration Certificate for sale of sand and stone grit on 27 December 1982 and was granted Registration from the same date without any spot survey or enquiry about his local and permanent addresses or his financial position. During the period from 14 February 1983 to 24 March 1983, he was from time to time issued 32 declarations in Form xxxi and 32 'C' Forms without ascertaining the proper utilization of the forms issued to him on earlier occasions. The dealer submitted returns for the month of January, February, and March 1983. Notice for assessment for the year 1982-83 was issued to the dealer on 15 June 1983. As the dealer did not appear, assessment was completed exparte on 27 June 1983 and his sales for 1982-83 were determined at Rs. 50,000 and tax amounting to Rs. 3,000 was levied. During the period from 4 April 1983 to 23 May 1983, 200 declaration, in Form xxxi and 165, 'C' Forms were issued to the dealer. In his returns for the month of April 1983, the dealer indicated sales of Rs. 28,600 and thereafter no return was submitted by him. On the basis of information received from check post on 11 July 1983 that the dealer had brought M.S. plates, coal and rubber belts etc. from outside the State and not grit or sand for which he was registered, survey of business premises of the dealer was carried out for the first time on 14 July 1983 and it was found that no such firm ever carried on business

at the given address. Notice for assessment for the year 1983-84 was sent to the dealer as late as in February 1988. As it could not be served on the dealer it was posted at the business place on 19 February 1988. Assessment for the year 1983-84 was made *exparte* on 27 February 1988 when the turnover of sales of iron sheet, rubber belt and motor parts etc. was determined at Rs. 43 lakhs and tax amounting to Rs. 2.18 lakhs levied. As the firm was not found functioning at the given address chances of recovery of the tax was remote. The dealer was also liable to pay penalty upto Rs. 3.25 lakhs for concealing particulars of turnover which was not imposed.

The case was reported to the Department and Government in March 1986 and again in June 1990; their replies have not been received (November 1991).

2.7 Irregularities in granting concession to manufacturers for purchase of raw material

A. Unauthorised disposal of goods.

Section 4-B of the U.P. Sales Tax act, 1948 provides for special relief in tax to manufacturers on purchase of raw material for use in the manufacture of notified goods, provided the goods so manufactured are sold within the State, in the course of inter-State trade or commerce or in the course of export out of India. In the event of violation of the above condition, the dealer shall be liable to pay, by way of penalty, a sum which shall not be less than the amount of tax payable on sale of goods within the State but not exceeding three times of such tax.

(i) In Sales Tax Circle, Varanasi, a dealer holding Recognition Certificate for the manufacture of cycle parts and accessories, purchased raw material for

Rs. 9.33 lakhs tax free on the strength of declaration Form III-B during 1984 -85 and 1985-86 and transferred manufactured goods worth Rs. 4.48 lakhs outside the State on consignment basis. The dealer was, therefore, liable to pay penalty upto Rs. 1.08 lakhs which was not imposed.

On the omission being pointed out in audit (April 1991), the Department stated in January 1992 that penalty amounting to Rs. 1.14 lakhs had since been imposed.

The case was reported to Government in April 1991.

(ii) During the audit of Sales Tax Circle, Aligarh, it was noticed (August 1990) that a dealer, holding Recognition Certificate for manufacture of nuts and bolts and steel wire, purchased M.S. round (raw material) valued at Rs 12.96 lakhs without payment of tax on the strength of declaration in Form III-B during the year 1985-86, and transferred nuts and bolts worth Rs. 4.10 lakhs (manufactured out of the said raw material) outside the State on consignment basis. The dealer was, therefore, liable to pay penalty upto Rs. 1.08 lakhs which was not imposed.

The case was reported to the Department and Government in October 1990; their replies have not been received (November 1991).

(iii) During the audit of Sales Tax Circle, Agra, it was noticed (May 1990) that a dealer holding Recognition Certificate for the manufacture of C.I. Casting pipes and pipe fittings purchased raw materials for Rs. 81.99 lakhs tax free against declaration in Form III-B during 1984-85 and transferred goods manufactured out of it worth Rs. 7.59 lakhs outside the State on consignment

basis. The dealer was consequently liable to pay penalty upto Rs. 91,050 which was not imposed.

The case was reported to the Department and Government in July 1990; their replies have not been received (November 1991).

B. Non-imposition of penalty for misuse of raw material

Section 4-B of the U.P. Sales Tax Act, 1948, read with Government notification dated 31 December 1976, provides for special relief in tax to manufacturers on the purchase of raw material required for use in the manufacture of notified goods on fulfilment of certain conditions. In case of use of raw material for a purpose other than that for which Recognition Certificate was granted, the dealer shall be liable to pay, by way of penalty, a sum which shall not be less than the amount of relief in tax so secured by him but shall not exceed three times of such relief.

(i) During the audit of Sales Tax Circle, Ghaziabad, it was noticed (August 1990) that a dealer holding Recognition Certificate for the manufacture of rubber goods, purchased raw material valuing Rs. 13.11 lakhs tax free on the strength of declaration in Form III-B during the year 1986-87 and utilised the same in the manufacture of rubberised beltings, a different commercial commodity notified separately under the Act as 'beltings of all kinds'. The dealer was, therefore, liable to pay penalty upto Rs. 3.10 lakhs which was omitted to be imposed.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(ii) During the course of audit of Sales Tax Circle, Ghaziabad, It was noticed (April 1990) that a dealer, holding Recognition Certificate for the manufacture of cycle parts, purchased raw material for Rs. 25.29 lakhs tax free on the strength of declarations in Form III-B during the years 1981-82 to 1985-86 and used the same in the manufacture of washers for spokes of cycles. As washers of spokes are not parts or accessories of cycles being component of the notified goods, the dealer was liable to pay penalty upto Rs.3.04 lakhs which was not imposed.

The case was reported to the Department and Government in June 1990; their replies have not been received (November 1991).

(iii) During the audit of Sales Tax Circle, Ghaziabad, it was noticed (April 1990) that a dealer, holding Recognition Certificate for the manufacture of microsheets, purchased raw material for Rs. 9.28 lakhs tax free on the strength of declarations in Form III-B during the years 1984-85 and 1985-86 and used it in the manufacture of footwear. The dealer was, therefore, liable to pay penalty upto Rs. 2.23 lakhs which was not imposed.

On the omission being pointed out in audit (June 1990), the Department stated in March 1991 that penalty amounting to Rs. 1.17 lakhs had since been imposed.

The case was reported to Government in June 1990.

(iv) During audit of Sales Tax Circle, Kanpur, it was noticed (October 1990) that a dealer, holding Recognition Certificate for the manufacture of nuts and bolts, purchased raw material (M.S. rods and M.S. wires) for Rs. 9.74 lakhs tax free on the strength of declaration in Form III-B, during the years 1983-84 to 1985-86. Out of

this, M.S. wires for Rs. 8.13 lakhs were sold by him. The dealer was, therefore, liable to pay penalty upto Rs. 97,612 which was not imposed.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(v) In Sales Tax Circle, Bareilly, a dealer holding Recognition Certificate for manufacture of oil, purchased raw material for Rs. 7.84 lakhs during 1985-86 against Form III-B at concessional rate of tax, and sold it instead of using it in manufacture of oil. The dealer was, therefore, liable to pay penalty upto Rs. 47,035 which was not imposed.

On the omission being pointed out in audit (June 1990), the Department stated (June 1991) that penalty amounting to Rs. 44,000 had since been imposed.

The case was reported to Government in June 1990.

C. Non-levy of tax and penalty for misuse of declaration forms

Section 4-B of the U.P. Sales Tax Act, 1948, read with Government notification dated 31 December 1976 provides for special relief in (exemption from) tax to manufacturers on purchase of raw material and packing material required for use in manufacture or packing of notified goods. For goods not specified in the said or subsequent notifications raw material and packing material could be purchased at the concessional rate of tax. In the event of false or wrong issue of declaration by reason of which tax on sale or purchase of goods ceases to be

leviable the dealer shall be liable to pay, a sum equal to the amount of relief in tax secured by him on purchase of raw material or packing material. Besides, he is also liable to pay, by way of penalty, a sum which shall not be less than 50 per cent but not exceeding one and half times of such relief.

(i) Baby food and *desi ghee* have not been specified in notification dated 31 December 1976 or any subsequent notification.

In Sales Tax Circle, Ghaziabad, a dealer holding Recognition Certificate for manufacture of baby food, desi ghee, etc. was authorised by the assessing authority to purchase packing material at concessional rate of tax. The dealer purchased packing material tax free for Rs. 85.61 lakhs during 1985-86 by issuing declaration in Form III-B. The dealer was, therefore, liable to pay an amount of Rs.3.42 lakhs being the amount equal to relief in tax secured by him. Besides, he was also liable to pay a minimum penalty of Rs. 1.71 lakhs. Tax as well as penalty was omitted to be imposed.

The cases was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(ii) In Sales Tax Circle, Kanpur, a dealer holding Recognition Certificate for the manufacture of footwear was authorised to purchase raw material at the concessional rate of tax. The dealer purchased selenium, silicon and rubber compound etc. at concessional rate of tax for Rs. 27.42 lakhs by issuing declaration Forms III-B during 1983-84 and 1984-85, although these goods were not mentioned in the Recognition Certificate. The dealer was, therefore, liable to pay Rs. 1.13 lakhs being equal to the

amount of relief in tax secured by him. The dealer was also liable to pay minimum penalty amounting to Rs. 56,552. Tax as well as penalty was omitted to be imposed.

On the omission being pointed out in audit (November 1989), the Department stated in January 1991 that the assessment order had since been revised and an additional demand for Rs. 1.13 lakhs raised. Intimation regarding imposition of penalty has not been received (November 1991).

The case was reported to Government in November 1989.

(iii) In Sales Tax Circle, Meerut, a dealer holding Recognition Certificate for manufacture of medicines was authorised to purchase raw material and packing material at concessional rate of tax. He, however, made tax free purchase of raw material/packing material of Rs. 13.53 lakhs during the years from 1980-81 to 1986-87 by issuing false declarations in Form III-B. The dealer was, therefore, liable to pay a sum of Rs.54,109 being equal to the amount of relief in tax secured by him. Besides, he was also liable to pay penalty upto Rs. 81,164 which was not imposed.

On the omission being pointed out in audit (February 1990), the Department stated (August 1990) that demand for Rs. 54,109 had since been raised under Section 3-B for the period from 1980-81 to 1986-87. Report on imposition of penalty has not been received (November 1991).

The case was reported to Government in February 1990.

(iv) Under Rule 12-A of the U.P. Sales Tax Rules, 1948, if a registered dealer wishes to purchase goods liable to tax at the point of sale to consumer, without

payment of tax he may issue a declaration in Form III-A to the selling dealer. In the event of false or wrong issue of declaration, the dealer shall be liable to pay a sum equal to the amount of tax that would have been payable had the declaration not been issued. Besides, the dealer shall also be liable to pay by way of penalty a sum which shall not be less than 50 per cent but not exceeding one and half times of the tax that would thereby have been avoided. Iron was taxable at the point of sale to consumer upto 29 November 1980. From 30 November 1980, it was made taxable in the hands of manufacturer or importer. From that date the dealers were not entitled to issue declaration Form III-A while purchasing iron and steel.

(a) In Sales Tax Circle, Lucknow, a dealer purchased iron scrap for Rs. 23 lakhs in 1984-85 tax free from the Railways, by issuing declaration in Form III-A. The dealer was, therefore, liable to pay Rs. 91,942 being equal to the amount of tax payable on the said transaction for issue of false declaration. Besides, he was also liable to pay penalty upto Rs. 1.38 lakhs. Both tax as well as penalty was omitted to be imposed.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(b) In Sales Tax Circle, Gorakhpur, a dealer purchased iron scrap for Rs. 58.16 lakhs from the Railways tax free during 1984-85 by issuing declaration in Form III-A. The dealer was, therefore, liable to pay Rs. 2.33 lakhs being equal to the amount of tax payable on above transaction for issue of false declaration. Besides, he was also liable to pay minimum penalty amounting to Rs. 1.16 lakhs. Neither tax nor penalty was, however, levied.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(c) In Sales Tax Circle, Basti, a dealer purchased iron scrap for Rs. 8.34 lakhs tax free from Railways by issuing declarations in Form-IIIA during the year 1985-86. The dealer was, therefore, liable to pay a sum of Rs. 33,375 being equal to the amount which would have been payable as tax had such declaration not been issued. Besides, he was also liable to pay penalty upto Rs. 50,063. Tax as well as penalty was omitted to be imposed.

The case was reported to the department and Government in May 1990; their replies have not been received (November 1991).

D. Irregular authorisation of tax free purchases of raw material

Section 4-B of the U.P. Sales Tax Act, 1948, read with Government notification dated 31 December 1976, provides for special relief in tax to manufacturers holding Recognition Certificate, on purchase of raw material for use in the manufacture of notified goods on fulfilment of certain conditions.

(a) As per Government notification dated 18 July 1979, manufacturers of Vanaspati were entitled to purchase only raw material tax free

(i) In Sales Tax Circle, Kanpur, a dealer holding Recognition Certificate for manufacture of Vanaspati was irregularly authorised to purchase packing material also tax free. He purchased packing material worth Rs. 3.17 crores during the year 1984-85 and 1985-86 tax

free against declarations Forms-IIIB. The irregular authorisation of tax free purchases of raw material resulted in loss of revenue amounting to Rs. 12.68 lakhs.

The case was reported to the Department and Government in January 1991 and again in May 1991; their replies have not been received (November 1991).

(ii) During the audit of Sales Tax Circle, Ghaziabad, it was noticed in June 1990 that a dealer holding Recognition Certificate for manufacture of Vanaspati was irregularly authorised to purchase packing material also tax free. The dealer purchased packing material for Rs. 2.63 crores in 1985-86 tax free on the strength of declaration in Form III-B. Irregular grant of Recognition Certificate resulted in loss of revenue amounting to Rs. 10.53 lakhs.

The case was reported to Department and Government in January 1991; their replies have not been received (November 1991).

(b) As per notification dated 5 June 1985, manufacturers of bakery products could purchase only atta, maida and suji tax free against declaration in Form III-B

(i) In sales Tax Circle, Meerut, a dealer holding Recognition Certificate for the manufacture of bakery products was authorised to purchase packing material and yeast also at concessional rate of tax. The dealer purchased wrapping paper and yeast for Rs. 82,820, Rs. 10.63 lakhs and Rs. 10.93 lakhs tax free during 1985-86, 1986-87 and 1987-88 respectively by issuing declaration in Form III-B. The dealer was, therefore, liable to pay Rs. 1.51 lakhs being equal to the amount of tax. Besides, he

was also liable to pay penalty upto Rs. 2.26 lakhs. The tax as well as penalty was not imposed.

The case was reported to the Department and Government in October 1990; their replies have not been received (November 1991)

(ii) In Sales Tax Circle, Kanpur, a dealer, holding Recognition Certificate for the manufacture of biscuits, was authorised to purchase Vanaspati, packing material and chemicals etc. at the concessional rate of tax in addition to atta, maida and suji. The dealer purchased Vanaspati, packing material etc. for Rs. 8.70 lakhs at concessional rate of tax on the strength of declarations in Form III-B during the year 1986-87. Irregular grant of Recognition Certificate resulted in loss of revenue amounting to Rs. 44,693.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(c) Under the provisions of the Act no relief in tax is admissible if the goods manufactured from the raw material purchased are exempt from levy of tax. Agricultural implements worked by human or animal power are exempt from levy of tax under the Act.

During the audit of Sales Tax Circle, Mirzapur, it was noticed (August 1990) that a dealer manufacturing agricultural implements worked by human power was incorrectly granted Recognition Certificate and was authorised to purchase raw material tax free. He purchased iron and steel for Rs. 10.45 lakhs tax free on the strength of declarations in Form III-B during the year 1978-79. On 30 June 1983, the case was opened and demand for Rs.

41,800 being equal to the amount of relief in tax was raised under Section 3-B. The dealer went in appeal and the orders under Section 3-B were set aside at the appellate stage in July 1989 on the ground that as the Recognition Certificate was granted by the Department itself, no action could be taken against the dealer under Section 3-B for misuse of declaration Forms and the amount of Rs.41,800 deposited by the dealer was refunded to him in November 1989. Incorrect grant of Recognition Certificate resulted in loss of revenue amounting to Rs. 41,800.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

2.8 Non-imposition of penalty

A. Suppression of turnover

Under the Section 15-A(1)(c) of the U.P.Sales Tax, 1948, if a dealer has concealed the particulars of his turnover or had deliberately furnished inaccurate particulars of such turnover the assessing authority may direct that such dealer shall be liable to pay by way of penalty in addition to tax a sum not less than 50 per cent but not exceeding one and half times of the amount of the tax which would thereby have been avoided.

In 15 cases noticed in 9 districts penalty amounting to Rs. 36.71 lakhs was leviable but was omitted to be imposed by the assessing officers while finalising assessments, as indicated below:

Sl. No.	Circle concerned	Commodity where sale/purchase suppressed	Assessment year	Amount of penalty involved (in lakhs of rupees)
1.	Agra	Vanaspati	1985-86	6.41

2(i)	Allahabad	Chemical fertilizer	1983-84	2.05
(ii)	-do-	Foodgrains	1985-86	2.20
3.	Azamgarh	Oilseeds	1984-85	0.58
4(i)	Bareilly	Foodgrains	1981-82 to 1985-86	8.32
(ii)	-do-	-do-	1984-85	3.51
(iii)	-do-	Silver and Silver ornaments	1987-88 and 1988-89	0.84
5(i)	Ghaziabad	polythene bags	1984-85 and 1985-86	1.59
(ii)	Hapur (Ghaziabad)	Gur	1984-85	1.26
6.	Jhansi	Iron and steel and coal	1983-84	0.76
7(i)	Kanpur	Rubber goods	1983-84	4.26
(ii)	-do-	Spices and dry fruits	1983-84	3.33
(iii)	-do-	Bricks	1984-85	0.42
8.	Lucknow	Vanaspati	-do-	1.73
9.	Meerut	Coal	1985-86 and 1986-87	0.80 ----- 38.06

On this being pointed in audit (between January 1989 and January 1991), demand for Rs. 27.75 lakhs was raised in 13 cases till November 1991. Reply in respect of remaining 2 cases had not been received (January 1992).

B. Unauthorised /excess collection of tax

Under Section 15-A(1) (qq) of the U.P. Sales Tax Act, 1948, if a dealer realises any amount as sales tax or

purchase tax, where no sales tax or purchase tax is legally payable or realises in excess of the amount of tax legally payable under the Act, he shall be liable to pay, by way of penalty, a sum which shall not be less than the amount of tax realised when not due or the amount realised in excess of the tax due but not more than three times of such sum.

(i) In Sales Tax Circle, Jaunpur, a dealer holding eligibility certificate for manufacture and sale of iron and steel was exempted from levy of tax under Section 4-A of the Act despite which he realised tax amounting to Rs. 46,233 during the year 1985-86 on sale of iron and steel, manufactured by him. The dealer had deposited the tax into the Treasury but the same was subsequently refunded to him in March 1990. Not only was the refund of Rs. 46,233 irregular but the dealer was also liable to pay penalty upto Rs. 1.39 lakhs which was omitted to be imposed.

The case was reported to the Department and Government in July 1990; their replies have not been received.

(ii) In Sales Tax Circle, Agra, a dealer of cast iron pipes and pipe fittings realised tax amounting to Rs. 22,925 during the year 1984-85 on sales of cast iron pipes and pipe fittings, in excess of the tax legally payable. The dealer did not deposit the tax irregularly collected by him into the Treasury. He was, therefore, liable to pay penalty upto Rs. 68,775 which was omitted to be imposed.

The case was reported to the Department and Government in July 1990; their replies have not been received.

C. Evasion of tax on import of goods from outside the State

(i) Under the State Sales Tax Act

Under Section 28-A of the U.P. Sales Tax Act, 1948, read with Rule 85 of the U.P. Sales Tax Rules 1948, a registered dealer, desirous of importing goods from outside the State, shall obtain the declaration Form-xxxii from the assessing officer. Where such goods are consigned by rail, river, air or post, the importer shall not obtain delivery thereof unless he furnishes to the assessing officer the declaration in duplicate duly filled in and signed by him for endorsement by such officer. In the event of contravention of these provisions, the assessing authority may direct that such dealer or person shall pay, by way of penalty, a sum not exceeding 40 per cent of the value of the goods imported, as provided in section 15-A(1) (i) ibid read with item (ix) thereunder.

(a) In Sales Tax Circle, Lucknow, a dealer imported projectors for Rs. 6.82 lakhs from outside the State during the year 1984-85 by rail without furnishing declarations in Form-xxxii to the assessing officer. The dealer was, therefore, liable to pay penalty upto Rs. 2.73 lakhs which was omitted to be imposed.

On the omission being pointed out in audit (December 1989) the Department stated (March 1991) that penalty of Rs. 2.73 lakhs had since been imposed.

The case was reported to Government in December 1989.

(b) In Sales Tax Circle, Meerut, a dealer imported C.R. Sheet worth Rs. 3.18 lakhs during the year 1985-86 from outside the State without furnishing declaration in Form xxxii to the assessing officer. The

dealer was, therefore, liable to pay penalty upto Rs.1.27 lakhs which was not imposed.

On the omission being pointed out in audit (October 1990), the Department stated in July 1991 that penalty amounting to Rs. 1.27 lakhs had since been imposed.

The case was reported to Government in October 1990.

(c) In Sales Tax Circle, Varanasi, it was noticed during audit that a dealer imported paper worth Rs. 1.56 lakhs during the year 1984-85 from outside the State without using the prescribed declaration in Form XXXI. Therefore, penalty upto Rs 62,585 was leviable, but was not imposed.

On the omission being pointed out in audit (March 1990), the Department stated that penalty amounting to Rs 62,585 had since been imposed.

The case was reported to Government in March 1990.

(ii) Under the Central Sales Tax Act

Under Section 10-A of the Central Sales Tax Act, 1956, if a registered dealer purchases any goods from outside the State at the concessional rate of tax on the strength of declaration in Form 'C' by falsely representing that such goods are covered by his certificate of registration, he shall be liable to pay, by way of penalty, a sum which shall not exceed one and half times the amount of tax leviable on sale of such goods.

(a) In Sales Tax Circle, Ghaziabad, a dealer purchased special machinery and generating set worth Rs. 14.47 lakhs during 1984-85 against Form 'C' at the

concessional rate of tax although the goods were not covered by his Registration Certificate. The dealer was, therefore, liable to pay penalty upto Rs. 2.23 lakhs which was not imposed.

On the omission being pointed out in audit (June 1990), the Department stated (June 1991) that penalty amounting to Rs. 2.23 lakhs had since been imposed. Report on recovery has not been received (November 1991).

The case was reported to Government in June 1990.

(b) In Sales Tax Circle, Pilibhit, a dealer purchased pipes, paints and chemicals etc. for Rs. 6.15 lakhs during the year 1984-85 from outside the State at a concessional rate of tax on the strength of declaration in Form 'C' although these goods were not covered by his Certificate of Registration. The dealer was, therefore, liable to pay penalty upto Rs. 92,323 which was not imposed.

On the omission being pointed out in audit (July 1990), the Department stated in January 1991 that penalty of Rs. 61,600 had since been imposed. Report on recovery has not been received (November 1991).

The case was reported to Government in July 1990 and again in April 1991.

(c) In Sales Tax Circle, Deoband (Saharanpur), a dealer purchased items like fire bricks, lubricants etc. worth Rs. 5.05 lakhs during the year 1981-82 from outside the State on the strength of declaration in Form 'C' at the concessional rate of tax, although the goods were not covered by his Certificate of Registration. The dealer was,

therefore, liable to pay penalty upto Rs. 75,822 which was omitted to be imposed.

On the omission being pointed out in audit (December 1987), the Department stated in June 1988 that penalty amounting to Rs. 56,000 had since been imposed.

