

CHAPTER-VI

CHAPTER VI

OTHER TAX RECEIPTS

6.1 Tax administration

This chapter consists of receipts from Excise Duty and Fees, Profession Tax, Amusement Tax and Electricity Duty. The tax administration is governed by Acts and Rules framed separately for each Department. These taxes are administered by the Excise Department and the Finance (Revenue) Department headed by the Principal Secretary who is assisted by the concerned Directorates.

6.2 Results of audit

In 2013-14, test check of the records of 37 units relating to Excise Duty and other Fees, Profession Tax, Amusement Tax and Electricity Duty showed underassessment of tax and other irregularities amounting to ₹ 27.91 crore in 220 cases, which fall under the following categories as indicated in **Table 6.1**.

Table 6.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
A. STATE EXCISE			
1.	Non/short levy of excise duty/wastage fee on chargeable wastage of Rectified Spirit/India Made Foreign Liquor	25	1.83
2.	Non/short realisation of privilege fee/additional fee/licence fee/renewal fee/initial grant fee/pass fee etc.	34	1.96
3.	Non-levy and non-realisation of excise duty due to non-destruction of unregistered unsold stock of foreign liquor	8	3.27
4.	Loss/blockage of revenue	7	15.68
5.	Non-realisation of fee due to delayed removal of foreign liquor from bonded warehouse	4	1.32
6.	Other cases	23	0.42
Total		101	24.48
B. PROFESSION TAX			
1.	Non-realisation of demand of Profession tax against enrolled certificate holders	15	0.24
2.	Non-realisation of profession tax due to non-enrolment	45	1.17
3.	Non-realisation of profession tax due to non-assessment	7	0.16
4.	Other cases	8	0.49
Total		75	2.06

C. AMUSEMENT TAX			
1.	Non/short realisation of Entertainment/ Luxury/ Amusement tax etc.	20	0.75
2.	Other cases	10	0.03
Total		30	0.78
D. ELECTRICITY DUTY			
1.	Non/short assessment and non/short realisation of Electricity duty	14	0.59
Total		14	0.59
Grand Total		220	27.91

During the course of the year, the Departments accepted underassessment and other deficiencies of ₹ 37.19 crore in 158 cases, of which 108 cases involving ₹ 2.89 crore were pointed out in the year 2013-14 and the rest in the earlier years. An amount of ₹ 1.83 crore was realised in 51 cases during the year 2013-14.

A Performance Audit on “Administration of taxes under various Acts by Directorate of Agricultural Income Tax in West Bengal” having money value of ₹ 136.05 crore and few illustrative cases involving ₹ 2.32 crore are discussed in the following paragraphs.

6.3 Performance Audit on “Administration of Taxes under various Acts by Directorate of Agricultural Income Tax in West Bengal”

Highlights

- Weakness in tax administration in respect of Agricultural Income Tax resulted in non-inclusion of 1,274 tea gardens having an area of 61,632 acres of land into the tax net.
(Paragraph 6.3.8)
- Absence of a system of cross verification of information with other sources resulted in non-inclusion of 1,849 omnibuses, 364 AC restaurants, 58 AC hotels and 54 AC banquet halls into the tax net and consequent non-realisation of ₹ 85.29 lakh.
(Paragraph 6.3.14)
- Absence of a system to monitor the compliance of the Appellate orders resulted in non-realisation of revenue of ₹ 39.63 lakh.
(Paragraph 6.3.15)
- Due to limited application of provision for taxation on complimentary tickets, the Government had to forgo ₹ 9.43 crore in sports/amusement events.
(Paragraph 6.3.17)

- Absence of a time limit for assessment resulted in non assessment of 1,083 cases of 255 Cable operators/Multi System Operators/Cinema halls and consequent non-realisation of ₹ 100.78 crore.

(Paragraph 6.3.18)

- Undue delay in initiation of recovery proceedings resulted in non-realisation of revenue of ₹ 11.16 crore in 438 cases of 229 cinema halls/parks, hotels and restaurants, tea gardens and cable operators.

(Paragraph 6.3.19)

- Absence of a time limit for disposal of appeal cases resulted in non-disposal of 3,519 appeal cases in which amount of ₹ 18.91 crore was blocked in 1,571 cases. Out of 3,519 appeal cases, 3,299 cases were pending for more than five years.

(Paragraph 6.3.21)

- Deficiencies in the Internal Control Mechanism like absence of an effective Internal Audit Wing, Manual on office procedures, mechanism to monitor compliance of instructions/orders, adequate infrastructure and proper record keeping were noticed.

(Paragraph 6.3.23)

6.3.1 Introduction

The Directorate of Agricultural Income Tax under the Finance (Revenue) Department, Government of West Bengal administers assessment, levy and collection of Agricultural Income Tax¹⁰², Primary Education Cess¹⁰³, Rural Employment Cess¹⁰⁴, Amusement-Cum-Entertainment Tax¹⁰⁵, Luxury Tax¹⁰⁶, and Charges for Draw of Lotteries.¹⁰⁷ The implementation of different Acts and Rules related to these taxes/cess/charges are also monitored by the Directorate. The Directorate contributed ₹ 922.02 crore to the State exchequer during the period from 2008-09 to 2012-13.

102 It is administered under the provisions of the Bengal Agricultural Income Tax Act, 1944 and Rules made thereunder. Agricultural income tax on non-tea agricultural products was abolished from 1993-94 and 1994-95 in respect of individuals and company/firm respectively.

103 It is administered under the provisions of the West Bengal Primary Education Act, 1973 and it is related to assessment, levy and collection of Primary Education Cess from the tea estates only.

104 It is administered under the provisions of the West Bengal Rural Employment and Production Act, 1976 and it is related to assessment, levy and collection of Rural Employment Cess from the tea estates only.

105 It is administered under the provisions of the Bengal Amusement Tax Act, 1922 (for Cinema, cabaret, musical & magic shows, sports & games, betting tax and totalisator tax on horse racing), the West Bengal Entertainment-cum-Amusement Tax Act, 1982 (for cable operators and film exhibition through video) & the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 (for entertainments provided in Hotels & Restaurants) and Rules made thereunder.

106 It is administered under the provisions of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 and Rules made thereunder.

107 It is administered under the provisions of the West Bengal Lotteries (Regulation of Payment of charge for Draw) Rules, 2011.

The Performance Audit on “**Administration of Taxes under various Acts by Directorate of Agricultural Income Tax in West Bengal**”, conducted during March 2014 and July 2014, revealed many system lapses, compliance deficiencies and failure of the internal control mechanism of the Directorate which are incorporated in the following paragraphs:

6.3.2 Organisational set up

The Directorate of Agricultural Income Tax (DAIT) is under the administrative control of the Principal Secretary, Finance (Revenue) Department. The overall control and superintendence of the Directorate is vested with the Commissioner of Agricultural Income Tax (CAIT), West Bengal who is assisted by three Additional Commissioners (Addl. CAITs), five Deputy Commissioners (DCAITs), six Assistant Commissioners (ACAITs), 42 Agricultural Income Tax Officers (AITOs) and 58 Inspectors. As on 31.03.2014, one post of Addl. CAIT, two posts of DCAIT, two posts of ACAIT, 12 posts of AITO and 11 posts of Inspectors were vacant.

6.3.3 Audit objectives

The Performance Audit was conducted with the objectives to ascertain whether:

1. tax administration was efficient and effective in ensuring compliance with the applicable legislations and rules;
2. a proper mechanism existed for the identification of assessees for the purpose levy of tax; and
3. effective internal controls were in place.

6.3.4 Audit criteria

The following Acts and Rules made thereunder along with notifications and circulars issued from time to time constitute the audit criteria for the Performance Audit:

1. The Bengal Amusement Tax Act, 1922 and Rules, 2010;
2. The Bengal Agricultural Income Tax Act, 1944 and Rules, 1944;
3. The West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 and Rules, 1972;
4. The West Bengal Primary Education Act, 1973 and Rules, 1984;
5. The West Bengal Rural Employment and Production Act, 1976 and Rules, 1976;
6. The West Bengal Entertainment-cum-Amusement Tax Act, 1982 and Rules, 1983; and
7. The West Bengal Lotteries (Regulation of Payment of charge for Draw) Rules, 2011.

6.3.5 Scope and methodology of audit

Performance Audit covered the period from 2008-09 to 2012-13. Selection of units was done through stratified sampling method. 20 Agricultural Income Tax (AIT) offices were stratified under three strata¹⁰⁸ based on their average revenue collections during last five years. Total of 14 AIT offices i.e. eight AIT offices from the first strata, four AIT offices from second strata and two AIT offices from third strata were selected based on risk analysis for the purpose of Performance Audit.

