

CHAPTER 6: OTHER TAX RECEIPTS

TAX ON LUXURIES (In Hotels and Lodging Houses)

6.1. Results of audit

Test check of records relating to tax on luxuries (in hotels and lodging houses) conducted in audit during the year 2001-2002, revealed irregularities involving revenue amounting to Rs. 2.32 crore in 26 cases, which broadly fall under the following categories.

(Rupees in crore)

		Number of cases	Amount
1.	Evasion of tax	3	0.21
2.	Loss of revenue due to concealment of lodging receipts	14	0.38
3.	Other irregularities	8	0.32
4.	Assessment and collection of taxes on luxuries	1	1.41
	Total	26	2.32

During the year 2001-2002, the concerned department accepted under assessment of Rs. 1.10 lakh in one case which had been pointed out in audit in earlier years. A few illustrative cases highlighting important observations involving financial effect of Rs. 1.41 crore are given in the following paragraphs.

6.2. 'Assessment and Collection of Tax on Luxuries in Hotels and Lodging Houses.'

6.2.1. Introduction

The Himachal Pradesh Tax on Luxuries (In Hotels and Lodging Houses) Act, 1979, provides for the levy and collection of tax (to be called 'Luxury Tax') on luxuries provided in hotels and lodging houses. Luxury provided in a hotel means "accommodation for residence provided in a hotel, rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, sports, extra beds and other amenities provided in a hotel) is fifty rupees per person per day or more".

6.2.2. Organisational set up

The Excise and Taxation Commissioner is the head of the department and is assisted by the Deputy Excise and Taxation Commissioner, the Assistant Excise and Taxation Commissioners, with the help of Excise and Taxation Officers and other allied staff in the administration of the Act. In order to assist in checking evasion of tax, flying squads headed by the Deputy Excise and Taxation Commissioner for the south zone, north zone and central zone each are also functioning in the department. The performance of district units etc., is monitored in the quarterly meetings of zonal and district level officers.

6.2.3. Scope of audit

Records of all the 11 district offices* (out of 12 district offices) relating to assessment and collection of luxury tax for the years 1996-97 to 2000-2001 were test checked in audit, between May and December 2001 with a view to assess the effectiveness of the system and procedure regulating the assessment and collection of tax on luxuries provided in hotels and lodging houses.

* *Bilaspur, Chamba, Hamirpur, Kangra, Kinnaur, Kullu, Mandi, Shimla, Sirmaur, Solan and Una.*

6.2.4. Highlights

(1) Non levy/ under assessment of luxury tax of Rs. 10.41 lakh was noticed in case of 13 hoteliers.

[Para 6.2.8 (i), (iii), (iv) and (v).]

(2) The department's failure to levy luxury tax on receipts from time-share customers in two hotels resulted in loss of revenue of Rs. 47.62 lakh.

[Para 6.2.8.(ii)(a) and (b).]

(3) The department allowed inadmissible benefit of luxury tax of Rs.36.77 lakh to 3 hoteliers under deferred payment scheme.

(Para 6.2.9.)

(4) The department's failure to detect the suppression of room rent receipts and unauthorised operation of unregistered rooms in respect of 12 hoteliers resulted in evasion of luxury tax of Rs. 27.28 lakh.

(Para 6.2.10.)

(5) Interest of Rs. 13.48 lakh for non-payment of luxury tax on due dates was neither demanded nor recovered from 71 hoteliers.

(Para 6.2.13.)

6.2.5. Trend of revenue

The budget estimates and actual receipts for the last five years ending 2000-2001 were as below:-

(Rupees in crore)

Year	Budget estimates	Actual receipts	Excess (+) Short(-)	Percentage Col. 4 to Col. 2
1.	2.	3.	4.	5.
1996-97	4.00	4.18	(+)0.18	(+)5
1997-98	5.02	4.76	(-)0.26	(-)5
1998-99	5.02	6.00	(+)0.98	(+)20
1999-2000	6.49	6.32	(-)0.17	(-)3
2000-2001	6.75	7.61*	(+)0.86	(+)13

* Provisional

The shortfall during 1997-98 was due to the arrival of less tourists due to heavy rains whereas during the year 1999-2000 the exemption limit of luxury tax was raised from Rs 24.99 per person to Rs 49.99 per person per day with effect from 4th May 1999. The excess collection during 1998-99 and 2000-2001 was due to large number of tourists visiting the State and better tax collection.