The case was reported to Government in January 1988.

(d) In Sales Tax Circle, Chandpur (Bijnor), a dealer purchased washing material, paints and welding material etc. amounting to Rs. 4.63 lakhs during the year 1984-85 from outside the State at concessional rate of tax on the strength of declaration in Form 'C' although the goods were not covered by his Certificate of Registration. The dealer was, therefore, liable to pay penalty upto Rs. 69,255 which was omitted to be imposed.

On the omission being pointed out in audit (March 1990), the Department stated (December 1990) that penalty of Rs. 69,875 had since been imposed, out of which Rs. 10,500 had been realised.

The case was reported to Government in March 1990 and April 1991.

(e) In Sales Tax Circle, Allahabad, a dealer purchased sandal wood dust, aluminium coil and chemicals etc. for Rs. 3.56 lakhs from outside the State at the concessional rate of tax on the strength of declaration in Form 'C' during the year 1984-85, although these goods were not covered by his Certificate of Registration. The dealer was, therefore, liable to pay penalty upto Rs. 53,372 which was omitted to be imposed.

On the omission being pointed out in audit (March 1990), the Department stated in December 1990 that penalty amounting to Rs 53,371 had since been imposed.

The case was reported to Government in March 1990.

(fg) In Sales Tax Circle, Ballia, a firm was reconstituted on 31 March 1980. The firm obtained fresh registration on 24 May 1980 under the State Sales Tax Act, but did not obtain registration under the Central Sales Tax Act. The firm unauthorisedly obtained declarations in Form 'C' and purchased goods for Rs. 4.47 lakhs during the years 1983-84 and 1984-85 on the strength of these Forms at the concessional rate of tax. The firm was, therefore, liable to pay penalty upto Rs. 52,053 which was omitted to be imposed.

On the omission being pointed out in audit (July 1988), the Department stated in January 1990 that penalty amounting to Rs.52,054 had since been imposed.

The case was reported to Government in March 1989.

(g) In Sales Tax Circle, Mathura, a dealer purchased Ranipal (Tinopal) at the concessional rate of tax for Rs. 2.48 lakhs during the year 1985-86 from outside the State on the strength of declaration Form 'C', although these goods were not covered by his Certificate of Registration. The dealer was, therefore, liable to pay penalty upto Rs. 37,248 which was not imposed by the Department.

On the omission being pointed out in audit (August 1990), the Department stated that penalty amounting to Rs. 37,248 had since been imposed.

The case was reported to Government in October 1990.

2.9 Short levy of tax due to mis-classification

(a) Under Section 3-A(1)(e) of the U.P. Sales Tax Act, 1948, on sale of goods not otherwise classified, tax is leviable at the rate of 8 per cent with effect from 7 September 1981 at the point of sale by manufacturer or importer. Under Section 8 (i) of the Act *ibid* the tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of 2 per cent per month till the date of deposit of the amount of unpaid tax.

In Sales Tax Circle, Kanpur, a dealer sold imported copper strips worth Rs. 10.84 lakhs, Rs. 11.20 lakhs and Rs. 9.33 lakhs during the years 1984-85, 1985-86 and 1986-87 respectively. Copper strips are not classified goods. Tax on above sales was levied at the rate of 2 per cent treating it as metal instead of at the correct rate of 8 per cent. Misclassification of copper strips led to short levy of tax by Rs. 2.04 lakhs (inclusive of additional tax). Besides, interest at the rate of 2 per cent per month was also chargeable from the dealer upto the date of deposit of tax.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(b) Under the U.P. Sales Tax Act, 1948, sales tax on old unserviceable and discarded stores is leviable at the rate of 8 per cent with effect from 7 September 1981. Additional tax at the rate of 10 per cent of the tax is also leviable with effect from 1 November 1985.

In Sales Tax Circle, Rampur, a dealer sold used cartridges worth Rs. 26.61 lakhs during the year 1985-86

and 1986-87. Tax on these sales was levied at the rate of 2 per cent (treating the used cartridges as scrap) instead of at the correct rate of 8 per cent. Incorrect classification resulted in short levy of tax amounting to Rs. 1.76 lakhs including additional Tax.

The case was reported to the Department and Government in March 1991; their replies have not been received (November 1991).

(c) Under Section 3-A(e) of the U.P. Sales Tax Act, 1948, on turnover of Sale of goods not otherwise classified tax shall be leviable at the rate of 8 per cent with effect from 7 September 1981 in the hands of manufacturer or importer. Kitchen appliances (including gas stoves) were removed from the entry "kitchen utensils and appliances" with effect from 1 June 1985 and were not included in any other entry.

In Sales Tax Circle, Ghaziabad, sales of gas stoves by a dealer during 1985-86 were determined at Rs. 24 lakhs and tax levied at the rate of 6 per cent treating these as kitchenware instead of at the correct rate of 8 per cent. The misclassification resulted in short levy of tax amounting to Rs. 48,000. Additional tax at the rate of 5 per cent of tax upto 31 October 1985 and 10 per cent from 1 November 1985 amounting to Rs. 4,400 was also leviable.

On the omission being pointed out in audit (November 1990), the Department stated in March 1991 that assessment had since been revised and additional demand for Rs. 52,400 (including additional tax) raised.

The case was reported to Government in November 1990.

2.10 Irregular exemption

(i) In Uttar Pradesh single point taxation is in vogue and no tax is payable on resale of goods on which tax has already been paid. However, under Section 2 (e-1) of the U.P. Sales Tax Act, 1948, if the goods so purchased are altered or processed and a new commercial commodity emerges, it amounts to manufacture and tax is leviable on the sale of such commodity. Tax admittedly payable by a dealer, if not paid by due date, shall attract interest at the rate of 2 per cent per month on the unpaid amount.

During the course of audit of Sales Tax Circle, Kanpur, it was noticed (October 1990) that a dealer had an opening balance of steel tubes worth Rs. 7.02 lakhs in 1986-87. He purchased steel tubes worth Rs. 79.99 lakhs during the year from within the State. Out of this, he sold steel tubes worth Rs. 77.56 lakhs after electroplating them. At the time of assessment, these sales were exempted from levy of tax treating the goods as sales of tax paid purchases. As the goods were sold after electroplating (manufacture), exemption from levy of tax was irregular. Irregular exemption granted to the dealer resulted in non-levy of tax amounting to Rs. 3.10 lakhs. As the tax was admittedly payable interest at the rate of 2 per cent per month was also chargeable from the dealer.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(ii) Section 4-A of the U.P. Sales Tax Act, 1948 provides for exemption from levy of tax to new units for specified period under certain conditions. As per departmental circular dated 29 September 1986, no exemption from levy of tax under section 4-A of the U.P. Sales Tax

Act, 1948 will be given to units for the period in which tax was realised by them from customers.

In Sales Tax Circle, Rae Bareilly, a dealer was granted Eligibility Certificate under section 4-A for rice milling on 24 November 1983. He was also holding Recognition Certificate under section 4-B. The dealer purchased paddy tax free during 1985-86 and after milling it, he sold the rice within the State and outside the State and collected tax amounting to 2.37 lakhs. At the time of assessment on 16 March 1990 he was granted exemption from levy of tax. The irregular exemption resulted in short recovery of tax amounting to Rs. 2.37 lakhs.

The case was reported to the Department and Government in December 1990; their replies have not been received (November 1991).

(iii) Section 4-A of the U.P. Sales Tax Act, 1948 provides for exemption from levy of tax to new units on sale of goods manufactured by them as specified in the Eligibility Certificate granted to them .

In Sales Tax Circle, Noida, a dealer was granted Eligibility Certificate with effect from 12 September 1984 for manufacture and sale of gas stove burners. However, during 1985-86 the dealer purchased gas stove bodies and parts and accessories thereof from outside the State and after assembling the same sold gas stoves for Rs. 1.52 lakhs within the State and for Rs. 4.33 lakhs in the course of inter-State trade/commerce. Grant of exemption from levy of tax, was irregular as the Eligibility Certificate was for sale of gas stove burners manufactured by the dealer. This resulted in underassessment of tax amounting to Rs. 55,526.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(iv) Section 4-B of the U.P. Sales Tax Act, 1948, read with Government notification dated 31 December 1976, provides for special relief in tax to manufacturers on purchase of raw material for use in the manufacture of notified goods for five years in certain specified districts and for three years in other districts. After the specified period, the dealer could avail the benefit of concessional rate of tax.

In Sales Tax Circle, Khurja (district Bulandshahr), a dealer was granted Recognition Certificate for manufacture of cycle tubes on 4 November 1977. He could purchase raw material tax free upto 3 November 1982. The dealer, however purchased raw material for Rs. 9.77 lakhs tax free against declaration Form III-B during the years 1983-84 to 1985-86 and was exempted from payment of tax. Allowing exemption beyond five years resulted in underassessment of tax amounting to Rs. 39,064.

The case was reported to the Department and Government in February 1991; their replies have not been received (November 1991).

(v) Under Government notification dated 30 September 1982, institutions certified by the All India Khadi and Village Industries Commission, Bombay (Commission) or by the Uttar Pradesh Khadi and Village Industries Board, Kanpur are exempt from payment of tax on purchase of any goods connected with the manufacture of products of Village Industries mentioned in the schedule to the Khadi and Village Industries Commission Act, 1956 and the Uttar Pradesh khadi and Village Industries Board Act,

1960 (as reproduced under the said notification). Methane gas (biogas) is one of the products of Village Industries mentioned in the schedule and for its manufacture biogas plant could be purchased without payment of tax. Biogas plant is not mentioned in the schedule to be a product of village industries.

During the audit of Sales Tax Circle, Allahabad, it was noticed (January 1991) that a dealer sold iron and steel worth Rs. 26.36 lakhs during 1984-85 to an institution holding certificate from the commission for the manufacture of biogas plants. These sales were exempted from levy of tax by the Assessing Authority. Biogas plant has not been specified in the schedule to be a product of village industries. As such manufacturers of biogas plants are not entitled to purchase raw material etc. tax free. Thus, the exemption of the sales from levy of tax resulted in short levy of tax amounting to Rs. 1.05 lakhs.

The case was reported to the Department and Government in April 1991; their replies have not been received (November 1991).

(vi) Under Section 6 (2) of the Central Sales Tax Act, 1956, in case of inter-State sales of goods effected by transfer of documents of title to goods during their movement from one State to another, no tax is leviable subject to fulfilment of certain conditions. If the transfer of documents was made after the goods have reached the other State, tax at the rates applicable in the State to which the goods have been sent shall be leviable on such transaction. Further, under section 3-E of the U.P. Sales Tax Act, 1948, additional tax is also leviable at the rate of 5 per cent of the tax upto 31 October 1985 and 10 per cent of the tax from 1 November 1985. Tax admittedly payable by a dealer, if not paid by due date

attracts interest at the rate of 2 per cent per month on the unpaid amount.

In Sales Tax Circle, Ghaziabad, a dealer entered into agreement with the Irrigation Department of Uttar Pradesh for installation of pump sets. For this, payment was to be made to him after satisfactory installation of pump sets at the specified sites. The dealer purchased electric motors for Rs. 58.07 lakhs during 1984-85 and 1985-86 from outside the State and used the motors in the assembly of pump sets installed at the specified sites in the State. The dealer showed the sale of such motors as by transfer of documents of title to goods during their movement from one State to another and was allowed exemption from levy of tax treating the sale as subsequent sale under section 6 (2) of the Central Sales Tax Act, 1956. As the dealer continued to retain ownership of the motors till the date of satisfactory installation of the pump set, the transaction did not fall under sale by transfer of documents of title to goods during their movement from one State to another. The actual transaction was import of goods from outside the State, its utilisation in assembly of pump sets and then their sale to the Irrigation Department. The dealer was, therefore, liable to pay tax amounting to Rs. 3.48 lakhs on sale which was omitted to be levied. Besides, additional tax amounting to Rs. 17,421 was also leviable and interest at the rate of 2 per cent per month was chargeable.

The case was reported to the Department and Government in November 1990; their replies have not been received (November 1991).

2.11 Underassessment of Central Sales Tax

Under Section 8 of the central Sales Tax, Act, 1956, on inter-State sales of goods other than declared

goods not supported by prescribed declarations in Form 'C' or 'D' tax is leviable at the rate of 10 per cent or the rate applicable to sale or purchase of such goods inside the State, whichever is higher. Further, if a dealer has concealed or has given inaccurate particulars of turnover, he is liable to pay penalty upto one and half times of tax which would thereby have been avoided.

(a)(i) In Sales Tax Circle, Meerut, a dealer made inter-state sales of self manufactured elastic thread for Rs. 13.87 lakhs during 1985-86. Although these sales were not supported by declarations in Form C or D, tax was levied at the concessional rate of 2 per cent instead of the correct rate of 10 per cent. This resulted in short levy of tax amounting to Rs. 1.11 lakhs.

The case was reported to the Department and Government in October 1990; their replies have not been received (January 1992).

(ii) In Sales Tax Circle, Kasganj (district Etah), a dealer made inter-State sales of timber for Rs. 12.68 lakhs during the year 1988-89 but showed it as consignment sale. Although these sales were not supported by prescribed declarations in Form 'C' or 'D', tax was levied at the rate of 10 per cent instead of at correct rate of 13.2 per cent (inclusive of additional tax). This resulted in short levy of tax amounting to Rs. 40,568. The dealer was also liable to pay penalty upto Rs. 60,850 which was omitted to be imposed.

On the omission being pointed out in audit (July 1990), the Department stated in February 1991 that assessment had since been revised and additional demand for Rs. 40,568 raised and penalty amounting to Rs. 65,000 imposed.

The case was reported to Government in July 1990.

(iii) In Sales Tax Circle, Kanpur, a dealer made inter-State sales of Auto leaf Springs for Rs. 36.24 lakhs during the year 1986-87 and for Rs. 19.61 lakhs during the year 1987-88. Although these sales were not supported by prescribed declarations in Form 'C' or 'D', tax was levied at the rate of 10 per cent instead of at the correct rate of 11 per cent, (inclusive of additional tax) being the rate applicable to sale of this item within the State. This resulted in short levy of tax amounting to Rs. 55,850.

On the omission being pointed out in audit in September 1990, the Department stated in June 1991 that assessments for both the years had since been revised and additional demand for Rs. 55,850 raised.

The case was reported to Government in September 1990.

(b) Under Section 8 of the Central Sales Tax Act, 1956, on inter-State sales of non-declared goods, not covered by prescribed declarations in Form 'C' or 'D', tax is leviable at the rate of 10 per cent or the rate applicable to sale or purchase of such goods within the State, whichever is higher. As per notification dated 1 April 1968, on inter-State sales of mustard oil, tax is leviable at the rate of 1 per cent and on inter-State sales of tin containers not covered by prescribed declarations, tax is leviable at the rate of 10 per cent.

(i) In Sales Tax Circle, Hathras, during the year 1982-83, a dealer made inter-State sales of mustard oil in tin containers for Rs. 1.85 crores which were not covered by Forms 'C' or 'D'. These sales included value of the tin containers amounting to Rs. 8.03 lakhs. Tax on total sales was levied at the rate of one per cent under Section 8 (5) of the Act. Levy of tax on sale of containers at the rate of one per cent instead of at the correct rate

of 10 per cent resulted in short levy of tax amounting to Rs. 72,253.

On the omission being pointed out in audit (February 1989), the Department stated (November 1990) that assessment had since been revised and additional demand for Rs. 72,253 raised.

The case was reported to Government in February 1989.

(ii) During the audit of the Sales Tax circle, Hathras, it was noticed (December 1988) that a dealer made inter-State sales of mustard oil in tin containers not covered by Forms 'C' or 'D' for Rs. 68 lakhs during the year 1983-84. These sales included value of tin containers amounting to Rs. 3.38 lakhs. Tax on these sales was levied at the rate of 1 per cent under Section-8 (5) of the Central Sales Tax Act, 1956. As the containers are not covered by Section 8 (5), tax on their inter State sales was leviable at the rate of 10 per cent. Levy of tax on sale of tin containers at the rate of one per cent instead of at the correct rate of 10 per cent resulted in short levy of tax amounting to Rs. 30,385.

On the omission being pointed out in audit (February 1989), the Department stated that the assessment had since been revised and additional demand for Rs. 30,385 raised.

The case was reported to Government in February 1989.

(c) Under Section 8(2) of the Central Sales Tax Act, 1956, tax is leviable on inter-State sales of declared goods not supported by the prescribed declaration in Form 'C' or 'D' at twice the rate applicable to sale of such goods within the State. Under Section 14 of the Act *ibid*,

cotton yarn is a declared commodity and with effect from 7 September 1981, tax is leviable at the rate of 2 per cent on sale of cotton yarn within the State and in the course of inter-State trade or commerce covered by Form 'C' or 'D'.

During the audit of Sales Tax Circle, Hathras, it was noticed (October 1989) that inter-State sales of cotton yarn not supported by declaration in Form 'C' or 'D' by a dealer during 1984-85 were determined at Rs. 80 lakhs and tax levied at the rate of one per cent instead of correct rate of 4 per per cent. This resulted in underassessment of tax amounting to Rs. 2.40 lakhs.

On the omission being pointed out in audit (January 1990), the Department stated in March 1991 that the assessment had since been revised and additional demand for Rs. 2.40 lakhs raised.

The case was reported to Government in January 1990.

(d) Under Section 8(2) of the Central Sales Tax Act, 1956, in case of inter-State sales of declared goods not covered by declarations in Form 'C' or 'D', tax is leviable at twice the rate applicable on sale of such goods within the State.

In Sales Tax Circle, Robertsganj, a dealer made inter-State sales of coal for Rs. 16.60 crores during the year 1984-85 against Form 'C'. Out of this, one Form 'C' for Rs. 11.66 lakhs was found to be defective and was not accepted. Tax on this sale was levied at the rate of 4 per cent instead of at correct rate of 8 per cent applicable to the sale not supported by prescribed declaration.

Application of incorrect rate resulted in short levy of tax amounting to Rs. 46,656.

On the omission being pointed out in audit (February 1990) the Department stated (February 1991) that assessment had since been revised and additional demand for Rs. 46,656 raised.

The case was reported to Government in February, 1990.

(e) Under Section 15 (b) of the Central Sales Tax Act, 1956, where a tax has been levied within the State on declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under the said Act, the tax paid under the Sales Tax Act of the State shall be reimbursed to the dealer. This facility of reimbursement of tax is, however, not admissible in respect of sale or purchase of non-declared goods.

In Sales Tax Circle, Aligarh, a dealer made inter-State sales of Peas (pulse) worth Rs. 86.80 lakhs during the year 1983-84. As these sales are not covered by declaration in Form 'C', tax amounting to Rs. 8.70 lakhs (at the rate of 10 per cent) was levied. The assessment order was passed after adjustment of tax of Rs. 3.20 lakhs paid by the dealer on sales within the State on the estimated cost of peas at Rs. 80 lakhs. The peas being a non-declared commodity, the benefit of refund of tax was not admissible. Irregular adjustment led to short levy of Central Sales Tax amounting to Rs. 3.20 lakhs.

On the omission being pointed out in audit (June 1989), the Department stated (March 1991) that additional demand for Rs. 3.20 lakhs had since been raised.

The case was reported to Government in June 1989.

2.12 Application of incorrect rate of tax

(i) (a) Under the U.P. Sales Tax Act, 1948, on Sales of Indian made foreign liquor tax was leviable at the rate of 26 per cent with effect from 7 September 1981.

In Sales Tax Circle, Gopiganj (Varanasi), the turnover of sales of Indian made foreign liquor by a dealer during the year 1982-83 was determined at Rs. 10 lakhs but tax was levied at the rate of 8 per cent instead of at the correct rate of 26 per cent. Application of the incorrect rate resulted in underassessment of tax amounting to Rs. 1.80 lakhs.

On the omission being pointed out in audit (February 1989), the Department stated (May 1989) that assessment had since been revised and additional demand for Rs. 1.80 lakhs raised.

The case was reported to Government in February 1989.

(b) Under the U.P. Sales Tax Act, 1948, on sale of Indian made foreign liquor by a manufacturer or importer tax was leviable at 21 per cent (including one per cent additional tax) with effect from 1 April 1978 upto 30 June 1979.

In Sales Tax Circle, Varanasi, the sale of imported Indian made foreign liquor by a dealer during the year 1978-79 was determined (February 1989) at Rs. 6 lakhs, on which tax was levied at the rate of 13 per cent (including one per cent additional tax) instead of the prescribed rate of 21 per cent. Application of incorrect rate led to short levy of tax by Rs. 48,000.

On the omission being pointed out in audit (September 1989), the Department stated (January 1990) that the assessment had since been revised and additional demand for Rs. 48,000 raised.

The case was reported to Government in September 1989.

(ii) Under the U.P. Sales Tax Act, 1948, on the sale of goods, not otherwise classified, tax is leviable at the rate of 8 per cent with effect from 7 September 1981. As per Section 3-E of the Act *ibid*, additional tax is also leviable at the rate of 5 per cent of the tax upto 31 October 1985 and 10 per cent of the tax with effect from 1 November 1985.

(a) In Sales Tax Circle, Moradabad, sale of corrugated paper sheets by a dealer during 1985-86 was determined at Rs. 43 lakhs and tax was levied at the rate of 6 per cent. As corrugated sheet is not otherwise classified, tax on these sales was leviable at the rate of 8 per cent. Application of incorrect rate resulted in short levy of tax amounting to Rs. 92,850 (including additional tax).

On the omission being pointed out in audit (January 1991), the Department stated in June 1991 that additional demand for Rs. 92,850 had since been raised.

The case was reported to Government in January 1991.

(b) In Sales Tax Circle, Kanpur, a dealer sold imported fruits and vegetables in sealed containers for Rs. 31.01 lakhs during the year 1987-88. Tax on these sales was levied at the rate of 6 per cent. As fruit and vegetable (sold in tinned containers) is not otherwise

classified, tax on these sales was leviable at the rate of 8 per cent. Application of incorrect rate led to short levy of tax amounting to Rs. 68,216 (including additional tax). Interest at the rate of 2 per cent per month was also recoverable from the dealer upto the date of deposit of tax.

The case was reported to the Department and Government in August 1990; their replies are awaited (November 1991).

(iii) Under the U.P. Sales Tax Act, 1948, on the sale of paints, tax was leviable at the rate of 12 per cent with effect from 6 June 1985 at the point of sale by a manufacturer or importer. Besides, under Section 3-E of the Act *ibid* additional tax, under certain conditions at the rate of 5 per cent of tax upto 31 October 1985 and at 10 per cent of the tax from 1 November 1985, is also leviable.

In Sales Tax Circle, Rae Bareli, a dealer sold paints for rs. 28.97 lakhs during the year 1985-86 (after 6 June 1985) on which tax was levied at the rate of 10 per cent instead of the correct rate of 12 per cent. Besides, additional tax at the rate of 5 per cent upto 31 October 1985 and 10 per cent from 1 November 1985 was also leviable. Application of incorrect rate of tax resulted in short levy of tax (including additional tax) amounting to Rs. 62,837.

The case was reported to the Department and Government in March 1991; their replies have not been received (November 1991).

(iv) Under the U.P. Sales Tax Act, 1948, on turnover of sales of cement, tax is leviable at the rate

of 10 per cent with effect from 6 June 1985 at the point of sale by manufacturer or importer. Besides, additional tax at the rate of 5 per cent and 10 per cent of the tax is also leviable from 1 October 1983 and 1 November 1985 respectively. Tax admittedly payable by a dealer, if not paid by due date shall attract interest at the rate of 2 per cent per month on unpaid amount.