In addition, records of the Directorate, Appellate Authorities¹⁰⁹ and Certificate Officers were also checked.

During Performance Audit, the records of the Directorate and AIT offices were scrutinised. Further, the data obtained from other departments/local bodies/websites etc. were also cross verified with the data available with the Directorate to detect tax evasion.

The cases of non/short realisation of revenue detected during transaction audit were also incorporated in the Performance Audit report.

6.3.6 Trend of revenue

Receipts of the Directorate of Agricultural Income Tax during the period of Performance Audit along with the total tax receipts are as detailed below:-

Table 6.2

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess(+) / Shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts of the DAIT vis-à-vis total tax receipts
2008-09	183.56	107.63	(-) 75.93	(-) 41.37	14,419.15	0.75
2009-10	209.73	118.90	(-) 90.83	(-) 43.31	16,899.98	0.70
2010-11	154.83	144.86	(-) 9.97	(-) 6.44	21,128.74	0.69
2011-12	190.04	249.44	(+) 59.40	(+) 31.26	24,938.16	1.00
2012-13	186.55	301.20	(+) 114.65	(+) 61.46	32,808.49	0.92

Source:- Budget Publication No. 4 of respective years.

The budget estimates and the actual receipts varied between (-) 43.31 per cent to (+) 61.46 per cent during the period showing unrealistic nature of the estimates. Audit observed that increase in actual receipt from the year 2011-12 was attributable to the implementation of the West Bengal Lotteries

108 First strata: AIT offices having average revenue collection more than or equal to one crore.

Second strata: AIT offices having average revenue collection more than and equal to 40 lakh and less than one crore.

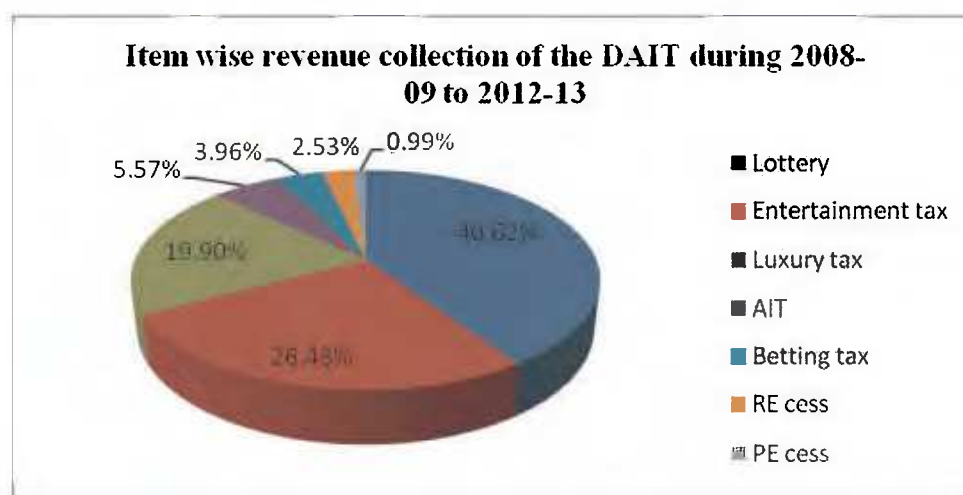
Third strata: AIT offices having average revenue collection less than 40 lakh.

109 ACAIT being the first Appellate Authority and CAIT being the second Appellate Authority.

(Regulation of Payment of Charge for Draw) Rules, 2011 and the revenue realised thereunder.

The item-wise revenue collection of the Directorate¹¹⁰ during 2008-13 is displayed through the following Pie chart:

Chart 6.1



Detailed figures of tax/cess collected by the Directorate are as follows:

Table 6.3

(₹ in lakh)

Period	Lotteries	Entertainment Tax	Luxury Tax	Agricultural Income Tax	Betting Tax	PE Cess	RE Cess	Total
2008-09	3,061.40	3,819.00	2,423.94	351.17	585.92	157.66	363.71	10,762.80
2009-10	3,180.02	4,159.99	2,124.28	886.27	961.66	133.44	444.22	11,889.88
2010-11	3,239.04	3,770.77	3,756.55	1,585.35	1,051.05	288.83	794.30	14,485.89
2011-12	12,078.24	5,905.34	4,685.04	1,088.00	500.33	227.94	458.71	24,943.60
2012-13	15,895.24	6,714.11	5,362.29	1,220.35	550.70	108.91	268.21	30,119.81
Total	37,453.94	24,369.21	18,352.10	5,131.14	3,649.66	916.78	2,329.15	92,201.98
	40.62%	26.43%	19.90%	5.57%	3.96%	0.99%	2.53%	100%

Analysis of the figures in the table revealed that there was a sharp increase in revenue from Lotteries from 2011-12 due to implementation of West Bengal Lotteries (Regulation of Payment of Charges for Draw) Rules, 2011. Entertainment Tax and Luxury Tax had shown continuous increase in revenue realisation except in 2010-11 and 2009-10 respectively. The Agricultural Income Tax, Betting Tax and RE Cess increased during 2008-09 to 2010-11 but decreased in 2011-12. The trend of revenue in respect of PE Cess was inconsistent during 2008-09 to 2012-13.

The CAIT in the Exit Conference (December 2014) stated that the wide variation between budget estimate and actual receipt during the period of performance audit was attributed to discontinuation of online lotteries and implementation of West Bengal Lotteries (Regulation of Payment of Charges for Draw) Rules, 2011.

¹¹⁰ Source : Budget Publication No. 4 of West Bengal

6.3.7 Acknowledgement

Audit acknowledges the co-operation of the DAIT in providing necessary records and information for the Performance Audit. Before taking it up, an Entry Conference was held on 31 March 2014 between the Accountant General and the Addl. CAIT of the Directorate where the objectives, criteria, scope and methodology and main focus areas of the Performance Audit were discussed. Findings of the Performance Audit were forwarded to the Directorate and Department in August 2014. An Exit Conference was held on 12 December 2014 with CAIT of the Directorate. The views of the Directorate have suitably been incorporated in relevant paragraphs.

Audit findings

Deficiencies in tax administration due to non-compliance of the provisions of the Acts and Rules

Efficient and effective tax administration is the result of proper compliance of the Acts and Rules by the tax administrator. Audit observed a number of deficiencies in assessment, levy and collection of taxes by the DAIT due to deficient compliance of the provisions of Acts and Rules as mentioned in the following paragraphs:

6.3.8 Weaknesses in Tax Administration in respect of Agricultural Income Tax

Agricultural Income Tax in West Bengal is leviable only in respect of tea. Audit observed a number of deficiencies in the tax administration in the absence of any database of individual/ corporate producers of tea, non-availability of income data in respect of tea producers, etc. as discussed below.

According to Section 24 of the West Bengal Agricultural Income Tax Act, 1944, every person whose total agricultural income during the previous year exceeded the maximum amount¹¹¹ which is not chargeable to Agricultural Income Tax, shall furnish a return in the prescribed form setting forth his total agricultural income and such other particulars as may be prescribed, before the expiry of three months from the end of the previous year or before 30 June of next following the previous year, whichever is later. Under Section 2(2A) and Section 3(2A) of the West Bengal Taxation Laws Act, 1989, the education cess and Rural employment cess shall be levied annually at the rate of four paise and 12 paise for each kilogram of green tea leaves respectively.

Information regarding tea gardens obtained from three¹¹² District Land & Land Reforms Officers (DL&LROs) revealed that there were 19,337 tea gardens in the three districts covering total area of 1.49 lakh acres of land. For the purpose of analysis, Audit selected 2,190 tea gardens each with area equal

111 ₹ 10,000 per annum for individuals and Hindu undivided families. No exemption allowed on agricultural income of companies/firms.

112 DL&LROs- Darjeeling, Jalpaiguri and Uttar Dinajpur.

to or more than 5 acres¹¹³. Cross verification of data pertaining to the land records of these 2,190 tea gardens with the General Index Register (GIR) of tea gardens maintained by the Agricultural Income Tax Officer (AITO) in three¹¹⁴ AIT Offices in these three districts revealed that out of these, as many as 1,274 tea gardens having area of 61,632 acres were not paying any Agricultural Income Tax and hence their names did not feature in the GIR. 280 more tea gardens were not paying any Agricultural Income Tax, though they paid Primary Education Cess and Rural Employment & Production Cess which were collected on production of tea.

