

**CHAPTER VI
AMUSEMENT TAX**

6.1 Results of audit

Test check of records of amusement tax conducted in audit during the year 2004-05, revealed underassessment etc. of tax amounting to Rs.95.62 crore in 67 cases, which broadly fall under the following categories:

(Rupees in crore)

Sl.No.	Categories	No. of cases	Amount
1.	Non/short levy of tax / penalty	8	0.21
2.	Non/short realisation of tax /penalty.	10	0.41
3.	Review on Assessment, Collection and Arrears of Amusement Tax including Luxury tax.	43	94.56
4.	Other cases	6	0.44
Total :		67	95.62

During the course of the year 2004-05, the concerned Department accepted underassessment etc. of Rs. 62.34 crore involved in 38 cases of which 33 cases involving Rs 62.27 crore had been pointed out in audit during the year 2004-05 and the rest in earlier years.

A review on ‘Assessment, Collection and Arrears of Amusement Tax including Luxury Tax’ involving financial effect of Rs.94.56 crore is given in the following paragraph:

6.2 REVIEW ON “ASSESSMENT, COLLECTION AND ARREARS OF AMUSEMENT TAX INCLUDING LUXURY TAX”

The findings of the review on the procedure of assessment, collection and arrears of amusement tax, including luxury tax, its effectiveness and deficiencies are discussed below:

Highlights

- Inaction of the Department against the proprietors of cinema halls led to non-realisation of composition money of Rs.50.74 crore
[Paragraph 6.2.6]
- Non-scrutiny of claims of utilisation of service charges made by proprietors of cinema halls resulted in non-levy of tax of Rs. 2.39 crore
[Paragraph 6.2.8]
- Non-adherence to the provisions of the Act resulted in non/short-levy of luxury tax of Rs.4.57 crore on air-conditioned hotels.
[Paragraph 6.2.9]
- Despite specific provisions, clubs were not brought under the purview of tax resulting in non-levy of tax of Rs.5.12 crore
[Paragraph 6.2.10]
- Non-fixing of time limit for disposal of appeal cases resulted in blockage of revenue of Rs.3.13 crore
[Paragraph 6.2.15]

6.2.1 Introduction

Assessment, levy and collection of amusement tax in West Bengal are regulated by provisions of the Bengal Amusement Tax (AT Act) Act, 1922, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax (WBELT Act) Act, 1972 and the West Bengal Entertainment-cum-Amusement Tax (WBEAT Act) Act, 1982 and the Rules made thereunder.

- Under the AT Act, entertainment tax is leviable on admission to cinema shows, casual entertainment shows, clubs, amusement parks, horse racing clubs etc. and betting taxes on horse racing. The Act further provides that proprietor of an entertainment shall not admit any person to an entertainment without a ticket stamped with an impressed, embossed,

engraved or adhesive stamp issued by the State Government and denoting that proper entertainment tax has been paid.

- Under the WBELT Act, entertainment tax and luxury tax are payable on the sale of food and drinks, admission fees and room-rent realised by an air conditioned hotel.
- Under the WBEAT Act, a weekly tax is payable on video shows and a monthly tax is payable on cable operation.

Tax, penalty and interest are assessed and collected under the provisions of the above Acts. The sums remaining unpaid form arrears which are recoverable as arrears of land revenue by initiating a certificate case under the Public Demands Recovery (PDR Act) Act, 1913.

Any assessment made under the AT Act and the WBELT Act may be re-opened for re-assessment within four years and two years respectively from the date of such assessment.

The Agricultural Income Tax Department responsible for collection of the tax under the Acts did not have a manual on the working of the Department. Further, no internal audit system was in operation to detect and check defects and errors in assessment, collection and realisation of entertainment tax and luxury tax.

The review focused mainly on collection of tax of the Department from cinema halls, air conditioned hotels, clubs, amusement parks, horse racing and video halls.