In one case due to application of incorrect rate of tax short levy of Rs. 2.85 lakhs (including interest) was noticed and demand was raised and realised on being pointed out in audit. Another case is mentioned below:

During the audit of the Sales Tax Circle, Dehradun, it was noticed (August 1990) that a Government department purchased cement worth Rs. 26.87 lakhs from outside the State in 1985-86 and after adding transportation charges etc. supplied it to contractor for Rs. 28 lakhs. Sales after 5 June 1985 amounted to Rs. 23.30 lakhs. Tax on these sales was levied at the rate of 8 per cent instead of correct rate of 10 per cent. Additional tax at the rate of 5 per cent of the tax on sales upto 31 October 1985 was also omitted to be levied. Both the mistakes resulted in short levy of tax amounting to Rs. 58,480. Interest at the rate of 2 per cent per month is also chargeable on this amount upto the date of deposit.

On the omission being pointed out in audit (January 1991), the Department stated in June 1991 that assessment had since been revised and additional demand for Rs. 58,480 raised. Report on recovery has not been received (November 1991)

The case was reported to Government in January 1991.

(v) Under the U.P. Sales Tax Act, 1948, on sales of goods not otherwise classified, tax is leviable at the rate of 8 per cent with effect from 7 September 1981. Additional tax is also leviable at the rate of 5 per cent of tax with effect from 1 October 1983 and 10 per cent from 1 November 1985.

In Sales Tax Circle, Meerut, two dealers sold self adhesive plaster for Rs. 14 lakhs and Rs. 8.40 lakhs during the years 1985-86 and 1986-87 respectively and tax on these sales was levied at the rate of 6.6 per cent including additional tax, treating it as medicine. As self adhesive plaster is not a medicine and also not otherwise classified, tax on its sales was leviable at the rate of 8.4 per cent upto 31 October 1985 and 8.8 per cent from 1 November 1985 including additional tax. Application of incorrect rate resulted in short levy of tax amounting to Rs. 48,280 including additional tax.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

2.13 Non-levy/short levy of interest

Every dealer, liable to pay tax under the U.P. Sales Tax, Act, 1948 is required to submit return of his turnover at prescribed intervals and to deposit the amount of tax due within the time prescribed. Tax admittedly payable by a dealer, if not paid by the due date, shall attract levy of interest at the rate of 2 per cent per month on the unpaid amount. Tax admittedly payable means

the tax which is payable under the Act on the turnover, as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceedings under the Act whichever is greater.

In one case of non-levy of interest on belated payment of tax a sum of Rs. 1.13 lakhs was raised and realised on being pointed out in audit. The other cases are mentioned below:

(i) During the audit of Sales Tax Circle, Ghaziabad, it was noticed (October 1988) that a dealer sold tin plates for Rs. 26.62 lakhs during the year 1983-84 on which tax amounting to Rs. 1.06 lakhs at the rate of 4 per cent was levied. The dealer deposited Rs. 24,571 within the prescribed time (April to December 1983). However, the balance of Rs.81,924 alongwith the interest of Rs. 37,219 was deposited late by the dealer (Rs. 9,500 on 31 May 1986 and Rs. 1,09,643 on 22 April 1988). Interest on belated payment of tax worked out to Rs. 84,501. Thus interest amounting to Rs. 47,282 was short levied.

On the omission being pointed out in audit (December 1988), the Department stated (July 1989) that demand for Rs. 45,440 had since been raised and realised (January 1989). The department further stated (February 1991) that additional demand for the balance amount of Rs. 1,842 had also since been raised (February 1991).

The case was reported to Government in December 1988.

(ii) During the course of audit of the office of the Assistant Commissioner (Assessment), Sales tax, Ghaziabad, it was noticed (June 1990) that a dealer disclosed sales of tin containers amounting to Rs. 98,937

during the period from August 1985 to February 1986 tax free against declaration in Form III-B. But he failed to furnish declaration in Form III-B in support of the claim and therefore deposited tax due thereon amounting to Rs. 39,357 on 18 and 19 October 1989 after additional demand for the amount was raised in August 1989. Interest amounting to Rs. 39,020 for late deposit of tax was also payable by the dealer which was not charged.

The case was reported to the Department and Government in January 1991; their replies have not been received (November 1991).

(iii) During the audit of Sales Tax Circle, Shahjahanpur it was noticed (September 1989) that a dealer made inter-State sales of rice bran oil for Rs. 5.22 lakhs during 1982-83 and tax amounting to Rs. 20,862 was levied. The tax was deposited in May 1990. However, the dealer was liable to pay interest amounting to Rs. 35,964 which was omitted to be charged.

On the omission being pointed out in audit (September 1989), the Department stated (January 1991) that demand amounting to Rs. 35,964 on account of interest had since been raised.

The case was reported to Government in September 1989.

2.14 Non-levy of purchase tax

Under the U.P. Sales Tax Act, 1948, babul bark is taxable at the rate of 8 per cent at the point of first purchase with effect from 7 September 1981. If the tax admittedly payable is not deposited within the prescribed period the unpaid amount of such tax will attract interest at the rate of Ra 2 per cent per month.

In Sales Tax Circle, Kanpur, a dealer purchased babul bark for Rs. 52.18 lakhs from another dealer of Kanpur during the year 1984-85. The dealer did not, however, produce the necessary declaration Forms III-C (2) or III-C(5) in support of the fact that the aforesaid purchases had already suffered tax. The dealer was, therefore, liable to pay purchase tax amounting to Rs. 4.38 lakhs (inclusive of additional tax) which was omitted to be levied. Interest at the rate of 2 per cent per month was also chargeable upto the date of deposit of tax.

On the omission being pointed out in audit (January 1990) the Department stated (July 1990) that the assessment had since been revised and additional demand for Rs. 4.38 lakhs raised. Report on recovery of tax alongwith interest due thereon, was awaited (November 1991).

The case was reported to Government in January 1990.

2.15 Non-levy of additional tax

Under the U.P. Sales Tax Act, 1948, additional tax at the rate of 10 per cent of tax is also leviable with effect from 1 November 1985. It has been judicially held* that whatever is payable by way of tax under State enactment will be payable by way of Central Sales Tax in case of inter-State sales.

In Sales Tax Circle, Meerut, a dealer made inter-State sales of bus bodies for Rs. 1.18 crores during the years 1986-87 to 1988-89 not covered by prescribed declarations in Form 'C' or 'D'. Tax on these sales

*Judgement of Andhra Pradesh High Court in the case of Satya Narain Spinning Mills V/s Commercial Tax Officer (STI 1989 P.290).

amounting to Rs. 11.80 lakhs was levied. Additional tax amounting to Rs. 1.18 lakhs was omitted to be levied.

The case was reported to the Department and Government in January 1991; their reply has not been received (November 1991).

2.16 Turnover escaping assessment

Under the U.P. Sales Tax Act, 1948, if a dealer has concealed particulars of his turnover he shall be liable to pay by way of penalty a sum which shall not exceed one and half times of tax which would thereby have been avoided. On turnover of sales of Chhuara (dry dates), tax is leviable at the rate of 10 per cent with effect from 1 October 1985 and additional tax at 10 per cent of the tax is also leviable with effect from 1 November 1985.

In Sales Tax Circle, Kanpur, a dealer purchased Chhuara (dry dates) for Rs. 5.70 lakhs from outside the State during the year 1987-88. Neither was the sale of chhuara disclosed in the return nor was it shown in the closing balance at the end of the year, thereby resulting in suppression of sales by the dealer. Suppression of turnover resulted in short levy of tax amounting to Rs. 62,696 at the rate of 11 per cent (inclusive of additional tax). Besides, the dealer was also liable to pay penalty upto Rs. 94,044 under section 15-A(1)(c) of the Act which was omitted to be imposed.

On the omission being pointed out in audit (July 1989), the Department stated (October 1990) that the assessment had since been revised and additional demand for Rs. 62,696 raised against the dealer. Report on imposition of penalty has not been received (November 1991).

The case was reported to Government in July 1989.

2.17 Computation mistake

Under the U.P. Sales Tax Act, 1948, brass artware and utensils were taxable at the rate of 8 per cent upto 30 September 1985 and at at the rate of 10 per cent from 1 October 1985.

In Sales Tax Circle, Moradabad, sales of brass artware by a dealer during 1985-86 (after 30 September 1985) were determined at Rs. 20 lakhs. Tax liability was erroneously worked out to Rs. 20,400 instead of Rs. 2,04,000. This resulted in short levy of tax amounting to Rs. 1.84 lakhs.

On the omission being pointed out in audit (January 1991) the Department stated in June 1991 that the assessment had since been revised and additional demand for Rs. 1.84 lakhs raised.

The case was reported to Government in January 1991.

CHAPTER-3
STATE EXCISE

3.1 Results of Audit

Test check of the accounts and relevant records of the State Excise Offices, conducted in audit during the year 1990-91 brought out non-levy or short levy of duties and fees amounting to Rs. 159.10 lakhs in 91 cases which broadly fall under the following categories:

	Number of cases	Amount (in lakhs of rupees)
1. Non-collection/short collection of licence fees	5	15.34
2. Non-levy of interest on delayed payment of duty	11	14.40
3. Short levy of export duty on Indian made foreign liquor	5	12.65
4. Other irregularities	70	116.71
Total	91	159.10

A few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

3.2 Under-assessment of duty due to non-adoption of actual strength of Indian made foreign liquor

Under the U.P. Excise Act, 1910 and the rules made thereunder, read with the U.P. Bottling of Foreign Liquor Rules, 1969, the sale strength prescribed for whisky, brandy, rum and gin is the apparent strength of spirit as indicated by the hydrometer after addition of the colouring and flavouring material. The strength so indicated, is to be mentioned on labels to be affixed to

the sealed and capsuled bottles. The minimum strength for whisky, brandy and rum is 25° U.P. (42.8 per cent volume by volume) for gin it is 35° U.P. (37.1 per cent volume by volume) and for low strength rum it is 30 per cent volume by volume. The duty is chargeable per litre of alcohol contained in the Indian made foreign liquor (IMFL) in sealed and capsuled bottles.

(i) In a distillery at Rampur, it was noticed (July 1990) in audit that during the period from April 1988 to March 1990, the actual apparent strength of the spirit in the liquor, after addition of colouring and flavouring material as indicated by the hydrometer, was 43 per cent volume by volume in case of whisky, brandy and rum, 42.9 per cent volume by volume in case of military rum, 37.2 per cent volume by volume in case of gin and 30.1 per cent volume by volume in case of low strength rum (as per the records of the distillery), which exceeded the prescribed strength (as indicated on the labels affixed to the bottles) upto 0.2 per cent volume by volume in case of whisky, brandy and rum and 0.1 per cent volume by volume in case of military and low strength rum. Levy of duty on the basis of the minimum prescribed strength (as indicated on the labels affixed to the bottles) instead of on the actual apparent strength indicated by the hydrometer, resulted in under-assessment of duty of Rs. 10.59 lakhs during the said period.

The matter was reported to the Department and Government in August 1990; their replies have not been received (April 1992).

(ii) In a distillery at Lucknow, 16,204.80 alcoholic litres of IMFL were manufactured and issued during various periods between April 1989 and March 1990. The labels affixed to the bottles indicated the alcoholic

content of whisky and rum as 42.8 per cent volume by volume, gin as 42.8 per cent volume by volume and 37.1 per cent volume by volume and that of low strength rum as 30 per cent volume by volume and the excise duty was levied on that basis. However, the actual apparent strength of spirit in the liquor after addition of colouring and flavouring material, as indicated by the hydrometer was 42.9 per cent volume by volume in case of whisky and rum, 42.9 per cent volume by volume and 37.2 per cent volume by volume in case of gin and 30.2 per cent volume by volume in case of low strength rum (as per records of the distillery), which exceeded the prescribed strengths (as indicated on labels) upto 0.2 per cent volume by volume. Levy of excise duty on the basis of minimum prescribed strengths (as indicated on labels) instead of on the actual apparent strengths indicated by the hydrometer resulted in under-assessment of duty of Rs. 6.48 lakhs.

The case was reported to the Department and Government in August 1990; their reply has not been received (April 1992).

3.3 Loss of revenue due to application of incorrect rate of export duty

Under the U.P. Excise Act, 1910 and the rules framed thereunder, for the purpose of levying excise duty, liquor is categorised either as country liquor or Indian made foreign liquor (IMFL). Liquor obtained through distillation, falling in the category of country liquor, may be plain spirit or outstill liquor and that falling in the category of IMFL, may be rectified spirit. Spirit having strength below 60 O.P. ie. containing alcohol less than 91.27 per cent volume by volume is termed as plain spirit and that having strength of 60 O.P. and above as rectified spirit. These spirits, having strength of above 42.8 per cent volume by volume are not fit for human consumption. Plain spirit of strength of below 60 O.P.

whether obtained from distillation of molasses or from malt, grape and apple, therefore, fall in the category of country liquor, for the purpose of levying excise duty. In its notification dated 25 October 1989, the State Government prescribed the rates of duty on export of country liquor and IMFL at Rs. 7 and Rs. 2.50 per alcoholic litre (A.L.) respectively.

It was noticed (September 1990) that a distillery at Ghaziabad exported out of Uttar Pradesh during the period from 19 March 1990 to 10 September 1990, 1,67,728.80 A.L. of malt plain spirit of the strength below 60 O.P. (57.6 per cent volume by volume to 85.2 per cent volume by volume) which fell in the category of country liquor. On the export of the above spirit, export duty at the rate of Rs. 7 per A.L. was realisable. The same was, however, realised at the rate of Rs. 2.50 per A.L. which resulted in loss of revenue to the extent of Rs. 7.55 lakhs.

The matter was reported to the Department and Government in November 1990; their replies have not been received (April 1992).

3.4 Non-imposition of penalty

Under the U.P. Excise Act, 1910 and the rules made thereunder, a licensed retail vendor is entitled to get spirit from a wholesale vendor (contractor) within reasonable time after payment of duty and contract price. For failure of the contractor to supply such spirit within the time adjudged by the Collector to be reasonable, spirit shall be procured from elsewhere by the Collector and the cost of spirit and any loss accruing to Government would be recovered from the contractor. In addition, the contractor shall be liable, at the discretion of the Excise commissioner, to pay a penalty not exceeding Rs. 17.50 per alcoholic litre of spirit demanded but not supplied.

(i) During audit of the Bonded Warehouse (Country spirit), Varanasi, it was noticed (August 1990) that during 1989-90, contract for supply of spirit to the above mentioned bonded warehouse was given to a distillery (wholesale vendor) situated at Majhola (district Pilibhit). The distillery, however, failed to supply within the time adjudged reasonable by the Collector 23,262 alcoholic litres of spirit demanded by licensed retail vendors during the said period. The quantity of spirit was arranged by the Collector, Varanasi from other distilleries of the State. For non-supply of the spirit, penalty upto a maximum of Rs. 4.07 lakhs which was leviable was omitted to be imposed on the defaulting wholesale vendor.

The matter was reported to the Department and Government in September 1990; their replies have not been received (April 1992).

(ii) In the course of audit of the Bonded Warehouse, (country spirit) Sitapur, it was noticed (December 1990) that for the year 1990-91, contract for supply of country spirit to the above mentioned bonded warehouse was given to a distillery (wholesale vendor) situated at Bazpur (Nainital). The distillery, however, failed to supply within reasonable time 7,200 alcoholic litres and 6,480 alcoholic liters of spiced country spirit in April 1990 and June 1990 respectively in sealed pouches demanded by the licensed retail vendors. The quantity of spirit in sealed pouches was arranged by the Collector, Sitapur from other distilleries of the State. For non-supply of the spirit, penalty upto Rs. 2.39 lakhs was leviable. However, no penalty whatsoever was imposed on the defaulting wholesale vendor.

The case was reported to the Department and Government in January 1991; their replies have not been received (April 1992).

3.5 Non-levy of excise duty on transit losses

Under the U.P. Excise Act, 1910 and the rules made thereunder, an allowance upto 0.5 per cent is admissible on liquor fit for human consumption, transported in wooden casks, metal vessels or tankers, under bond, within the State for actual transit wastage (due to leakage, evaporation or other unavoidable causes). No transit wastage is, however, admissible under the rules on the liquor fit for human consumption transported in sealed bottles or pouches under bond within the State. Full excise duty is realisable on the chargeable transit wastage of liquor.

In a distillery at Majhola (district Pilibhit), excise duty amounting to Rs 1.87 lakhs on account of excess transit wastage of liquor was levied and realised on being pointed out in audit. A few other cases are mentioned below:

(i) In a distillery at Raja Ka Sahaspur (Moradabad), it was noticed in audit (February 1991) that on excess transit losses of 15,063.78 alcoholic litres of country spirit transported in bottles (in 765 consignments) under bond to the various bonded warehouses in the districts of Banda, Barabanki, Budaun, Fatehpur, Moradabad, Mainpuri and Rae Bareli during the years 1988-89, 1989-90 and 1990-91, no duty was levied and realised by the Department. This resulted in loss of revenue amounting to Rs. 4.72 lakhs.

The matter was reported to the Department and Government in April 1991; their replies have not been received (April 1992).

(ii) It was noticed in audit (October 1990) that on transit loss of 3,020.96 alcoholic litres of spiced spirit in excess of the permissible limit, transported in bottles under bond from Bajpur distillery to the bonded warehouses during April 1990 to June 1990, excise duty amounting to Rs. 1.01 lakhs at the rate of Rs. 33.33 per alcoholic litre was actually leviable but was neither levied nor realised.

The matter was reported to Government in December 1990; reply has not been received (April 1992).

3.6 Non-levy of interest on belated payments of excise revenue

Under the provisions of the U.P. Excise Act, 1910, as amended from 29 March 1985, where any excise revenue is not paid within three months from the date it becomes payable, interest at the rate of 18 per cent per annum is recoverable from the date such excise revenue had become payable till the date of actual payment. In respect of excise revenue which became payable before the date of commencement of the said amendment, viz., 29 March 1985, interest at the said rate is to be charged from 29 March 1985, if the excise revenue is not paid within three months of the date of the amendment.

In two distilleries at Mansoorpur (Muzaffarnagar) and Sardarnagar (Gorakhpur), interest amounting to Rs. 58,987 was levied and recovered on being pointed out in audit. A few other important cases are mentioned in the succeeding paragraphs.

(i) In Varanasi, excise revenue to the tune of Rs. 9.17 lakhs, payable by various licensees prior to 29 March 1985 was paid after delays ranging from 16 to 60 months, reckoned from 29 March 1985. Thus, interest amounting to Rs. 7.16 lakhs was leviable on these belated payments, which was not levied and realised.

The matter was reported to the Department and Government in October 1990 and again in February 1991; replies have not been received (April 1992).

(ii) In Nainital, excise revenue (licence fee and assessed fee) amounting to Rs. 4.44 lakhs payable by two licensees prior to 29 March 1985, was paid after delay of about 38 to 48 months, reckoned from 29 March 1985. Interest amounting to Rs. 3.16 lakhs was leviable on these belated payments of excise revenue which was not, however, levied and realised.

The matter was reported to the Department and to Government in May 1990 and again in February 1991; their replies have not been received (April 1992).

(iii) During audit of the District Excise Office, Rae Bareli, it was noticed (May 1990) that excise revenue of Rs. 4.13 lakhs payable after the commencement of the Act, was paid after delay of 14 to 52 months from the date it became payable. In another case, excise revenue (licence fee for country liquor) of Rs. 8,661 payable prior to 29 March 1985 was paid after delay of 19 to 42 months reckoned from 29 March 1985. Interest amounting to Rs. 1.69 lakhs at the rate of 18 per cent per annum was leviable on these belated payments of total amount of

excise revenue of Rs. 4.22 lakhs which was not levied and realised.

The matter was reported to the Department and Government in June 1990 and March 1991; their replies have not been received (April 1992).

(iv) During audit of a distillery at Sardarnagar (District Gorakhpur), it was noticed (September 1990) that between September and December 1988, the Deputy Excise Commissioner, Gorakhpur ordered recovery of excise duty of Rs. 3.78 lakhs on the transit wastage of bottled spiced country liquor transported under bond to bonded warehouses. The excise duty was payable from the date of the order passed by the Deputy Excise Commissioner. The amount of Rs. 3.78 lakhs was, however, deposited by the distillery between November and December 1989 after delays ranging from about 12 months to 14 months. For the late deposit of excise revenue, interest at the rate of 18 per cent per annum amounting to Rs. 71,779 was also payable by the distillery, but no action was taken for its recovery.

The matter was reported to Government in November 1990 and again in February 1991; reply has not been received (April 1992).

(v) During audit of the District Excise Office, Lakhimpur Kheri, it was noticed (April 1990) that excise revenue amounting to Rs. 35,380 payable by the two licensees in the Tehsils of Mohammadi and Nighasan prior to 29 March 1985 was paid after delay of 57 to 60 months reckoned from 29 March 1985. Interest amounting to Rs. 31,653 was leviable on these belated payments of excise revenue which was not levied and realised.

The cases were reported to the Department and Government in May 1990 and February 1991; their replies have not been received (April 1992).

CHAPTER-4

TAXES ON VEHICLES, GOODS AND PASSENGERS

4.1 Results of Audit

Test check of records of the various offices of the Transport Department, conducted in audit during the year 1990-91 revealed short levy or non-levy of taxes/fees amounting to Rs. 162.95 lakhs in 207 cases, which broadly fall under the following categories:

	Number of cases	Amount (in lakhs of rupees)
1. Short levy/non-levy of passenger tax/additional passenger tax	115	101.81
2. Under assessment of road tax	34	13.70
3. Short levy of goods tax	15	6.35
4. Other cases	43	41.09
Total	207	162.95

The findings of a review on "Working of the Enforcement Wing of Transport Department" and a few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

4.2 Working of the Enforcement Wing of Transport Department

4.2.1 Introduction

Enforcement of the regulatory provisions of the Motor Vehicles Act, 1939, which was subsequently replaced by the Motor Vehicles Act, 1988, effective control over

collection of Taxes and guarding against evasion of taxes under the Uttar Pradesh Motor Vehicles Taxation Act, 1935, Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962, Uttar Pradesh Motor Gadi (Mal-kar) Adhiniyam, 1964 and rules framed thereunder through preventive checks, form an essential part of the functions of the Transport Department. The regulatory functions, inter alia, consist of checking of offences, e.g. (i) plying of unregistered vehicles on road (ii) plying of vehicles without valid permits or in violation of the conditions thereof and (iii) driving of vehicles without valid driving licences or fitness certificates. Control over evasion of taxes includes checking of vehicles plying without payment of taxes or their use for purposes requiring payment of higher taxes and plying of vehicles during the period when they are declared to be off road. Besides, the work of compounding of offences punishable under the Motor Vehicles Act, 1939/1988, was also entrusted to the officers of the Transport Department under Government notification issued in December 1982 so as to speed up the disposal of these cases.

Each Enforcement Squad consists of an Assistant Regional Transport Officer (Enforcement), one Supervisor and three enforcement constables. Checking is carried out by the enforcement squads at any point on roads in their region/sub-region. Inter-regional checking is also done by them.

4.2.2. Scope of Audit

A review was conducted by Audit (February to July 1991) to study the adequacy and effectiveness of the existing rules and procedures followed with regard to the regulatory and controlling functions as well as compounding

of offences by the prescribed authorities of the Enforcement Wing. Memorandum of checking, personal bond, Receipt Books, Crime Register and Prosecution statements etc. maintained by the Transport Commissioner, Uttar Pradesh in 6 out of 14 Regional Transport Offices (Agra, Dehradun, Gorakhpur, Kanpur, Lucknow and Varanasi), 10 out of 44 Sub-regional Transport Offices (Aligarh, Banda, Bijnor, Deoria, Etah Ghaziabad, Jaunpur, Mathura, Orai and Rae Bareilly) and 10 out of 36 check posts in the State were test checked for the period 1987-88 to 1990-91 (upto January 1991).

4.2.3 Organisational set-up

The over all responsibility for enforcement of rules and regulations on vehicular traffic as also the issuance of necessary directions in this regard rests with the Transport Commissioner. There are 67 enforcement squads in the State attached to the Headquarters office and the Regional and Sub-regional offices under the control and supervision of the Deputy Transport Commissioner (Enforcement) at the Headquarters and 6 Deputy Transport Commissioners at zonal levels at Bareilly, Kanpur, Lucknow, Meerut, Pauri and Varanasi.