Audit observed that there was no database to identify the companies / firms neither was any income data available with the AITOs to help them identify the individual producers liable to pay tax. The Act itself did not provide for registration on the part of the producers/ tax payers. The exemption limit of ₹ 10,000 in respect of individual producers in the Act has not been revised since 1983.

On being pointed out, the two AITOs (December 2014) stated that 47 tea gardens had been/being brought under the tax net. In the remaining cases, the AITOs did not give any specific reply.

The CAIT in the Exit Conference (December 2014) stated that liaison with the Land and Land Reforms Department was under the active consideration of the Directorate. Instructions were being issued to the AITOs in this regard.

6.3.9 Under assessment of tax

According to the provision under Section 3 of the Bengal Amusement Tax Act, 1922 there shall be charged, levied and paid to the State Government, a tax at the rate specified on all payments for admission to any entertainments including sports and games held in an amusement park, theme park or water games park.

Scrutiny of the assessment case records of an amusement park for the period from 2010-11 to 2012-13 as maintained under the AITO, Darjeeling Range revealed that the gross total collection of the assessee was assessed as ₹ 1.67 crore. However, scrutiny of profit and loss account of the assessee revealed that the income from sale of tickets during the period was ₹ 2.76 crore. Short determination of gross collection from tickets amounting ₹ 1.10 crore resulted in short levy of entertainment tax amounting to ₹ 21.95 lakh.

On this being pointed out, the AITO, Darjeeling Range did not furnish any specific reply.

The CAIT in the Exit Conference (December 2014) admitted the audit observation and stated that instruction had been sent to review the matter.

113 Since Agricultural income upto ₹ 10,000 is exempted, the tea gardens having an area equal to or more than five acres have been commented upon.

114 AITOs- Darjeeling Range, Jalpaiguri Range and Uttar Dinajpur Range.

6.3.10 Non-realisation of dues from sub-cable operators¹¹⁵

Under provisions of Section 4A (4c) of the West Bengal Entertainment-cum-Amusement Tax Act, 1982, read with the Notification No. 616 F.T. dated 4 March 1999, every sub-cable operator who is a holder of a video cassette recorder set or video cassette player set and transmits from such set for exhibition of any performance, film or programme, shall be liable to pay a tax at the rate of ₹ 1,500 and ₹ 1,000 per year as per their location within the Calcutta Metropolitan area and the other areas respectively.

Scrutiny of General Index Register and other related records of 143 sub-cable operators under four¹¹⁶ AIT Offices revealed that the sub-cable operators had not paid tax of ₹ 7.60 lakh for the period from 2001 to 2012. The AITOs also did not raise any demand for realisation of the said amount from the sub-cable operators. This resulted in non-realisation of tax of ₹ 7.60 lakh.

On this being pointed out, the AITOs stated (December 2014) that process had been/being initiated to realise tax from the defaulting sub-cable operators.

The CAIT in Exit Conference (December 2014) stated that action had been/being initiated for realisation of Government dues.

6.3.11 Non-initiation of certificate proceedings within the prescribed time limit

Under provisions of Section 45 and 45A of the Bengal Agricultural Income Tax Act, 1944, when an assessee is in default in making payment of Agricultural Income Tax, the AITO may forward to the Collector a certificate under his signature specifying the amount of arrears including interest due from the assessee or may initiate other mode of recovery for realisation. Section 45(4) of the Act prescribes that no proceeding for recovery of any tax payable under this Act shall be commenced after the expiry of six years from the last date on which the tax is payable.

Scrutiny of the outstanding dues register and other related case records maintained under the three¹¹⁷ AIT Offices revealed that in 103 cases of 52 tax payers an amount of ₹ 2.31 crore of assessed dues for the period of assessment from 1960-61 to 2003-04 were not realised. No evidence to the effect that the cases were under any appeal or under any litigation found on records. The period of six years from the last date on which the tax was payable had already expired. Thus, in absence of initiation of certificate proceedings within the prescribed time limit, Government revenue amounting to ₹ 2.31 crore remained unrealised.

On this being pointed out, the CAIT in the Exit Conference (December 2014) stated that in certain cases certificate could not be forwarded within due time. Necessary steps were being initiated. However, no action for initiating

115 A person who on the basis of an agreement, contract or any other arrangement with a cable operator receives signal and distribute cable service to the customers.

116 AITOs- Burdwan Range, Dakshin Dinajpur Range, Kolkata Range II and Nadia Range.

117 AITOs- Darjeeling Range, Kolkata Range I and Uttar Dinajpur Range.

recovery proceedings under Sections 45 or 45A can be taken as the cases have become time barred.

3.12 Non-levy of interest in certificate cases

Under provisions of Section 5BA(2) of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 as inserted by the West Bengal Finance Act, 2006, where a cable operator registered under this Act fails to make payment of tax payable within the date fixed by the prescribed authority after the assessment, he shall pay a simple interest at the rate of one *per cent* for each month of default.

Scrutiny of assessment case records of three¹¹⁸ AIT Offices revealed that, in 17 cases of eight cable operators, for the period of assessments from 2002-03 to 2009-10; the demand notices involving ₹ 2.62 crore were issued specifying the dates of payments between September 2006 and January 2011. The cable operators did not pay the assessed dues and the cases were referred to the Certificate Officers between November 2006 and May 2013 for recovery. As per provisions of the Act, interest was to be levied and included in the certificate demands. AITOs neither levied the interest nor included it in the demand communicated to the Certificate Officers. This resulted in non-levy of interest amounting to ₹ 11.33 lakh.

On this being pointed out, two¹¹⁹ AITOs admitted (between April and December 2014) the audit observation in 11 cases of ₹ 8.86 lakh and stated that necessary steps would be initiated for recovery of interest. In the remaining cases, the AITO did not furnish any specific reply.

The CAIT in Exit Conference (December 2014) stated that action had been/being initiated for levy of interest and realisation thereof.

6.3.13 Non-pursuance of certificate case

Scrutiny of the Certificate Case Register and other case records of nine¹²⁰ AIT Offices revealed that in 465 cases assessed dues of ₹ 10.55 crore was forwarded to the Certificate Officers for recovery. These cases were selective and not exhaustive. The cases were related to the period of assessment from 1955-56 to 2007-08 and were forwarded to the Certificate Officer between 1996-97 and 2011-12. After sending the cases to the Certificate Officer for recovery, no pursuance had been made by the AITOs. The Certificate Officers also did not intimate the status of realisation in the cases to the AITOs. In absence of the persuasion with the Certificate Officers, Government revenue of ₹ 10.55 crore remained blocked.

On this being pointed out, the CAIT in Exit Conference (December 2014) stated that the matter had been/was being taken up with the Certificate Officers for recovery.

118 AITOs- ATS, Burdwan Range and North 24 Parganas Range.

119 AITOs: ATS and North 24 Parganas.

120 AITOs- Birbhum Range, Burdwan Range, Darjeeling Range, Jalpaiguri Range, Kolkata Range I, Malda Range, Nadia Range, Purba Midnapore Range and Uttar Dinajpur Range.

6.3.14 Deficiencies in the mechanism to identify and to bring the potential assesseees into the tax net through a system to cross-verify information from other sources

Audit observed a number of deficiencies in the mechanism to identify and bring the potential tax payers into the tax net. The Directorate had no effective system for cross-verification of information of other departments/local bodies/websites with the departmental records for this purpose. Such deficiencies as observed in the course of Performance Audit are discussed in the following paragraphs:

6.3.14.1 Non-realisation of revenue from Omnibus owners

Under provisions of Section 4A(2) of the West Bengal Entertainment-cum-Amusement Tax Act, 1982, where the performance or exhibition of films is made in an Omnibus¹²¹, registered under the Motor Vehicles Act, 1939, the tax for each year shall be at such rate, not exceeding ₹ 3,000 per year per set. Rate of tax had been notified¹²² as ₹ 1,000 per year per set. However, the rate had not been revised since 1985.

Cross verification of the motor vehicles registration data in respect of the Omnibuses registered during the audit period and equipped with video devices obtained from 13¹²³ Transport Offices, West Bengal Motor Vehicle Department with the records of nine¹²⁴ AIT Offices, revealed that 1,849 omnibus owners were not paying entertainment-cum-amusement Tax. This resulted in non-realisation of Government revenue of ₹ 64.34 lakh during the period from 2008-2012.

On this being pointed out, the AITOs admitted the audit observations and stated (December 2014) that actions were being taken to initiate proceeding to realise Government revenue.

The CAIT in Exit Conference (December 2014) stated that liaison with the Transport Department was under the active consideration of the Directorate. Instructions were being issued to the AITOs in this regard.

