

## CHAPTER III TAXES ON AGRICULTURAL INCOME

### 3.1 Results of audit

Test check of the records of agricultural income tax offices conducted during the year 2008-09 revealed underassessments of tax amounting to Rs. 28.66 crore in 67 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Income escaping assessment	4	8.07
2.	Underassessment due to grant of inadmissible expenses	22	6.77
3.	Incorrect computation of tax	9	3.56
4.	Incorrect computation of income	8	2.16
5.	Underassessment due to assignment of incorrect status	1	0.30
6.	Other lapses	23	7.80
<b>Total</b>		<b>67</b>	<b>28.66</b>

During the year 2008-09, the department accepted underassessments and other deficiencies of Rs. 12.09 lakh involved in nine cases of which five cases involving Rs. 1.10 lakh were pointed out during 2008-09 and the rest in earlier years. The department recovered Rs. 10.99 lakh in four cases relating to the earlier years.

A few audit observations involving Rs. 10.75 crore are mentioned in the succeeding paragraphs.

### **3.2 Audit observations**

*Scrutiny of assessment records of agricultural income tax in Commercial Taxes Department revealed several cases of non-observance of provisions of Act/Rules, incorrect determination of income/interest, grant of inadmissible expenses/allowances and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Assessing Authorities (AAs) are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system including strengthening of internal audit.*

### **3.3 Non-observance of provisions of Acts/Rules**

*The Kerala Agricultural Income Tax (KAIT) Act, 1991 and Rules made thereunder provide for completing assessments observing the following aspects:*

- i) levy of tax at the prescribed rate on the agricultural income derived by the assessee;*
- ii) allowance of deductions on income derived subject to certain conditions and*
- iii) levy of interest on the balance tax payable.*

*It was observed that the AAs while finalising the assessments, did not observe some of the provisions of the Act/Rules resulting in short levy of tax and interest of Rs. 10.75 crore as mentioned in the paragraphs 3.3.1 to 3.3.5.*

#### **3.3.1 Income escaping assessment**

**3.3.1.1** Under the provisions of the KAIT Act, the agricultural income shall be computed after making the prescribed deductions. The deductions include the rent actually paid/provision for payment of rent for the land from which the agricultural income is derived. The Act further stipulates that where an allowance or deduction is made in the assessment for any year in respect of loss or expenditure and if the assessee obtained any amount in lieu of such loss, the amount so obtained shall be deemed to be agricultural income.

During scrutiny of records in the office of the inspecting assistant commissioner (commercial tax), Kottayam in July 2008, it was noticed that while finalising the assessment of a public limited company for the assessment year 2004-05, an amount of Rs. 10.85 crore received as value of rubber trees was adjusted against lease rent outstanding. As the company had provided for payment of lease rent which was already allowed as a deduction in the agricultural income tax assessments, the receipt of Rs. 10.85 crore adjusted against reserve created by the company for payment of lease rent, should have been deemed as income. The omission to assess the deemed income of Rs. 10.85 crore resulted in non-levy of tax of Rs. 6.51 crore.

After the case was pointed out, the AA stated (July 2008) that the case would be examined. Further report has not been received (September 2009).

The matter was reported to Government in December 2008; their reply has not been received (September 2009).

**3.3.1.2** Under the KAIT Act, where any person sustains a loss as a result of computation of agricultural income for any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly set off, shall be carried forward to the following year and so on, but no loss shall be carried forward for more than eight years.

During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Mattancherry in September 2008, it was noticed that while finalising the assessment for the year 2005-06 in December 2007 of a public limited company, the net income returned for the year was incorrectly reckoned as loss and was recorded as nil demand. The reckoning of income as loss had resulted in irregular carry forward of loss of Rs. 3.12 crore and short levy of tax of Rs. 1.56 crore calculated at the prevailing rate of 50 *per cent*, when the loss is set off.

After the case was pointed out, the AA stated (September 2008) that the carry forward of loss was in order and there was no revenue loss involved. However, the fact remains that reckoning of income as loss had doubled the loss carried forward which would ultimately result in short levy of tax. Further reply has not been received (September 2009).