4.2.4. Highlights

- (i) During 1989-90 and 1990-91, shortfall in checking by enforcement squads ranged between 7 to 206 days against the targeted 252 days in a year.
- (ii) Steps taken to challan stage carriages plying without permit were inadequate.
- (iii) Norms for checking of vehicles declared off road were not fixed.

- (iv) There was loss of revenue amounting to Rs. 65000 due to non-challan of vehicles emitting smoke in excess of the prescribed limit.
- (v) Delay in circulation of Government notification resulted in short realisation of compounding fees amounting to Rs. 6.72 lakhs.

4.2.5.(a) Progressive decrease in percentage of checks conducted by enforcement staff

No norm or minimum percentages for various types of vehicles to be checked by officers of the enforcement wing as a safeguard against leakage of revenue, has been fixed by the Department. No reasons for non-fixation of norms were furnished by the Department (October 1991). The quantum and percentage of checking of vehicles in the State, however, showed progressive decrease as would be evident from the following table:

Year	Vehicles on road	Vehicles checked	Percentage
1987-88	12,56,236	2,13,914	17.03
1988-89	14,70,508	2,30,635	15.68
1989-90	17,13,809	2,55,774	14.92

(b) Shortfall in checking of vehicles by enforcement squad

The checking of vehicles is required to be done for 21 days in a month by each enforcement squad. Under the orders of the Transport Commissioner (August 1987), the results of such checking are to be recorded daily in the "Memorandum of Checking" for submission to the Deputy Transport Commissioner, (D.T.C.) of the respective zones for weekly assessment of performance.

(i) In 1 Regional Office (Dehradun) and 4 Sub-regional offices (Banda, Bijnor, Deoria and Jaunpur), checking of vehicles fell far short of the required 21 days in a month or 252 days in a year. During 1987-88 to 1990-

91, shortfall in checking ranged between 7 to 217 days as detailed below:

Name of Unit	Number of days- required for checking of vehicles	Number of days during which checking was done				Shortfall of checking days			
		-(in a year)-							
		<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>	<u>1990-91</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>	<u>1990-91</u>
1. R.T.O., Dehradun	252	279	287	245	146	--	--	7	106
2. A.R.T.O., Banda	-do-	35	181	140	171	217	71	112	81
3. A.R.R.O., Bijnor	-do-	231	275	236	202	21	--	16	50
4. A.R.T.O., Deoria	-do-	135	231	240	179	117	21	12	73
5. A.R.T.O., Jaunpur	-do-	209	260	74	46	43	--	178	206

Shortfall in the checking was attributed (July and October 1991) by Regional/Sub-Regional officers to non-availability of staff car and non-posting of enforcement officers.

(ii) Test check of records of personal bonds relating to 4 Regional offices (Agra, Gorakhpur, Lucknow and Varanasi) and 6 Sub-regional offices (Aligarh, Deoria, Etah, Ghaziabad, Gorakhpur, and Orai) revealed that no Memorandum of Checking was prepared by the aforesaid R.T.Os/A.R.T.Os. On the omission being pointed out (between February 1991 and July 1991) in audit, the department stated (between February 1991 and July 1991) that the instructions would be followed in future. In the absence of the said memoranda the extent of checking conducted by the enforcement squads could not be verified in audit.

4.2.6(i) Plying of vehicles without permit

In accordance with the provisions of the Motor Vehicles Act, 1988, holding a permit is a prerequisite for the operation of a transport vehicle in a public place. The U.P. Motor Vehicles Taxation Rules, 1935, provide that the Taxation Officer shall not accept road tax in respect of any transport vehicle plying for hire unless it is accompanied by a permit.

Under Section 192 of the said Act, plying of vehicles without permit is a punishable offence. A cross linking of the Demand and Collection Registers of Road tax and Passenger tax with that of Permit Register revealed that in 4 Sub-regional offices (Etah, Pratapgarh, Rae-Bareilly and Sultanpur), 59 stage carriages were plying without permits during different periods between June 1988 and May 1991. Of these vehicles, 13 were challaned from October 1988 to March 1991. In these 13 cases road tax was being realised regularly, but Passenger tax was assessed by the Department for that month only in which the vehicles were found plying without permit. No norms have, however, been fixed by the Department in regard to the period for which Passenger tax shall be assessed in respect of stage carriages found plying without permits. In the absence of such norms the exact loss of revenue could not be worked out. The remaining 46 vehicles plying without permits, however, remained undetected by the enforcement squads.

As a result, Government is sustaining loss by way of permit fee regularly. The loss on account of Passenger tax cannot be assessed in absence of details of length and classification of routes plied upon or the fare levied and collected. Penalty for operation of vehicle without permit and for non-payment of Passenger tax in time was also leviable.

(ii) Non-imposition of Challan on vehicles plying without permit

Scrutiny of the relevant records at Regional Transport Office, Varanasi, Transport Check-post at Tamkuhi Raj (Deoria) and Deoria sub-region, revealed that 11 vehicles were found by the concerned Assistant Regional Transport officers (Enforcement) to be plying without valid permits during the period from April 1989 to September 1990. During checking they were not challaned for the offence of their plying without permit for which fees amounting to Rs. 33,000 could have been realised if the offences had been compounded by the Departmental authorities.

4.2.7. Non-fixation of norms and non-checking of vehicles declared off the road

Rule 33 of the Uttar Pradesh Motor Vehicles Taxation rules, 1935 provides that, if during any period a vehicle owner does not intend to use his vehicle for a period exceeding three months, he should surrender the Registration Certificate and the tax-token to the transport officer alongwith an application in the prescribed Form 'F' duly completed by him. There is provision in Form 'F' to insert the full address or garage where the vehicle is kept or will be kept during the period of its non-use. The Transport Commissioner also issued instructions in January 1983 and June 1988, that in such cases the operators should be asked to invariably indicate in Form 'F', the place where the vehicles would be kept by them and that the enforcement squad should visit such places. If any such vehicle is not found at the declared place, it would be assumed that the vehicle was plying on the road and steps would be taken for recovery of tax in respect thereof.

Verification of declaration in Form 'F' (which enables the owners of vehicles to get exemption from payment of taxes on vehicles, goods and passengers for the

period the vehicles are off the road) is one of the important functions of the enforcement wing. It was, however, observed that no norms for checking of the "off the road" vehicles had been prescribed by the Department.

In 3 regions and 10 sub-regions, 8,833 vehicles were declared by the owners off the road for periods exceeding three months during the period from 1987-88 to 1990-91 as shown in the table given below:

Name of the unit	No. of vehicles surrendered				No. of vehicles checked
	1987-88	1988-89	1989-90	1990-91	
(1)	(2)	(3)	(4)	(5)	(6)
1. R.T.O., Dehradun	356	419	437	461	--
2. R.T.O., Gorakhpur	261	191	199	151	--
3. R.T.O., Varanasi	888	888	900	883	14
4. A.R.T.O., Aligarh	61	48	47	64	--
5. A.R.T.O., Banda	198	202	106	76	--
6. A.R.T.O., Bijnor	--	202	147	276	209
7. A.R.T.O., Deoria	41	43	47	45	176
8. A.R.T.O., Etah	--	5	5	24	34
9. A.R.T.O., Ghaziabad	27	35	57	98	--
10. A.R.T.O., Jaunpur	--	80	108	115	303
11. A.R.T.O., Mathura	52	59	75	58	--
12. A.R.T.O., Orai	--	--	9	19	--
13. A.R.T.O., Rae Bareli	107	91	102	70	--
Total	1991	2263	2239	2340	736

The certificates of registration and the tax token were accordingly surrendered by the owners to the respective registering authorities.

Altogether 736 vehicles were checked by the enforcement wing at the declared places of their parking. Lists of 610 surrendered vehicles (A.R.T.O-Banda-582, Orai-28) were not sent to the enforcement wing and the remaining 7487 vehicles were never checked.

Necessary documents in support of the checks of the surrendered vehicles stated to have been conducted were, however, not produced to audit (June and July 1991).

**4.2.8 Loss of revenue due to non-challan of vehicles
 emitting excess smoke**

Under the provisions of the Central Motor Vehicles Rules, 1989, (effective from 1st July 1989), every motor vehicle shall be manufactured and maintained in such condition and shall be so driven that smoke, visible vapour, grit, sparks, ash, cinder or oily substance do not emit therefrom. Any officer, not below the rank of sub-Inspector of Police or Inspector of Motor Vehicle, who has reason to believe that a motor vehicle, by virtue of the smoke or other pollutants like carbon monoxide emitted from it, is likely to cause danger to the health or safety of any other user of the road or the public, may direct the driver or any other person incharge of the vehicle to submit the vehicle for undergoing a test to measure the standard of black smoke or of any of the other pollutants. Under the provisions of the Motor Vehicles Act, 1988, any person who drives or causes or allows to be driven in any public place, a motor vehicle which violates the standard prescribed in relation to air pollution, shall be punishable for the first offence with a fine of Rs. one

thousand and for subsequent offence with a fine of Rs. 2,000. The measurement of standard of smoke shall be done with a smokemeter. For this purpose, 33 sets of smokemeters were purchased by the Department between April 1990 and December 1990.

(i) It was noticed (June 1991) during the audit of the transport checkpost, Mohannagar under the control of Assistant Regional Transport Officer, Ghaziabad in Meerut region, that although 65 vehicles were found (by the Inspector of Motor Vehicles) to be emitting smoke in excess of the prescribed standard between April 1990 and June 1990, the vehicles were not challaned. This resulted in loss of revenue of Rs. 65,000 on account of non-levy of fines at prescribed rates.

On this being pointed out in audit (June 1991), the department stated that only notices regarding excess smoke emission were issued to the owners under orders of the higher authorities, whereas no such orders were found to be issued by the Transport Commissioner nor is there any provision in the Act for issuing such a notice.

(ii) In Dehradun region, 46 vehicles were challaned for the offence of emission of excessive smoke during the months of July 1990 and December 1990 to March 1991, but the fines imposed by the Magistrate was below the prescribed rate of Rs. 1,000 in case of first offence in each of the case. This resulted in loss of Rs. 33,085.

4.2.9. Loss of revenue due to delay in circulation of Government notification

Under the new Section 127-B of the Motor Vehicles Act, 1939 (subsequently substituted by Section 200 of the Motor Vehicles Act, 1988), a provision was made with effect

from 1 October 1982 that offences punishable under different sections of the Act *ibid* may be compounded by such officer or authorities of the Transport Department and for such amount as the State Government may, by notification in the Official Gazette, specify from time to time. As per notification dated 21 December 1982, all officers of the Transport Department of the rank of Passenger Tax Officer/Goods Tax Officer and above, were empowered by Government to compound offences detected by them after realising compounding fees at the rates prescribed in the table appended to the notification. The rates of compounding fees were revised upwards in January 1985 and slightly modified in October 1986. By a notification published in the Extraordinary Gazette of 8 November 1990, the State Government enhanced (with effect from 8 November 1990) the rates of fees for compounding certain offences punishable under the Motor Vehicles Act, 1988 as mentioned in the table appended to the aforesaid notification. The enhanced rates were circulated by the State Transport Commissioner on 28 November 1990 (after delay of 20 days) which was received by the concerned authorities between 5 December 1990 and 19 January 1991 (after delay of 27 days to 52 days).

While discussing Paragraph 4.3 of the Audit Report on Revenue Receipts of the Government of Uttar Pradesh for the year 1982-83 on loss of revenue due to late receipt of Government notification by 9 to 16 days, the Transport Department had assured the Public Accounts Committee (Paragraph 44 of the committees Report for 1986-87) that, in future, such information would be immediately communicated to the concerned authorities by telegram. Mention was also made in Paragraph 5.23 of the Audit Report on Revenue Receipts for the year 1986-87 about loss of revenue due to delay in receipt of another such Government notification by the concerned authorities of the Department.

Similar delay in receipt of Government notification dated 8 November 1990 by the concerned authorities resulted in loss of revenue of Rs. 6.72 lakhs on account of compounding fees, between 8 November 1990 and 19 January 1991 during which offences were compounded at the pre-revised lower rates in respect of 1008 vehicles challaned in 7 regions and 12 sub-regions test-checked as detailed in the Appendix. There is no possibility of recovery in such cases, as offences once compounded cannot be reopened and therefore loss of Rs. 6.72 lakhs sustained by way of incorrect application of pre-revised rates of compounding fees is a total loss to the department.

4.2.10 Non-submission of challans to courts on time

Under the provisions of the Motor Vehicles Act, 1988, the Uttar Pradesh Motor Vehicles Taxation Act, 1935, the U.P. Motor Gadi (Yatri-kar) Adhiniyam, 1962 and the U.P. Motor Gadi (Mal-kar) Adhiniyam, 1964, all economic offences are sent to the court for disposal, if not compounded by the officers of the Transport Department.

Under Section 468 of the Criminal Procedure Code, no court shall take cognizance of any offence unless the case is submitted to such courts within six months from the date of occurrence of such offence. All cases of challans at the check posts by the Passenger Tax Superintendents who are not empowered to compound the offences, are to be sent to courts through the respective Regional Transport Officer/Assistant Regional Transport officer. Cases of challans by the Regional Transport Officer/Assistant Regional Transport Officer are sent direct to the court.

(i) In Agra region, from transport check-posts at Naubatpur, (Varanasi region) and Tamkuhi Raj (Deoria sub

region), 15 cases of challans for the period from June 1988 to August 1990 for various offences punishable under the Motor Vehicles Act were not sent to the respective courts within the prescribed time limit of six months (the quantum of delay ranged between 1 month to 30 months). In reply, it was stated that the present position of the cases would be intimated after verification. Further developments are awaited (April 1992).

(ii) In 5 check posts (Mohan Nagar, Loni, Sahibabad, Bhopura and Maharajpur) under the jurisdiction of the Assistant Regional Transport officer, Ghaziabad in Meerut region, 164 cases of challans for the period from April 1990 to December 1990 were sent by the Passenger Tax Superintendents-in-charge of the check posts, to the Assistant Regional Transport officer, Ghaziabad for compounding of offences or sending them to the court as the case may be.

From the records of the Assistant Regional Transport Officer, Ghaziabad it was, however, seen that whereas 13 cases were not entered in the Register of Receipts of Challans, no action was taken either to compound the remaining 151 cases or to send them to court. No reasons were on record.

4.2.11 Compounding fees vis-a-vis fines imposed by courts

The cases which are sent to the courts for decision are those in which offenders do not agree to get their offences compounded by the officers of the Transport Department. The maximum rates of fines to be imposed by courts for different offences are much higher than the fixed rates of compounding fees for the same offence. It is at the discretion of the courts to impose fines upto maximum limits, apart from imprisonment. No minimum limit

of fines is provided in the Motor Vehicles Act, 1939/1988 for the courts except in a few cases. The position of compounding fees realised by the officers of the Transport Department for compounding of offences punishable under the Motor Vehicles Acts, and the fines imposed by the courts for offences punishable under the Acts *ibid* are given below:

Year	No. of cases decided by courts	Amount of fine imposed by courts in rupees	No. of challans compounded by departmental officers	Amount of compounding fees realised in rupees
1986-87	26,337	33,52,888	57,258	1,48,60,695
1987-88	30,943	33,47,800	73,438	1,91,08,590
1988-89	40,156	38,19,315	80,723	2,20,32,399
1989-90	34,375	37,82,353	78,379	2,03,20,858
1990-91 (upto 31st December 1990)	27,937	28,03,782	44,631	1,02,57,808
Total	1,59,748	1,71,06,138	3,34,429	8,65,80,350

An analysis of the above figures reveal that average of compounding fee imposed per case was Rs. 259 as against average of fines per case of Rs. 107 imposed by the courts which was far below the compounding fee realised for compounding of the same offence. Consequently compounding fees lost much of their effectiveness and force as a deterrent in the absence of provision in the Act of minimum limit for fines to be imposed by the Courts. In the absence of minimum penalty leviable by courts, a comparison shows that by going to courts rather than by compounding, an offender gains time as well as a reduced financial indictment for the same type/nature of offence.

The foregoing points were reported to Government in September 1991, their replies have not been received (April 1992).

4.3 Non-levy or short levy of passenger tax

Under the Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962, passenger tax at the prescribed rate of 16 per cent is levied on the fare payable to the operator by a passenger in respect of his journey in the State by a stage carriage. The tax is collected by the operator and paid to the State Government. The State Government may accept or agree to accept, a lump sum amount in lieu of the amount of tax that may be payable by the operator. According to rules, an agreement to accept a lump sum shall be for a period of three months or for the unexpired period of the currency of permit, whichever is less and the lump sum amount is determined on the basis of prescribed formula.

A. Loss of passenger tax due to non-adoption of the prescribed minimum fare

Under the Motor Vehicles Act, 1939/1988, the State Government may, from time to time, by notification in the official gazette, issue direction to the State Transport Authority regarding fixation of fares (including the maximum and minimum thereof) for stage carriages. By a notification of 9 July 1987, the State Government directed the State Transport Authority to fix the minimum rate of fare at 9.56, 10.43 and 12.50 paise per passenger per kilometre for stage carriages plying on 'special' and 'A' class routes, 'B' class routes and 'C' class routes respectively (fare to be rounded off to the nearest multiple of 50 paise including the amount of passenger tax, additional passenger tax and insurance surcharge). The State Transport Authority, however, implemented these minimum rates of fares after five months, effective from 16 December 1987. Under the provisions of the U.P. Motor Vehicles Taxation Act, 1935 and the rules framed thereunder, all routes in the State have been classified as

special routes or 'A' class, 'B' class or 'C' class routes. The rate of fare for special and 'A' class routes is the lowest and that for 'B' and 'C' class routes is comparatively higher. Any change in route, trips, seating or standing capacity or fare which has the effect of increasing receipts of the operator renders the agreement void with effect from the date of such change and thereafter a fresh lump sum agreement in respect of unexpired period of the permit is required to be executed.

(i) Despite the implementation of minimum rates of fare from December 1987, in Etah sub-region, in respect of Etah-Sakit-Mainpuri-Mora station routes classified as 'B' class, the lump sum agreements for payment of passenger tax on Etah to Mora station and Mainpuri to Etah were executed with the operators of 35 stage carriages plying on these routes on fares less than the minimum approved fares, thereby resulting in loss of revenue to the extent of Rs. 1.63 lakhs during the period from 16 December 1987 to March 1990.

The case was reported to the Department/Government in February 1991; their replies have not been received (April 1992).

(ii) In Etah sub-region in respect of Gorha-Kadarganj route classified as 'A' class, passenger tax under lump sum agreements was not assessed on the basis of the fare chargeable at the minimum rate (9.56 paise per kilometer per passenger) as prescribed by Government. The chargeable minimum fare for the actual distance of the route (47 kilometer) worked out to Rs. 4.60 after rounding off the fare to the nearest multiple of 50 paise including the amount of passenger tax, additional passenger tax and insurance surcharge, whereas the Department assessed the tax on the basis of fare of Rs. 4.20 only. This resulted in

short assessment of tax amounting to Rs. 87,675 during the period from 16 December 1987 to 31 October 1990.

The matter was reported to the Department and Government in February 1991; their replies have not been received (April 1992).

(iii) In Varanasi region, Babatpur-Kuru--Kachhawa Bazaar and Kariyawan-Chilha-Mirzapur routes were classified as 'B' class routes. The Regional Transport Officer, however, started assessment and realisation of passenger tax with effect from 16 December 1987 based at the minimum rate of fare applicable for 'A' class route which is lower than the rate applicable for 'B' class routes. However, the road tax continued to be assessed at the rate applicable to 'B' class routes which is lower than the rate of tax applicable to 'A' class route. This resulted in passenger tax being realised short by Rs. 82,988 in respect of 24 stage carriages during the period 16 December 1987 to June 1989.

The matter was reported to the Department and Government in July 1989 and January 1991; their replies have not been received (April 1992).

(iv) In Bareilly region 10, stage carriages were plying on Bilsi-Kashganj route (62 Kilometres long and classified as 'A' class). The minimum fare of the route worked out to Rs. 5.90 but as against this, the Department realised passenger tax under lump sum agreements on the basis of fare of Rs. 5.55 only. This resulted in loss of revenue of Rs. 53,605 during the period from 16 December 1987 to August 1990.

On this being pointed out in audit (August 1990), the Department accepted the audit point and stated that the deficit amount would be recovered.

The matter was reported to Government in January 1991; reply has not been received (April 1992).

(v) During the audit of the Regional Transport Office, Bareilly, it was noticed (August 1990) that Faridpur-Bisalpur via Dhakari route was classified as 'B' class route by the State Transport Authority. The Department assessed and realised tax under a lump sum agreement from 16 December 1987 on the basis of minimum fare of Rs. 3.30 per passenger prescribed for an 'A' class route instead of Rs. 3.75 applicable for a 'B' class route. This resulted in loss of passenger tax amounting to Rs. 51,390 during the period from 16 December 1987 to June 1990 in respect of 11 stage carriages plying on the route.

The matter was reported to the Department and to Government (January 1991); their replies have not been received (April 1992).

(vi) During the audit of the Regional Transport Office, Varanasi, it was noticed (May 1990) that minimum fare for Badshahpur-Mirzapur route (Class 'A' route) with distance of 76 Km. was Rs. 7.20 per passenger. The Department, however, entered into a lump sum agreement on fare of Rs. 5.90 instead of Rs. 7.20 per passenger. The incorrect adoption of fare resulted in loss of Rs. 1.43 lakh as passenger tax during the period 16 December 1987 to 15 May 1990.

The matter was reported to the Department and to Government in May 1990 and January 1991; their replies have not been received (April 1992).

(vii) In respect of three routes in Lucknow region (Lucknow Mal-Basahrighat-Bharawan, Shahabad- Behta Gokul and Lucknow-Rehta-Gahdon), passenger tax was assessed

on incorrect minimum fare, without taking into account the provision of rounding off of gross fare inclusive of taxes. This resulted in tax being short assessed by Rs. 57,488 for the period from 16 December 1987 to 14 November 1990.

On this being pointed out in audit (November 1990), the Regional Transport Officer, Lucknow stated (October 1991) that recovery of passenger tax at the revised rates had been started since 15 November 1990 after correcting the mistake and a sum of Rs. 5,865 being difference of enhanced liability of tax for the periods prior to that date had been recovered. Report on recovery of balance amount of Rs. 51,623 has not been received (April 1992).

The matter was reported to the Government in January 1990; reply has not been received (April 1992).

B. Short charge of passenger tax due to incorrect calculation of net fare

Under the Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962 and the rules made thereunder, computation of passenger tax payable by a stage carriage under a lump sum agreement depends, inter alia, on the total fare normally payable for the entire route on which the stage carriage plies. The fare taken for computation of passenger tax is the amount after deducting the element of taxes from the actual amount charged from the passengers. Any change in route, trips, seating or standing capacity or fare which has the effect of increasing receipts of the operator renders the agreement void with effect from the date of such change and thereafter a fresh lump sum agreement in respect of the unexpired period of the permit is required to be executed.

In Meerut region, on Meerut-Rohta-Baraut and Mawana-Kiethore routes, the operators furnished to the tax officers, the table of actual fare inclusive of taxes as Rs. 7.00 and Rs. 4.00 respectively. After exclusion of passenger tax, additional tax and insurance, the net fare worked out to Rs. 5.90 and 3.30 respectively. The Department, however, incorrectly calculated the net fare at Rs. 5.73 and Rs. 3.21 only for computation of passenger tax. This resulted in short charge of passenger tax amounting to Rs. 85,962 between the period August 1987 and April 1989.

The matter was reported to the Department in May 1989 and to Government in May 1989 followed by reminder issued in August 1991; their replies have not been received (April 1992).