6.3.14.2 Non-realisation of revenue from unregistered restaurants

Section 4 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 provides that proprietor of every hotel and restaurant in which there is provision for luxury¹²⁵ shall pay luxury tax and

121 As per Motor Vehicle Act, Omnibus means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

122 No. 1586-F.T. dated 1st April, 1985.

123 Public Vehicles Department, RTOs-Alipore, Barasat, Burdwan, Darjeeling, Howrah, Paschim Midnapore and Purba Midnapore, and ARTOs-Asansol, Alipurduar, Barrackpore, Durgapur and Siliguri.

124 AITOs- Amusement Tax Section, Burdwan Range, Darjeeling Range, Howrah Range, Jalpaiguri Range, Kolkata Range II, North 24 Parganas Range, Paschim Midnapore Range and Purba Midnapore Range.

125 Luxury means provision for air conditioning or air cooling.

Section 4(a) prescribes the rate of tax for a restaurant within the State as per locality.

Section 4(AA)¹²⁶ of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 prescribes that every proprietor of a hotel or restaurant who is liable to pay the luxury tax shall get himself registered with the prescribed authority. Rule 9B of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Rules, 1972 prescribes that the proprietor shall furnish, within 10 days from the date of deposit of the luxury tax, to the Assessing Authority a return in Form AA showing the total area which is air conditioned, the quarter in question and the amount of luxury tax payable for the quarter along with copy of the treasury challan showing the payment of luxury tax.

Cross-verification of information obtained from five¹²⁷ local bodies with the records maintained under four¹²⁸ AIT Offices revealed that 364 air conditioned restaurants obtained registration (trade license) from the local bodies during the period from April 1999 to February 2013 and also renewed their licenses from time to time; but these restaurants were not registered with the AITOs and they neither deposited their quarterly tax nor submitted the returns. In the absence of a system of cross verification of information with other local bodies, these restaurants could not be brought under the tax net by the AITOs. This resulted in non-realisation of luxury tax amounting to ₹ 20.95 lakh calculated at the minimum rate of tax.

On this being pointed out, the AITOs stated (December 2014) that inspection process to bring the AC restaurants under the tax net was going on.

The CAIT in Exit Conference (December 2014) stated that liaison with the local bodies (Corporations and Municipalities) was under the active consideration of the Directorate. Instructions were being issued to the AITOs in this regard.

6.3.14.3 Non-realisation of revenue from unregistered hotels

Under provisions of Section 4 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, there shall be charged, levied and paid to the State Government a luxury tax by proprietors of every hotel in which there is provision for luxury.

Section 4(AA) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 prescribes that every proprietor of a hotel or restaurant who is liable to pay the luxury tax shall get himself registered with the prescribed authority.

126 Inserted vide West Bengal Finance Act, 2011.

127 Asansol Municipal Corporation, Siliguri Municipal Corporation, South Dum Dum Municipality, Kolkata Municipal Corporation (KMC) and Paschim Midnapore Municipality.

128 AITOs- Amusement Tax Section, Burdwan Range, Darjeeling Range and Paschim Midnapore Range.

Section 6(1) of the Act prescribes that if any proprietor fails to get himself registered under this Act, he shall be liable to a fine at prescribed rate on conviction before a magistrate.

Cross verification of the information obtained from websites¹²⁹ about air conditioned hotels available under the jurisdiction of AIT Offices selected for audit and two local bodies¹³⁰ regarding licensed air conditioned hotels with the General Index Register of five¹³¹ AIT Offices revealed that out of 143 cases, 58 hotels neither got themselves registered nor submitted returns with the AIT Offices though there was provision for luxury (AC rooms) in these hotels. In the absence of a system of cross verification of information with other sources, these hotels could not be brought under the tax net. The tax is paid in respect of income earned from the occupancy of those rooms, data for which were not available with the AITOs.

On this being pointed out, the AITOs stated (June 2014 and December 2014) that inspection process to bring the AC hotels under the tax net was going on.

The CAIT in Exit Conference (December 2014) stated that necessary steps to bring the eligible hotels under the tax net were being initiated.

6.3.14.4 Non-realisation of revenue from the banquet halls

Under provisions of Section 2(ca) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 hotel means a building or part of a building or any place where any activity or business is carried on in providing lodging or boarding or any kind of accommodation, with or without supply of food, drinks or refreshments, to the members of the public on payment or for any consideration with the object of making profit. Further, according to provisions of Section 2(i) of the Act, 'room' includes banquet hall, conference room or any other room used for similar purpose. Luxury tax is payable in respect of income earned from the occupancy of those rooms.

Cross verification of information in respect of air conditioned (AC) banquet halls, marriage halls and ceremonial houses not attached to any hotel obtained from the website and four local bodies¹³² with the records maintained under four¹³³ AIT Offices revealed that 54 standalone AC banquet halls, marriage halls, ceremonial houses, etc. were not under the tax net, though these halls and houses had been covered under the definition of hotel under Section 2 (ca) of the Act. Due to non-registration of these banquet halls, marriage halls, ceremonial houses, etc. under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, loss of substantial amounts of revenue could not be ruled out. In absence of a system of cross verification of

129 Official website of West Bengal Tourism Department and two private marketing websites.

130 Asansol Municipal Corporation and Siliguri Municipal Corporation.

131 AITOs- Burdwan Range, Darjeeling Range, Jalpaiguri Range, Kolkata Range II and Nadia Range.

132 Asansol Municipal Corporation, Howrah Municipal Corporation, Rajarhat-Gopalpur Municipality and South Dumdum Municipality.

133 AITOs- Amusement Tax Section, Burdwan Range, Howrah Range and North 24 Parganas Range.

information with other departments/local bodies/Institutions, these standalone banquet halls could not be brought under the tax net by the AITOs.

On this being pointed out, the AITOs stated (December 2014) that as per existing provision of the Act, the standalone banquet halls and the like did not fall in the category of hotels or restaurants. The reply is not tenable as standalone banquet halls are in any case covered under section 2(ca) of the Act.

The CAIT in Exit Conference (December 2014) stated that the matter was under active consideration of the Directorate. Necessary amendments in the Act would be proposed to the Government, if required.

6.3.15 Absence of a system to monitor the compliance of Appellate orders

During Performance Audit, it was observed that the Directorate did not evolve a system to monitor the compliance of Appellate orders through reports and returns. In the absence of such a system, orders of the Appellate Authority could not be carried out, resulting in blockage of Government revenue as detailed in following paragraphs:

6.3.15.1 Cross verification of appellate orders issued by CAIT during 2008-09 to 2012-13 on appeal cases related to the periods of assessment from 2000-01 to 2006-07 with the records of ACAIT Kolkata revealed that in seven cases involving taxes amounting to ₹ 13.47 lakh of two appellants, the CAIT had set aside the decision of first Appellate Authority in April and May 2011 and instructed the ACAIT to dispose of the appeal cases afresh after giving the appellants reasonable opportunity of being heard. Though, more than 29 months had passed after the date of orders of the CAIT, the ACAIT did not comply with the orders and initiate any action to dispose the cases. This resulted in blockage of Government revenue of ₹ 13.47 lakh.

On this being pointed out, the ACAIT, Kolkata did not furnish any specific reply.

6.3.15.2 Scrutiny of the appeal cases and other related records maintained under the six¹³⁴ AIT Offices revealed that in 24 appeal cases the Appellate Authorities/Tribunal had given their judgment between February 2001 and June 2012 by confirming/modifying/setting aside the previous orders of the AITOs. The Appellate Authorities also instructed the AITOs to do the needful regarding realisation of the Government dues or to modify the assessment in the confirmed or modified appeal cases respectively. Copies of the Appellate orders were also forwarded to the AITOs for compliance. But even after expiry of 18 to 144 months from the dates of Appellate orders, the necessary action was not taken by the AITOs for compliance of these orders and realisation of Government revenue amounting to ₹ 26.16 lakh.

¹³⁴ AITOs- ATS, Birbhum Range, Darjeeling Range, Howrah Range, Kolkata Range I and Kolkata Range II.

On this being pointed out, the AITOs admitted the audit observation and stated (December 2014) that necessary actions were being taken shortly for immediate compliance of the appellate orders.

The CAIT in Exit Conference (December 2014) stated that the concerned authorities would be instructed to monitor the compliance of appellate orders effectively.