6.2.6. Arrears of luxury tax collection

As on 31st March 2001, the year wise arrears of luxury tax pending collection were as under:-

(In lakh of Rupees)	
Year	Amount
Up to 1996-97	2.14
1997-98	5.34
1998-99	5.01
1999-2000	23.94
2000-2001	62.74
Total	99.17

In Shimla and Solan Districts, the additional demand of Rs 2.41 lakh (Shimla Rs.0.50 lakh; Solan Rs.1.91 lakh) for the period 1996-97 and 1998-99 respectively created during May 1996 and December 1999 respectively were not included in the arrears intimated to audit (January 2002).

6.2.7. Assessments

Under the Himachal Pradesh Tax on Luxuries (in hotels and lodging houses) Act, 1979, every proprietor, liable to pay luxury tax from April 1991 was to furnish a return in the prescribed form to the assessing authority quarterly within 15 days of the close of each quarter. The amount of luxury tax due from a proprietor should be assessed separately for every half financial year or part thereof. However, there was no provision in the Act/ Rules for the submission of annual accounts to the assessing authority. If the assessing authority is not satisfied without requiring the presence of proprietor who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he should serve a notice in the prescribed manner and after giving an opportunity to the proprietor of being heard, assess the amount of luxury tax due from him. If the proprietor fails to comply with the terms of notice or does not furnish his return in respect of any period by the specified date, the assessing authority should, within five years

after the expiry of such period, proceed to assess to the best of his judgement the amount of the luxury tax due.

Year-wise details of cases upto the year 1999-2000 awaiting assessments as on 31st March 2001 were as under:

Year of assessment	No. of cases pending
Up to 1995-96	141
1996-97	128
1997-98	195
1998-99	327
1999-2000	565
Total	1356

No record was maintained in the district offices which could show the amount involved in respect of pending assessment cases. Although pendency of assessments were reviewed in the quarterly meetings of the Zonal and districts incharge of the department wherein it was stressed for early finalisation of the assessments, yet 1356 cases were pending assessment as of 31st March 2001. As such no effective results could be achieved for clearance of old assessments through the periodical departmental meetings.

6.2.8. Non levy/under assessment of luxury tax

(i) As per the Himachal Pradesh Tax on Luxuries Act, 1979, "Hotel" means any premises or part of premises including a house boat, restaurant, bar or a tent where lodging with or without board or any kind of eatables or beverages or other services are by way of business provided for a monetary consideration, and includes such premises as are given on rent during any period of a financial year. Besides, if a dealer fails to pay tax due by the prescribed date, interest on the tax due at the rate of one per cent for a period of one month and at one and a half per cent per month thereafter is to be charged till the default continues.

Luxury tax of a hotel of Kullu district for the years 1996-97 to 1998-99 were assessed on 28th April 2000. As per the lease deed filed by the hotelier with the Excise and Taxation department, part of the hotel premises alongwith furniture and fixtures were leased out on 29 March 1996 and 30 July 1996 to two lessees and rentals of Rs. 18.85 lakh was received on which no tax was levied by the Assessing Authority. The assessing authority's failure to assess luxury tax on rentals resulted in non-levy of luxury tax of Rs. 3.12 lakh including interest.

(ii) The Act provides that where luxury is provided in a hotel and no charges for such luxury are made or charges are made at concessional rates, the luxury tax shall be levied and paid as if the luxury was provided at the maximum rates and charges fixed by the prescribed authority under the Himachal Pradesh Registration of Tourist Trade Act 1988. Where such charges have not been fixed by the prescribed authority, the luxury tax shall be levied at the maximum rates, as may be determined by the Assessing Authority after having due regard to the maximum rates and charges at which the luxury has been provided in such a hotel at any time during the preceding six months. Further, the liability to pay tax shall not be affected where any proprietor does not collect the luxury tax payable by him.

As per the agreement between the time-share customers and the hoteliers 'Time-share' means the right to stay in an apartment in the Holiday Resort and enjoy the amenities during the Holiday week subject to terms and conditions in the agreement.

(a) The Assessing Authority, Kullu issued (September 1996) a notice to a hotelier to furnish occupancy information under time-share scheme, which was liable to luxury tax, but was not supplied by the hotelier in spite of reminders. As per the report of the Inspector, the hotelier had evaded luxury tax amounting to Rs. 3.89 lakh on rooms under time-share scheme during April 1997 to July 1997.