C. Short levy of passenger tax due to its calculation on the basis of the fare for part route only

In Jhansi region, the Regional Transport Authority vide its resolution of June 1987 extended the route Orai-Konch upto Kyolani having distance of 13 kilometres. Out of 15 permit holders plying their vehicles on the route, 13 permit holders got endorsement in respect of the extended portion in their permits on 18 July 1987. The assessment of tax in respect of 3 stage carriages thereby was done, but the Department did not assess the passenger tax on the extended portion of route in respect of the remaining 10 stage carriages thereby resulting in loss of revenue amounting to Rs. 32,700 during the period from 18 July 1987 to 18 January 1988.

On this being pointed out in audit (February 1988), the Assistant Regional Transport Officer (Administration), Orai (Jalaun) stated (October 1991) that

the time-table of the route submitted by the remaining 10 operators was approved by the Regional Transport Authority, Jhansi in June 1988 with retrospective effect from 19 January 1988 and, therefore, assessment of tax in respect of 10 vehicles had since been revised with effect from 19 January 1988. Reasons for non-assessment of passenger tax from earlier period with effect from 18 July 1987 were not furnished.

The matter was reported to the Department and to Government (April 1988); their replies have not been received (April 1992).

D. Passenger tax escaping assessment

Under the Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962 and the rules framed thereunder, if for any reason, the whole or any portion of the tax leviable under the Adhiniyam ibid, in respect of any month, has escaped assessment, the Tax Officer may, at any time within three years from the expiry of that month, assess the tax which has escaped assessment. When the tax payable has not been paid in time, the Tax Officers may levy, in addition to the tax so payable, a penalty not exceeding 25 per cent of tax.

(i) During the course of audit it was noticed (December 1990) that in Etah sub-region, operators of 28 stage carriages entered into lump-sum agreement for payment of passenger tax plying on the Etah-Bakrabad-Sakeet Malaban-Aaspur-Kartala-Audha-Mainpuri-Pilo-Bhanuo Ghat-Aliganj-Mola station-Baber route approved as 'B' class route. Passenger tax amounting to Rs. 1.08 lakhs payable by these carriages plying on three portions of the said route (1. Etah-Sakeet-Bakrabad 2. Sakeet to Kartala 3. Sakeet to Malaban) covering 45 kilometres was, however, omitted to be assessed and realised at the calculated minimum rate of fare payable for the above portions of the

route during the period 16 December 1987 to December 1990. Besides, penalty upto Rs. 27,000 was also leviable for non-payment of tax in time, which was not levied.

The matter was reported to the Department and to Government in February 1991; reply has not been received (April 1992).

(ii) In Rae Bareli Sub-region, temporary permits for the period not exceeding four months were issued by the Regional Transport Authority, Lucknow between January 1990 and June 1990 for plying of 5 stage carriages on the Rae Bareli-Salon route, 4 stage carriages on the Rae Bareli-Rasoolpur route and one each on Salon-Sarouli and Rae Bareli-Parsedpur-Nanauti route. Although none of the permit holders surrendered the permits, passenger tax payable by these carriages plying on the said routes was omitted to be assessed to tax for different periods between 17 January 1990 and 31 July 1990, thereby resulting in loss of revenue amounting to Rs. 39,212.

On this being pointed out in audit (July 1990), the Assistant Regional Transport Officer, Rae Bareli stated that intimations regarding issue of temporary permits by the Regional Transport Authority, Lucknow were not received in his office. Thus, due to lack of co-ordination between the Regional and sub-regional offices, the aforesaid amount of passenger tax could not be assessed and realised.

The matter was reported to Government in January 1991; their reply has not been received (April 1992).

E. Other Cases**(i) Non-assessment of passenger tax**

Section 72(2) of the Motor Vehicles Act, 1988, provides that while granting a permit to a stage carriage, the Regional Transport Authority may attach a condition regarding minimum and maximum number of daily trips to be performed by the vehicle. For any deviation from the conditions of the permit, approval of the Regional Transport Authority is necessary.

In Dehradun region, 7 permits for stage carriages were granted in December 1989 on Prem Nagar-Chakrata Tyuni route with the condition that each vehicle would perform two single trips per day. In respect of 2 vehicles, way-bills for payment of passenger tax were submitted on the basis of one single trip per day instead of two single trips and the remaining 5 vehicles were not assessed to tax at all in the absence of way-bills. This resulted in under assessment/non-assessment of tax amounting to Rs. 70,003 during the period from January 1990 to March 1990.

On the omission being pointed out in audit (April 1990), the Tax Officer stated that it was not possible for a vehicle to perform two single trips (400 Km.) per day in a hilly region. The reply is not tenable as the condition for two single trips per day was imposed by the R.T.A. under the Motor Vehicles Act. However, at the instance of audit, the Department issued demand notices (May 1990) to the operators of the five vehicles.

The matter was reported to Government in June 1990; reply has not been received (April 1992).

(ii) Non-levy of passenger tax on a contract carriage

Under the U.P. Motor Vehicles Rules, 1940, a private stage carriage means any motor vehicle constructed or adapted to carry more than nine persons (excluding the driver) and used by or on behalf of the owner exclusively in connection with his trade or business or private purposes but not for hire or reward. The Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962 does not contemplate levy of passenger tax on a private stage carriage. If, however, such vehicles ply for hire or reward, passenger tax becomes leviable under section 3 of the said Adhiniyam at a rate equivalent to 16 per cent of the fare paid or payable by passengers.

During the audit of Hardoi sub-region, it was noticed (December 1990) that a vehicle to carry more than 9 persons (excluding driver) was registered as mini bus on 27 July 1988 in the name of an individual. It was noticed that this vehicle was plying under contract as per affidavit filed by the owner of the vehicle on 27 July 1988 and road tax was being assessed and realised at the rates prescribed for transport vehicles plying for hire and reward under Article IV of the U.P. Motor Vehicles Taxation Act, 1935. As the vehicle was owned by an individual and plied on hire, it was liable for payment of passenger tax. But no passenger tax was paid or levied in respect of this vehicle. The passenger tax leviable amounted to Rs. 35,251 for the period from 27 July 1988 to 27 December 1989.

The matter was reported to the Department and to Government in March 1991; their replies have not been received (April 1992).

(iii) Loss due to non-imposition of penalty

Under the Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962 and the rules framed thereunder, passenger tax at the prescribed rate is leviable on every passenger carried by a stage carriage. For this purpose, the owners of stage carriages are required to maintain a way bill for each trip undertaken by the vehicles and to submit a weekly return to the tax officer within three days of the expiry of the week and a monthly return within fifteen days of the expiry of the month to which the return relates. If an operator fails to submit a return within the prescribed time limit, the tax officer may levy penalty not exceeding ten rupees in respect of each stage carriage for every day till the default continues, provided the total penalty in respect of each stage carriage shall not exceed one hundred rupees.

In Rae Bareli sub-region, 34 vehicles (13 vehicles on the Rae Bareli-Unchahar-Salwan route, 10 vehicles on the Rae Bareli-Jagatpur-Rasoolpur route, 6 vehicles on the Rae Bareli-Nanouti route and 5 vehicles on the Rae Bareli-Mohanganj-Amawan route) were plying with valid permits. The operators did not enter into lump sum agreement and also did not submit any return to assess passenger tax on way bill basis. Passenger tax was realised by the Department for the period from November 1988 to June 1990 under Section 8 (1) of the U.P. Motor Gadi (Yatri-kar) Adhiniyam 1962, However, the Department did not initiate action for imposition of penalty for non-submission of returns. This resulted in loss of Rs. 68,000 by way of penalty for non-submission of returns during the period from November 1988 to June 1990.

The case was reported to the Department and Government in January 1991; their replies have not been received (April 1992).

(iv) Non-recovery of arrears of passenger tax

Under Section 11 of the Uttar Pradesh Motor Gadi (Yatri-kar) Adhiniyam, 1962, arrears of passenger tax or penalty imposed under the Act ibid shall be recoverable as arrears of land revenue and the tax shall be the first charge on the stage carriage in respect of which it is due as also on its accessories.

In Varanasi region, despite arrears of passenger tax of Rs.70,627 for the period from January 1987 to June 1989, action to recover the arrears of passenger tax by way of recovery certificate was not taken. Instead, the stage carriage was allowed to be converted into a public carrier in September 1989.

The matter was reported to the Department and Government in September 1989; their replies have not been received (April 1992).

4.4 Non-assessment of road tax and goods tax on vehicles

Under rule 33 of the U.P. Motor Vehicles Taxation Rules, 1935 when the owner of a motor vehicle does not intend to use his vehicle for a period exceeding 3 months, the registration certificate and tax token issued in respect of vehicles are required to be surrendered to the taxation officer, otherwise it is presumed that the vehicle remained under use. Besides, the exemption granted from levy of goods tax on goods belonging to State Electricity Board carried in any vehicle for public purpose was also withdrawn in June 1977.

(a) In Shahjahanpur sub-region, in respect of four public carriers and one stage carriage as per records

of the Department, road tax and goods tax were neither paid by the owners nor assessed and realised by the Department for various periods between April 1989 and November 1990. The registration certificates and tax tokens of these vehicles were not surrendered by the owners during the said period. Road tax and goods tax leviable amounted to Rs. 34,804 and Rs. 31,104 respectively.

On this being pointed out in audit (December 1990), the Assistant Regional Transport Officer stated that action for recovery would be taken by issuing demand notices in all cases. Report on recovery of tax has not been received (April 1992).

The matter was reported to Government (March 1991); reply has not been received (April 1992).

(b) Non-assessment of road tax and goods tax on vehicles owned by State Electricity Board

In Mirzapur sub-region, the registration certificates and tax token issued in respect of 4 vehicles of the State Electricity Board had not been surrendered. The assessing authority failed to assess and realise road tax amounting to Rs. 28,463 for 3 years from 1987 to 1989 and goods tax amounting to Rs. 94,853 for the period from June 1977 to December 1989, resulting in non-realisation of revenue amounting to Rs. 1.23 lakhs.

The matter was reported to the Department and Government in April 1990 and again in January 1991; their replies have not been received (April 1992).

4.5 Non-assessment of taxes on vehicles owned by Government companies/corporations

Under the Uttar Pradesh Motor Vehicles Taxation Rules, 1935 and the Uttar Pradesh Motor Gadi (Mal-kar) Adhiniyam, 1964, motor vehicles owned and exclusively used by or on behalf of a Government Department, are exempt from payment of road tax and goods tax. The exemption is, however, not admissible to vehicles owned by Government Companies/Corporations.

In Rae Bareli sub-region, a private carrier owned by the Uttar Pradesh State Bridge Corporation having pay load of 100 quintals was registered on 1st July 1986. Road tax of the vehicle was deposited upto 31st December 1986. Road tax amounting to Rs. 14,757 for the period January 1987 to June 1990 and goods tax amounting to Rs. 16,560 for the period from July 1986 to June 1990 were, however, not levied though the registration papers and token etc. had not been surrendered, thereby resulting in non-levy of tax of Rs. 31,317.

The matter was reported to the Department and Government in January 1991; their replies have not been received (April 1992).

4.6 Loss due to non-issue of permits to tractor-trailers

Under the Motor Vehicles Act, 1988, no owner of a motor vehicle should use or permit the use of the vehicle in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with the Act and covered by a permit granted by the Regional or State Transport Authority, on payment of prescribed fee. The Act provides for exemption from obtaining of permit to any goods vehicle

with the gross vehicle weight not exceeding 3,000 kilograms.

In Varanasi region, 70 tractor-trailers (goods vehicle) having gross vehicle weight in excess of 3000 kilograms were registered during 1989-90. In respect of 69 trailers, the owners were not directed to obtain temporary permits and the tractor-trailers were allowed to ply without obtaining permits on payment of the prescribed fee, though under the Act, such trailers were not exempted from obtaining the permits. The omission resulted in non-realisation of permit fee amounting to Rs. 65,550 (computed on the basis of fee realisable for temporary permits for a limited period of 4 months).

The matter was reported to the Department and Government in September 1990; their replies have not been received (April 1992).

4.7 Loss due to non-issue of permits to transport vehicles

In accordance with the provisions of Section 66 (1) of the Motor Vehicles Act, 1988, permit is a prerequisite for operation of a transport vehicle in a public place. Under Section 192 of the Act *ibid* whoever causes or allows a motor vehicle to be used without permit shall be punishable for first offence with fine which may extend to two thousand rupees and for any second or subsequent offence with imprisonment which may extend to six months or with fine which may extend to three thousand rupees, or with both.

In Rae Bareli sub-region, twelve vehicles of private operators to whom no permits were issued (except for a few short intervening periods), were on contract with

Indian Telephone Industries Ltd. at Rae Bareli, during the period from January 1988 to June 1990 for carrying staff members from their places of residence to the factory site and back. Although the operators were paid contract money by the said undertaking and the Department realised passenger tax for the aforesaid period, permit fees amounting to Rs. 17,450 only, were realised by the Department as against Rs. 79,200 payable by the operators, thereby resulting in loss of fees amounting to Rs. 61,750.

The Department did not initiate any action to check and challan the vehicles plying without permit despite information available with them. In the absence of any check and challan the amount of penalty could not be quantified.

The matter was reported to the Department and Government in January 1991; their replies have not been received (April 1992).

CHAPTER-5

Stamp Duty and Registration Fees

5.1 Results of Audit

Test check of the accounts and relevant records of District Registrars and Sub-Registrars, conducted in audit during the year 1990-91, revealed short levy of Stamp duty and Registration fees amounting to Rs. 175.75 lakhs in 321 cases, which broadly fall under the following categories:

	Number of cases	Amount (In lakhs of rupees)
1. Short levy of Stamp duty and Registration fees due to undervaluation of properties	233	77.48
2. Short levy due to misclassification of documents	66	29.14
3. Other irregularities	22	69.13
TOTAL	321	175.75

A few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

5.2 Short levy of Stamp duty due to undervaluation of properties

In case of instruments relating to immovable property chargeable with duty, the Indian Stamp Act, 1899 provides that the instrument shall truly set forth the full facts affecting duty. Under the U.P. Stamp Rules, 1942, as amended from time to time, the minimum market value of immovable property forming the subject of an instrument of

conveyance, gift, settlement, award or trust shall be deemed to be not less than 25 times of the actual or assessed annual rental value, whichever is higher, in the case of a building. In case the property is non-agricultural land and the land is situated within the limits of any local body, the minimum market value should be worked out on the basis of the average price per square metres (Sq. Mtrs) prevailing in the locality on the date of the execution of the instrument. For the guidance of the registering authority, the Collector of each district shall forward biennially, a statement of such average prices of different categories of lands in different localities.

The Rules further provide that if the registering officer has reason to believe that the correct valuation of the property cannot be arrived at without having recourse to local enquiry or extraneous evidence, he may after registering the instrument, refer the same to the Collector for determination of the actual market value.

In a number of cases checked in audit, plots of land meant for residential or commercial purposes were undervalued by treating them as agricultural land or adopting the valuation set forth in the instrument which was much below the prevailing market rate for residential/commercial plots notified by the Collector of the district; but no action was taken by the registering authorities for determining the proper valuation of the property as required under the Rules. Eleven such cases, involving short charge of Stamp Duty amounting to Rs.14.24 lakhs are mentioned below:

(a)(i) During the audit of the Office of Sub Registrar, Deoria, it was noticed (September 1989) that eleven deeds of conveyance relating to sale of land for construction of residential houses were registered during

February 1988 to May 1988. These instruments were valued at rates lower than the market rates prevailing in the locality as notified by the Collector (January 1988). On the basis of the rates fixed by the Collector, the value of the lands amounted to Rs. 36 lakhs. However, the registering authority adopted the value of lands as Rs. 2.98 lakhs. The under valuation of properties by Rs. 33.02 lakhs resulted in short levy of Stamp Duty amounting to Rs. 3.76 lakhs.

The matter was reported to the Department/Government in October 1989 and again in February 1991: their replies have not been received (April 1992).

(ii) During the audit of the Office of Sub-Registrar, Dudhdhi (district Sonebhadra), it was noticed (August 1989) in the case of a deed of conveyance (registered in August 1988) relating to industrial land measuring 13,302.43 Sq. Mtrs that the valuation of land adopted by the registering authority was Rs. 29,250 as against Rs. 21.48 lakhs computed on the basis of rates fixed by the Collector. The adoption of lower valuation resulted in short levy of Stamp Duty of Rs. 2.65 lakhs.

The matter was reported to the Department and Government in August 1989 and again in February 1991; their replies have not been received (April 1992).

(iii) During the audit of the Office of Sub-Registrar, Mussoorie (District Dehra Dun), it was noticed (April 1990) that in the case of three deeds of conveyance (registered during March 1990) relating to land measuring 1,750.37 Sq. Mtrs, the valuation of land adopted by the registering authority was Rs. 9.68 lakhs as against Rs. 26.25 lakhs computed on the basis of the rates fixed by the Collector. The adoption of lower valuation resulted in short levy of Stamp Duty by Rs. 2.40 lakhs.

The matter was reported to the Department and Government in August 1990 and again in February 1991; their replies have not been received (April 1992).

(iv) During the course of audit of the Office of Sub-Registrar, Bindaki (District Fatehpur), it was noticed (September 1989) that three deeds of conveyance relating to plots measuring 15,624 Sq. Mtrs. situated in the industrial area of village Godhrauli and declared in March 1989 as non-agricultural by the Sub-Divisional Magistrate under the provisions of Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 were registered in June 1989. Stamp Duty of Rs. 60,315 on the valuation of Rs. 4.83 lakhs as set forth in the instrument, was levied by the registering authority treating the plots as agricultural land. As no rates for the land situated in Godhrauli village were fixed by the Collector, on the basis of documents executed in August 1988 the valuation of non-agricultural plots at the prevalent market rate of Rs. 150 per Sq. Mtrs prevailing in the same locality worked out to Rs. 23.44 lakhs. Incorrect application of rates for determining value of land resulted in short levy of Stamp Duty amounting to Rs. 2.33 lakhs.

On this being pointed out in audit (September 1989) the Department stated (March 1991) that Stamp Duty of Rs. 20,120 (including penalty) was further levied and collected (September 1990). Reply of the Department is not acceptable in view of the fact that plots were not valued at the prevalent market rate of land.

The matter was reported to Government in May 1990; reply has not been received (April 1992).

(v) During the audit of the Office of Sub-Registrar, Bilhaura (District Kanpur), it was noticed

(April 1990) that in case of a deed of conveyance registered in June 1989 relating to land measuring 27,400 Sq. Mtrs the valuation of land adopted by the registering authority was Rs. 1.41 lakhs as against Rs. 7.60 lakhs computed on the basis of the rates fixed by the Collector in December 1988. The adoption of lower valuation resulted in short levy of Stamp duty of Rs. 77,313.

The matter was reported to the Department/Government in August 1990 and January 1991; their replies have not been received (April 1992).

(vi) At Orai (District Jalaun), the Collector had prescribed (August 1986) the rate of Rs. 100 to Rs. 150 per Sq. Mtrs for non-agricultural land situated within Nagarpalika limits. As per directions of the Collector, land upto 1,011.75 Sq. Mtrs within Nagarpalika limits, was to be treated as non-agricultural land. Five plots of land measuring 4,583.23 Sq. Mtrs of village (Mauza) Loharia, situated within Nagarpalika limits, were sold to five different purchasers through one joint sale deed (March 1988) for a total consideration of Rs. 21,000 only on which Stamp Duty was realised by the registering authority treating it as agricultural land. As the share of land of each purchaser was less than 1,011.75 Sq. Mtrs (25 decimals), it was for non-agricultural purposes as per aforesaid direction of Collector. On the basis of the minimum rates fixed by the Collector for non-agricultural land in Nagarpalika limits, the total consideration of these plots worked out to Rs. 4.53 lakhs. The adoption of lower valuation resulted in short levy of stamp duty of Rs. 49,680 and Registration fee of Rs. 30.

The matter was reported to the Department in December 1988 and to Government in May 1990; their replies have not been received (April 1992).

(vii) During the audit of the Office of Sub-Registrar, Haidergarh (District Barabanki), it was noticed (October 1989) that in the case of a deed of conveyance (executed in the month of January 1989) relating to land measuring 9,442 Sq. Mtrs, the valuation of land adopted by the registering authority was Rs. 12,500 as against Rs. 3.78 lakhs computed on the basis of the rates fixed by the Collector. The adoption of lower valuation resulted in short levy of Stamp duty of Rs. 45,685 and Registration fees of Rs. 115.

The matter was reported to the Department and Government in January 1990 and again in February 1991; their reply has not been received (April 1992).

(viii) During the audit of District Registrar, Gonda, it was noticed (August 1989) that in the case of a gift deed executed in April 1989 for the land admeasuring 1,173 Sq. Mtrs shown as residential land in revenue records, Stamp duty was erroneously levied taking the value of land as for agricultural instead of that for residential land. The value adopted was Rs. 8,700 as against Rs. 3.03 lakhs worked out on the basis of rates fixed by the Collector in September 1988 for residential purposes. This resulted in short levy of Stamp duty amounting to Rs. 36,750.

The matter was reported to the Department and Government in September 1989 and February 1991; their replies have not been received (April 1992).

(ix) During the audit of District Registrar, Allahabad, it was noticed (February 1989) that in the case of a deed of conveyance (registered in June 1988) relating to agricultural land measuring 18.47 hectares, the valuation of land adopted by the registering authority was

Rs. 2.57 lakhs as against Rs. 6.32 lakhs computed on the basis of rates fixed by the Collector in January 1987. The adoption of lower valuation of land resulted in short levy of Stamp duty amounting to Rs. 35,683.

The case was reported to the Department and Government in March 1989 and June 1990; their replies have not been received (April 1992).

(x) During the audit of the Office of the Sub-Registrar Khalilabad (District Basti), it was noticed (January 1990) that in two deeds of conveyance of land executed in March 1989, stamp duty was levied on the value of Rs. 1.98 lakhs set forth in the documents as against Rs. 4.76 lakhs computed on the basis of the rates fixed by the Collector. The adoption of lower valuation resulted in short levy of stamp duty of Rs. 34,750.

The cases were reported to the Department and Government in February 1990 and again in February 1991; their replies have not been received (April 1992).

(xi) At Bansdih (district Ballia), in respect of eighteen deeds of conveyance (registered during December 1986 to December 1987) relating to lands admeasuring 2,860 Sq. Mtrs, the valuation of land adopted by the registering authorities was Rs. 1.78 lakhs as against Rs. 5 lakhs computed on the basis of rates fixed by the Collector. The adoption of lower valuation resulted in short levy of Stamp duty of Rs. 30,598 and Registration fee of Rs. 1,040.

The matter was reported to the Department in June 1988 and to Government in June 1990; their replies have not been received (April 1992).

(b) Under-valuation of residential- cum- commercial building

During audit of Sub-Registrar, Mussoorie (District Dehra Dun), it was noticed (May 1990) that a sale deed (registered in May 1989) relating to sale of a house consisting of 22 rooms on 685 Sq. Mtrs of land with 1,015 Sq. Mtrs of open land was conveyed for a total consideration of Rs. 9 lakhs. In accordance with the norms laid down, the value of building worked out to Rs. 30 lakhs on the basis of assumed rental value of Rs. 10,000 per month determined (September 1990) by the Deputy Inspector General (Registration) as the building was not assessed to house tax by the Nagarpalika. The value of the property was thus determined short by Rs. 21 lakhs, resulting in short levy of Stamp duty of Rs. 3.05 lakhs.

The matter was reported to the Department and Government in August 1990 and February 1991; their replies have not been received (April 1992).