6.3.16 Need for inclusive definition of ‘Luxury’ under the Act

The West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act was enacted in the year 1972. At that time, scope of luxury was limited to hotels and restaurants. But during last 40 years scope of luxury has been widened. Many other commercial businesses like spa, slimming centre, gymnasium, massage parlours, shopping malls and air conditioned shopping complexes, etc. are in operation which could be considered luxurious in nature. Some States¹³⁵ had brought the spa, beauty parlours, malls, etc. under the ambit of luxury tax through amendments in their Acts.

Section 2 (d) of the West Bengal Entertainments And Luxuries (Hotels and Restaurants) Tax Act, 1972, prescribes that ‘luxury’ means provision for air conditioning through air conditioner or central air conditioning or any other mechanical means, or air cooling through air coolers provided in any of the rooms, or any part of a building, constituting a hotel or restaurant.

Section 4 of the Act prescribes that there shall be charged, levied and paid to the State Government a luxury tax by the proprietor of every hotel and restaurant in which there is provision for luxury at such rates as may be prescribed.

The scope of luxury and luxury tax had been updated by the other States¹³⁶ of the country. At present ‘accommodation in hotels’ has been defined as ‘luxury’ in those States. But no attempt had been made by the DAIT to update the scope of luxury and luxury tax in West Bengal since inception of the Act.

6.3.16.1 Information obtained from websites¹³⁷ and enquiry reports of eight¹³⁸ AIT Offices revealed that 42 air conditioned shopping complexes/malls and 353 spas were in business under the jurisdictional area of the nine and six¹³⁹ AITOs respectively. The total air conditioned area of

135 Goa and Delhi. In addition, under Karnataka Tax on Luxuries Act “the luxury tax shall be levied and collected for luxuries provided in a hotel for residents and others such as health club, beauty parlour, swimming pool, etc.” and under Kerala Tax on Luxuries Act, 1976, hospitals with luxuries under the tax net and hospital includes rejuvenation centres, Ayurvedic cure and care centre, personal care centre, etc. Under the Haryana Tax on Luxuries Act, 2007, the charges for use of amenities of health club, beauty parlour, etc. are taken into account while computing the luxury tax of a hotel.

136 Delhi, Goa and Tamil Nadu.

137 http://en.wikipedia.org/wiki/List_of_shopping_malls_in_West_Bengal and Justdial.com.

138 AITOs- Burdwan Range, Darjeeling Range, Howrah Range, Jalpaiguri Range, Kolkata Range II, Malda Range, North 24 Parganas Range and Paschim Midnapore Range.

139 AITOs- Amusement Tax Section, Burdwan Range, Darjeeling Range, Jalpaiguri Range, Kolkata Range II and North 24 Parganas.

shopping complexes/malls was 6.77 lakh square meters. In absence of a contemporary definition of scope of luxury under the Act, these complexes/malls and spas could not be brought under the tax net.

On this being pointed out, the AITOs admitted (December 2014) the absence of provision in the Act and Rules and stated that to include those malls, spas and the like in the tax network an amendment was required in the provision of the Act.

6.3.16.2 Information obtained from the website about the luxurious hotels which were operative in the tourist places like Darjeeling, Kalimpong, Kurseong, Mirik, etc. within the jurisdictional area of AITO, Darjeeling Range revealed that there were at least 120 luxury hotels running their business in the hilly and cold areas of the State. These hotels do not require ACs; however, they have all modern facilities like well furnished accommodation, room service, colour TV, internet, room heating systems, running cold and hot waters, swimming pools, spa, gymnasium, etc. and charging room tariffs between ₹ 1,000 to ₹ 9,000 per night. Due to limited scope of luxury which covers only hotels with AC rooms, these hotels could not be brought under the tax ambit.

On this being pointed out, the AITO, Darjeeling Range admitted the absence of provision of luxury tax in respect of non-AC hotels under the Act and stated (December 2014) that to address the problem the definition of luxury had to be made in terms of tariff instead of rooms having air conditioning facility.

The CAIT in Exit Conference (December 2014) admitted the audit observation and stated that the matter was under the active consideration. The proposal would be initiated in due course.

6.3.17 Limited application of provision related to taxation on complimentary tickets

Under provision of Section 3(3b) of the Bengal Amusement Tax Act, 1922, entertainment tax shall be charged, levied and paid on all complimentary tickets issued by the proprietor of a cinema hall in respect of admission without payment. But no such provision has been made in respect of complimentary tickets issued by the organiser/proprietor of magic shows, musical nights, parks and commercialised sports events in the State. Audit observed that the organisers of IPL matches declared in the statement of tickets account submitted for payment of entertainment tax that 86,402 complimentary tickets were issued by them during the period from 2011-12 to 2013-14 for 20 matches held in Kolkata.

Had the provisions of Section 3(3b) been applicable on the commercialised sports events, Government could have generated revenue of ₹ 9.43 crore towards entertainment tax on these tickets. By way of analogy, in Maharashtra under Section 3A of Bombay Entertainment Duty Act, 1923, every complimentary ticket issued by the proprietor is taxable at the prescribed rate.

On this being pointed out, the AITO, Amusement Tax Section (ATS) admitted (December 2014) the absence of provision for charging and levying entertainment tax on complimentary tickets of sports and stated the matter would be conveyed to the appropriate authority.

The CAIT in Exit Conference (December 2014) stated that proposal for widening the provision of taxation on complimentary tickets to cover all the relevant events under the Act was being initiated.

6.3.18 Absence of a time limit for assessment of entertainment and amusement tax

Timely assessment of tax is one essential feature of any efficient tax administration. In the absence of time limit for assessment, tax administration tends to become lax, assessments orders become prone to litigation and Government revenue remains blocked for indefinite periods.

Under provisions of Section 5 (4) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, assessment of luxury tax shall be made before expiry of two years from the end of the period in respect of which the assessment is made. Some other Acts monitored by different Directorates of the State also prescribe time limit for assessment. But no time limit for assessment of entertainments and amusement tax has been prescribed under the West Bengal Entertainment-cum-Amusement Tax Act, 1982 and the Bengal Amusement Tax Act, 1922 for cable operators and cinema halls respectively.

6.3.18.1 Scrutiny of the case records in nine¹⁴⁰ AIT Offices revealed that assessments in 529 cases of 126 cable operators were not made even after expiry of period ranging from two years three months to 11 years three months from their respective period of assessments till the date of audit.

On this being pointed out, the AITOs stated (July 2014 and December 2014) that assessment proceedings had been/were being initiated.

6.3.18.2 During the course of audit of four AITOs¹⁴¹ it was observed that 12 Multi System Operators (MSOs), operating their business in digital assessable cable TV system (DAS) area paid entertainment tax under West Bengal Entertainment-cum-Amusement Tax Act, 1982 amounting to ₹ 9.93 crore for the assessment period 2010-11 to 2012-13, without submitting any return or tax assessment. Audit obtained the information regarding number of cable connections of these 12 MSOs from the Telecom Regulatory Authority of India (TRAI), New Delhi and calculated the entertainment tax due. The tax liability of these MSOs came to ₹ 110.70 crore against which the MSOs had paid only ₹ 9.93 crore. The department failed to assess the correct tax liability

¹⁴⁰ AITOs- Birbhum Range, Burdwan Range, Dakshin Dinajpur Range, Darjeeling Range, Jalpaiguri Range, Malda Range, Nadia Range, North 24 Parganas Range and Uttar Dinajpur Range.

¹⁴¹ AITOs- ATS, Hooghly Range, Howrah Range and North 24 Parganas Range.

of these MSOs which resulted in short collection of entertainment tax to the tune of ₹ 100.78 crore.

On this being pointed out, the Addl. Commissioner stated (September 2014) that the concerned AITOs were being instructed to take immediate action and assured that necessary steps would be taken to realise the dues and to complete assessment within the financial year.

6.3.18.3 Scrutiny of the case records in 11¹⁴² AIT Offices revealed that assessments in 518 cases of 117 cinema halls were not made even after expiry of periods ranging from two years 11 months to 13 years from their respective periods of assessments (2000-01 to 2010-11) till the date of audit. No action for assessment of entertainment tax was initiated by the Directorate.

On this being pointed out, the AITOs stated (December 2014) that assessment proceedings had been/were being initiated.

The CAIT in Exit Conference (December 2014) stated that the Directorate was in the final stage of computerisation. Attempts would be made to incorporate time limit for assessment in the assessment module. Necessary amendments in the Acts in this regard would also be initiated. Necessary instructions to initiate assessment had been issued to the concerned AITOs.

