

Chapter V
Land Revenue and Building Tax

CHAPTER-V LAND REVENUE AND BUILDING TAX

5.1 Tax administration

The Revenue and Disaster Management (R&DM) Department is under the control of the Principal Secretary at the Government level with the Commissioner of Land Revenue as its head. The revenue collection of the Department includes collection of basic tax, building tax, lease rent and plantation tax. The Department realises arrears of public revenue under the Kerala Revenue Recovery Act, 1968 (KRR Act, 1968) with interest and cost of process prescribed.

5.2 Internal audit

The Internal Audit Wing (IAW) of the Office of the Commissioner of Land Revenue is supervised by a Senior Finance Officer under the Commissioner of Land Revenue. The audit of *taluk* offices, Revenue Divisional Offices and Revenue Recovery offices, Offices of Vigilance Deputy Collector and stamp depot is conducted in a period of two to three years and on random selection without conducting any risk analysis. During 2014-15, the wing planned and conducted audit of 24 units. Out of an overall outstanding of 22,765 paras, only 136 paras (0.59 *per cent*) were cleared. This clearly suggests that the Commissioner of Land Revenue failed to accord necessary attention to the observations of the IAW and ensure clearance of the paras by taking care the shortcomings/deficiencies.

5.3 Results of audit

The records of 49 units out of total 107 units relating to land revenue and building tax were test checked during 2014-15. Under-assessment of tax and other irregularities involving ₹ 55.21 crore were detected in 210 cases which fall under the following categories as given in **Table – 5.1**.

Table – 5.1

(₹ in crore)			
Sl. No.	Categories	Number of cases	Amount
1	Under-assessment and loss under building tax	171	12.07
2	Under-assessment and loss under other items	39	43.14
	Total	210	55.21

During the course of the year, the Department accepted under-assessments and other deficiencies involving ₹ 0.87 crore in 67 cases; of which four cases having monetary value of ₹ 49.09 lakh were pointed out in audit during 2014-15. An amount of ₹ 2.17 crore was realised in 158 cases during the year; of which, four cases involving ₹ 5.06 lakh pertained to 2014-15. The Department replied that the non/short realisation of dues were due to the pendency of Court cases and appeals.

A few illustrative audit observations involving ₹ 5.99 crore are mentioned in the following paragraphs.

5.4 Non-assessment of building tax

The completion of buildings were either not reported by Village Officers or the buildings were not assessed to building tax by the assessing authority though reported by Village Officers for assessment.

As per Section 5(1) of the Kerala Building Tax Act, 1975 (KBT Act, 1975), building tax shall be charged on every building the construction of which is completed on or after 10 February 1992 based on the plinth area of the buildings at the rates prescribed. Section 7(1) of the KBT Act, 1975 stipulates that the owner of every building the construction of which is completed or to which major repair or improvement is made on or after 10 February 1992 shall furnish to the assessing authority a return in the prescribed form along with a copy of the plan approved by the local authority or such other authorities as may be specified by the Government in this behalf. As per Rule 3 of the Kerala Building Tax (Plinth Area) Rules, 1992 every Village Officer shall transmit to the assessing authority, within five days of the expiry of each month, a monthly list of buildings liable to assessment, together with extracts from building application register of the local authority within whose area the buildings included in the list are situated. As per Section 7(3) of the KBT Act, 1975 if the assessing authority is of opinion that any person is liable to furnish a return under subsection (1), it may serve a notice upon that person requiring him to furnish within such period a return in the prescribed form. If any person fails to make a return in response to any notice issued under subsection 3 of Section 7, the assessing authority shall assess the amount payable by the person as building tax to the best of its judgement.

5.4.1 Cases which were not reported by Village Officers

- **20 Taluk Offices¹**

Audit collected the details of buildings completed from the local authorities which were cross-verified with the building tax assessment registers of 20 Taluk Offices, the booking registers and collection registers of 48 village offices. Audit found that 563 buildings, completed between January 2007 and March 2014 and a building completed in 1993 were not reported to the *Tahsildars* for assessment. Root cause for non-identification of the new buildings completed was non filing of return by the building owners as envisaged in the Act. Though a penalty clause

¹ Aluva, Ambalapuzha, Chengannur, Cherthala, Chirayinkeezhu, Chittur, Ernad, Kanayannur, Kasargod, Kodungallur, Kottayam, Kozhencherry, Kozhikode, Mananthavady, Mannarkkad, Palakkad, Sultan Bathery, Tirur, Tirurangadi and Udumbanchola.

had been envisaged in the Act, this was not being enforced. The Village Officers also failed to forward the monthly list of completed buildings to *Tahsildars*. Non-reporting of the completion of the buildings by the building owners and failure of the Village Officers to send the list of completed buildings to *Tahsildars* resulted in non-identification of the buildings completed for assessment. This resulted in non-assessment of buildings and consequent non levy of tax of ₹ 2.24 crore.