CHAPTER-6

LAND REVENUE

6.1 Results of Audit

Test check of the accounts and relevant records of the various offices of the Revenue Department, conducted in audit during 1990-91 revealed non-levy/short levy of land revenue, short realisation of collection charges and non-recovery of fee for supply of jot bahis, etc., amounting to Rs. 148.29 lakhs in 167 cases, which broadly fall under the following categories:

	Number of Cases	Amount (in lakhs of rupees)
1. Non-levy or short levy of land revenue	21	27.17
2. Short recovery of collection charges	56	15.88
3. Non-recovery of fee for supply of <u>Jot bahis</u>	18	7.43
4. Other irregularities	72	97.81
Total	167	148.29

A few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

6.2 Non-recovery of collection charges

In terms of the Revenue Recovery (U.P. Amendment) Act, 1965, revenue authorities are required to recover dues on behalf of other departments of the Government, semi-

Government organisations and local bodies as arrears of land revenue on receipt of the recovery certificates from the concerned authorities. Except in the case of Government departments, collection charges at the rate of 10 per cent of the dues recovered are to be realised by the revenue authorities for the services so rendered. The Board of Revenue in their circular dated 30 June 1975 directed that the recovery certificate should clearly indicate whether collection charges were to be borne by the defaulter or the local body etc., issuing the certificate. Where no such indication is given in the recovery certificate, only the net amounts, after deducting the collection charges, are to be passed on by the revenue authorities.

(i) In three Tehsils (Marihan in district Mirzapur, Gyanpur in district Varanasi and Machhalishahar in district Jaunpur) and one Land Revenue (Collection) Office at Pauri Garhwal, collection charges in respect of the recoveries effected by the revenue authorities as arrears of land revenue on behalf of semi-Government organisations, local bodies etc., during 1988-89 and 1989-90 were not deducted by the revenue authorities from the collections made before passing on the amounts recovered on behalf of those organisations/local bodies. The omission resulted in loss of revenue amounting to Rs. 1.99 lakhs.

On this being pointed out in audit (between May and October 1990), the officers-in-charge of the units audited stated that action for recovery of the amount was being taken.

The above cases were reported to the Department and Government between May and October 1990; their replies have not been received (April 1992).

(ii) In four Tehsils (Chandauli and Bhadohi in district Varanasi, Malihabad in district Lucknow and Sadar

Tehsil in district Kanpur Nagar), dues amounting to Rs.17.40 lakhs pertaining to certain organisations/bodies were recovered as arrears of land revenue during the period from 1988-89 to 1990-91 but the entire amount so recovered was passed on to the concerned organisations without recovering collection charges at the rate of 10 per cent of the amount realised which resulted in loss of revenue of Rs. 1.74 lakhs.

On this being pointed out in audit (between July and November 1990), the concerned Tehsildars stated that necessary action would be taken to recover the collection charges from the organisation/bodies concerned.

The matter was reported to the Department and to Government between December 1990 and January 1991; their replies have not been received (April 1992).

6.3 Non-deposit of service charges

Under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, where any property vested in a Gaon Sabha is damaged or misappropriated, the amount of compensation for damages, misappropriation or wrongful occupation of such property shall be recovered as arrears of land revenue. The amount so recovered is required to be credited to the consolidated Gaon Fund vide Section 124 *ibid*. The Board of Revenue in their circular letter dated 17 June 1975 directed that Amins should be entrusted with the job of recovery of the compensation money, out of which 10 per cent was to be deposited into the treasury as service charges and the balance into the consolidated Gaon Fund.

In five tehsils (Salempur in district Deoria, Soraon and Phulpur in district Allahabad, Kole in district

Aligarh and Khaga in district Fatehpur) and one Land Revenue (Collection) office at Pratapgarh, compensation charges amounting to Rs. 8.55 Lakhs were recovered by the Amins during the years 1988-89 to 1990-91, out of which an amount of Rs. 85,508 (10 per cent of the compensation amount), was required to be deducted and remitted into the treasury towards service charges. However, this was not done thereby resulting in loss of revenue amounting to Rs. 85,508 (June 1990 to March 1991).

On the omission being pointed out in audit (June 1990 to March 1991), the Officers-in-charge of the respective units, except Phulpur stated that the amount towards service charges would be credited to Government account. The Tehsildar, Phulpur, however, stated (March 1991) that he had no knowledge of such directions from Board of Revenue. Report on adjustment has not been received (April 1992).

The matter was reported to the Department and Government between August 1990 and March 1991; their replies have not been received (April 1992).

6.4 Non-recovery of fee for supply of Jot-bahis

Under Sub-section (4) of Section 33 of the U.P. Land Revenue Act, 1901, every tenure holder is supplied with a Jot bahi (pass book) in respect of all holdings of land held by him on payment of the prescribed fee, which is recoverable as arrears of land revenue. Its preparation and distribution to cultivators was introduced by Government with effect from the year 1969-70 (1377 fasli, i.e., June 1969).

In the Office of Land Records Officer, Hardoi and Tehsildar, Harraiya (district Basti) 3,78,976 Jot bahis

were distributed to cultivators during the period from 1970 to 1989 for which fees amounting to Rs. 4.02 lakhs was recoverable as arrears of land revenue. The Department, however, recovered an amount of Rs. 3.66 lakhs only till December 1990 leaving a balance of Rs. 36,170 unrealised.

On this being pointed out in audit between May 1989 and October 1989, the Department stated that action was being taken for recovery of the amounts involved. Report on the recovery has not been received (April 1992)

The cases were reported to the Department and Government between January 1990 and March 1991; their replies have not been received (April 1992).

CHAPTER-7

OTHER TAX RECEIPTS

A-ELECTRICITY DUTY

7.1 Results of Audit

Test check of the accounts of the offices of Assistant Electrical Inspector/Appointed Authorities, conducted in audit during the year 1990-91, revealed non-levy or short levy of Electricity Duty and Inspection Fees amounting to Rs. 46.96 lakhs in 30 cases, which broadly fall under the following categories:

	Number of cases	Amount (in lakhs of rupees)
1. Non-levy/short levy of electricity duty	17	5.58
2. Non-levy/short levy of inspection fees	3	1.09
3. Non-levy of interest on delayed payment of duty	1	0.75
4. Other irregularities	9	39.54
Total	30	46.96

B- TAX ON PURCHASE OF SUGARCANE AND ADMINISTRATIVE CHARGES ON SALE AND SUPPLY OF MOLASSES

7.2. Results of Audit

Test check of the accounts and other relevant records of sugar factories and Khandsari units, conducted in audit during the year 1990-91, brought out non-levy/short levy of Purchase tax on sugarcane amounting to Rs. 312.66 lakhs and of Administrative charges on sale and

supply of molasses amounting to Rs. 26.33 lakhs in 32 and 7 cases respectively which broadly fall under the following categories:

(a) Cane Purchase Tax

	Number of cases	Amount (in lakhs of rupees)
1. Deferment of purchase tax on sugarcane	6	288.24
2. Clearance of Sugar without payment of purchase tax	5	17.06
3. Short assessment due to non-observance of rules	8	5.97
4. Non-payment of purchase tax on own farm cane	12	1.25
5. Other irregularities	1	0.14
Total:	32	312.66

(b) Administrative charges

1. Clearance of molasses without payment of Administrative charges	5	25.99
2. Other irregularities	2	0.34
Total	7	26.33

A few important cases are mentioned in the succeeding paragraphs.

7.3. Short payment of tax due to non-clearance of sugar bags at final rate

Under Section 3-A of the U.P. Sugarcane (Purchase Tax) Act, 1961, no owner of a sugar factory shall remove or cause to be removed any sugar produced in the factory either for consumption or for sale or for manufacture of any other commodity, until he has paid the tax leviable on the purchase of sugarcane consumed in the manufacture of

such sugar. Any contravention of these provisions renders the owner liable to pay, in addition to the tax payable, a further sum not exceeding one hundred per cent of the sum so payable by way of penalty. At the end of the crushing season (or, as the case may be, immediately after the closure of the factory) the assessing authority should work out and specify a revised rate of payment per bag of sugar by taking into account the quantity of sugarcane purchased and the sugar produced in the factory. Where the rate is reduced or increased on such revision, the excess paid or the shortfall as the case may be shall be spread over the remaining stock of the said sugar and the amount to be paid by the assessee before removal of each remaining bag of sugar, be refixed accordingly. If no such sugar remains in stock, then the owner shall pay the balance.

(i) During the audit of a sugar factory in Bijnor district, it was noticed (April 1989) that the factory purchased 38.30 lakh quintals of sugarcane during the sugar season 1987-88 on which a sum of Rs. 47.88 lakhs was payable as cane purchase tax and the factory produced 3.38 lakh bags of sugar from the above quantity of sugarcane. A provisional rate of Rs. 12.75 per quintal of sugar was fixed by the assessing authority in November 1987 which was not revised even after closure of the factory or at the end of the crushing season (July 1988). The factory cleared the entire quantity of sugar (3.38 lakh bags) by 13 April 1989 after payment of Rs. 42.65 lakhs and the balance amount of tax of Rs. 5.23 lakhs remained unpaid.

On the irregularity being pointed out in audit (June 1989), the Department stated (August 1989) that the assessing officer had since directed the factory to pay the balance amount of tax. Report on recovery of tax is awaited (April 1992).

The matter was reported to Government in December 1989; their reply has not been received (April 1992).

(ii) A sugar factory in Bahraich district purchased 13.99 lakh quintals of sugarcane during the season 1989-90. A sum of Rs. 24.47 lakhs was payable on the above quantity of cane purchased, against which the factory paid Rs. 12.01 lakhs. At the closure of the factory for the season in June 1990, there was a balance of 49,916 sugar bags in stock on which Rs. 8.99 lakhs of tax at the provisional rate of Rs. 18 per bag was realised leaving a balance of Rs. 3.47 lakhs. The rate of purchase tax per bag should have been revised by the assessing authority by taking into account the quantity of balance of 49,916 sugar bags in stock at the close of the crushing season and the balance amount of tax of Rs. 12.46 lakhs to be paid which worked out to Rs. 24.97 per bag. This was not done. Thus, non-finalisation of provisional rate by the Department resulted in loss of purchase tax amounting to Rs. 3.47 lakhs.

The matter was reported to Government in March 1991; reply has not been received (April 1992).

7.4 Clearance of sugar bags without payment of tax

Under Section 3-A of the U.P. Sugarcane (Purchase Tax) Act, 1961, no owner of a factory shall remove or cause to be removed any sugar produced in the factory until he has paid the tax leviable on the purchase of sugarcane so consumed in the manufacture of sugar. Any contravention of the above provision makes the owner of the factory liable to pay, by way of penalty, in addition to the amount of arrears of tax, a sum not exceeding one hundred per cent of the total sum payable. There is no provision in the Act empowering Government to defer the realisation of tax by an executive order.

(i) During the audit of a sugar factory in Sitapur district, it was noticed (August 1988) that the

factory which started functioning in April 1983, continued to clear sugar without payment of purchase tax upto July 1988. Thus during six sugar seasons i.e., 1982-83 to 1987-88, the factory purchased 67.26 lakh quintals of sugarcane on which cane purchase tax amounting to Rs. 84.07 lakhs was payable. However, all the sugar bags were cleared by the factory without payment of purchase tax.

On the mistake being pointed out (March 1989), the Government stated that the realisation of purchase tax for the seasons 1982-83 to 1986-87 was deferred vide an executive order dated 30 December 1988 issued by Government, while the tax due for the season 1987-88 was ordered to be recovered in five annual instalments during 1988-89 to 1992-93 vide another executive order dated 10 January 1989, three instalments of which due by 1990-91 were deposited regularly.

The matter was reported to Government in March 1989; reply has not been received (April 1992).

(ii) During the audit of a sugar factory in Bahraich district, it was noticed (July 1990) that the factory which started functioning from the sugar season 1984-85 continued to clear sugar bags without payment of purchase tax upto September 1989. During the above five sugar years, the factory purchased 72.18 lakh quintals of sugarcane on which cane purchase tax amounting to Rs. 90.23 lakhs was payable. However, all the sugar bags in the production of which the above quantity of sugarcane was consumed were cleared by the factory without payment of tax. No action regarding recovery of tax and imposition of penalty as envisaged in the Act was taken by the Department. Vide an executive order of 30 December 1988 the factory was granted permission to defer the payment of tax for the entire period mentioned above. According to this

order, a management committee of the factory was to report to the Government the financial position of the factory. However, no management committee was formed. A personal account was also required to be operated in a bank or treasury in which the amount decided by the representatives of the Chini Udyog Vibhag, Vitta Vibhag and the factory itself, was to be deposited regularly to facilitate the payment of the accumulated arrears of tax. This condition of the order was also not complied with. However, no action was taken by the Department. Information regarding realisation of arrears of tax is awaited (April 1992).

The deferment of realisation of tax for first five seasons, that too, retrospectively by an executive order in both cases was neither in conformity with the provision of the Act nor could it overrule the provision of the Act. The realisation of tax due for the sixth season in instalments without adjudication of default invoking penal provisions, was also irregular.

The matter was reported to the Department and Government in December 1990; their reply has not been received (April 1992).

7.5 Non-payment of administrative charges on sale of molasses

Under State Government notification dated 4 December 1985, the owner of a sugar factory would be liable to pay administrative charges at the rate of Rs. 2.50 per quintal of molasses of any category sold/supplied by the factory.

It was observed in audit (June 1990) that a sugar factory in Deoria district sold 65,547.29 quintals of molasses during the period from June 1989 to April 1990, on

which administrative charges of Rs. 1.64 lakhs was payable by the factory. The factory paid Rs. 1.17 lakhs only, thereby leaving a balance of Rs. 47,344 unpaid.

The matter was reported to the Department and Government in January 1991; their replies have not been received (April 1992).

CHAPTER - 8
FOREST RECEIPTS

8.1 Results of Audit

Irregularities noticed during post check of the divisional records conducted by Audit during 1990-91 were broadly as under:-

Sl. No.	Category	Number of cases	Amount (lakhs of rupees) In
1.	Irregularities in extraction of resin	17	115.89
2.	Non-realisation of lease rent	2	42.39
3.	Loss of revenue due to non-registration of saw mills	12	20.88
4.	Loss of revenue due to non-levy of stamp duty	38	11.60
5.	Incorrect fixation of royalty	1	11.10
6.	Miscellaneous	177	4381.32
Total		247	4583.18

A few amongst the interesting cases are mentioned in the succeeding paragraphs.

8.2 Exploitation of Minor Forest Produce

8.2.1 Introduction

Minor Forest Produce (MFP) includes mainly resin, tendu leaves, bamboos, biab* grass and other forest produce having potential commercial value.

Resin is an important MFP of the Himalayan region of Uttar Pradesh and is extracted from *Chir* and *Kail* trees. This is the raw material used in the production of resin

*Biab grass is a special grass found in Shivalik and Western Forest Circles

and turpentine oil. Consequent upon the nationalisation of the trade in resin in 1976, the tapping and sale of resin were entrusted to the State Government. Tapping and collection of resin in Reserved, Civil and Panchayat forests are mainly got done by petty contractors (local name-Mates) whereas in case of Napland (private lands) forest, it is being done by the owner of the trees. Resin extracted from different types of forests is disposed of in such manner as the State Government may by general or special order direct.

Tendu leaves, which are used in the manufacture of 'Bidis', are mostly grown in Bundelkhand and Varanasi II Forest circles. The leaves are collected in April and May every year. In 1972, the trade relating to tendu leaves was nationalised by the Government with the enactment of Uttar Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1972, and rules made thereunder. Upto the 1982 season, the lots of tendu leaves were sold by auction and the successful bidders made their own arrangement for collection and disposal of tendu leaves. In April 1983, however, Government appointed the Uttar Pradesh Forest Corporation (UPFC) as its agent for the purpose of trade in tendu leaves in seven districts (Allahabad, Banda, Hamirpur, Jhansi, Lalitpur, Mirzapur and Varanasi). Tarai Anusuchit Janjati Nigam (Nigam) was also appointed as agent for collection of leaves in 1987 and 1988 seasons in two districts (Lalitpur and Mirzapur). From 1989 season, the UPFC was appointed as the sole agent for all the seven districts.

Exploitation and collection of bamboo and biab grass was also being done by the UPFC on the basis of royalty fixed by the Royalty Fixation Committee from time to time. Other miscellaneous produce is disposed of either by auction or allotment.

Mention had been made in Para 8.4 of Audit Report (Revenue Receipts) 1984-85 about collection and sale of tendu leaves, in Para 8.4 of Audit Report (Revenue Receipts) 1985-86 regarding exploitation of bamboo and in Para 9.3 of Audit Report (Revenue Receipts) 1986-87 in respect of extraction and sale of resin.

8.2.2 Scope of Audit

A review to examine the exploitation of MFP during the years 1985-86 to 1990-91 was conducted by Audit during October 1990 to June 1991 in 14** out of 42 territorial forest divisions with a view to seeing the effectiveness of the system as also to see if rules and orders and Government instructions are correctly being followed.

8.2.3 Organisational set-up

The Principal Chief Conservator of Forests is the Head of the Department and is assisted by 11 Chief Conservators of Forests at the Zonal level, 33 Conservators of Forests at Circle level and 42 Divisional Forest Officers at the Division level.

8.2.4 Highlights

- (i) Non-tapping of 30.98 lakh resin channels resulted in a shortfall of yield of 64,906 quintals of resin valued at Rs. 599.08 lakhs.
- (ii) Sale of resin from Napland at lower rate resulted in a loss of revenue of Rs. 46.62 lakhs and non-

** Mirzapur, North Kheri, North Pilibhit, West Tarai, North Gorakhpur, South Kheri, South Pilibhit, East Tarai, Tarai Central, Shivalik, Garhwal, Nainital, Bareilly and Muzaffarnagar.

recovery of administrative charges aggregating Rs. 57.87 lakhs.

- (iii) Penalty of Rs. 1.55 lakhs had not been realised from Napland owners for illicit tapping.
- (iv) Due to improper appreciation of the Government order by Resin Allotment Committee, Government sustained a loss of Rs. 4.69 lakhs.
- (v) Unintended benefit of Rs. 3.74 lakhs was given due to allotment of resin to an ineligible industrial unit.
- (vi) Late fees aggregating Rs. 208.13 lakhs remained to be realised from Uttar Pradesh Forest Corporation and Tarai Anusuchit Janjati Nigam.
- (vii) There was a shortfall of production of bamboo with loss of revenue of Rs. 46.24 lakhs due to inadequate protection, non-observance of the prescribed working plan, irregular felling in the past and non-execution of silviculture operation.
- (viii) Instead of crediting royalty of Rs. 18.82 lakhs to Government account, the Uttar Pradesh Forest Corporation was allowed to spend it on culture.
- (ix) Delay in finalisation of contract for collection of sal seeds resulted in a loss of Rs. 19.04 lakhs.
- (x) Due to non-raising of demand on allotment of cane area, there was loss of revenue of Rs. 21.30 lakhs.

8.2.5 Production and value of MFP

Production and value of MFP during the years 1985-86 to 1988-89 are given below:-

Name of MFP (Broad Category)	1985-86		1986-87		1987-88		1988-89	
	Quantity	Value (in lakhs of rupees)	Quantity	Value (in lakhs of rupees)	Quantity	Value (in lakhs of rupees)	Quantity	Value (in lakhs of of rupees)
Resin (in Quintals)	136418	1074.27	42963	343.70	85417	683.34	93601	823.69
Tendu Leaves (in Standard bags)	380976	584.16	79616	544.26	105183	532.34	159511	992.16
Bamboo (in Kori)	584417	192.73	897803	296.27	812434	294.91	794028	349.37
Biab grass (in Quintals)	91790	36.72	70739	30.42	128520	60.79	58362	63.03
Other forest produce viz. Sal, Seed, Honey, Wax and Cane etc.	--	283.27	--	743.41	--	513.13	--	636.47

Note : Kori means a bundle of 20 Bamboos

Figures for the year 1989-90 were stated by the Department (January 1992) to be under compilation. The Department further stated that figures for the year 1990-91 had not been received from field offices so far (April 1992).

As there was a declining trend in the production of resin, Government set up a Committee in December 1988 to review the allotment policy. The Committee recommended that due to lower production of resin, it would not be possible to allot resin to all industrial units according to their production capacity and new licence should not be given to new industries by the Forest and Industries departments.

Similarly, the production of tendu leaves in 1986-87, 1987-88 and 1988-89 had declined by 79, 72 and 58

per cent respectively in comparison to production in 1985-86. Production of Biab grass had also gone down by 23 per cent in 1986-87 and 37 per cent in 1988-89. Figures of production and value of MFP for the year 1989-90 and 1990-91 were called for in October 1990 but were stated to be not available. The Chief Conservator of Forests (Administration and Planning) intimated (October 1991) that the figures were under compilation.

The points noticed during test-check are discussed in the succeeding paragraphs:-

8.2.6. Resin

8.2.6.1 Shortfall in production of resin

The number of channels marked to be tapped, anticipated yield vis-a-vis number of channels actually tapped and actual production in Garhwal and Kumaon regions of the State during the six years 1985-90 are indicated in the table below:-

Name of Circle	Number of channels in lakhs			Anticipated yield in quintals	Actual yield in quintals	Actual yield per hundred channels in quintals	
	Channels to be tapped	Channels actually tapped	Channels not tapped			1985	1990
A. Garhwal Region							
Bhagirathi	59.43	52.45	6.98	78675	73514	1.56	1.01
Garhwal	49.33	48.80	0.53	68128	65540	1.92	1.31
Yamuna	29.38	26.99	2.39	44525	53627	2.40	2.21
B. Kumaon Region							
Timber supply	24.66	22.29	2.37	37004	20887	N.A.	0.73
Kumaon	253.84	235.13	18.71	379882	329740	1.68	1.44
Grand Total	416.64	385.66	30.98	608214	543308		

It would be seen from the above table that actual yield per hundred channels in all the circles had declined in 1990 as compared to 1985. Due to fall in number of channels tapped, premature fall of trees due to storm, high terrain, fire, non-availability of trained labour and adverse climate etc. in the five-year period, 64,906

quintals of resin valued at Rs. 599.08 lakhs (Computed at the average rate of supply to Indian Turpentine and Resin Company) could not be extracted and the Department was deprived of potential revenue to that extent. It was further noticed that 11.7 per cent of the channels in Bhagirathi Circle, 9.6 per cent in Timber Supply Circle and 7.37 per cent in Kumaon circle were not tapped. Though almost all the Channels were tapped in Garhwal Circle, the shortfall in production was 2,588 quintals. The Chief Conservator of Forests (Garhwal) stated (February 1990) that the shortfall was due to non-availability of labour.

8.2.6.2 Loss in disposal of resin of Napland

Resin from Napland forest is extracted by the owner and is disposed of by Forest Department, for which the Department pays the owners at rates determined by State Government from time to time, after deducting overhead charges. Under Government orders of June 1989 and November 1990, the rate of payment to owners of Napland was fixed at Rs. 1,250 per quintal for 1988-89 and Rs. 1,330 per quintal for 1989-90. 15 per cent towards administrative charges was to be deducted from these rates.

It was noticed in audit (June 1991) that during 1988-89, a loss of Rs. 46.62 lakhs was incurred by the Department in disposal of resin. The figures are given in the table below :-

Year	Rate fixed by Government (Rs. per quintal)	Rate after deduction of 15 per cent towards Administrative charges	Quantity supplied (in quintals)	Amount paid to owners (in lakhs of rupees)	Amount actually realised (in lakhs of rupees)	Loss in disposal of resin (in lakhs of rupees)	Amount of administrative charges not credited to revenue (in lakhs of rupees)
1988-89	1250	1062.50	23291	247.47	200.85	46.62	43.67
1989-90	1330	1130.50	7116	80.45	80.45	--	14.20

The loss in 1988-89 was due to the fact that the Napland owners were paid at the rate of Rs. 1,062.50 per quintal of resin during the year, while the realisation towards sale proceeds from Indian Turpentine and Resin Company and other industrial units was at the rate of Rs. 880 and Rs. 838 per quintal respectively.

Besides the administrative charges amounting to Rs. 57.80 lakhs could not be credited to revenue as the rate fixed for payment to Napland owners in 1988-89 was more than the supply rate by 24 per cent and in 1989-90 the supply and payment rate were the same i.e. Rs. 1,130.50 per quintal.