While framing the assessments of the hotel from April 1994 to March 1998 between January 1999 and March 2000, no action was taken to assess luxury tax under time share scheme which resulted in non levy of luxury tax amounting to Rs. 46.72 lakh worked out on proportionate basis. Besides interest and penalty were also leviable.

(b) A hotelier of Solan District had disclosed receipts from time-share customers amounting to Rs. 2.44 lakh and 3.80 lakh during the year 1997-98 and 1998-99 respectively. While framing the assessment of the hotel for the year 1997-98, however, no action was taken by the Assessing Authority to levy luxury tax of Rs. 0.63 lakh on the time share receipts. Besides, interest of Rs. 0.27 lakh was also leviable.

(iii) The Act provides that there shall be levied and paid a tax on the amount of charges in respect of any luxury provided in a hotel. However, extra beds are chargeable according to the rates fixed by the Tourism department.

Assessments of 9 hotels (Shimla: 4, Kullu: 1, Kangra: 3 and Chamba: 1) for the years 1996-97 to 2000-2001 were framed between June 1999 to August 2001. As per returns filed by the hoteliers and assessments made by the assessing authorities, luxury tax of Rs. 2.36 lakh on the receipts of Rs. 23.60 lakh from extra beds was not assessed by the assessing authorities. Besides, interest of Rs. 1.55 lakh was also leviable.

(iv) A hotelier of Shimla district neither filed the returns nor paid the luxury tax for the years 1996-97 to 1999-2000 and the luxury tax for the years 1996-97, 1997-98 and 1999-2000 was assessed (July 2000) on best judgement basis by increasing room rent receipts over the previous year by 10 per cent for the years 1996-97 and 1997-98 and by 20 per cent for the year 1999-2000. However, no tax was assessed for the year 1998-99 and 1999-2000 on the plea that the hotel remained closed during the year as per affidavit filed by the assessee. The hotel was inspected in December 1996 by the Excise and Taxation department and the visitor book containing entries from 25.6.96 to 29.7.96 and 19.9.96 to 30.12.96 was seized. However, no action was taken by the department on the detection report. It was also noticed by the Tourism department during November 1998 that the hotel was in operation whereas no luxury tax for the year 1998-99 had been assessed by the Excise and Taxation Department. The hotel was also inspected by the Tourism department and again by the Excise and Taxation Department in June 1999 and visitors' book containing entries for 97 days pertaining to the year 1999-2000 was also seized. Thus, not framing the assessments on the basis of detection reports for the year 1996-97 onwards and non-assessment of luxury tax for the year 1998-99 and 1999-2000 resulted in non/short levy of luxury tax of Rs. 2.37 lakh including interest and penalty.

On this being pointed out in audit, the department stated that notice had been issued (December 2001) to the hotelier. Further report has not been received.

(v) A test-check of the records of the office of Assistant Excise and Taxation Commissioner, Shimla revealed (August 2001) that the taxable turnover was computed incorrectly for the period falling between 1994-95 and 2000-2001 filed by two hoteliers which resulted in short levy of luxury tax of Rs. 1.01 lakh including interest and penalty.

On this being pointed out in audit the department stated (December 2001) that notices for reassessment had been issued to the hoteliers. Further report has not been received (August 2002).

6.2.9. Inadmissible benefit of deferred payment scheme

Under the Himachal Pradesh Tax on Luxuries (In Hotels and Lodging Houses) Act, 1979 and rules made thereunder, the proprietor of new hotels who had started the operation between August 1993 and July 1998 were eligible to the scheme of deferred payment of luxury tax. The proprietor of a new hotel in respect of certificate in Form-1 issued by the Tourism department shall within a period of thirty days make an application to the Assessing Authority for concession of deferred payment of luxury tax in Form LT (D.P.-I).

(a) Two hoteliers of Shimla and Solan districts were registered with Tourism Department on 14th July 1997 and 17th May 1997 respectively. They failed to submit their applications for the benefit of deferment of luxury tax within thirty days from the date of registration with the Tourism Department

and applied in January 1998 and June 1998 respectively. The hoteliers were not eligible to deferment but the Excise and Taxation department allowed the said benefit for three years from 1st June 1996 to 31st March 1999 in first case and from 24th July 1996 to 23rd July 2000 for four years instead of three years in the second case. This resulted in undue benefit of luxury tax of Rs. 33.58 lakh.

