

## CHAPTER-III: OTHER TAXES AND DUTIES

### 3.1 Impact of audit reports

During the last five years (including the current year's report), audit through its audit reports had pointed out<sup>1</sup> non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 6144.43 crore in 17 paragraphs. Of these, the departments/Government had accepted audit observations in three paragraphs involving ₹ 23.85 crore and had since recovered ₹ 3.94 crore. The details are shown in the following table:

**Table 3.1**

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	2	45.72	-	--	-	--
2006-07	3	6,089.71	1	20.86	1	3.94
2007-08	3	1.77	-	--	-	--
2008-09	5	4.53	2	2.99	-	--
2009-10	4	2.70	-	--	-	--
<b>Total</b>	<b>17</b>	<b>6,144.43</b>	<b>3</b>	<b>23.85</b>	<b>1</b>	<b>3.94</b>

Thus, against accepted cases involving ₹ 23.85 crore, the concerned departments/Government recovered an amount of ₹ 3.94 crore only which is 16.51 per cent.

**We recommend that the concerned departments need to revamp their revenue recovery mechanism to ensure that at least the revenue involved in the accepted cases is promptly recovered.**

### 3.2 Results of audit

Test check of the records relating to the Taxation Department and four units of the Stamps & Registration Department including cross-verification with other departments during the year 2009-10 revealed non/short realisation, evasion of taxes, duties, etc., amounting to ₹ 5.18 crore in nine cases which can be categorised as under:

<sup>1</sup> Paragraphs on amusement and betting tax, professional tax and stamps and registration.

**Table 3.2**

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Loss of revenue	3	1.10
2.	Short realisation of tax/duties	3	3.2
3.	Evasion of tax/duties	3	0.88
<b>Total</b>		<b>9</b>	<b>5.18</b>

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 35 lakh in one case. No recovery has been intimated (October 2010).

A few illustrative audit observations involving ₹ 2.65 crore are mentioned in the following paragraphs.

### **3.3 Audit observations**

*Scrutiny of the records in various offices of the Taxation Department and Stamps and Registration Department revealed several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy/realisation, evasion of taxes, duties etc., as have been mentioned in the ensuing paragraphs of the chapter. These cases are illustrative, based on test check carried out by us. Though we point out such omissions each year, yet the irregularities continue to persist. We feel there is a need for the Government to consider directing the departments to improve the internal control system so that such omissions can be detected, avoided, and corrected.*

### **3.4 Loss of revenue**

Under the Indian Stamp Act, 1899, 'lease' means a lease of an immovable property and includes undertaking in writing to cultivate, occupy or pay or deliver rent for the immovable property.

**3.4.1** We scrutinised the records of the Shillong Municipal Board (SMB) in January 2010 and observed that the SMB executed a lease agreement with a lessee in February 2009, under which it transferred 72,000 sq. feet of the existing

Clause 35(a) (v) of the Act *ibid*, lays down that stamp duty on lease, where, the lease purports to be for a term exceeding twenty years but not exceeding thirty years shall be calculated at the rate of ₹ 99 per ₹ 1,000 for a consideration equal to three times the amount or value of the average annual rent reserved.

SMB office plot at Shillong to the lessee for a period of thirty years at an annual lease rent of ₹ 61.92 lakh, subject to an escalation of 10 per cent in a block of every three years. The average annual lease rent for the purpose of stamp duty works out to ₹ 98.68 lakh for which stamp duty of ₹ 29.31 lakh was leviable. Cross-check of records of the District Registrar, East Khasi Hills district,

Shillong, however, revealed that the aforesaid lease agreement was not registered, thereby leading to evasion of stamp duty of ₹ 29.31 lakh.

**3.4.2** We noticed, during the cross verification of the records of the Registrar/Sub-Registrar, East Khasi Hills, Shillong with the records of the Superintendent of Taxes, Shillong in October 2009, that a lease agreement was executed between M/S Hotel Eldorado Private Limited and M/s Vishal Retail Limited under which the lessor transferred to the lessee a commercial building measuring area of 20,900 square feet for a period of nine years for an annual consideration of ₹ 62.70 lakh

Clause 35 (a) (iii) of the Indian Stamp (Meghalaya Amendment) Act 1993, lays down that the stamp duty on lease where the lease purports to be for a term exceeding five years and not exceeding ten years, the duty is chargeable at the rate of ₹ 99 per ₹ 1000 for a consideration equal to the amount or value of the average annual rent received.

subject to escalation of 15 *per cent* applicable after a block of every three years. Thus, the lease rent for the purpose of stamp duty would be ₹ 72.58 lakh for which stamp duty of ₹ 7.19 lakh was leviable. But the lessee did not register the aforesaid lease agreement with the Registrar. This resulted in evasion of stamp duty of ₹ 7.19 lakh.

We reported the cases to the Department/Government between November 2009 and April 2010 but their replies have not been received (October 2010).