The matter was reported to Government in April 2009; their reply has not been received (September 2009).

**3.3.1.3** Under the proviso below sub section (6) of Section 39 of the KAIT Act, the assessment of agricultural income derived from manufactured tea may be provisionally completed on the basis of the return filed and revised on the basis of the Central Income Tax (CIT) assessment as and when completed. As per the second proviso below the said sub section, an assessee who fails to submit a copy of the CIT assessment order or appellate order within 30 days of receipt of the same shall be liable to pay interest as provided under sub section (4) of Section 37.

During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Mattancherry in September 2008, it was noticed that the agricultural income tax assessment of a company for the year 1997-98 was completed in December 2000. The total agricultural income of Rs. 10.20 crore including income from manufactured tea was provisionally determined at Rs. 8.43 crore on the basis of the return furnished by the company. However, as per the CIT assessment completed in February 2001, income attributable to agricultural income in respect of manufactured tea was computed at Rs. 9.22 crore. The inspecting assistant commissioner did not revise the assessment, taking into account income computed by the CIT, though the information regarding CIT assessment was available with the department as evident from a notice issued in May 2002 under Section 37(4) of the Act. It was further noticed that, though the assessment was revised in February 2008 to allow certain expenses allowed in appeal, the income escaped from manufactured tea was not considered for assessment. This

resulted in turnover of Rs. 78.83 lakh escaping assessment leading to short levy of tax of Rs. 47.30 lakh.

After the case was pointed out, the AA stated (September 2008) that the matter would be examined. Further development has not been reported (September 2009).

The matter was reported to Government in December 2008; their reply has not been received (September 2009).

### **3.3.2 Incorrect computation of income**

Under the KAIT Act, the total agricultural income of the previous year of any person comprises of all agricultural income derived from land situated within or outside the State. Under section 12 of the Act, where any person sustains a loss as a result of computation of agricultural income for any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly set off, shall be carried forward to the following year and so on but no loss shall be carried forward for more than eight years.

During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Kottayam in July 2008, it was noticed that while finalising the assessment for the year 2004-05 of a company (which returned net income of Rs. 4.18 crore), after adjusting the carry forward loss of Rs. 2.37 crore from the previous year, the balance income of Rs. 1.81 crore was reckoned as net loss instead of net income exigible to tax. This resulted in short levy of tax of Rs. 1.09 crore being 60 *per cent* of Rs. 1.81 crore. The assessee was also liable to pay interest of Rs. 20.63 lakh from January 2007 to July 2008.

After the case was pointed out, the AA stated (July 2009) that the case would be examined. Further development has not been reported (September 2009).

The case was reported to Government in March 2009; their remarks have not been received (September 2009).

### **3.3.3 Non-levy of interest**

**3.3.3.1** Under the KAIT Act, any person who fails to pay tax under section 37 (1) and (3) of the Act or in pursuance of a demand notice issued under Section 45, shall pay simple interest at the prescribed rates for every month of delay or part thereof, on the unpaid balance of tax.

During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Mattancherry in September 2008, it was noticed that the assessment of a domestic company for the assessment year 1998-99 completed in December 2000 levying tax of Rs. 6.63 crore was revised in February 2008 based on an appellate order, reducing the tax to Rs. 6.07 crore. After adjusting the excess credit available on revision of assessments for the assessment years 1995-96 to 1997-98 and remittance of Rs. 5 crore, the balance tax payable worked out to Rs. 1.02 crore as on 1 January 2001, of which, the assessee had remitted Rs. 40.68 lakh in March 2001. Hence the balance tax payable was Rs. 60.98 lakh on which interest of

Rs. 65.40 lakh for the period from January 2001 to August 2008 though leviable, was not levied. This resulted in non-levy of interest of Rs. 65.40 lakh. Besides, balance tax of Rs. 60.98 lakh is also recoverable (September 2009).

After the case was pointed out, the assessing officer stated in September 2008 that the case would be examined. Further reply has not been received (September 2009).