6.2.2 Organisational set up

The Principal Secretary, Finance Department, Government of West Bengal is in overall control and superintendence of the Department at the Government level. The Commissioner of Agricultural Income Tax is the head of the Directorate and is assisted by one Additional Commissioner, four Deputy Commissioners, three Assistant Commissioners, 28 Agricultural Income Tax Officers and 58 Inspectors. Agricultural Income Tax Officers are entrusted with the duty of assessment and collection of amusement tax under the Acts.

They function under the direct control of the Commissioner in Kolkata and through the District Collectors in the districts.

6.2.3 Audit objectives

The review was conducted to examine whether

- amusement tax in the form of entertainment tax and luxury tax, including penalty and interest, was properly assessed, collected and remitted to Government accounts as provided under the AT Act, the WBELT Act, the WBEAT Act and the Rules framed thereunder;
- adequate steps were taken for realisation of arrears of entertainment tax and luxury tax ;
- there were lacunae in the Acts and Rules ; and
- adequate internal controls were in place.

6.2.4 Scope of audit

Records for the periods from 1999-2000 to 2003-04 of the Commissioner of Agricultural Income Tax, West Bengal and 10¹ Agricultural Income Tax Offices (AITOs) out of a total of 18² AITOs along with the concerned District Collector offices were test checked during the period from October 2004 to March 2005.

Audit findings as a result of that check of records were reported in June 2005 to the Government with a specific request in July 2005 for attending the meeting of Audit Review Committee so that viewpoint of the Government may be taken into account before finalising the review. The meeting was held in July 2005. A nominee from office of the Agricultural Income Tax Commissioner was deputed to attend the meeting though no representative from the Finance Department was present. The results of the discussion have been included in review.

¹ Bankura, Burdwan, Darjeeling, Howrah, Jalpaiguri, Kolkata, Medinipur, North 24Parganas, Purulia and South 24 Parganas.

² Bankura, Birbhum, Burdwan, Coochbehar, Dakshin Dinajpur, Darjeeling, Hooghly, Howrah, Jalpaiguri, Kolkata, Malda, Medinipur, Murshidabad, Nadia, North 24 Parganas, Purulia, South 24 Parganas and Uttar Dinajpur.

6.2.5 Trend of revenue

As per provisions of the Budget Manual, the Finance Department shall collect related informations both for receipts and expenditure from the concerned administrative departments and prepare budget estimates of the State after necessary changes according to the policy of the Government.

The position of budget estimates and actual collection of revenue from 1999-2000 to 2003-04 as appeared in the Budget Publication of the Government of West Bengal and as furnished by the Directorate were as under:

(Rupees in crore)

Year	Budget estimates	Actual collection as per the Budget Publication	Actual collection as furnished by the Directorate	Difference (3-4)
1	2	3	4	5
1999-2000	71.68	134.08	63.11	70.97
2000-2001	78.85	141.04	66.72	74.32
2001-2002	77.80	95.03	61.85	33.18
2002-2003	87.49	54.26	51.12	3.14
2003-2004	124.55	56.85	51.28	5.57

The difference between the figures of actual collection as per the Budget Publication and those of the Directorate was due to lack of intra Departmental coordination and an internal control mechanism including the absence of a system of reconciliation. After this was pointed out, the Directorate stated that instructions were being issued to start reconciliation which had not been done for the last few years.

There is a wide variation in between the budget estimates and the actual collection which clearly indicates that the budget estimates are not being prepared in accordance with the provisions of the budget manual.

➤ Arrears of revenue

The position of arrears from 1999-2000 to 2003-04 as furnished by the Commissioner of Agricultural Income Tax, West Bengal was as under:

(Rupees in crore)

Year	Opening balance	Demand raised	Demand realised	Closing balance
1999-2000	23.82	The figures could not be furnished by the Directorate.	63.23	23.34
2000-2001	23.34		66.71	23.57
2001-2002	23.57		61.85	26.90
2002-2003	26.90		51.12	22.78
2003-2004	22.78		Not available	Not available

It would be seen from the above that the Department did not have any effective monitoring procedure for watching/raising of annual demands.