Audit found that four *Taluk* Offices having maximum cases of non levy of building tax where the village officers had not reported the buildings for assessment noticed as given below.

- *Taluk* Office, Kottayam – 112 cases; ₹ 27.78 lakh.
- *Taluk* Office, Kozhikode – 85 cases; ₹ 70.57 lakh.
- *Taluk* Office, Chengannur – 55 cases; ₹ 8.29 lakh.
- *Taluk* Office, Chirayinkeezhu – 52 cases; ₹ 9.68 lakh.

The Government stated (July 2015) that ₹ 46.41 lakh had been recovered in 62 cases, two cases involving ₹ 3.92 lakh had been exempted and action was being taken to realise the balance amount. Justification for exemption and details of realisation in remaining cases had not been received (January 2016).

Thus, it is felt that in the case of new buildings, Government may consider issuing directions to the Kerala Water Authority/Kerala State Electricity Board Limited to ensure that water/electricity supply connections are given to buildings for which building tax assessments have been completed.

5.4.2 Cases which were reported by Village Officers

- **14 *Taluk* Offices²**

Audit cross-verified the building tax assessment registers of 14 *Taluk* Offices with the booking registers and collection registers of 156 village offices and found that 986 buildings completed during 2011-14 were reported by Village Officers to the *Tahsildars* for assessment. The *Tahsildars* failed to levy and assess tax even on the buildings the completion of which were reported by the Village Officers. Inaction on the part of the *Tahsildars* to assess the buildings resulted in non-levy of building tax of ₹ 2.26 crore.

Audit found that short levy of building tax involving ₹ 1.60 crore was noticed maximum in the following *Taluk* Offices.

- *Taluk* Office, Palakkad --295 cases; ₹ 60.04 lakh.

² Ambalapuzha, Chengannur, Kanayanoor, Kodungallur, Kothamangalam, Kottarakkara, Kozhenchery, Kozhikode, Mukundapuram, Nedumangad, Palakkad, Peerumade, Tirur, and Tirurangadi

- *Taluk Office, Kozhikode* – 124 cases; ₹ 45.45 lakh.
- *Taluk Office, Tirur* – 198 cases; ₹ 29.41 lakh.
- *Taluk Office, Kanayannur*--23 cases; ₹ 25.07 lakh.

The Government stated (July 2015) that ₹ 35.93 lakh had been recovered in 295 cases, four cases involving ₹ 65,475 had been exempted and action was being taken to realise the balance amount. Justification for exemption and details of realisation in balance cases had not been received (January 2016).

Audit found that failure of the Village Officers to send the list of buildings coupled with the failure of *Tahsildars* to assess these buildings, the completion of which were reported by Village Officers resulted in the failure of prescribed mechanism of identification of buildings to be assessed to tax. Audit found that survey system prevailed in the Department was inadequate to identify the new buildings for assessment of tax.

Audit noticed that the Government was taking action only after defects/ deficiencies were being pointed by Audit. As such, Government needs to put in place necessary system to take care of all such cases in a timely manner.

5.5 Non-realisation of luxury tax and non-demand of interest

Luxury tax was not assessed and demanded though building tax was assessed. Further, interest was not levied though luxury tax was paid after the prescribed dates.

As per Section 5A of the KBT Act, 1975, a luxury tax is leviable at the rate of ₹ 2,000 per annum on all residential buildings completed on or after 1 April 1999, having a plinth area of 278.7 square metres or more. The rate was revised to ₹ 4,000 per annum from 1 April 2014. As per the KBT Act, 1975 luxury tax is to be paid in advance on or before 31 March every year. As per Section 19 of the KBT Act, 1975 in case of default, such amount shall be recoverable under the law relating to the recovery of arrears of public revenue due on land. Further, the arrears of tax shall attract interest at six per cent per annum from the date of default.