The matter was reported to Government in January 2009; their reply has not been received (September 2009).

**3.3.3.2** During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Mattancherry in September 2008, it was noticed that the assessment of a domestic company for the year 1993-94 was finalised in March 1995 fixing the net income at Rs. 1.82 crore levying tax of Rs. 1.18 crore. After affording credit for Rs. 80 lakh, balance tax of Rs. 38.02 lakh was demanded in December 1995. The assessment was later revised in March 2008, based on an appellate order (March 2002), in which the net income and tax due were fixed at Rs. 1.66 crore and Rs. 1.08 crore respectively. After giving credit as in the original order as well as remittance of Rs. 17.30 lakh made in March 1999, the balance tax was Rs. 10.53 lakh. Interest on the balance tax for the period from 1 January 1996 to 31 August 2008 worked out to Rs. 27.15 lakh.

After the case was pointed out, the AA stated (September 2008) that interest was not leviable since the assessment was remanded by the Commissioner of Commercial Taxes. The fact remains that the order referred to was not an open remand but only a modification of the earlier order as the revised order relied on the turnover already fixed and there was only minor alterations from the original order. Further replies have not been received (September 2009).

The case was reported to Government in January 2009; their replies have not been received (September 2009).

### **3.3.4 Grant of inadmissible expense/allowance**

Under the KAIT Act, the agricultural income of a person shall be computed after making the prescribed deductions. Under Section 5(k), any sum paid during the previous year to an employee as gratuity in accordance with the provision of the Payment of Gratuity Act, 1972 less such amount, if any, as claimed in any previous year towards provision for gratuity in respect of such employee can be allowed as deduction. Instructions issued (March 1970 and June 1989) by the erstwhile Board of Revenue lay down departmental procedure for verifying and checking of all calculations of turnover, tax and credits in the assessment order.

During scrutiny of records in the office of the inspecting assistant commissioner (commercial tax), Kottayam in July 2008, it was noticed that while finalising the assessment for the year 2004-05 of a domestic company in December 2006, gratuity of Rs. 26.55 lakh payable for the period from March 1980 to March 1991 and claimed on the basis of actuarial certificate produced by the assessee during the year was ordered to be disallowed and was agreed to by the assessee. But while computing the income, deduction in respect of

gratuity was not disallowed. This resulted in short levy of tax of Rs. 15.93 lakh.

After the case was pointed out, the AA stated (July 2008) that the case would be examined. Further development has not been received (September 2009).

The matter was reported to Government in March 2009; their reply has not been received (September 2009).

**3.3.5 Short levy of tax due to grant of excess re-plantation allowance/ investment deposit scheme**

Under the KAIT Act, an assessee shall be entitled to a deduction on account of deposit under Investment Deposit Scheme 1993 from his agricultural income, any sum not exceeding 20 *per cent* of the total agricultural income. Under paragraph 3 (i) of the Investment Deposit Scheme, deduction not exceeding eight *per cent* of the agricultural income from tea liable to tax under the Act alongwith the share of deduction under Central Scheme shall not exceed 20 *per cent* of the income computed under Rule 8 (1) of the Income Tax Rules, 1962.

During scrutiny of records in the office of the inspecting assistant commissioner, (commercial tax) Mattancherry in September 2008, it was noticed that the assessment of a domestic company for the year 1999-2000 was completed in December 2001 and the net income from tea as well as other crops was fixed at Rs. 85.27 lakh after allowing deduction of Rs. 13.28 lakh towards deposit under Investment Deposit Scheme. The assessment was revised in August 2005 and the net income was fixed at Rs. 56.46 lakh. However, the corresponding modification in the deduction allowed under Investment Deposit Scheme was not made. The deduction allowable as per the revised income was Rs. 8.63 lakh instead of Rs. 13.28 lakh allowed. The excess deduction allowed had resulted in short levy of tax of Rs. 2.79 lakh.

After the case was pointed out, the AA stated (September 2008) that the case would be examined. Further development has not been reported (September 2009).

The matter was reported to Government in January 2009; their reply has not been received (September 2009).