8.2.6.3 Non-realisation of penalty from Napland owners

According to Uttar Pradesh Resin and Other Forest Produce Act 1976, penalty for illicit blazes* and other irregular works** is to be imposed and recovered from Napland owners for the offences committed by them, while making payment for the resin supplied by them. In Nainital Forest Division, penalty aggregating Rs. 1.55 lakhs was imposed on the Napland owners in 1988-89 for illicit blazes but not recovered (July 1991).

8.2.6.4 Irregular payment of Forest department share

According to Panchayat Forest Rules, 1972, the net income on account of sale of resin shall be credited to Panchayati Forest Fund and shall be distributed and utilised as follows:-

- (i) 20 per cent to Zila Parishad for development purposes.
- (ii) 40 per cent to Forest Panchayat for development purpose.

* Blaze: represents resin channels

** Irregular works represent preparation of channels beyond prescribed limit of depth, width and length of channel.

- (iii) 40 per cent to Forest Department, which shall be kept separate and shall be spent by them on maintenance and development of Panchayati Forests. Approval of the Commissioner, Kumaon Division, to the proposal of the Forest Department for utilisation of the income shall be obtained and a utilisation certificate furnished.

During the audit of Nainital Forest Division, it was noticed (June 1991) that Rs. 4.27 lakhs representing 40 per cent share of Forest Department for the year 1978 to 1988 was kept in the Forest Deposit and lying unutilised as no project for development was prepared and submitted as required under the Act. This resulted in blocking of money to that extent. It was further noticed that out of Rs. 4.27 lakhs, a sum of Rs. 1.12 lakhs pertaining to 1980, 1987 and 1988 crops had been transferred to the District Magistrate, Nainital between October 1982 and March 1991, instead of being utilised on development projects by the Forest Department. The Chief Conservator of Forests, Kumaon, Nainital directed in April 1990 that the amount kept in deposit may be transferred to District Magistrate. The balance amount of Rs. 3.15 lakhs relating to the years 1978, 1979 and 1981 to 1987 had neither been transferred nor utilised by the Department. The objective of developing the Panchayat Forests utilising the share of Forest Department was not, therefore, achieved.

8.2.6.5 Loss of revenue in disposal of resin from Civil and Panchayat forests

In Badrinath Forest Division, all-in-cost for 1986 resin crop was fixed at Rs. 821.36 per quintal. 644.9 quintals of resin were tapped from Civil and Panchayat forests after incurring an expenditure of Rs. 5.34 lakhs which actually worked out to Rs. 827.27 per quintal as against Rs. 821.36 fixed by the Department. It was disposed

of for Rs. 4.60 lakhs resulting in loss of Rs. 0.74 lakh. Due to this loss, no credit to the Panchayat forest fund for the year 1986 could be made by way of royalty.

8.2.6.6 Loss of revenue due to improper appreciation of Government order

For extraction and collection of resin, resin coupes are prepared. The Government issued orders (November 1978) for setting up a Committee every year for allotment of coupes to Mates (Contractors). The Government, however, clarified in April 1981 that it was not binding on the Committee to accept the minimum or special tender rates offered by the contractors.

In three forest divisions, 19 coupes (8 coupes of 1989 and 11 coupes of 1990 season) were allotted to mates below their tendered rates by the committee even without having any negotiation with them. As a result, mates did not turn up and the coupes remained untapped for periods ranging from 5 to 9 months. Ultimately, these coupes were departmentally tapped and against the yield of 822 quintals estimated by one Department, only 201 quintals could be extracted. Thus 621 quintals, valued at Rs. 8.25 lakhs could not be tapped, with a net loss of revenue of Rs. 4.69 lakhs (Rs. 8.25 lakhs computed at Indian Turpentine And Resin Company rate less Rs. 3.56 lakhs all-in-cost) due to improper appreciation of Government order by the Committee.

8.2.6.7 Irregular acceptance of tender

According to the conditions of the notice inviting tenders for 1989 crops, all applications for tenders should be accompanied by earnest money; otherwise they would stand cancelled. Two tenders were received without earnest money in Uttarakashi Forest Division for 1989 crops. In contravention of the above provisions, tenders for two coupes having an estimated yield of 203

quintals of resin were accepted by the Resin coupes allotment committee. The mates, however, did not turn up and the coupes remained untapped. As a result of irregular acceptance of tenders, revenue of Rs. 1.49 lakhs (computed at the rate of allotment to industrial units) was lost.

8.2.6.8 Loss of revenue due to departmental extraction

For obtaining the maximum yield of resin, the coupes should be tapped between March and December each year. In Nainital Forest Division five coupes for 1989 and 1990 seasons were not tapped for the full span of ten months due to non-availability of labourers. As only 80 quintals of resin was extracted against the anticipated yield of 302 quintals, worked out on the basis of the norm of 1.5 quintals per hundred channels, 222 quintals of resin valued at Rs. 2.95 lakhs, could not be extracted resulting in a loss of revenue to the extent of Rs. 1.77 lakhs, after deducting the cost of extraction.

8.2.6.9 Irregular allotment

Upto 1988-89 the allotment of resin to industrial units was made on the recommendation of the Dhar Committee and accepted by the Government. As per recommendation of Dhar Committee, thirteen industrial units were not eligible for allotment of resin.

The Government, however, allotted (November 1988) 799 quintals resin at the concessional rate of Rs. 838 per quintal to an ineligible unit, against the average market price of Rs. 1306 per quintal in 1987-88 at Kathgodam depot. Thus, due to irregular allotment, unintended benefit of Rs. 3.74 lakhs was given to the ineligible unit.

8.2.7 Tendu leaves**8.2.7.1 Non-realisation of late fees**

Under Uttar Pradesh *Tendu Patta* (Vyapar Viniyaman) (Chaturath Sanshodhan) Niyamawali, 1979, the purchasers are required to deposit the sale price in two instalments, by 15 June and 15 October failing which late fee is recoverable from them at the rate of 2 paise per hundred rupees per day for delay upto 60 days and at the rate of 5 paise per hundred rupees per day for delay beyond 60 days.

The UPFC and Tarai Anusuchit Janjati Nigam delayed payment of the instalments for the seasons 1983 to 1988 in two circles (Bundelkhand and Varanasi II) by 34 days to 928 days. It were noticed in audit (July to October 1990) that late fees amounting to Rs. 88.90 lakhs from UPFC and Rs. 119.23 lakhs from the Nigam, though recoverable, was not recovered. On this being pointed out in audit (January 1991), the Chief Conservator of Forests (Management), Nainital, reported (March 1991) the matter to Government. Further development has not been received (April 1992).

8.2.7.2 Incorrect fixation of royalty

Government orders dated 20 September 1983 prescribed that the royalty for the year 1983-84 and onwards would be realised from UPFC after adding the following increases to the royalty of the previous year.

- (i) Percentage increase in price of *Tendu* leaves sold by UPFC in the previous year over that of preceding year.
- (ii) Unusual increase in the market rate in the price fixation year, if any.

The percentage increase in the price of *tendu* leaves in 1988 season over those in 1987 season was 32 per

cent as intimated in March 1991 by UPFC to the Chief Conservator of Forests (Management). For 1988 the royalty of *tendu* leaves was fixed at Rs. 662.56 lakhs. The royalty for the 1989 season should have been at Rs. 874.58 lakhs, calculated on the basis of 32 per cent price increase. But the actual royalty for the year 1989 was fixed at Rs. 662.56 lakhs vide Government order dated 11 May 1989 on the ground that the UPFC had suffered a loss of Rs. 266 lakhs and Rs. 21 lakhs in 1987 and 1988 season respectively as reported by Chief Conservator of Forests (Management) in June 1989. This resulted in a loss of revenue of Rs. 212.02 lakhs.

Further, the royalty for 1990 season had not yet been finalised (July 1991) though the Government directed (March 1990) the Department to submit their proposal. Although the percentage increase of price was 104 as reported (March 1991) by the UPFC, the final royalty had not been fixed even after lapse of one year. According to the proposals sent by Chief Conservator of Forests, (Management) to Government in June 1991, the royalty due for the 1990 season was Rs. 1352 lakhs. The delay in fixation of royalty resulted in delay in realisation of revenue and undue benefit to the UPFC.

8.2.8. Bamboo

8.2.8.1 Target and achievement of felling

Targets vis-a-vis achievement during the period of five years from 1985-86 to 1989-90 in five Forest Divisions were as under:

Name of the Division	Areas marked for felling		Area actually exploited	Percentage of shortfall		Loss of revenue (in lakhs of Rupees)
	As per working plan	Area actually marked (in hectares)		in marking the area for felling	in actual exploitation	
Banda	101045	101045	81755	..	19	9.71
Lalitpur	5513	2121	1588	62	25	28.84
West Mirzapur	48043	23387	15624	51	33	1.01

East Mirzapur	35187	39230	32182	..	18	3.30
Varanasi	23833	6962	2713	71	61	3.38
Total						<u>46.24</u>

The shortfall in marking of the area was particularly conspicuous in three Divisions. The shortfall in exploitation was mainly attributed by the Department (June 1986) to inadequate protection, non-observance of the prescribed working plan, irregular felling and non-execution or delayed and careless silviculture operation. Thus, revenue aggregating Rs. 46.24 lakhs was lost.

The production of bamboo in two Forest Divisions during 1985-86, 1988-89 and 1989-90 was as under :-

Name of Division	Year	Production per hectare in Kori
West Mirzapur Forest Division	1985-86	8.83
	1988-89	0.71
East Mirzapur Forest Division	1985-86	10.07
	1989-90	1.50

It was noticed in audit (October 1990) that the production of bamboo came down by 92 per cent in West Mirzapur Forest Division and 85 per cent in East Mirzapur Forest Division within a period of four years. The Principal Chief Conservator of Forest admitted (June 1986) that there were large scale congestion of culms in Varanasi IIInd circle resulting in shortfall in production.

8.2.8.2 Irregular control of export

The royalty on bamboo is realisable on the basis of actual quantity exported out of a forest. Outturn Register disclosed that export of 2,16,267 kori bamboos valued at Rs. 5.34 lakhs was allowed during 1986-87 to 1988-89 in West Mirzapur Forest Division to UPFC but

royalty of Rs. 0.32 lakh only was charged from them for export of 16,935 kori. No action was initiated to realise the royalty of Rs. 5.02 lakhs on the basis of actual export.

Similarly, in East Mirzapur Forest Division, the UPFC had exported 1,15,920 kori bamboos in 1989-90 but they had paid royalty of Rs. 2.07 lakhs for only 11,516 kori of bamboos. The royalty for 1,04,404 kori at the rate of Rs. 15.52 per kori amounting to Rs. 15.91 lakhs had not been realised so far (April 1992).

8.2.3.3 Silviculture operation

Silviculture operation includes management practices on scientific line with a view to removing older culms* in time before they become congested and dried up and to ensure availability of sufficient mature culms for regular exploitation. This is carried out immediately after exploitation and consists of earth piling and removal of congestion.

The working plan of Dehradun Forest Division *inter-alia* provided that 934.03 hectares bamboo area were to be cultured during the period from 1985-86 to 1988-89 as the occurrence of bamboo is sporadic and culms had deteriorated mainly due to not carrying out exploitation in the prescribed manner in the past. In audit it was noticed (April 1991) that no silviculture operation was carried out in the area as planned. In reply to the audit observation (April 1991), it was stated that no culture work was done as availability of bamboo was almost nil in that area. Thus, due to unscientific felling in the past, 934.03 hectares were rendered unfit for future yield.

* Bamboo produce culms each year from rhizomes of the previous year into a clump. A clump is the smallest unit of management.

8.2.8.4 Irregular appropriation of revenue

According to financial rules, all moneys received should be paid in full into the treasury or into bank without undue delay and should be included in the Government Account. Moneys received as aforesaid, should not be appropriated to meet departmental expenditure. However, as an exception, cash received by the Forest Department can be utilised to meet immediate local expenditure.

A decision was taken in the meeting held on 5 March 1986 under the chairmanship of Principal Chief Conservator of Forest that the culture work would be carried out by the UPFC and they were also authorised to adjust the expenditure on silviculture from the royalty of bamboo due to be paid by them to Forest Department. A test check of three divisions (Banda, Lalitpur and West Mirzapur) revealed that Rs. 18.82 lakhs was adjusted from the royalty of 1985-86 to 1989-90 by the UPFC on account of silviculture works which was contrary to the provisions of financial rules.

Besides, Sales Tax amounting to Rs. 1.72 lakhs leviable on royalty of Rs. 14.21 lakhs, was not charged in Banda Forest Division. No justification had been given by the Department for short levy of Sales Tax.

8.2.9 Biab Grass**8.2.9.1 Decline in revenue due to increase in production cost**

The Royalty Fixation Committee decided (February 1990) that the *Biab* grass would be supplied to local people at the rate of Rs. 108 per quintal to improve their economic condition. The supply would be made through UPFC. After deducting the cost of production from the sale price

realised from the villagers, the balance would be adjusted towards royalty. In 1988-89 in Shivalik Forest Division, 24453 quintals of *Biab* grass was supplied to villagers and the royalty worked out to Rs. 43.58 per quintal after deducting the cost of production of Rs. 64.42 per quintal from the sale price. 19,643.95 quintals was supplied during 1989-90 and the rate of royalty worked out was Rs. 2.15 per quintal after deducting the cost of production of Rs. 105.85 per quintal. Thus due to steep increase in cost of production by 64.3 per cent within one year, the Government revenue declined to the extent of Rs. 7.49 lakhs.

8.2.10. Other minor forest produce

8.2.10.1 Delay in finalisation of contract

(a) The *Sal* seed is collected between April and June each year. Contracts for collection of *Sal* Seeds must be finalised by the end of March.

The tender for collection of *Sal* seeds for 1987 season for South Gorakhpur Forest Division was invited by the Conservator of Forests, Eastern Circle, Gorakhpur on 4 April 1987 and opened on 5 May 1987 after the commencement of the collection season. The highest bid was for Rs. 11 lakhs. The work order was awarded on 17 May 1987 but the contractor did not turn up. Consequently, it was cancelled on 26 May 1987. The second highest bidder was asked on 30 May 1987 to work the lot, but he telegraphically refused on 2 June 1987 to take up the work. On 4 June 1987 a short term tender was invited. The highest bid was for Rs. one lakh and the work order was issued on 18 June 1987 to the firm as only 12 days were left for collection in 1987 crop. The firm did not take up the work due to shortage of time. The Department then awarded the work for Rs. 1.01 lakhs to a firm whose tender was initially rejected by the Department on the ground that it was not received in time.

Thus due to delay in finalisation of contract, royalty of Rs. 9.99 lakhs was lost.

(b) For collection of Sal seeds from South Gonda Forest Division in 1989 season, the Conservator of Forest, Utilisation Circle invited tenders on 6 May 1989 which were opened on 23 May 1989. The contractor whose highest bid was for Rs. 5.10 lakhs, was directed on 29 May 1989 to contact the concerned Divisional Forest Officer regarding execution of agreement and start the work. As the contractor did not turn up till 3 June 1989, the work was awarded to second highest bidder in June 1989 for Rs. 2 lakhs, who collected the seeds. Due to belated initiation of action and consequent paucity of time, retendering could not be done and revenue of Rs. 3.10 lakhs was lost.

8.2.10.2 Non-collection of Seeds from Sal forest

Under the Government orders of May 1990, the sal seeds were to be collected in 1990 season from an area of 1,10,343 hectares of four divisions of Western circle and 21,965 hectares pertaining to two Divisions of Saryu circle. Accordingly, in West Tarai Forest Division of Western circle, 9786 hectares were auctioned in 1990 season for Rs. 58000. As the successful bidder did not turn up to sign the agreement, neither the Sal seeds were collected nor was any royalty received. The average rate of royalty due was Rs. 5.92 per hectare.

The remaining area 1,00,557 hectares in three Divisions (Haldwani, East Tarai and Ramnagar) was not auctioned at all thereby resulting in a loss of revenue of Rs. 5.95 lakhs (computed at the average rate of Rs. 5.92 per hectare).

Besides, 21,965 hectares of Saryu circle were auctioned for Rs. 30,000 in the same season but the

purchaser did not work out the area and no royalty was paid by him. No alternative arrangement for its collection was made by the divisions resulting in loss of revenue amounting to Rs. 30,000.

8.2.10.3 Non-exploitation of cane area

According to Sale Rules of the Department, the demand for minor forest produce should be raised and realised from the allottees to whom lots are allotted for exploitation, irrespective of the fact whether these are worked or not. Further, the Forest Department shall not be held responsible for any damages in lots after their sale/allotment.

During the audit of North Gorakhpur Forest Division, it was noticed (January 1991) that against the allotment of 8,132 hectares cane area during 1987-88 to 1989-90, UPFC had worked out only 3,646 hectares. The Division did not raise demand for the entire area of 8,132 hectares as required under the Sale Rules, resulting in loss of revenue of Rs. 20.11 lakhs over the three years period.

Further, one lot (area:429.8 hectares) allotted to UPFC in 1987-88, had not been exploited by them. The Corporation, however, intimated (December 1990) that the area was burnt. No action was taken by the Division to recover the royalty of Rs. 1.19 lakhs due at the rate of Rs. 278 per hectare fixed for that year.

8.2.10.4 Non-realisation of royalty of honey and wax

According to Uttar Pradesh Forest Manual, no fresh contract can be given to any person who is in debt to Government on account of previous contract.

Under the orders (January 1987) of the Government, the work of collection of honey and wax in 1986-87 was entrusted to the Uttar Pradesh Khadi Gram Udyog Board (Board) in western circle. During test check it was noticed (June 1991) that the Board defaulted in payment of royalty of Rs. 70,000 during that year. In contravention of the above rules, the Board was again entrusted the collection work in five other circles (Bareilly, Faizabad, Gorakhpur, Jhansi and Shivalik) in 1987-88 and 1988-89. The Board again defaulted in payment of royalty of Rs. 2.91 lakhs. Thus, due to entrusting the work once again to the Board which owed royalty to the Department, revenue aggregating Rs. 3.61 lakhs remains unrealised. The Chief Conservator of Forests (Management) had requested (December 1990) the Principal Chief Conservator of Forests that necessary direction be issued to the Board at the Government level for depositing the dues. Report on further development has not been received (April 1992).

The matter was reported (August 1991) to Government; their reply is awaited.

8.3 Incorrect assessment of outturn of Khair tree

According to the departmental standing orders of October 1969 read with orders of June 1978 and September 1978, the content of *Khair* wood in a *Khair* tree is calculated applying the following volume factors :

For fit green tree	1
For unfit green tree	1/2
For fit dry tree	3/4
For unfit dry tree	3/8

An observation was made in para 8.4 of the Audit Report (Revenue Receipts) of the Comptroller and Auditor General of India, Uttar Pradesh, 1989-90 about the loss of revenue amounting to Rs. 7.07 lakhs due to incorrect assessment of outturn of Khair trees. It was further

noticed in audit (February 1990) that 10 Khair lots were allotted to Uttar Pradesh Van Nigam by Social Forestry Division, Rampur in 1988-89. The Division calculated the outturn without applying the correct factors prescribed for fit and unfit green trees as given below:

	<u>Volume factors</u>	
	<u>As per departmental orders</u>	<u>As reckoned by Division</u>
Fit green trees	One	2/3
Unfit green trees	1/2	1/3
Fit dry trees	3/4	1/2
Unfit dry trees	3/8	1/4

The incorrect computation of outturn resulted in short assessment of 126.756 cubic metres of Khair wood and consequential loss of revenue of Rs. 3.33 lakhs.

The matter was reported to Government in April 1990; reply has not been received (April 1992).

8.4 Short levy of Stamp Duty

Under the Indian Stamp Act, 1899, the Stamp Duty at the rate of Rs. 85 per thousand was leviable on all contracts exceeding Rs. 5,000 executed by the Forest Department for sale of standing trees or any other forest produce with effect from 20 January 1982. These rates were revised to Rs. 95 and Rs. 125 per thousand with effect from 17 October 1985 and 24 June 1988 respectively.

Mention had been made in paragraph 5.8 and 9.6 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the years 1984-85 and 1986-87 respectively regarding loss of revenue due to non-levy/short levy of Stamp Duty.

It was further noticed in audit between March 1990 and March 1991 that in seven Forest Divisions (Bijnor, North Gorakhpur, South Gorakhpur, South Kheri, South Pilibhit, Tarai East Haldwani and Tarai Central-Haldwani) Stamp Duty aggregating Rs. 3.78 lakhs was short levied in respect of 330 contracts awarded during 1988-89 and 1989-90 for sale of forest produce. The Divisional Officers stated that they were not aware of the current rates of Stamp Duty as the two notifications regarding revision of rates were communicated to them only in July 1990.

The matter was reported to the Department and Government between June 1990 and May 1991; reply has not been received (April 1992).

8.5 Loss of revenue due to delay in auction

According to Government of India orders of June 1988, issued under Forest (Conservation) Act, 1980, boulders, *bajri**, stone, sand etc. in the river beds located in forest is a part of the forest land and their removal would require prior approval of the Central Government.

The working period for extraction of boulders, *bajri*, stone and sand lots, is October to June each year. The Divisional Forest Officer, North Gonda Forest Division, however, sent the proposals for 1988-89 through the Nodal Officer in January 1989 for obtaining prior approval of the Government of India, after 3 months of the commencement of the working season. The Government of India accorded sanction in May 1989 for a period of 10 years. The extraction of boulders, *bajri*, stone, sand etc., however, could not be done in 1988-89. Thus due to delay in sending

* *Bajri* means gravel.

proposal, revenue aggregating Rs. 11.96 lakhs (average of last 3 years) was lost to Government.

It was further noticed (July 1990) that the boulders, *bajri*, stone and sand of 35 lots of 1989-90 in the same Division was auctioned in March 1990, with the result that the working period available was only about three months instead of the usual 9 months. Due to this, as against the estimated value of Rs. 12.79 lakhs, revenue of Rs. 7.66 lakhs only was realised. The Divisional Forest Officer stated (July 1990) that the State Government orders for their disposal was obtained in February 1990 although the clearance for disposal had already been given by the Government of India in May 1989. Thus due to delay in initiating proposal for auction by five months, revenue amounting to Rs. 5.13 lakhs was lost.

The matter was reported to Government (October 1990); reply has not been received (April 1992).

8.6 Loss of revenue due to decay of trees for want of timely exploitation

According to the Sale Rules, the purchaser is required to inspect the lots before sale. The Department shall not be responsible for any discrepancy in the sale list and consequential loss after sale or allotment of lots. The purchaser was required to pay the royalty due at the appropriate rates to the Department in three instalments.

One timber lot consisting of 205 *Chir* trees (Volume 207.141 cu.m.) was allotted (July 1988) to Uttar Pradesh Forest Corporation (Corporation) at the rate of Rs. 569 per cu.m. (total royalty payable being Rs. 1.18 lakhs) for exploitation in Garhwal Forest Division, Pauri. But the Corporation did not start the work and after a lapse of 18 months, intimated (January 1990) rejection of

the said lot to the Department on the ground that most of the marked trees of the lot were decayed and as such very little useful timber was expected. It was also revealed by the Corporation that there was pipe line of the *Jal Nigam* in the area where the trees were to be felled and as such, there would be possibility of loss due to breakage of pipe lines which may be higher than the total value of the timber obtained. Neither did the Corporation pay royalty of Rs. 1.18 lakhs due, nor did the Division take any action to collect this amount by raising necessary demand.

On this being pointed out (May 1990) in audit the Divisional Forest Officer stated that the division normally took a minimum time of 6 months in marking of trees and exploitation was being taken up by the Corporation 4 months after its marking. The trees were decayed due to non-exploitation for a long period. He further stated that necessary action would be initiated after joint inspection of the lot. The reply of the Department is not tenable as there was no mention of decayed trees or the existence of pipe lines in the marking list of the lot, and the Corporation did not represent about this for as long a period as 18 months (July 1988 to December 1989) after the allotment.

The matter was reported (July 1990) to Government, reply has not been received (April 1992).