6.3.19 Undue delay in initiation of recovery proceedings

Under Sections 10, 10A and 21 of the Bengal Amusements Tax Act, 1922, Section 7 and 7A of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, Section 4 and 4AA of the West Bengal Rural Employment and Production Act, 1976, Section 78B and 78BB of the West Bengal Primary Education Act, 1973 and Section 9 and 9A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982, all arrears of tax, penalty and cess due from the person liable to pay assessed dues under these Acts and Rules shall, be recoverable as arrears of land revenue or by initiating special mode of recovery.

Scrutiny of Outstanding Register and other related records maintained under the 12¹⁴³ AIT Offices revealed that in 438 cases of 229 cinema halls/parks, hotels and restaurants, tea gardens and cable operators assessed dues of ₹ 11.16 crore were outstanding. The assessed dues were related to periods of assessment from 1982-83 to 2012-13. The cases were assessed by the Assessing Authorities between March 1990 and June 2013 and demands were raised with the assesseees for realisation of these dues. Even after expiry of periods ranging between seven months to 285 months till the date of audit

142 AITOs- ATS, Birbhum Range, Burdwan Range, Darjeeling Range, Howrah Range, Jalpaiguri Range, Kolkata Range II, Malda Range, Nadia Range, Paschim Midnapore Range and Uttar Dinajpur Range.

143 AITOs- ATS, Birbhum Range, Burdwan Range, Dakshin Dinajpur Range, Darjeeling Range, Howrah Range, Jalpaiguri Range, Kolkata Range II, Malda Range North 24 Parganas Range, Paschim Midnapore Range and Uttar Dinajpur Range.

from their respective dates of assessment, there was no evidence that payments were made by the assesseees or recovery proceedings were initiated by the Assessing Authorities. As per appeal registers available in AITOs, the cases were nowhere involved in appeal or any other type of litigation. Recovery proceedings were not initiated by the Assessing Authorities and Government revenue of ₹ 11.16 crore remained unrealised as detailed below:

Table 6.4

Sl. No.	Items of amusements/ entertainments/ Cess/ luxuries.	No. of AIT offices	No. of assesseees	No. of cases	Periods of assessment	Date of assessment	Periods of defaults (in months)	Amount not realised (₹ in crore)
1.	Cinema /Parks	6	53	135	1984-85 to 2012-13	3/90 to 6/13	11 to 285	5.21
2.	Hotels & restaurants	9	92	148	1985-86 to 2012-13	4/94 to 6/13	7 to 267	1.14
3.	Tea gardens	2	57	93	1982-83 to 2003-04	1/99 to 2/12	28 to 185	4.70
4.	Cable operators	6	27	62	1997-98 to 2011-12	5/99 to 2/13	14 to 179	0.11
Total			229	438				11.16

Similar issues were pointed out under sub-paragraphs 6.02.11 to 6.02.15 of the report of the C&AG for the year 1997-98 which were also discussed by the Public Accounts Committee. In its Sixteenth Report of the year 2002-03, the Committee had recommended that full efforts must be made by the Government to realise amusement tax and luxury tax from the defaulters.

On this being pointed out, the eleven¹⁴⁴ AITOs in 430 cases involving ₹ 11.15 crore stated (between March 2014 and December 2014) that recovery processes had been/were being initiated. In the remaining cases, the AITO, Birbhum Range did not furnish any specific reply. Directorate should have complied with directions of PAC. Absence of a time limit prescribed in the Act and Rules for initiation of recovery proceedings contributed to substantial Government dues remaining unrealised.

The CAIT in Exit Conference (December 2014) stated that incorporation of time limit for recovery proceeding in the Acts was under active consideration of the Directorate. It would also be incorporated in computerised system of the Directorate for better monitoring.

6.3.20 Absence of a provision for levy of interest

Section 4B (1) and (2) of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, prescribe that where a proprietor fails to make payment of any tax payable before/after assessment by the dates specified, he shall pay a simple interest at the rate of one *per cent* for each

144 AITOs: ATS, Burdwan Range, Dakshin Dinajpur Range, Darjeeling Range, Howrah Range, Jalpaiguri Range, Kolkata Range II, Malda Range, North 24 Parganas Range, Paschim Midnapore Range and Uttar Dinajpur Range.

month of default. Similar provisions for levy of interest at same rate have been made in other Acts administered by the Directorate; however, no such provision of interest has been prescribed under the Bengal Amusement Tax Act, 1922.

6.3.20.1 Scrutiny of assessment case records revealed that four cases of one assessee for the period of assessments between 2009-10 and 2012-13 were assessed between January 2011 and June 2013. During assessment, the assessing authority detected non-payment of admitted entertainment tax of ₹ 67.81 lakh but could not levy any interest for the period of non-payment due to absence of provision for interest in the Act.

On this being pointed out, the AITO, ATS stated (December 2014) that presently there were no provisions to charge interest under the Act.

6.3.20.2 Scrutiny of certificate case records of six¹⁴⁵ AIT Offices revealed that 44 cases of 21 cinema halls for the period of assessments between 1990-91 and 2009-10 were assessed and the demand notices were issued specifying the dates of payments between December 1998 and January 2013. The cinema hall owners did not pay the assessed dues and defaulted in payment. Lastly, the cases were referred to the Certificate Officer or the dues were fully realised through bank attachment between March 1999 and November 2013. But due to absence of provision for interest, the AITOs could not incorporate upto date interest in the certificate demands.

On this being pointed out, AITOs admitted (December 2014) that there were no provisions to charge interest under the Act.

The CAIT in Exit Conference (December 2014) admitted the audit observation and stated that incorporation of provision for levy of interest in the Act was under consideration.

6.3.21 Absence of a time limit for disposal of appeal cases

Under provisions of Sections 34 and 35 of the Bengal Agricultural Income Tax Act, 1944, Section 11E of the Bengal Amusement Tax Act, 1922, Section 5A of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 and Section 10 of the West Bengal Entertainment-cum-Amusement Tax Act, 1982, any assessee may prefer an appeal against any order of assessment within a prescribed time limit from the receipt of demand notice or order in respect thereof. The Appellate Authority may dispose of the appeal cases in the manner prescribed.

These Acts provide for further appeal to the Commissioner for revision etc. However, no time limit has been prescribed in any of the Acts administered by the Directorate for disposal of such revision/appeal cases as provided under Section 84 of the West Bengal Value Added Tax Act, 2003.

On scrutiny of the Administrative Reports of the Directorate, it was observed that total 2,132 appeal cases (1,622 with first Appellate Authority¹⁴⁶ and 510 with CAIT) were pending for disposal till March 2013 and out of these 1,912

145 AITOs- ATS, Birbhum Range, Burdwan Range, Kolkata Range II, North 24 Parganas Range and Uttar Dinajpur Range.

146 ACAIT (Kolkata) and ACAIT (Jalpaiguri).

were more than five years old. Neither the first Appellate Authority nor CAIT could furnish records/registers/files to substantiate the total number of pending cases and the amount involved therein. However, scrutiny of appeal cases made available to audit by the first Appellate Authorities revealed that in 80 appeal cases, Government revenue of ₹ 2.71 crore was blocked for a period ranging from 30 to 300 months. Out of 510 appeal cases pending with CAIT, details of only 104 cases were made available in which Government revenue of ₹ 12.97 crore was blocked.

Scrutiny of appeal case records maintained in the ACAIT, Kolkata revealed that though the agricultural income tax on non-tea agricultural products was abolished from 1993-94 and 1994-95 in respect of individuals and company/firm respectively, total 1,387 appeal cases involving disputed amount of ₹ 3.23 crore related to non-tea agricultural products pertaining to nine AITO offices were pending for disposal for more than 18 years.

On being pointed out, the CAIT and the ACAITs stated (December 2014) that necessary action would be taken to dispose the cases.

The CAIT in Exit Conference (December 2014) stated that the Directorate was in the final stage of computerisation. Attempts would be made to incorporate time limit for disposal of appeal in the appeal module. Necessary amendments in the Acts in this regard would also be initiated.

6.3.22 Failure of the Directorate to achieve the objectives of computerisation

On scrutiny of records related to initiation of computerisation and its subsequent development in the DAIT, West Bengal, it was noticed that the proposal for computerisation of the Directorate was first sent to the Finance (Revenue) Department in March 2009. The assent of the Government was communicated to the Directorate in February 2010. A Committee¹⁴⁷ was formed for monitoring the development of the IT system. The proposal for necessary approval of the Government, financial sanction and placement of funds was sent to the Finance Department vide letter No. 1106 C dated 19.11.2010. Administrative approval to the estimated cost not exceeding ₹ 54.10 lakh was accorded by the Finance in March 2011. However, financial sanction of ₹ 32.91 lakh only was allotted to the Directorate till March 2013.