Cinema Halls

6.2.6 Non-realisation of composition money from proprietors of cinema halls issuing tickets to viewers unauthorisedly

Under the provisions of the AT Act, no person liable to pay entertainment tax shall be admitted by the proprietor of a cinema hall except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp issued by the State Government and denoting that proper entertainment tax has been paid. Further, the proprietor of a cinema hall shall also furnish a prescribed weekly return within the stipulated time. In case of non-compliance of the above provisions or default in payment of entertainment tax, the assessing authority is empowered to lodge a report with the licensing authority of the cinema halls for cancellation of the licence. Moreover, non-compliance of the above provisions is an offence for which a proprietor shall be punishable by a Court of Law with imprisonment for a term upto two years or fine upto Rs. 3,000 or both. However, the assessing authority is empowered to compound the offence by accepting a sum of money not exceeding Rs. 1,000 or double the amount of tax payable, whichever is greater.

Audit scrutiny of records of cinema halls in two districts out of 10³ districts test checked revealed that

- proprietors of 49 cinema halls admitted viewers by issuing tickets without getting those tickets stamped with an impressed, embossed, engraved or adhesive stamp for years together;
- of these, proprietors of 47 cinema halls also defaulted in furnishing the returns within the stipulated time; and

³ Bankura, Burdwan, Darjeeling, Howrah, Jalpaiguri, Kolkata, Medinipur, North 24 Parganas, Purulia and South 24 Parganas.

- proprietors of 17 cinema halls defaulted in payment of their assessed dues of Rs.2.28 crore

in contravention of the provisions of the Act.

The Department, however, did not lodge any report with the licensing authority for cancellation of the licence of the proprietors. Further, the Department neither served any notice to the proprietors for compounding the offences nor took any action for framing charges and prosecuting them in a Court of Law. As a result, the proprietors did not come forward for payment of assessed dues. This led to non-realisation of assessed dues of Rs.2.28 crore. Besides composition money of Rs.50.74 crore should have been imposed as detailed below:

<i>(Rupees in crore)</i>				
Name of the AITO	No. of Cinema halls/cases	Period of assessment between	Date of assessment between	Composition money realisable
North 24 Parganas	10/26	1996-97 & 2001-02	1/2000 & 3/2004	4.94
Kolkata	39/86	1996-97 & 2003-04	4/1999 & 7/2004	45.80
Total:	49/112			50.74

After this was pointed out, the Department admitted the facts. However, it is stated that criminal proceedings were not initiated as they took a prolonged time for finalisation. The contention was not tenable as action as provided in the Act should have been taken. The Department did not even issue notice to the defaulting proprietors for availing the remedy of composition as prescribed under the Act.

6.2.7 Imposition of token penalty

Under the AT Act and the Rules made thereunder, a proprietor of a cinema hall shall furnish a prescribed weekly return within the stipulated time. The assessing authority may impose a penalty for late submission of return, of a sum not exceeding double the amount of entertainment tax assessed i.e. 200 *per cent* of the tax. However, the Act does not specify the minimum amount of penalty to be levied in such cases. While, in the West Bengal Luxury Tax (WBLT Act) Act, 1994, the minimum amount of penalty for late submission of a return is equal to the amount of tax assessed, i.e. 100 *per cent* of the tax.

Scrutiny of assessment records of eight AITOs revealed that in 222 cases, 99 proprietors failed to submit their returns within the prescribed time. The assessing officers issued show cause notices to the proprietors for late submission of returns. Thereafter, either the proprietors did not furnish reply to the show cause notices or the assessing officers did not find the explanations given by the proprietors as reasonable or sufficient. In spite of these facts, they imposed nominal penalties ranging from 0.005 to 2.89 *per cent* of the tax payable against the maximum leviable penalty of 200 *per cent*. Consequently, penalty of Rs.7.93 lakh only was imposed against the maximum penalty leviable of Rs 43.68 crore as detailed below:

(Rupees in lakh)