On this being pointed out in audit, the department stated (December 2001) that the notices for reassessment had been issued in one case.

(b) Assessments of a hotel of Solan district for the years 1995-96 to 1998-99 were framed between March 1999 and December 1999. The hotelier did not pay luxury tax of Rs.1.80 lakh from April 1995 to March 1999 on the plea that he was entitled to the benefit under the deferred payment scheme. It was however, observed from the records of the Assistant Excise and Taxation Commissioner, Solan that the hotelier had neither filed any application for grant of benefit under the scheme nor any certificate authorising deferred payment of luxury tax was issued. Thus, he was liable to pay interest of Rs.1.39 lakh alongwith luxury tax of Rs.1.80 lakh.

On this being pointed out the case was reassessed (March 2002) and demand was created for Rs. 3.29 lakh (including interest of Rs. 1.50 lakh).

6.2.10. Evasion of luxury tax

Under the Himachal Pradesh Tax on Luxuries (in hotels and lodging houses) Act, 1979, every proprietor liable to pay luxury tax shall deposit the full amount of luxury tax due and payable by him within eight days after the close of the month to which the luxury tax relates. If a proprietor has maintained false or incorrect accounts with a view to suppressing any transaction or has concealed any particulars of his business or furnished false or incorrect information, he is liable to pay, by way of penalty in addition to the luxury tax, an amount not less than twenty five per cent but not exceeding one and a half times of the amount of luxury tax. However, there was no provisions in the Act/Rules for the submission of annual accounts with the assessing authority.

(a) Luxury tax payable by 10 hoteliers of Bilaspur, Chamba, Kangra, Kullu and Shimla for the year 1995-96 to 1999-2000 were assessed between March 1997 and August 2000. A correlation of accounts filed by the hoteliers with the Income Tax department revealed that they had disclosed lodging receipts of Rs. 3.44 crore in income tax returns whereas in the returns filed with respective assessing authorities the amount on account of lodging receipts were shown as Rs. 2.27 crore. As such the hoteliers had suppressed the lodging receipts amounting to Rs. 1.17 crore on which luxury tax of Rs. 23.82 lakh (including interest and penalty) was leviable.

(b) As per the information collected by audit from the Income Tax Department it was noticed that two hoteliers (Shimla:1 and Kullu:1) were

running nine rooms and one cottage unauthorisedly for the period .from December 1992 and April 1999 respectively for which no record of these rooms/ cottage were maintained by them. The offence case of Shimla hotelier was compounded by imposing a penalty of Rs. 6000 by the Tourism department. Scrutiny of the records of the hotels maintained by the Excise and Taxation department revealed that although the assessments of luxury tax of these hotels for the period 1993-94 to 1999-2000 were finalised between August 1996 and May 2000, luxury tax of Rs. 1.77 lakh (based on actual occupancy of registered rooms) in respect of unregistered room was neither paid by the hotelier nor assessed at the time of assessments. Minimum penalty of Rs. 0.44 lakh and interest of Rs. 1.25 lakh were also recoverable.

On this being pointed out (June 2001) in audit, the department stated (February 2002) that an additional demand of Rs. 10.84 lakh has been created on reassessment. Report of recovery has not been received (August 2002).

6.2.11.Lack of co-ordination between Tourism and Excise and Taxation Department

As per provisions of the Himachal Pradesh Registration of Tourist Trade Act, 1988, all hotels are required to be registered with the Tourism Department of Himachal Pradesh and the lodging rates of all the rooms require prior approval from them.

The absence of provisions in the Luxury Tax Act/ Rules for the collection of information by the Assessing Authority, relating to the detection made by the Tourism Department of unauthorised operation of rooms by the hoteliers resulted in evasion of revenue amounting to Rs.5.35 lakh by two hoteliers, as under:-

(i) During a survey conducted (August 1996) by the Tourism department, it was noticed, that a hotelier of Shimla district was operating (since 26th December 1994) six rooms added to the hotel without approval. These rooms were subsequently registered with the Tourism department on 23rd June 1997. Although the Excise and Taxation department had finalised (February 1998) the assessments of this hotel up to March 1997, luxury tax in respect of these six rooms from 26th December 1994 to 22nd June 1997, was neither paid by the hotelier nor assessed by the assessing authority which resulted in non-levy of luxury tax of Rs. 2.17 lakh based on the average rent charged on the registered rooms. Minimum penalty of Rs. 0.54 lakh and interest of Rs. 1.65 lakh were also recoverable.