Short and delayed allocation of fund affected the pace of development of the IT system and even after expiry of more than three years of its initiation; the status of computerisation had reached only at the design and development level. During January 2011 to November 2013, no meeting of the Steering Committee was held. Thus, the development of IT system was not efficiently monitored by the Steering Committee. Two servers supplied by the WTL could not be activated till date as the key numbers required for the purpose were misplaced by the Directorate.

147 Including the Commissioner of Agricultural Income Tax, the Advisor (Computerisation) from Finance Department, the Project Manager of Webel Technology Limited (WTL), the Principal System Analyst from National Informatics Centre (NIC) and one Additional Commissioner of Agricultural Income Tax.

As a result, none of the objectives of the project (computerisation of the Directorate) has been achieved so far.

On this being pointed out, the CAIT in Exit Conference (December 2014) stated that to speed up the process of computerisation, a new IT cell had been formed. It was expected that the project would take a shape at the end of current financial year.

6.3.23 Internal control mechanism

Internal Control is an integral component of an organisation's management processes in order to provide reasonable assurance that the organisation's operations are carried out effectively, economically and efficiently. Evaluation of internal control mechanism in the administration of different taxes under the Directorate revealed deficiencies in the administrative, operational and monitoring controls. Deficiencies in the internal control mechanism are discussed in the following sub-paragraphs:

6.3.23.1 Absence of an effective Internal Audit Wing

The Internal Audit Wing (IAW) of the Directorate had commenced its functioning from June 2006¹⁴⁸ with the objectives to scrutinise and detect the irregularities and shortcomings in the assessment cases of DAIT. It was enunciated that IAW will be headed by the Addl. CAIT who will be assisted by the ACAIT, AITO and Inspectors, but the Directorate did not depute separate set of officers and staff for the job related to internal audit to ensure impartial evaluation of the working system and performance of different wings of the Directorate. A manual on the working procedure of the IAW had not since been formulated till the date of audit. Neither the Directorate nor the IAW itself fixed any audit plan/targets for conducting internal audit of various units of the Directorate. During the period from 2008-09 to 2012-13, only three Range offices were audited by the IAW. The Directorate did not initiate any efforts to streamline and strengthen the functions of IAW till date.

The CAIT in Exit Conference (December 2014) stated that steps were being taken to streamline the functioning of the IAW.

6.3.23.2 Absence of an Office Procedure Manual

No manual on the working of the Directorate, where assignment of duties, power, role and responsibility of various wings/sections/officers were to be documented, was formulated by the Directorate. In absence of the manual, the registers and records otherwise required to be maintained by the Directorate and field offices and duties and responsibilities of the officers and staff of various levels had not been maintained.

The CAIT in Exit Conference (December 2014) stated that steps would be taken to prepare an office procedure manual.

¹⁴⁸ Vide circular no.-2 dated 30-06-2006.

6.3.23.3 Absence of a mechanism to monitor compliance of instructions, orders etc.

Commissioner of Agricultural Income Tax issued instruction¹⁴⁹ that copies of assessment orders may be served to the assesseees alongwith the demand notices.

Scrutiny of records in five¹⁵⁰ AIT Offices revealed that 2,684¹⁵¹ assessments were made after March 2012 and the demand notices were issued accordingly. Scrutiny of 315¹⁵² assessment case records revealed that no copies of the assessment orders were served alongwith the demand notices as no evidence was found on record to this effect. The Directorate also did not evolve any mechanism to monitor the compliance of instructions, issued from time to time, through periodical reports or returns.

The CAIT in Exit Conference (December 2014) stated that necessary steps to monitor compliance of instructions/orders, etc were being initiated.

6.3.23.4 Inadequate infrastructure to support tax administration

Audit attempted to collect information regarding available infrastructure in the Range offices and the Directorate. Out of 14 Range offices, information had been made available by nine Range offices. Of them, eight Range offices mentioned about insufficient manpower. The vacancies created due to retirements and promotions of the officers and staff were not filled. All nine AIT Offices intimated about inadequate official equipments like PCs, printers, fax, xerox machine etc. Supply of inadequate consumables, insufficient allotment of contingency fund (under office expenses), non/short availability of vehicles for inspection and other official works, absence of communication facilities like phone, intercom, STD, internet etc. were also brought to the notice of audit by the AITOs. The facilities of record rooms was not available in any of the Range offices, and neither were there record keepers for preservation of old records, even though there was no system for periodical weeding and indexing of records for disposal and preservation. Updation of books related to various Acts and Rules was not done since 2009. Thus, updated versions of the provisions under various Acts were not available to the officers and staff in the Directorate. These inadequacies in the infrastructure of the Directorate are likely to affect the tax administration.

The CAIT in Exit Conference (December 2014) admitted that there was inadequate infrastructure in the Directorate. The matter would be taken up with the Finance Department/Government.

¹⁴⁹ Vide Memo No. 261(20)-C dated 20-03-2012.

¹⁵⁰ AITOs- Birbhum Range, Burdwan Range, Darjeeling Range, Kolkata Range II and Howrah Range.

¹⁵¹ Hotels:- 313, Restaurants:- 262, Cinema:- 154, Cables:- 54, Park/Games & sports:- 8, AIT: 517 and Cess:-1376.

¹⁵² Hotels:- 68, Restaurants:- 91, Cinema:- 86, Cables:- 19, Park/Games & sports:- 8, AIT: 23 and Cess:-20.

6.3.23.5 Improper maintenance of records

Proper maintenance of records and registers is an important tool for administration to ensure smooth functioning of the system. Effectiveness of the audit process also depends on records maintenance to a large extent.

Audit observed that in the Directorate, no appeal register was maintained to ensure the status of the appeal cases. None of the files and folders were found page numbered. Thus, completeness of these files and folders was not ensured due to which misplacement of any important document from the case record was unverifiable. Various registers¹⁵³ maintained under the AITOs were not periodically verified by the competent authorities as no signature of the authorities with seal was found periodically as a mark of authentication. In the absence of periodical checking of these registers, the updated status of assessment, revenue realisation and initiation of recovery proceedings could not be ascertained. There was no system for periodical weeding and indexing of records for the purpose of disposal and preservation.

The CAIT in Exit Conference (December 2014) stated that necessary instructions had been/were being issued to the concerned authorities for proper maintenance of records.

6.3.24 Conclusion

Performance Audit has brought out a number of compliance as well as system deficiencies in the administration of taxes under various Acts monitored by the DAIT. Absence of a system of cross verification of information that can be obtained from other departments/local bodies and sources was noticed. Audit scrutiny also revealed that several contemporary areas were left out of the purview of taxation on account of the related Acts not covering them. In addition, absence of provisions for time limits/levy of interest reduced the deterrent effect on tax evaders. Failure of the Directorate to monitor the compliance of Appellate orders affected revenue realisation. Absence of an effective internal audit wing, non-observance of the CAIT orders and poor record keeping were found to be weaknesses of the internal control mechanism of the Directorate.

6.3.25 Summary of recommendations

The Government may consider taking the following steps to enhance the efficiency and effectiveness in the tax administration of the Directorate:

- establishing a system to mandatorily coordinate with different departments, local bodies and other sources and exchange relevant information so as to bring eligible tax payers into the tax net;
- timely initiation of recovery proceedings and evolving a mechanism to monitor compliance of Appellate orders for efficient tax administration;

¹⁵³ General Index Register, Appeal Register, Certificate Register, Outstanding Register etc.

- making the definition of luxury more inclusive in the tax;
- widening the scope of taxation under the Bengal Amusement Tax Act 1922, on complimentary tickets of commercialised entertainment/sports events;
- ensuring timely assessment of taxes under the West Bengal Entertainment-cum-Amusement Tax Act, 1982 and the Bengal Amusement Tax Act, 1922;
- contemplating provisions in the Bengal Amusement Tax Act, 1922 for levy of interest; and
- establishing an effective internal audit wing and formulating the office procedure manual to ensure that various provisions of the Acts and Rules are efficiently administered for effective tax administration.

Other audit observations

State Excise

6.4 Non-realisation of fee on unsold stock of foreign liquor

Rules 241(1) and 241(2) of the West Bengal Excise (Foreign Liquor) [WBE (FL)] Rules, 1998 provide that the licensee shall forthwith intimate the Collector for destruction/removal of Foreign Liquor (FL) lying unsold in any licensed premises after the period indicated as “best for use” on the label of the bottle of beer or after expiry of one year from the date of manufacture of FL (other than beer). In case of failure, the licensee shall pay a fee at the rate of ₹ 2 and ₹ 3 per Bulk Litres (BL) *per diem* under Section 241(1) and 241(2) respectively.