Name of the AITO	No. of cinema halls/ cases	Period of assessment between	Maximum penalty leviable under the AT Act	Minimum penalty leviable as fixed in the WBLT Act	Penalty levied	Percentage of penalty levied From to
Howrah	11/27	1996-97 & 2003-04	367.61	183.81	0.32	0.03-0.83
North 24 Parganas	13/22	1996-97 & 2001-02	396.33	198.16	0.67	0.05-1.53
Medinipur	14/34	1996-97 & 2002-03	153.69	76.85	0.33	0.08-1.83
Burdwan	20/53	1996-97 & 2002-03	531.05	265.52	0.87	0.04-2.80
Darjeeling	5/8	1999-00 & 2001-02	168.10	84.05	0.10	0.01-0.73
Kolkata	27/46	1991-92 & 2002-03	2,614.22	1,307.11	5.22	0.005-2.89
Purulia	3/3	2000-01 & 2002-03	4.40	2.20	0.01	0.50-1.12
Bankura	6/29	1996-97 & 2002-03	132.47	66.23	0.41	0.18-1.97
Total:	99/222		4,367.87	2,183.93	7.93	0.0036

Moreover, the assessing officers had in no case given any justification for imposition of only a token penalty and it was levied at as low rates as 0.0036 *per cent* of the assessed tax. Thus there is a need for fixation of minimum amount of penalty leviable in such cases.

After this was pointed out, the Department issued a circular in March 2005 at the instance of audit directing all the assessing officers to discuss the imposition of penalty in the assessment orders in case of late submission of returns.

The Department further stated in June 2005 that an amendment in the provision of penalty is also under consideration.

6.2.8. Non-levy of entertainment tax on inadmissible service charges

Under the AT Act, a proprietor of a cinema hall may realise from viewers, a service charge for maintenance of the cinema hall etc. and an additional service charge for air conditioning of the cinema hall. Entertainment tax shall be levied on such service charges unless the proprietor proves to the satisfaction of the assessing authority that the service charges have been fully utilised or adequate provision has been made in the books of accounts for maintenance etc. and air-conditioning of the cinema hall. Rates of entertainment tax ranged between 10 per cent and 70 per cent during 1999-2000 to 2003-04.

Scrutiny of assessment records of nine AITOs revealed that in 306 cases proprietors had realised service charges of Rs.5.23 crore for maintenance etc. as well as air conditioning of the cinema halls. However, the proprietors had not produced supporting documents regarding utilisation of the service charges or made adequate provisions in the books of accounts. The assessing officers were also silent in their assessment orders about the utilisation of service charges or regarding provision made thereof in the books of accounts and did not levy entertainment tax of Rs.2.39 crore on the service charges of Rs.5.23 crore as detailed below:

(Rupees in crore)

Name of the AITO	No. of cases	Period of assessment between	Date of assessment between	Service charges realised	Entertainment tax leviable
Howrah	42	1996-97 & 2002-03	8/2001 & 1/2004	0.94	0.45
Purulia	28	1998-99 & 2002-03	7/1999 & 11/2003	0.26	0.12
Bankura	7	1996-97 & 2002-03	12/1999 & 2/2004	0.08	0.01
South 24 Parganas	31	2001-02 & 2002-03	12/2002 & 9/2004	0.72	0.20
Jalpaiguri	51	1997-98 & 2000-01	9/1999 & 3/2002	0.38	0.24
Medinipur	58	1996-97 & 2002-03	1/2000 & 3/2004	0.64	0.24
Burdwan	36	1998-99 & 2002-03	1/2000 & 8/2004	0.95	0.44
Darjeeling	14	1999-00 & 2002-03	4/2002 & 9/2003	0.55	0.29
North 24 Parganas	39	1996-97 & 2001-02	5/2000 & 3/2004	0.71	0.40
Total:	306			5.23	2.39

The Department accepted the audit observation in June 2005, however action taken for levy of tax has not been intimated (October 2005).

Hotels

6.2.9. Non/short levy of luxury and entertainment tax on hotels

➤ **Non/short levy of luxury tax on banquet hall charges**

Under the provisions of the WBELT Act, a luxury tax is chargeable on daily charges received by a hotel for an occupied air conditioned room. Government of West Bengal by a notification issued in April 1997 clarified that daily charges for an occupied room shall be the charge for lodging only.