8.7 Loss of revenue due to delay in allotment

The Range Officer is required to furnish the marking list to the Divisional Forest Officer latest by June each year so that marked trees may be handed over to the Uttar Pradesh Forest Corporation (Corporation) for exploitation in ensuing season.

In Garhwal Forest Division, Pauri, the wind fallen and uprooted trees were marked in the year 1986-87

in one range for allotment to the Corporation in July 1986. It was noticed (May 1990) that marked trees could not be allotted to the Corporation in time as the marking list was made available by the Range Officer only in July 1986. The allotment of 290 Chir trees (321.586 Cubic metres timber) was, however, made in July 1988 to the Corporation on the royalty rate of Rs. 569 per cubic metre although the revised marking list was made available in March 1987 to the Divisional Forest Officer by Range Officer concerned. The Corporation refused (December 1988) to work out the lot on the ground that ninety per cent of trees had decayed with the result that no timber would be available after working of the lot. Thus delay in allotment after lapse of two working seasons resulted in loss of revenue of Rs. 1.83 lakhs.

The Divisional Forest Officer stated (May 1990) that the explanation of the concerned staff had been called for. Further developments are awaited (April 1992).

The matter was reported to Government in July 1990; reply has not been received (April 1992).

8.8 Loss of revenue due to delay in exploitation

While formulating the rules in 1978 for exploitation of Forest Produce by the Uttar Pradesh Forest Corporation (Corporation), no provision was made for penalty in case the corporation does not work out the lots in the allotted year.

In Uttar Kashi Forest Division, 4 lots (estimated outturn 599.638 cu.m.) were allotted in 1987-88 to Corporation and royalty of Rs. 2.96 lakhs was payable to the Department on exploitation. As per the condition of allotment, the Corporation remains responsible for forest coupes from the date of allotment till the date of acceptance of their letter relinquishing the charge.

However, it was noticed that the Corporation did not start the work on the lots and intimated the Division (between July 1988 and September 1988) that the number of trees allotted to the Corporation were not in position.

sequently, a joint inspection (between August 1988 and January 1989) by the officers of the Forest Department and Corporation was carried out to ascertain the actual position. It was found during inspection that most of the marked trees had either been taken away by nearby villagers or rendered unfit for use due to their rotten condition. The lots (revised estimated outturn 294.144 cu.m. and 200 quintals slush) were renumbered and allotted to the Corporation in 1988-89. The Corporation worked out the lots and paid royalty of Rs. 1.09 lakhs only.

The Department suffered a loss of Rs. 1.87 lakhs as there was no penal clause in allotment rules for non-exploitation of lots by the Corporation in the allotted year.

The matter was reported to the Department/Government in November 1990; reply has not been received (April 1992).

8.9 Loss of revenue due to non-observance of prescribed procedure

The royalty of major forest produce is realisable from Uttar Pradesh Forest Corporation (Corporation) on the basis of estimates which are prepared according to the quality class and volume table prescribed by the Chief Conservator of Forests (Management). According to the sale rules, the Department shall not be held responsible for any discrepancy in the sale list. The purchaser (Corporation) is, therefore, required to inspect the condition of lots before finalisation of sale. It was also provided that from the date of sale, the purchaser will be responsible for

that lot and the Department shall not be responsible for any loss.

In Tarai West Forest Division, Ramnagar (Nainital), 15 eucalyptus lots, having estimated outturn of 7,514.29 volumetric tonnes worked out on the basis of quality class and volume table prescribed by the Department, were allotted to Corporation at the rate of Rs. 1,100 per volumetric tonne in the year 1988-89. After felling of the lots, the Corporation requested (March 1989) to change the estimated outturn as the quality class was not determined correctly. In contravention of the rules, the Division, accepted the request of the Corporation to revise to quality class and royalty was realised for actual outturn of 6,564.68 volumetric tonnes. This resulted in short realisation of royalty to the extent of Rs. 10.45 lakhs for 949.61 volumetric tonnes. The Divisional Forest Officer, however, rejected (October 1990) a similar proposal of the Corporation for change in quality class of lots for the year 1989-90 as it was submitted after felling of lots and emphasised that estimated outturn should be worked out on the basis of quality class printed in the sale list.

No justification for acceptance of request of the Corporation for change in quality class after felling of lots for the year 1988-89 had been given.

The matter was reported to Government (August 1991); reply has not been received (April 1992).

8.10 Non-realisation of extension fee

According to the orders of the Chief Conservator of Forests issued in February 1957, and extended to the Uttar Pradesh Forest Corporation (Corporation), in September 1978, extension fee at the rate of 1 per cent per month on the sale price of lots was chargeable from the purchasers.

for the period for which extension in working period was granted.

A mention was made in paragraph 8.7 of the Audit Report (Revenue Receipts) of the Comptroller and Auditor General of India, Uttar Pradesh, 1989-90 about non-realisation of extension fee. It was further noticed in audit (August 1990 to December 1990) that in three Forest divisions (Dehradun, West Bahraich and South Gonda) twenty four lots were allotted to the Corporation between 1988-89 and 1989-90. The Corporation did not exploit the lots within the stipulated period. The divisions granted extension in working period ranging between 19 and 518 days. No demand for extension fee, which worked out to Rs. 4.38 lakhs, was raised against the Corporation.

On this being pointed in audit (August to December 1990), the Divisional Forest Officers stated (August 1990 to December 1990) that the demand for extension fee would be raised and the recovery effected. However, no recovery had been made till June 1991.

The matter was reported to Government in November 1990 and February 1991; reply has not been received (April 1992).

8.11 Illicit felling of trees

In accordance with the provisions contained in the Uttar Pradesh Forest Manual, forest guards and other subordinate officers are required to submit a report on illicit felling of trees to the Range Officer within 24 hours of its occurrence, who in turn, would transmit it along with action taken thereon to the Divisional Forest Officer within three days.

The Divisional Forest Officer, East Bahraich Forest Division, who conducted inspection in one of his

ranges (Chakia range) in July 1990, noticed some cases of illicit felling and ordered the combing of forests in order to assess the actual position. The Sub-divisional Officer who conducted the combing in October 1990, reported that 755 trees valuing Rs. 13.35 lakhs had been felled during 1989-90 and 1990-91.

Of the illicit fellings valued at Rs. 13.35 lakhs, only Rs. 2.56 lakhs worth fellings had been detected earlier and registered. The remaining illicit fellings valued at Rs. 10.79 lakhs had escaped detection. Failure of the Forest staff to prevent illicit fellings had resulted in loss of trees worth Rs. 10.79 lakhs.

On this being pointed out (January 1991) in audit, the Divisional Forest Officer stated that one forest guard had already been suspended in July 1990 and another forest guard was absconding since 26 June 1990, while the then Range Officer had retired in June 1990.

The matter was reported to Government in February 1991; reply has not been received (April 1992).

CHAPTER -9

OTHER DEPARTMENTAL RECEIPTS

A-Irrigation Department

9.1 Results of Audit

Test check of the accounts and records of 19 Divisions of Irrigation Department, conducted in audit during 1990-91, brought out irregularities (pertaining to levy and collection of revenue) involving revenue of Rs. 119 lakhs in 42 cases, which broadly fall under the following categories:

	Number of cases	Amount (In lakhs of rupees)
1. Loss due to non-claiming of electricity rebate	1	32.00
2. Non-realisation of stamp duty	11	5.80
3. Loss due to closure of tubewells	2	1.96
4. Unauthorised use of canal water	2	0.63
5. Loss due to sale of tender forms at pre-revised rate	5	0.37
6. Loss due to non-leasing of Arazai (Production) land	3	0.24
7. Other irregularities	18	78.00
TOTAL	42	119.00

A few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

**9.2 Non-imposition of punitive charges for
unauthorised use of canal water**

Under the provisions of the Northern India Canal and Drainage Act, 1873 and the rules framed thereunder, read with the manual of orders of the Irrigation Department, punitive charges are leviable for wastage or misuse of canal water. However, before ordering the levy of punitive charges in any case, the Divisional Officer has to satisfy himself that the case has been promptly investigated by a responsible officer not below the rank of a Zileadar. Punitive charges so levied are to be treated as assessment of occupier's rate and are to be included in the demand statement (*Jamabandi*) for recovery by the Revenue Department as arrears of land revenue.

During audit and scrutiny of relevant records of five Irrigation Divisions, Barabanki, Jalaun, (two) Bulandshahr and Mainpuri, it was noticed (between May 1989 and November 1990) that 1,874 cases of misuse of canal water were reported between May 1989 and November 1990, covering unauthorised irrigation of 24,775 acres of land during *fasli* years 1389 to 1397 (July 1981 to June 1990). The cases, which involved punitive charges amounting to Rs. 12.98 lakhs were not investigated and finalised till the date of audit.

The matter was reported to the Department and Government in June 1989 and again in March 1991; their replies have not been received (April 1992).

**9.3 Delay in repair of tubewells resulting in loss of
revenue**

As per standing orders of the Director of Tubewells, Irrigation Department, U.P., issued in the year 1965, the maximum closure period permitted for repairs/rectification of mechanical defects in State

tubewells varies from 48 hours to 7 days. Orders also envisage obligatory imposition of penalties including termination of service, reversion etc. on staff (at different levels) in the event of tubewells remaining closed beyond the maximum period allowed for repairs.

During the audit of six Tubewell Divisions, it was noticed that during the Rabi seasons 1396 *fasli* to 1397 *fasli* (1988-89 to 1989-90) and *Kharif* season 1396 *fasli* (1988-89), 306 State tubewells remained closed for periods varying from 10 to 90 days. These delays in rectification of defects in tubewells occurred during the peak season of demand for water for irrigation in spite of the fact that every Tubewell Division has a workshop for proper maintenance of tubewells. As a result of delay in repairs, cultivators were deprived of irrigation facilities during the peak season and Government also lost revenue of Rs. 3.73 lakhs (at the rate of Rs. 1.20 per 5,000 and 10,000 gallons respectively for *Rabi* and *Kharif* *fasals*), calculated for the periods during which power supply was available. No action was taken against the persons responsible for not making repairs within the prescribed limit.

The matter was reported to the Department and Government in March 1991; their replies have not been received (April 1992).

9.4 Loss of revenue due to non-realisation of full bid money before allowing fishing operations

As per instructions issued by the Irrigation Department in February 1962, in cases where fishing rights were auctioned, one-fourth of the accepted bid money was required to be realised at the time of the auction and the balance three-fourths at the time of signing the contract for fishing rights and the contractor was not to be allowed

to undertake any fishing operations until he had deposited the bid money in full and signed the agreement or the lease deed. In November 1977, the Chief Engineer issued fresh instructions for realisation of full bid money at the close of the auction and for incorporating this condition in the auction notice.

In Irrigation Division, Mahoba (Hamirpur), four reservoirs were auctioned in August 1981, June 1985, August 1986 and June 1987, to four contractors for Rs. 2.31 lakhs for fishing rights for different periods between August 1981 and June 1991. The contractors deposited only Rs. 47,735 instead of the entire amount of Rs. 2.31 lakhs at the close of the auctions. Although the requisite agreements and leases were also not signed by them, they were permitted to undertake fishing operations. The contractors failed to pay the balance bid money amounting to Rs. 1.84 lakhs.

On this being pointed out in audit (December 1988), the Chief Engineer, Bundelkhand stated (April 1990) that while a sum of Rs. 76,410 had been recovered from the defaulters and for recovery of Rs. 71,555, notices had been issued (January 1990), the balance amount of Rs. 35,700 had become irrecoverable due to defaulters being declared insolvent by the courts of law. Report on recovery has not been received (April 1992).

The matter was reported to the Department and Government in February 1991; their replies have not been received (April 1992).

B - Public Works Department**9.5 Results of Audit**

Test check of the accounts and relevant records of 31 divisions of the Public Works Department, conducted in audit during the year 1990-91, revealed irregularities involving Rs. 403.60 lakhs in 86 cases, which broadly fall under the following categories:

	Number of cases	Amount (in lakhs of rupees)
1. Non-realisation of rents from occupants of Government buildings	18	59.84
2. Non-realisation of water tax from occupants of Government buildings	4	22.01
3. Non-realisation of stamp duty on lease agreements	2	11.74
4. Sale of tender forms at pre-revised rates	26	7.06
5. Non-realisation of stamp duty on contract Bonds	6	3.70
6. Loss of revenue in auction of Maxphalt Drums	7	3.33
7. Other irregularities	23	295.92
TOTAL	86	403.60

Some of the important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

9.6 Short levy of stamp duty on lease agreements

In accordance with the provisions of Article 35(b) of Schedule I-B of the Indian Stamp Act, 1899 (as

amended in its application of Uttar Pradesh) and instructions issued by the Board of Revenue in October 1953, Stamp Duty on leases for ferry services and toll collections is to be levied treating the total amount (part paid in advance and rest agreed to be paid in instalments) as premium for which the lease has been granted since there is no rent reserved. This view has also been held* by the Allahabad High Court .

In five Public Works Divisions (Orai, Bulandshahr, Jaunpur and two in Kanpur), Stamp Duty in respect of 14 lease agreements for collection of toll on one ferry and 9 bridges, executed by the Executive Engineers with the lessees between 1984-85 and 1989-90, was realised, treating the prescribed instalments as fixed rent (and not premium). Non-levy of Stamp Duty on the basis of the leases granted for premium resulted in short realisation of stamp duty of Rs. 29.27 lakhs.

On being pointed out in audit (between February 1989 and February 1991) the Executive Engineer, Construction Division, P.W.D., Jaunpur intimated (December 1990) that a sum of Rs. 23,257 had since been recovered from the contractors concerned. Report on recovery of the balance amount of Rs. 29.04 lakhs has not been received (April 1992).

The cases were reported to the Department and Government between March 1989 and April 1991; their replies have not been received (April 1992).

*Case No. AIR 1977 Allahabad 79 Full Bench-Sri Gajay Pal Singh Vs State of U.P.

9.7 Short realisation of water tax from occupants of Government residential buildings

Under the Uttar Pradesh Fundamental Rules, municipal and other taxes payable by occupants of Government residential buildings, are paid by Government in the first instance to the local body and recovered thereafter from the Government employees occupying the buildings along with the monthly licence fee.

During the course of audit of three Public Works Divisions (Etah, Kanpur and Lucknow), it was noticed between November 1989 and November 1990 that as against Rs. 28.07 lakhs paid to the local bodies as water tax for the period from 1976-77 to 1989-90, an amount of Rs. 6.69 lakhs only was recovered (upto October 1990) from the occupants leaving a balance of Rs. 21.38 lakhs unrecovered.

These cases were reported to the Department and Government in December 1989 and February 1991; their replies have not been received (April 1992).

9.8 Loss of revenue due to delay in circulation of Government orders

In terms of Government Orders of 31 March 1989, the minimum rate of tender fee was raised from Rs. 15 to Rs. 50 and the maximum rate from Rs. 100 to Rs. 200 per tender according to their cost. These orders were applicable to all departments of the State Government with immediate effect. However, the Public Works Department circulated these orders to the offices under their administrative control as late as on 5 March 1991.

In 13 Public Works Divisions at Badaun, Barabanki, Basti, Faizabad, Fatehpur, Ghaziabad, Kanpur, Lucknow, Mainpuri, Nainital and Varanasi 9,780 tender forms

were sold during the period from April 1989 to January 1991 at pre-revised rates ranging from Rs. 15 to Rs. 35 instead of the revised rate of Rs. 50 per tender form which resulted in loss of revenue amounting to Rs. 2.72 lakhs.

On the omission being pointed out in audit (between April 1990 and January 1991), the Divisional Officers stated that the above orders had not been received in their divisions.

The matter was reported to the Department and Government in October 1990; their replies have not been received (April 1992).

9.9 Mis-utilisation of departmental receipts

As per the provisions of the Financial Hand Book, Volume VI, cash realised by the Departmental Officers is required to be remitted, as soon as possible, into the nearest treasury for credit as the receipt of the Department. If a Divisional or Sub-divisional officer wants to make use of the cash receipts temporarily for meeting current expenditure, he may do so but, before the end of the month, he must send to the treasury for credit to Government account a cheque for the amount so utilised.

It was pointed out in audit (January 1991) that in Temporary Division, P.W.D., Etawah, revenue receipts amounting to Rs. 62,754 realised by the Divisional Officer between September 1990 and December 1990, were not deposited into the treasury. These receipts were utilised to meet departmental expenditure from time to time. No cheque for the amount so utilised was sent to the treasury for credit to Government account, as required under the financial rules. This indicates non-observance of procedure laid down. On receipt of revenue, the same should have been

credited to the concerned receipt head instead of utilising it for departmental expenditure for which separate budget estimate should have been available.

Report on remittance and eventual credit to Government has not been received (April 1992).

The omission was reported to Government in April 1991; reply has not been received (April 1992).

9.10 Non-realisation of Stamp Duty on agreements

Exemption from the levy of Stamp Duty on agreements/contract bonds, executed for Government works was withdrawn by Government by notification issued on 14 January 1982 (effective from 20 January 1982). As such all types of agreements became subject to Stamp Duty from 20 January 1982. As per article 5(c) of Schedule 1-B of the Indian Stamp Act, 1899 (as amended in its application to Uttar Pradesh), an instrument of simple agreement (without security) is chargeable with Stamp Duty of Rs. 5 upto 14 June 1982 and Rs.6 thereafter (which was further increased to Rs. 10 with effect from 24 June 1988).

In four Public Works Divisions (Kheri-two divisions, Agra and Kanpur), Stamp Duty on 1,250 agreements at the rate of Rs. 5, on 5,400 agreements at the rate of Rs. 6 and on 1,050 agreements at the rate of Rs. 10, (agreements executed between January 1982 and October 1990) was not realised. This resulted in loss of revenue amounting to Rs. 49,150.

On this being pointed out in audit (between January 1990 and April 1990), the Divisional Officers stated that orders to the effect had not been received in their divisions.

The matter was reported to the Department and Government between June 1990 and February 1991; their replies have not been received (April 1992).

C-AGRICULTURE DEPARTMENT

9.11 Results of Audit

Test check of the accounts and relevant records of the Agriculture Department, conducted in audit during the year 1990-91, revealed irregularities involving Rs. 70.54 lakhs in 31 cases, which broadly fall under the following categories:

	Number of cases	Amount (In lakhs of rupees)
1. Short fall in production on Government Agricultural farms	6	20.92
2. Non-realisation of licence fees from fertilizer dealers	7	16.66
3. Loss due to non-utilization of full cultivable lands	3	7.61
4. Loss due to sale of fertilizers at prerevised rates	1	0.41
5. Other irregularities	14	24.94
TOTAL	31	70.54

D- Co-operation Department**9.12 Results of Audit**

Test check of the accounts and relevant records of the offices of 10 Assistant Registrars, conducted in audit during the year 1990-91, revealed irregularities involving Rs. 1.74 lakhs in twelve cases, ten of which pertained to non-deposit of collection charges into Government account.

Cases of non-deposit of collection charges into Government account noticed during 1990-91 and earlier years are mentioned in the succeeding paragraph.

9.13 Non-deposit of collection charges in Government account

In terms of Section 130 of the Uttar Pradesh Co-operative Societies Act, 1965 (Act), the State Government may make rules to carry out the purposes of the Act. According to Rule 363 of the Uttar Pradesh Co-operative Societies Rules, 1968, framed by Government, any amount received or realised as fee or otherwise under the Act is to be deposited in full into the treasury under the head of account as specified by the State Government or the Registrar, Co-operative Societies, U.P.(Registrar) from time to time. An amendment in the Act was proposed in 1981 to create a fund for collection charges under law. Pending amendment in the Act (September 1991), the Uttar Pradesh Co-operative Societies Collection Fund Regulation, 1982 was framed by the Registrar and circulated on 19 January 1983, according to which 1 per cent of the total collection charges (10 per cent of the arrear amount received on behalf of the co-operative societies) realised during the

previous year by the Department from the beneficiaries of loans, is to be deposited into the Government treasury and the remaining 9 per cent in the Fund Account proposed to be created under the amended Act. These regulations are not consistent with the rules framed by the Government till the Act is amended.

Mention was made in paragraph 9.14 of the Audit Report on Revenue Receipts for the year ended 31 March 1988 about non-deposit of collection charges amounting to Rs. 3.40 lakhs (being one per cent only) in respect of the offices of 23 Assistant Registrars, Co-operative Societies in Government account. Similar irregularities were noticed (between June 1989 and September 1990) in the course of audit of the offices of 10 more Assistant Registrars, Co-operative Societies in which total amount of Rs.1.68 crores being 10 per cent collection charges for arrear dues recovered on behalf of various co-operative societies during the period 1982-83 to 1990-91, was kept in a separate bank account. Even one per cent of this amount (Rs. 1.68 lakhs) was not credited to Government account as contemplated in the regulation framed by the Registrar.

On this being pointed out in audit, the Department stated (September 1991) that the proposed amendment is still to be carried out and collection charges at the rate of 1 per cent are being deposited into the treasury under the head intimated by Government in March 1988. Information regarding total amount so deposited is being called for from the districts.

The matter was reported to Government in February 1990.

E-Food and Civil Supplies Department**9.14 Results of Audit**

Test check of the accounts and relevant records of 12 District Supply Offices , conducted in audit during the year 1990-91, revealed irregularities involving Rs. 6.52 lakhs in 24 cases, which broadly fall under the following categories:

	Number of cases	Amount (In lakhs of rupees)
1. Non-crediting of lapsed securities of coal dealers to Government account	11	4.73
2. Non-realisation of cost of ration cards	8	1.48
3. Other irregularities	5	0.31
TOTAL	24	6.52

A few important cases noticed during 1990-91 and earlier years are mentioned in the succeeding paragraphs.

9.15 Non-recovery of the cost of ration cards

Ration cards are supplied by the Food and Civil Supplies Department to the District Supply Officers, Block Development Officers and Tehsildars etc. for selling them to public. The issuing officers are required to realise from the public, the cost of ration cards (ranging between 15 paise and 35 paise per card) as fixed by Government from time to time and deposit the same into the treasury.

In nine districts, the cost of ration cards supplied to various authorities during the period from April 1981 to March 1989 for issue to public, was either

not deposited at all or deposited in part only, by those authorities. The cost not deposited amounted to Rs. 4.21 lakhs.

On this being pointed out in audit between October 1986 and April 1989, the Department recovered (between November 1988 and December 1989) Rs. 64,846. Report on recovery of the balance amount of Rs. 3.56 lakhs has not been received (April 1992).

The matter was reported to the Department and Government between November 1986 and July 1989; their replies have not been received (April 1992).

9.16 Non-forfeiture of security deposits

As per Government notification dated 28 December 1977, each applicant for the grant of licence for wholesale and retail vend of coal and operation of brick-kilns should, before issue of the licence, furnish a security of Rs. 1,000 in case of coal agent, Rs. 200 in the case of coal depot holder and Rs. 300 in the case of owner of brick-kiln run with coal in the form of fixed deposit receipt of a scheduled bank, duly pledged to the District Magistrate concerned. The whole or any part of the amount of the security, which is not forfeited should, on an application being made for that purpose be refunded to the licensee on the termination of his licence. No application for such refund would be entertained after expiry of one year from the date of termination of the licence and the security in whole or part as the case may be, would, in that event, be forfeited to Government.

In 13 District Supply Offices, it was noticed that security deposits in respect of 1,097 cases involving an amount of Rs. 4.08 lakhs in which licences were

terminated between April 1979 and April 1989, had not been forfeited and credited to Government account although no application for refund was made within one year of the date of termination.

On this being pointed out in audit, the Department stated (December 1989) that a sum of Rs. 4,100 had since been forfeited and credited to Government Account. Report on the balance amount has not been received (April 1992).

The cases were reported to the Department between June 1988 and December 1990 and to Government in March 1991; their replies have not been received (April 1992).

Jai Narain

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Lucknow
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25 SEP. 1992

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New Delhi
The

5 OCT. 1992