In the office of the Commissioner of Excise, Kolkata (North) from the annual stock taking reports, inspection reports and correspondence between the licensees and the excise authority, Audit found in September 2013 that in three cases, 3,177.57 BL of FL were lying unsold in three licensed premises after the prescribed period. In two cases involving 2,404.38 BL, the licensees did not intimate the Collector even after lapse of 21 to 31 months from the prescribed date. In the remaining case involving 773.19 BL, the licensee intimated the Collector after lapse of 98 days from the prescribed date. Even after being informed, the Department too did not take any action against the licensees for levy of fees resulting in non-realisation of fee of ₹ 35.46 lakh.

After Audit pointed out the cases, the Department and the Government informed (April 2014 and October 2014 respectively) that in two cases involving fee of ₹ 4.26 lakh chargeable on 1,151.49 BL, demand notices were issued subsequent to audit, but did not furnish further details regarding realisation. In the remaining one case involving fee of ₹ 31.20 lakh

chargeable on 2,026.08 BL, the Department did not furnish any specific reply (November 2014).

6.5 Non-realisation of excise duty on issue of over strength foreign liquor

Rule 41 of the WBE (FL) Rules, 1998 provides that all potable FL shall be manufactured at the strength prescribed under the rules subject to an allowable limit of variation of 0.2° proof on either side. The samples of FL are sent to the Chemical Examiner (CE) for determination of strength of the FL. If the report of the CE shows any deviation from the prescribed strength beyond the allowable limit, the manufacturer shall pay on demand the excise duty on the excess quantity of spirit used in manufacture.

Audit found in September 2013 from the Bottling Registers (Register-A) and reports of the CE in the office of the Superintendent of Excise, Hooghly that two licensees produced 26,43,779.39 BL of FL during 2007-08 to 2011-12 which had variations of strength beyond the allowable limit. Owing to the variation of strength, 11,272 LPL¹⁵⁴ of spirit were issued in excess and the licensees were liable to pay excise duty on that quantity of spirit at the applicable rates. However, the Department did not raise any demand, resulting in non-realisation of excise duty of ₹ 20.97 lakh.

After Audit pointed out the cases, the Department stated (March 2014) that demand notices were issued subsequently, but did not furnish any report on realisation (November 2014).

The Government accepted (October 2014) the audit observation and stated that demand notices have been served upon the concerned licensees but did not furnish any report on further action taken (November 2014).

Profession tax

6.6 Non-realisation of profession tax due to non-enrolment

Sections 3(2) and 5(2) of the West Bengal State Tax on Professions, Trades, Callings and Employments (WBSTPTCE) Act, 1979 provide that every person who falls under the purview of the Act shall obtain a certificate of enrolment from the prescribed authority and pay tax at the prescribed rates. As per Section 17 of the said act, authorities are empowered to inspect and search any place of work where the records relating to employment, trade, salaries etc. are believed to be kept.

Scrutiny of records from 19 licence issuing offices¹⁵⁵ and

¹⁵⁴ London Proof Litre (LPL). London Proof means the strength or proof as ascertained by means of Sykes Hydrometer and denotes that spirit which at the temperature of 51 degree Fahrenheit weighs exactly 12/13th part of an equal measure of distilled water.

¹⁵⁵ 19 units of different authorities responsible for issuing licences/permissions to carry out different trades/professions as follows:-Assistant Chief Medical Officer of Health (ACMOH), Asansol; Additional Superintendent of Excise (ASE), Murshidabad; Agricultural Income Tax Officer (AITO), Medinipur; AITO, Jalpaiguri; Asst. Registrar of Cooperative Societies, Bankura range office; Bankura Municipality; Burdwan Municipality; CMOH, Bankura; CMOH, Birbhum; CMOH, Hooghly; CMOH, Jalpaiguri; CMOH, Murshidabad; CMOH, Nadia; CMOH, Paschim Medinipur; District Magistrate Office, Birbhum; Municipal Corporation (MC), Asansol; MC, Siliguri; Post Master, Siliguri Head Post Office and SE, Paschim Medinipur.

10¹⁵⁶ unit offices of profession tax revealed that 3,026 professionals¹⁵⁷ had not enrolled themselves with the prescribed authority and continued their professions without payment of any profession tax between 2009-10 and 2012-13. The Department also failed to bring these persons under the tax net and recover tax from them at the prescribed rates, leading to non-realisation of profession tax of ₹ 1.59 crore.

Four¹⁵⁸ Profession Tax Officers (PTOs) admitted the audit observations (between October 2012 and May 2013) in 417 cases involving ₹ 0.22 crore. In the remaining 2,609 cases involving ₹ 1.37 crore, six¹⁵⁹ PTOs did not furnish any reply/specific reply (November 2014).

The cases were reported to the Government between November 2011 and October 2013 followed by reminders issued upto March 2014; their reply has not been received (November 2014).

6.7 Non-raising of demand of profession tax

Section 8 of the WBSTPTCE Act, 1979 provides that any person who stands enrolled before the commencement of the year is liable to pay profession tax at the prescribed rates (ranging from ₹ 216 *per annum* to ₹ 2,500 *per annum*) before 31st July of that year. Further, Rule 15 (2) of the WBSTPTCE Rules, 1979 provides that in case of non-payment, the PTO shall serve a notice of demand directing the defaulter to pay the dues within 15 days from the date of receipt of notice. Section 10 of the Act also provides for levy of penalty upto 50 *per cent* of the unpaid tax. Section 17 (C) provides that demand for the tax and penalty so determined cannot be raised after the expiry of three years.

During scrutiny of records of enrolment and tax receipts in seven¹⁶⁰ unit offices between March and September 2013, it was found that 367 enrolled persons did not pay profession tax for various periods between 2009-10 and 2012-13. However, the PTOs did not serve demand notice to the defaulters resulting in non-realisation of profession tax of ₹ 17.19 lakh and leviable penalty upto ₹ 8.59 lakh.

Three¹⁶¹ PTOs admitted (between April and September 2013) the audit observations in 152 cases involving ₹ 6.75 lakh, but did not furnish any report

¹⁵⁶ DCPT/WBCU-III, Behrampur; DCPT/WBNU-I, Siliguri; DCPT/WBNU-II, Jalpaiguri; DCPT/WBSU-II, Serampur; DCPT/WBSU-III, Medinipur; DCPT/WBWU-II, Burdwan; DCPT/WBWU-III, Asansol; DCPT/WBWU-VI, Birbhum; PTO/WBCU-II, Krishnanagar and PTO/WBWU-IV, Bankura.

¹⁵⁷ Under Section 3(2) of the WBSTPTCE Act, 1979, a professional has been defined as a person engaged in any profession, trade, calling or employment and falling under one or the other of the classes mentioned in the second column of the Schedule appended to the Act.

¹⁵⁸ DCPT/WBNU-I, Siliguri; DCPT/WBSU-II, Serampur; DCPT/WBWU-II, Burdwan and PTO/WBCU-II, Krishnanagar.

¹⁵⁹ DCPT/WBCU-III, Behrampur; DCPT/WBNU-II, Jalpaiguri; DCPT/WBSU-III, Medinipur; DCPT/WBWU-III, Asansol; DCPT/WBWU-VI, Birbhum and PTO/WBWU-IV, Bankura.

¹⁶⁰ DCPT/WBCU-III, Behrampur; DCPT/WBCU-VIII, Barrackpore; DCPT/WBNU-I, Siliguri; DCPT/WBNU-II, Jalpaiguri; DCPT/WBWU-II, Burdwan; DCPT/WBWU-VI, Birbhum; and PTO/WBWU-IV, Bankura.

¹⁶¹ DCPT/WBNU-I, Siliguri; DCPT/WBWU-II, Burdwan; and PTO/WBWU-IV, Bankura.

on levy and realisation of tax. In the remaining 215 cases involving ₹ 10.44 lakh, four¹⁶² PTOs did not furnish any reply/specific reply (June 2014). In respect of the year 2009-10, the demands have already become time barred leading to irrevocable loss in revenue to the extent of ₹ 1.13 lakh.

The cases were reported to the Government between April and October 2013 followed by reminders issued upto March 2014; their reply has not been received (November 2014).

¹⁶² DCPT/WBCU-III, Behrampur; DCPT/WBCU-VIII, Barrackpore; DCPT/WBNU-II, Jalpaiguri; and DCPT/WBWU-VI, Birbhum.