### **3.5 Non-levy of stamp duty**

We noticed during scrutiny of the records of the Registrar, East Khasi Hills, Shillong in October 2009 that a deed of agreement was executed in January 2009. The recitals of the agreement indicated that Shillong Club would hand over land measuring 9,297 square metres to a private party for construction of a five-star

The distinction\* between lease and licence is “if the document creates an interest in the property, it is a lease but, if it only permits another to make use of the property of which the legal possession continues with the owner, it is a licence”.

\*“Supreme court of India judgment in Associated hotels of India v/s R. N Kapoor case (1959) (SC) (1262)”

hotel at a cost of ₹ 30 crore for a period of 28 years. An annual fee of ₹ 7 lakh was to be paid by the second party during the first four years, and thereafter, ₹ 63.33 lakh subject to escalation of 10 *per cent* after every five years. The second party was free to run the hotel in their own name and style including the name of first party and to obtain loans or other financial assistance of its choice for carrying out the development and the construction of the said hotel without any liability to the first party. Thus, the deed should have been classified as a lease deed and stamp duty of ₹ 19.80 lakh levied. But the Registrar classified the deed as a ‘licence’ and

exempted it from stamp duty. Thus, incorrect classification of the deed resulted in non-levy of stamp duty of ₹ 19.80 lakh.

After we pointed out the case, the Registrar stated (March 2010) that the said agreement could not be construed as lease as it did not transfer any interest in favour of the licensee. The reply furnished is not correct as the recitals of the deed indicated that the second party was free to run the hotel in their own name and style including the name of first party and to obtain loans or other financial assistance of its choice for carrying out the development and the construction of the said hotel without any liability to the first party. Moreover, the deed also indicated that the hotel shall be operated by the second party for profit.

We also noticed that the second party had also deposited a security deposit of ₹ 1.50 crore by way of bank guarantee against satisfactory completion of the construction works within the stipulated period of 48 months in the demised land. However, the Registrar did not levy stamp duty on the security paid. This resulted in non-levy of stamp duty of ₹ 14.85 lakh.

We reported the cases to the Government in October 2009 and April 2010 but their reply has not been received (October 2010).

### **3.6 Non-realisation of renewal fee**

We noticed from the test check of the records of the ST, Circle-VIII, Shillong in April 2010 that out of 8607 licensed bookmakers, only 2,257 licensees applied for

Under Rules 39 (7) and 45 of the Meghalaya Amusement and Betting Tax Rules, 1982, application for renewal of the licence of bookmaker of arrow shooting or the game of *teer* shall be submitted before 30 days of the expiry of the period of validity of licence, to the Commissioner of Taxes. The fee for renewal of the licence shall be ₹ 3,400 per annum which is payable upto the date of renewal/cancellation of licence.

renewal of the licences between 2005-06 and 2009-10 and 767 applied for cancellation of licences. The remaining 5,583 bookmakers neither applied for renewal of their licences, nor surrendered the licences for closure of business. Though the information was available with the ST, he initiated no action either to ascertain the facts of discontinuance of business or to realise the renewal fee. Hence, in the absence of a proper monitoring, renewal fee of ₹ 1.90

crore realisable for the aforesaid period was not realised.

We reported the case to the Department/Government in April 2010 but their replies have not been received (October 2010).

### 3.7 Non-levy of professional tax

We test checked the records of the ST, Circle-II, Shillong in March 2010 and noticed that about 200 employees of Shillong Municipal Board (SMB) had neither furnished returns for professional tax nor paid tax under the Act during the period

Under the Meghalaya Professions, Trades, Callings and Employments Tax Act, every person in employment in any government, local body, company, firm and other association of persons is liable to pay professional tax. Further, every person liable to pay tax under this Act, shall submit to the AO, a return within 60 days of the commencement of the financial year. If any person fails to submit the return, the AO shall assess to the best of his judgement and determine the tax payable by him. The Act further provides that the notice in respect of escaped tax can only be issued within three years of the end of the year for which assessment or reassessment is proposed to be made.

2002-03 to 2008-09. The Drawing and Disbursing Officer of the SMB also did not deduct the tax from the pay bills of the employees. The AO did not issue any notice to the defaulting office to furnish returns and payment of tax. Thus, inaction on the part of the AO resulted in non-realisation of professional tax of ₹ 7.01 lakh, of which, ₹ 4.03 lakh is a loss of revenue to the government as provision in the Act prohibits assessment beyond three years. Similarly, we also noticed that employees of two commercial banks had defaulted in payment of professional tax, of which, one of the banks had not paid tax since

8 years *i.e.*, from 2001-02 to 2008-09 while the other since 17 years *i.e.*, from 1992-93 to 2008-09. The AO did not take any action to complete the assessment to the best of his judgement and to recover the assessed tax. This resulted in non-realisation of professional tax of ₹ 2.40 lakh, of which ₹ 1.87 lakh was a loss of revenue as the Acts prohibits assessment/reassessment beyond three years.

We reported the cases to the Department/Government in May 2010 but their replies have not been received (October 2010).