Scrutiny of assessment records of luxury hotels under the AITO, Kolkata revealed that in 25 cases, six hotel authorities received Rs.11.24 crore between 1996-97 and 2002-03 as rental/hire charges for air-conditioned banquet halls as reflected in their annual accounts. However, in 23 out of 25 cases no luxury tax was levied at all while in the remaining two cases it was assessed short at Rs. 1.70 lakh instead of the leviable amount of Rs. 7.51 lakh. This resulted in non/short -levy of luxury tax of Rs.1.14 crore as detailed below:

Name of the hotel	No. of cases	Period of assessment between	Assessment made between	Rental/hire charges received (Rs. in crore)	Luxury tax leviable (Rs. in lakh)	Luxury tax levied (Rs. in lakh)	Non/short levy of luxury tax (Rs. in crore)
A	6	1996-97 & 2001-02	4/1999 & 10/2003	3.40	35.66	Nil	0.36
B	2	1997-98 & 1998-99	2/2000 & 3/2001	0.75	7.51	1.70	0.06
	3	1999-2000 & 2001-02	3/2002 & 2/2004	1.50	14.97	Nil	0.15
C	3	1998-99 & 2000-01	1/2001 & 12/02	0.90	8.95	Nil	0.09
D	6	1996-97 & 2001-02	4/1999 & 2/2004	3.72	38.41	Nil	0.38
E	4	1998-99 & 2001-02	3/2001 & 2/2004	0.86	8.64	Nil	0.09
F	1	2002-03	8/2003	0.11	1.07	Nil	0.01
Total:	25			11.24	115.21	1.70	1.14

After this was pointed out, the Department stated in June 2005 that since banquet halls in the hotels were not rooms for lodging, luxury tax could not be charged under the Act. The contention was not tenable as banquet halls in all these cases were big rooms in the hotels where lodging i.e. temporary accommodation for the purpose of meetings, conferences, entertainment activities etc. was made available on receipt of rental/hire charges. As such luxury tax in these cases was leviable. In addition, the Department also assessed luxury tax in two cases though it was levied short.

➤ **Short determination of Gross Turnover**

Under the provisions of the WBELT Act, an entertainment tax is payable on the sums received for all the services including food and drink and admission fee realised by an air conditioned hotel, providing entertainment. The

minimum rate of tax leviable is 10 *per cent* on the services provided by an air conditioned hotel.

- Scrutiny of annual accounts of five⁴ luxury hotels under the AITO, Kolkata revealed that in 25 cases, the hotel authorities received an amount of Rs.719.63 crore between 1996-97 and 2001-02 as income from guests, accommodation, restaurants and bars etc. However, the assessing authorities while completing the assessments between April 1999 and February 2004 excluded Rs.31.48 crore from levy of tax without assigning any reason. Although shown as income viz. 'miscellaneous income/miscellaneous receipts/other services', the classes to which it belonged were not available on record. Consequently, the correct amount of tax leviable could not be ascertained. However, taking the minimum rate of tax of 10 *per cent*, there was a short levy of tax of Rs.3.15 crore. Out of these, 20 cases were more than two years old and could not be re-opened for re-assessment. This resulted in loss of revenue of Rs.2.67 crore.

The Department accepted the audit observation in June 2005; however further action taken to realise Government revenue has not been intimated (October 2005).

- Scrutiny of annual accounts of 1997-98 of a night club of a hotel disclosed that it was liable to pay entertainment tax of Rs.35.62 lakh on its gross turnover of Rs.1.19 crore. However, the assessing authority while completing the assessment in March 2000 excluded Rs.1.07 crore on account of sale of food and drinks from gross turnover. This resulted in underassessment of tax of Rs.28.30 lakh.

After this was pointed out, the Department stated in June 2005 that the matter was being examined. Further reply is awaited (October 2005).

