# CHAPTER VII : MINISTRY OF FINANCE

## Chief Commissioner of Income Tax, Kolkata

### 7.1 Avoidable expenditure due to payment of inadmissible levies to the local municipal bodies

**Chief Commissioner of Income Tax in disregard to Constitutional and manual provisions paid property tax and service tax to Bidhannagar Municipality and Kolkata Municipal Corporation to the tune of ₹ 28.18 lakh.**

In May 1954, the Government of India decided to pay "Service Charges" for specific services rendered to Central Government properties by the state local authorities. It was emphasized that specific services would include not only direct services such as water and electric supplies, scavenging, etc. but also general services such as street lighting, town drainage, connecting approach roads, etc. An Office Memorandum (OM) dated 25 August 1962 was issued by Government of India, wherein it was decided that service charges for Central Government properties constructed or acquired after 31 March 1937 were payable with effect from 1 April 1954. The OM also mentioned the method of calculation of service charges payable. The procedure for arriving at the quantum of service charges payable as mentioned above was revised as per letter dated 29 March 1967 read with OM dated 3 April 1968 issued by Government of India.

Test check of records as made available to audit revealed that Chief Commissioner of Income Tax (CCIT) had been paying service charges to the Kolkata Municipal Corporation (KMC) at the rate of 75 *per cent* of the property tax payable by private individuals (i.e. maximum admissible rate for availing all the services) for its four office premises and one residential property.

Further scrutiny revealed that in addition to service charges, CCIT had paid Water charges and Drainage & Sewerage charges in respect of two office premises. CCIT had also paid water charges for the Residential Complex. Since the service charges include services towards water supply and drainage, the payment of water charges and drainage separately by CCIT was irregular. The total of water charges and drainage charges irregularly paid in respect of the aforesaid premises between November 2004 and October 2009 amounted to ₹ 16.35 lakh and entirely constitutes inadmissible payment made to KMC.

It was further observed that the roads, lighting and water facilities inside the residential complex are built and maintained by the IT Department and only partial services are availed of from the municipality. Despite this CCIT was paying full service charges for the location. Thus, payment of service charges at full rate in respect of the residential complex resulted in inadmissible payment of ₹ 5.07 lakh for the period from 2004-2010.

Further as per the provisions contained under Article 285 of the Constitution of India, the properties of the Central Government are exempt from all taxes imposed by a state or by any other authorities within a state. It was observed in audit that CCIT paid ₹ 6.76 lakh to the Bidhannagar Municipality as Property Tax for the period 1 July 2005 to 31 March 2007 for another residential complex at Salt Lake, Kolkata which was inadmissible and irregular.

In reply CCIT stated in October 2010 that payments were made against bills raised by a State Government Body. Moreover the bills raised also contained provisions of penalty in case of non payment. CCIT also stated that clarifications have been sought from the local bodies concerned. The reply is not tenable as CCIT should have considered the rule provision in respect of taxation by civic bodies for properties of Central Government and discussed the matter with the Civic Bodies before making payment.

Thus CCIT had paid an amount of ₹ 28.18 lakh (₹ 16.35 lakh + ₹ 5.07 lakh + ₹ 6.76 lakh) to the municipal bodies towards inadmissible payment of property tax, water charges, drainage charges and service charges.

The matter was referred to the Ministry in July 2010; their reply was awaited as of December 2010.

**Securities and Exchange Board of India**

### 7.2 Irregular expenditure

**Failure of SEBI to check the status of land before making payment of its cost resulted in irregular payment of compensation of ` 90 lakh to MIDC for settlement with the illegal occupants. The possession of land was yet to be handed over to NISM, SEBI even after making payment of ` 11.85 crore to MIDC.**

SEBI decided (February 2006) to acquire a 70 acres plot of land from Maharashtra Industrial Development Corporation (MIDC)[1], for setting up the

[1] A Maharashtra Government Undertaking

National Institute of Securities Market (NISM). NISM was envisaged to be an Institute for teaching and training intermediaries in the securities markets and promoting research.

MIDC allotted (March 2006) a plot of land measuring 60 acres to SEBI at a cost of ` 6.24 crore. It also allotted an additional plot of land measuring 10 acres to SEBI at a cost of ` 1.02 crore in November 2007.

Audit noted that ` 11.85 crore[2] had been paid to MIDC by NISM, SEBI between February 2006 to April 2010, for 70 acres of land without any formal agreement.

Possession of the plot of 60 acres was to be handed over to SEBI in June 2007. However, in June 2007, MIDC informed SEBI that handing over of possession was not possible due to various reasons including encroachment of a small area of the plot by locals for seasonal cultivation. MIDC should have given the land free from encroachment. They misled SEBI.