• **17 Taluk Offices³**

As per the luxury tax assessment records maintained in 17 *Taluk Offices*, the assessee either did not pay luxury tax or paid the tax partially during the period 1999-2000 to 2014-15 in 2,597 cases. Audit found that the building owners had

³ Aluva, Ambalapuzha, Cherthala, Kanayannur, Kasargod, Kodungallur, Kollam, Kottarakkara, Kottayam, Kozhencherry, Kozhikode, Mallappally, Mannarkad, Nedumangad, Palakkad, Thiruvalla and Udumbanchola

not paid the luxury tax in advance in above cases and the assessing officers were not reviewing the building tax register containing the details of building tax assessments to ensure that the luxury tax due was paid by the owners of buildings regularly. The absence of such a system led to failure of *Tahsildars* concerned to take action under Section 19 resulting in non-realisation of luxury tax and interest amounting to ₹ 1.24 crore.

Audit observed that maximum cases where luxury tax was either not levied or levied short were noticed in *Taluk* Offices, Kanayannur and Kodungallur involving ₹ 38 lakh.

The Government stated (October 2015) the luxury tax of ₹ 46.29 lakh was realised in 1,309 cases, 17 cases with money value ₹ 1.46 lakh was exempted and 27 cases with ₹ 1.86 lakh were appeal/Court cases pending disposal. Justification for granting exemption had not been furnished by the Government. Further report had not been received (January 2016).

- **11 *Taluk* Offices⁴**

On a scrutiny (between March 2014 and January 2015) of the luxury tax registers of 11 *Taluk* Offices, Audit found that in 1,464 cases, the assessee paid luxury tax for the years 1999-2000 to 2013-14 after the prescribed due dates. The delay in payment ranged between one to 179 months. The *Tahsildars* accepted the delayed payments of luxury tax without collecting the interest prescribed. Omission on the part of the *Tahsildars* to realise interest under Section 19 amounted to ₹ 4.93 lakh in above 1,464 cases.

Audit observed that maximum cases of non levy of interest on luxury tax were noticed in *Taluk* Offices Kasargod, Kanayannur and Palakkad involving ₹ 3.70 lakh.

The Government stated (July 2015) that ₹ 26,400 had been recovered in 189 cases and two cases involving ₹ 890 were pending for disposal of appeal and action was being taken to realise the balance amount. Further report had not been received (January 2016).

On this being pointed out (September 2015) Principal Secretary to Government Revenue Department stated (September 2015) that District Collectors had been directed to ensure that appropriate action will be taken for collection of building tax and to take disciplinary action in case of non compliance.

PAC (2006-2008) in their 68 Report had commented on the lapses and irregularities in the assessment and collection of building tax supplemented by procedural drawbacks. The Committee had also noted that when irregularities were pointed out by Audit or otherwise, the Department issued circulars directing

⁴ Ambalapuzha, Cherthala, Chirayinkeezhu, Kanayannur, Kasargode, Kozhikode, Mallappally, Mannarkkad, Palakkad, Peermade and Udumbanchola.

the sub-offices not to repeat such irregularities, but no follow up was taken by the Department and the irregularities were being repeated. The Committee recommended that along with issuing circulars, the Department should ensure with the use of a capable internal audit system, whether the circular directions were being carried out. In response to the recommendation of PAC, the Department stated that the internal audit wing of the Department had been strengthened in such a way as to go through each and every nook and corner of building tax assessment files and it had also been made sure that the inspections were being made at regular intervals. Despite the assurance made by the Department to the PAC, the irregularities were persisting and these systemic issues had resulted in considerable leakage of revenue.

Though, every year the Audit points out large number of such cases in which either luxury tax was not collected or interest was not levied in cases of delayed payments of luxury tax, Government had not evolved an effective system to detect such cases and make good the short/non collection of tax/interest.

5.6 Non collection of cess on building tax

Cess on buildings with plinth area of 4,000 square feet and above was not demanded and collected.

- **31 Taluk Offices⁵**

As per Section 5(1) of the KBT Act, 1975, building tax shall be charged on every building the construction of which is completed on or after 10 February 1992 based on the plinth area of the buildings at the rates prescribed. As per the Kerala Finance Act 2011, a cess at the rate of two per cent on the building tax shall be levied for residential buildings having a plinth area of 4,000 square feet and above, completed after 19 July 2011. As per Section 19 of the KBT Act, 1975 in case of default, such amount shall be recoverable under the law relating to the recovery of arrears of public revenue due on land. Further, the arrears of cess shall attract interest at six per cent per annum from the date of default.