Clubs

6.2.10 Non-levy of entertainment tax on clubs

Under the West Bengal Society Registration Act, 1961, clubs are registered with the Registrar of Firms, Societies and Non-trading Corporation, West

⁴ Hindustan International, Oberoi Grand, Radisson the Fort, Taj Bengal and The Park

Bengal. Further, as per provisions of the AT Act, any club providing entertainment and receiving payments for entertainment as subscription or contribution from its members for the right of admission shall be liable to pay entertainment tax on such receipts.

The total number of clubs liable to pay tax was not available with department. The department had not made any effort to get the details of clubs registered with the Registrar of Firms and Societies so that these could be brought under the tax-net. However, information obtained by audit from Sales Tax Department revealed that eight clubs situated in Kolkata received subscription or contributions from their members for different years between 1996-97 and 2001-02 for right of admission to various entertainments round the year including musical nights, dance events, indoor/outdoor games, New Year and Christmas celebrations, etc. As per the annual accounts of the clubs available with the Sales Tax Department, subscription/contribution of Rs.25.66 crore was liable to entertainment tax of Rs.5.12 crore as detailed below:

(Rupees in crore)

Name of the club	No. of cases	Period of subscription	Assessment made by Sales Tax Authorities between	Subscription/contribution for admission	Tax payable @ 20 per cent
A	4	1996-97 & 1999-2000	1999-2000 & 2002-03	4.21	0.84
B	4	1997-98 & 2000-01	2000-01 & 2003-04	4.97	0.99
C	4	1998-99 & 2001-02	2000-01 & 2003-04	13.22	2.64
D	3	1999-2000 & 2001-02	2001-02 & 2003-04	0.38	0.08
E	3	1999-2000 & 2001-02	2001-02 & 2003-04	1.31	0.26
F	3	1999-2000 & 2001-02	2001-02 & 2003-04	0.62	0.12
G	2	1996-97 & 1997-98	1999-2000 & 2000-01	0.90	0.18
H	1	1996-97	1999-2000	0.05	0.01
Total:	24			25.66	5.12

After this was pointed out, the Department while accepting the audit observation in June 2005 stated that the clubs liable to pay entertainment tax were being brought under the tax net.

Amusement park

6.2.11. Non-payment of entertainment tax by amusement parks

Under the provisions of the AT Act, “admission to an entertainment” includes admission to any place in which entertainment is held and an entertainment tax is payable on the value of tickets sold for such admission.

As per the records of the AITO, Kolkata the entertainment activities of the Nicco Park and Resorts Ltd. had commenced as early as in mid 1991-92 but the financial records available to audit are from 1999-2000 to 2001-02 only. Scrutiny of records revealed that the park had collected entry fee for admission for different rides like cable car, striking car, fun games, lazy river, tumble tosser, toy trains and water coaster etc. The Entertainment tax, though payable, on the admission fee of Rs.31.17 crore collected by the park between 1999-2000 and 2001-02, was neither paid by the park authority nor demanded by the Department. This resulted in non-levy and consequent non-realisation of Government revenue of Rs.6.24 crore as detailed below:

(Rupees in crore)

Year	Admission fees realised by the park	Entertainment tax payable @ 20 per cent
1999-2000	9.18	1.84
2000-01	10.03	2.01
2001-02	11.96	2.39
Total	31.17	6.24

The Department stated in June 2005 that entertainment tax was neither collected nor paid in respect of the Nicco Park as ‘sports and games’ were exempted from tax prior to 1 April 2002. The reply is not tenable since entertainment activities of the Park like cable car etc. are not ‘sports and games’ and were liable to tax.

➤ Scrutiny of records revealed that a hotel “X” within the jurisdiction of AITO, Kolkata collected Rs.2.48 crore on account of admission to its water park named ‘Aqua Park’ during 1998-99 to 2001-02. Similarly, under the AITO, Darjeeling the authorities of a water park named “Y” collected boating charges of Rs.18.72 lakh between April 2002 and July 2004. However, the tax was neither paid by the proprietors nor was it ever demanded by the Department. This resulted in non-levy and consequent non-realisation of revenue of Rs.53.37 lakh.