After protracted correspondence between SEBI and MIDC, it was mutually decided in February 2009, that SEBI would pay a compensation of ` 90 lakh to adivasi occupant families as demanded by them through an NGO[3]. SEBI in August 2009 had paid ` 90 lakh to MIDC as compensation to remove encroachment.

The decision of SEBI to pay compensation of ` 90 lakh to MIDC was irregular as the legal responsibility of providing land free from encroachment rested with MIDC. The fact that SEBI had made full payment to MIDC without entering into an agreement, denied it the opportunity to explore the legal options to safeguard its interest.

Further, inspite of the payment of the compensation amount the following irregularities were noted by Audit:

- No formal agreement was signed with MIDC for possession of land.

[2] ` 3.04 crore (14.2.2006) and ` 3.21 crore (5.5.2006) as Ist and IInd instalment towards 60 acres of plot, ` 20.60 lakh for fencing work (11.9.2007), ` 50.88 lakh (29.11.2007) for earnest money towards 10 acres of plot, ` 90 lakh (20.8.2009) for compensation amount and ` 3.99 crore (29.4.2010) towards construction of compound wall.

[3] Shram Kranti Sangathan

- The possession of the land was yet to be handed over to SEBI as of February 2011 even after a delay of 39 months.

- Even after being aware of the encroachment of the plots, SEBI went ahead and made payment of ` 50.88 lakh to MIDC in November 2007 towards earnest money for the plot of 10 acres of land.

- There was an inordinate delay in setting up of NISM, which was envisaged by the Finance Minister in his budget speech of 2005.

SEBI forwarded the reply of NISM (June 2010) stating that since the land was allotted by MIDC, a Government of Maharashtra Undertaking no verification of the title was carried out. However, physical verification of the land was carried out by the officials of SEBI, NISM on a number of occasions and no adverse conditions were observed by any of these officials at plots of lands. Further, due to delay in handing over of possession of the plots by MIDC has resulted in non-execution of agreements. The Ministry while endorsing the views of SEBI stated (March 2011), that it had been mutually agreed between MIDC and NISM that the possession of the land would be handed over after completing the construction of compound wall. This was expected to be completed by February 2011. It also stated that the measures taken by NISM were not only most prudent but also inevitable in the circumstances to resolve the issue amicably.

The fact remains that SEBI failed to articulate the terms of agreement with MIDC before making payments. This allowed MIDC to be free of any obligation to provide the plot without any adverse possession to SEBI.

## Insurance Regulatory and Development Authority

### 7.3 Loss of interest

**IRDA invested ₹ 58.80 crore in two banks as term deposits under 'above one crore' category at an interest rate of 7.5 *per cent* rather than opting for multiple deposits at a higher interest rate of 8 *per cent* offered by these banks under 'below one crore' category. In the process it sustained a loss of interest of ₹ 31.14 lakh.**

Insurance Regulatory Development Authority (Authority) invited quotations (March 2009) from public and private sector banks for investment of ₹ 153.50 crore in term deposits for one year period commencing from 31March 2009. Quotations were received from 12 banks, out of which five banks[4] qualified

[4] Andhra Bank, Bank of India, HDFC, Karur Vysya Bank, , Syndicate Bank

and were selected in accordance with the approved financial parameters[5] of the Authority. SBI being the main banker of the Authority was also selected. The banks offered rates of interest under two categories. Higher interest rates were offered by four banks for term deposits under 'below one crore' category than those offered under 'above one crore' category. The terms of the quotations did not impose any restriction on the number of deposits that could be made at a time under each category.

The Authority deposited an amount of ₹ 17.10 crore with Andhra Bank in 19 F.D's[6] of ₹ 90 lakh each on 31 March 2009 in order to avail higher interest rate under 'below one crore' category. Audit noted that the Authority did not follow the same pattern while investing funds with Bank of India and Syndicate Bank. It deposited ₹ 16.80 crore with Bank of India in 2 FD's [7] and ₹ 42 crore with Syndicate Bank in 3 FD's[8] under 'above one crore' category at interest rate of 7.5 *per cent per annum*. Thus the failure of the Authority to avail the benefit of higher interest rate of 8 *per cent* by investing the money in multiple deposits of amounts less than ₹ one crore resulted in loss of interest of ₹ 31.14 lakh.

The Authority stated (July 2010) that all banks do not agree to accept funds of more than one crore in multiple deposits of amounts less than one crore. It also stated RBI had imposed restriction on splitting of deposits on the same day for availing higher rate of interest.

The reply of the Authority is incorrect as the instructions imposing restriction on splitting of deposits were internal orders of Bank of India and were not attributable to RBI. Moreover, the reply is also contrary to the action of the Authority in investing multiple FDs of less than one crore with Andhra Bank and SBI on the same day i.e. 31 March 2009.