In 31 Taluk offices, though building tax of ₹ 3.37 crore was collected in 870 buildings having plinth area of 4,000 sq.ft and above, completed between 20 July 2011 and March 2014, the *Tahsildars* did not demand cess for such buildings. Failure of *Tahsildars* of the Taluk offices concerned to demand cess in 870 cases resulted in non-realisation of cess of ₹ 6.73 lakh besides interest.

⁵ Aluva, Ambalapuzha, Chengannur, Cherthala, Chirayinkeezhu, Ernad, Kanayannoor, Kasargod, Kochi, Kollam, Kottarakkara, Kottayam, Kozhencherry, Kozhikode, Kunnathunad, Mallappally, Mananthavady, Mannarkkad, Mukundapuram, Ottappalam, Palakkad, Perinthalmanna, Ponnani, Sulthan Bathery, Thalassery, Thaliparamba, Thiruvalla, Thrissur, Tirur, Tirurangadi and Vaikom.

Audit found that non-levy of cess on building tax was noticed maximum in *Taluk* Offices, Kanayannur and Thrissur involving ₹ 2.25 lakh.

Further, it was found that though the details of residential buildings having a plinth area of 4,000 sq feet and above were available in the building tax assessment register of the *Taluk* Offices the Department had not evolved an effective system to identify such cases reviewing the entries in the register regularly and for raising demand timely. Inaction on the part of *Tahsildars* resulted in non demand of cess in above cases.

The Government stated (July 2015) that ₹ 99,199 had been realised in 191 cases, 49 cases involving ₹ 71,260 had been exempted and action was being taken to realise the amount in balance cases. Justification for exemption granted and details of realisation in remaining cases had not been received (January 2016).

5.7 Short levy of tax due to short assessment of plinth area

Assessing authority failed to assess the extended plinth area of the building.

- ***Taluk* Office, Mananthavady**

As per Section 5(4) of the Kerala Building Tax Act, 1975, where the plinth area of the building, the construction of which is completed after 10 February 2002 is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement. Section 7(1) of the Act stipulates that the owner of the building the construction of which is completed to which major repair or improvement is made on or after the appointed day shall furnish to the assessing authority a return in the prescribed form within the prescribed period along with a copy of the plan approved by the local authority.

In *Taluk* Office, Mananthavady, the assessments of newly constructed/extended areas⁶ were not made in three cases⁷ during 2012-14 and hence tax was not demanded. Audit found that though the details of constructions/extensions were available in building tax assessment records, same was not utilized by the *Tahsildar* while completing the assessment. Hence Audit requested for joint verification. On such a joint physical verification (March 2015) of the premises by Audit and village officer, it was found that plinth area of 1,145.51 sq.m was omitted for assessment. Failure of the *Tahsildar*, Mananthavady to take action

⁶ 304.62 sq.m, 762.80 sq.m, 78.09 sq.m,

⁷ Sri. Ambilikunnam Ahammed, Sri. K. Noushad, Sri. Rasheed.

resulted in non-levy of building tax of ₹ 13.21 lakh⁸ as shown below in foot note. There was no prescribed mechanism in the Rules for recheck of the assessments made by a *Tahsildar* by a superior officer, except in case of a dispute.

On the matter being pointed out by Audit (March 2015), the *Tahsildar*, Mananthavady stated (June 2015) that on re-examination, new extensions/construction were found in all three cases and demand notices had been issued to realise the balance tax.

Government stated (September 2015) that in one case the assessee had remitted ₹ 54,000 and in the remaining two cases, the assessees had filed writ petitions against the assessment orders of *Tahsildar*. The Hon'ble High Court of Kerala had set aside (August 2015) the assessment orders of the *Tahsildar* and directed to re-inspect the building and issue fresh assessment orders within three months. Further it was stated (January 2016) that in another case the assessment was completed and demanded ₹ 34,755 including fine. In the third case, no amount had been demanded since the area computed previously was seen wrong.

⁸ ₹ 2.91 lakh, ₹ 7.53 lakh, ₹ 2.76 lakh.