The Department accepted the audit observation in June 2005.

Horse racing club

6.2.12. Foregoing of interest due to late issue of notification

Under the AT Act, betting taxes are leviable on all monies paid as a bet by any person who bets on a horse race held in a race course. The racing clubs shall collect taxes from such persons and deposit them to Government account within the prescribed time. Under the Act, interest was not payable prior to May 1990 for delayed payment of tax. In June 1990, the Act was amended and a provision for levy of interest at the rate of two *per cent* per month for delayed payment of tax was introduced. However, the government issued notification for implementation of the same in July 2003. Consequently, no interest could be levied for a period of more than 13 years resulting in foregoing of government revenue.

Scrutiny of records of the AITO, Kolkata revealed the following:

- The Royal Calcutta Turf Club (RCTC) collected tax of Rs.6.97 crore between November 1991 and October 1993 but did not deposit it within the prescribed time. The club started paying the tax in a piecemeal manner from October 1993 to March 2005 until the tax was fully paid. However, interest could not be levied for the period upto July 2003 for delayed payment of tax due to late issue of notification. This resulted in foregoing of Government revenue of Rs.3.78 crore for the period from April 1999 to July 2003. Further, interest of Rs.2.74 crore was not levied by the Department for delayed payment of tax for the period between August 2003 and March 2005.

The RCTC was liable to pay inter state betting tax of Rs. 7.32 crore for the period from 19 December 1986 to 4 April 1990 which was not paid at all. The Public Accounts Committee (PAC), while discussing the Audit Report of 1998-99, recommended in its sixteenth report of 2002-03 in July 2003 that the State Government may set a firm deadline for recovery of dues and possession of the property at D.L. Khan Road, Kolkata from RCTC, after the expiry of which a case must be instituted for realisation of the dues as arrears of land revenue. The State Government, therefore, fixed the deadline of March 2005 in February 2005 i.e. after a lapse of 21 months. The amount has neither been received nor has any action been taken to recover the same as arrears of land revenue. Thus lack of action resulted in non-recovery of Government revenue to that extent.

6.2.13.Non-payment of entertainment tax on horse racing by RCTC

Under the AT Act, entertainment tax shall be charged on all payments for admission to horse racing for entertainment. Further, the Act defines 'admission' as admission as a spectator, an audience and a participant.

Scrutiny of records of the RCTC under the AITO, Kolkata revealed that the club received Rs.1.93 crore as entry money, entrance fee and subscription between 1999-2000 and 2003-04. However, entertainment tax was not paid by the club. The taxing officer also did not raise any demand for the payment of tax. This resulted in non-realisation of entertainment tax of Rs.1.16 crore as detailed below:

(Rupees in crore)

Year	Entry money	Entrance fee and subscription	Total	Tax payable @ 60 per cent
1999-2000	0.12	0.27	0.39	0.24
2000-01	0.12	0.22	0.34	0.20
2001-02	0.16	0.19	0.35	0.21
2002-03	0.15	0.28	0.43	0.26
2003-04	0.18	0.24	0.42	0.25
Total:			1.93	1.16

The Department stated in June 2005 that such receipts were not taxable as those were not paid by the spectators but by the persons taking part in betting on horse racing. The reply is not tenable since the provisions of the Act stipulate that all payments made for admission to horse racing as a spectator or as a participant are taxable.

Video Halls**6.2.14.Non/short levy of penalty and non-realisation of tax on/from the owners of video halls**

Under the provisions of the WBEAT Act, the owner of a video cassette recorder/player set, who makes public performance or commercial exhibition of films through these sets in rural areas, shall pay Rs.600 per week within seven days from the end of each such week. If the owner fails to pay the weekly tax within the specified period, he shall be liable to pay a penalty at the rate of Rs.10 per week till the tax is fully paid. Further, all arrears of such tax and penalty are recoverable from the defaulters, after giving one month's

notice, as an arrear of land revenue under the PDR Act by initiating a certificate case.