The matter was referred to the Ministry in October 2010; their reply was awaited as of March 2011.

### 7.4 Irregular award of work

**Awarding the work of web portal development to a firm without ensuring competitiveness of rates and without safeguarding its interest resulted in an irregular and avoidable expenditure of ₹ 59.48 lakh.**

[5] 80 *per cent* to be invested in public sector banks and 20 *per cent* in private banks.
[6] Fixed deposits
[7] ₹ 15.30 crore and ₹ 1.50 crore each
[8] ₹ 30crore, ₹ 10 crore and ₹ 2 crore each

In order to streamline the web based procedure for receipt of applications and grant of licenses to insurance agents the Insurance Regulatory and Development Authority (Authority) invited 'limited' quotations from four firms[9]. The Authority awarded the work (August 2000) to the lowest bidder at a cost of ₹ 9.00 lakh being one time expenditure including first year revenue expenditure. The recurring expenditure was ₹ 2.75 lakh from the second year onwards. The Information Technology based system was put in place in October 2000 at the firm's site and the Authority released payment of ₹ 9.00 lakh to the firm in three instalments by April 2001. Later, the Authority entered into an agreement (June 2003) with the same firm for web hosting and site care maintenance at a cost of ₹ 2.50 lakh *per annum* (with provision for annual increase of 10 *per cent*) and ₹ 4.20 lakh *per annum* respectively. In January 2009, the site care maintenance charges and web hosting charges were enhanced to ₹ 1.56 lakh per month and ₹ 61000 per month respectively. The services of the firm were discontinued with effect from August 2009.

Audit scrutiny (October 2005 and September 2010) brought out the following:

- The authority failed to provide specific reasons/justification for opting for limited tender enquiry. This was in violation of GFRs which provides that where agreements are made by negotiation or limited tenders, specific reasons for doing so should be provided.

- The Authority entered into formal agreement (June 2003) with the firm, however, it failed to clearly set the terms and conditions for execution of the work. Questions regarding ownership of the software and the source code[10] were left unaddressed.

- Until the date of entering into the contract in June 2003, the Authority had paid ₹ 30.88 lakh towards various services[11] as claimed by the firm against the dues of ₹ 14.50 lakh[12] payable to the firm as per the bid document.

- The Authority had to pay ₹ 33.71 lakh (January 2009) to the firm for acquiring the source code of the portal. Audit noted that there was no basis for arriving at this figure. Further, the terms for the source code

[9] M/s Apex Technologies Pvt. Ltd., M/s Net Across, M/s India Mart and M/s Maruti IT
[10] Source Code is a collection of statements or declaration written in computer programming language to enable the programmers to specify the action to be performed by a computer
[11] Reconciliation work, back office maintenance, site care maintenance, portal development etc.
[12] ₹ 9 lakh being one time expenditure and ₹ 2.75 lakh *per annum* for the next two years)

ownership rights should have been part of the agreement and expressed prior to award of the work.

- The financial terms were further altered in favour of the firm in January 2009. The authority accepted the enhancement of the charges for services without sufficient justification in terms of increase in scope of work. Between January 2009 and July 2009 the Authority had made a payment of ₹ 15.19 lakh towards site care maintenance and web hosting charges against the amount of ₹ 4.80 lakh due as per the terms of the contract. This resulted in avoidable excess payment of ₹ 10.39 lakh.

In response to the audit observation initially issued in December 2005, the Authority stated (October 2005 and July 2006) that the decision to award the work to the firm was taken by the then Chairman after discussing the scheme in detail with the firm. It also stated that since the technology was new and only a few firms had this capability, limited tender system had been followed. It further stated that it could not execute the agreement with the firm as the process was time consuming and the exigency of addressing the problem of Agent's Licensing was critical for the credibility of the Authority. The Ministry while endorsing the views of the Authority stated (January 2007) that no undue advantage had been given to the firm as the charges paid to it was for additional services rendered by it for the back office maintenance, site care and web hosting.

However, audit noted that the decision to adopt limited tendering was not supported by reasons on file. The grounds mentioned in the Authority's reply appear to be an after thought. The action of the Authority contravened the provisions of GFRs which stipulates that no work should commence without the execution of an agreement. Moreover, the recurring expenditure of ₹ 2.75 lakh initially offered by the firm in its initial quotation of July 2000 included recurring hosting, maintenance and support charges for the web portal and client server applications. Therefore the services could not be treated as additional services.

The manner of appointment of the firm without setting up the terms before hand, subsequent payments for services not forming the part of contract; procurement of source code at a substantial cost are suggestive of undue benefit being extended to the firm.

The Statement of Facts was issued to IRDA in September 2010 and the matter was referred to the Ministry in February 2011; their reply was awaited as of March 2011.