On this being pointed out in audit, notice for re-assessment was issued to the hotelier by the Excise and Taxation department. Further report has not been received (August 2002).

(ii) Detections made (between May 1997 and June 2000) by the Tourism department revealed that a hotelier in Kangra district was operating 10 newly constructed rooms with effect from 21st May 1997, without the approval of the

lodging rates from the Tourism department. It was seen that no entry was made in the visitors book between May 1997 and July 2000. Due to lack of co-ordination with Tourism department, the Excise and Taxation department could not detect the operation of these unregistered rooms. Thus, there was a loss of revenue by way of non-levy of luxury tax and penalty of Rs. 0.99 lakh (tax calculated on the actual occupancy of registered rooms).

6.2.12. Hotels not brought under the tax net

(i) As per a notification issued (April 1991) under the Act, no proprietor who is liable to pay tax can carry on business as a proprietor unless he is registered and possesses a registration certificate. For registration, every proprietor has to make an application in the prescribed manner to the Assessing Authority of the district concerned and if the assessing authority is satisfied, he may grant him registration certificate in the prescribed form. In cases where the proprietor has wilfully failed to apply for registration, the assessing authority may direct the proprietor to pay by way of penalty, an amount not less than ten per cent but which shall not exceed one and a half times the amount of luxury tax.

Every person intending to operate a hotel is also required to apply for registration with the Department of Tourism under the Himachal Pradesh Registration of Tourist Trade Act, 1988 and without proper registration is liable to penal action under the Act *ibid*.

A correlation in audit of the records of the Tourism department with the Excise and Taxation department revealed that 198 hotels/lodging houses were registered with the Tourism Department under the Himachal Pradesh Registration of Tourist Trade Act, 1988. Copies of lodging charges approved by the Tourism department were invariably endorsed to the concerned assessing authority. However, it was seen that the Excise and Taxation Department failed to register these hotels /lodging houses as required under the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979, as tabulated below:-

Sr. No.	Name of District	No. of hotels not paying the luxury tax since their registration with the Tourism department.
1.	Hamirpur	3
2.	Kangra	52
3.	Kinnaur	22
4.	Kullu	34
5.	Mandi	33
6.	Shimla	30
7.	Sirmour	2
8.	Solan	18
9.	Una	4
	Total	198

(ii) A hotel of Mandi district consisting of 16 rooms was registered with the Tourism department on 15th March 1996. The hotelier paid luxury tax amounting to Rs 1.06 lakh for the period October 1999 to June 2000. On the basis of return filed by the assessee, however, the luxury tax for the period March 1996 to September 1999 was neither paid by the hotelier nor any penal action for non payment of tax was initiated against the hotelier.

(iii) The Tourism department inspected (April 1997), a hotel in Kullu district which was operating 31 double bed rooms and charging rent between Rs 800/- and Rs 1,000/- per suite per day but had not maintained the records viz. bill book/visitors book. After inspection, out of the 31 rooms, 19 rooms were registered with the Tourism department in June 1998. The hotelier however, neither paid any luxury tax nor filed any returns. The Excise and Taxation Department was also not able to detect the unauthorised operation of the hotel in the absence of provision of annual survey under the Act.

6.2.13. Non-levy of interest

The Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 provides that if the amount of luxury tax or penalty due from a proprietor is not paid by him within the period specified in the notice or when no period is specified therein, within a period of 30 days from the service of such notice, interest is chargeable at the rate of one percent per month for a period of one month and at the rate of one and a half percent per month thereafter as long as the default continues.

During test check of the records of the Assistant Excise & Taxation Commissioner, Shimla, Kullu, Solan, Kinnaur and Kangra districts, it was noticed that in respect of 71 cases, additional demands were belatedly deposited by the defaulters with delay ranging between 1 months and 55 months. For belated deposits interest amounting to Rs 13.48 lakh was leviable, but was not levied.

6.2.14. Conclusion

The Government should review the levy and collection of luxury tax as there is no provision to submit the accounts by the assesses alongwith the returns and provision of annual survey by the department to detect the unregistered dealers under the Act. There should be co-ordination and exchange of information between Tourism and Excise and Taxation Department to check the evasion of luxury tax.

The above cases were reported to the department/ Government in June 2002; their replies had not been received (August 2002).

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