➤ **Non-initiation of certificate cases for realisation of arrear tax**

Scrutiny of records of four AITOs revealed that 87 owners of video halls failed to make payment of weekly tax for different periods between April 1999 and August 2004. Out of these, in 49 cases demand notices were issued between April 2000 and July 2004 and in remaining 38 cases notices were not issued at all. Although in none of the cases the owners paid any tax but certificate proceedings were not initiated for recovery of arrear tax against any defaulter. This resulted in non-realisation of tax of Rs.81.95 lakh as detailed below:

(Rupees in lakh)

Name of the AITO	No. of video halls	Period of default	Amount realisable
Jalpaiguri	21	1.04.1999 to 31.8.2004	19.79
Medinipur	30	6.11.1999 to 31.3.2004	14.06
South 24 Parganas	30	1.04.1999 to 31.3.2004	44.56
Purulia	6	1.04.1999 to 22.7.2003	3.54
Total	87		81.95

The Department accepted the audit observation in June 2005. However, further action taken has not been received (October 2005).

➤ **Non/short imposition of penalty**

Scrutiny of records of AITO, Burdwan, Jalpaiguri and Purulia revealed that 28 owners of video halls failed to make payment of weekly tax within the specified period. The concerned AITOs initiated certificate cases between November 2000 and October 2004 under the PDR Act to realise the due tax. However, scrutiny of the certificate cases revealed that in seven cases no penalty was imposed while in the remaining 21 cases it was imposed short by the concerned AITOs. This resulted in non/short-imposition of penalty of Rs.50.95 lakh as detailed below:

(Rupees in lakh)

Name of the AITO	No. of video halls	Date of initiation of certificate cases between	Penalty to be imposed	Penalty included in the certificate cases	Non/Short imposition of penalty
Burdwan	17	14.11.2000 and 29.10.2004	18.63	5.85	12.78
Purulia	4	4.7.2003 and 6.1.2004	4.67	1.09	3.58
Jalpaiguri	7	17.11.2003 and 9.12.2003	34.59	Nil	34.59
Total	28		57.89	6.94	50.95

The Department accepted the audit observation in June 2005. However, further action taken has not been intimated (October 2005).

6.2.15 Poor disposal of appeal cases

Under the amusement and luxury tax laws of West Bengal, if any proprietor is aggrieved against an order of assessment he may prefer an appeal before the appellate authority within the prescribed time. However, the laws are silent about the time limit within which an appeal case should be disposed of.

Scrutiny of appeal cases in the office of the Commissioner of Agricultural Income Tax revealed that 332 appeal petitions were accepted between 1999-2000 and 2002-03, of which 166 cases were not disposed of by the appellate authority till March 2005. Age-wise analysis of 28 cases involving Rs.3.13 crore is given as under:

(Rupees in crore)

Period of pendency	No. of appeal cases	Amount blocked
More than 48 months but less than 60 months	6	0.91
More than 36 months but less than 48 months	7	0.68
More than 24 months but less than 36 months	7	0.51
More than 12 months but less than 24 months	8	1.03
Total	28	3.13

The Department attributed the reasons of poor disposal to the shortage of officers at the appellate level.

6.2.16. Conclusions and recommendations

In the absence of internal control mechanism, the Department failed to implement the provisions of the Acts and Rules effectively and was unable to keep a watch over assessment and collection of amusement tax and the Government sustained loss of revenue. The Department also failed to recover the arrear of tax by way of periodical review of pending cases and by initiation of certificate proceedings. Effective steps were also not taken by the Department to plug the loopholes in the extant Acts and Rules and to make suitable amendments for better collection of amusement tax.

The State Government may consider the following steps for effective assessment and collection of amusement tax:

- Initiation of legal proceedings against the proprietors of cinema halls for non-payment of tax in advance;
- Amendment in AT Act to specify minimum penalty for late submission of returns by proprietors of cinema halls; and
- Ensure that all clubs are brought under the tax net.

All the cases were reported to the Government in June 2005, followed by reminder issued in June 2005; their reply has not been received (October 2005).