CHAPTER I: DEPARTMENT OF ATOMIC ENERGY

Electronics Corporation of India Limited

1.1 Avoidable loss due to short/ excess payment of advance tax

The Company incorrectly worked out the estimated profit resulting in excess/short payment of advance tax which resulted in loss of ₹ 5.34 crore.

The Income Tax (IT) Act provides that a Company has to estimate its income and pay advance tax every year in four instalments of 15, 45, 75 and 100 *per cent* by June, September, December and March, respectively. The IT Department charges penalty on short payment of advance tax and allows simple interest at six *per cent* on refunds, from April of the next financial year. It is the responsibility of the Management to estimate the income tax correctly to avoid penalty for short payment of advance tax or to avoid loss of interest on excess paid advance tax.

Audit scrutiny of the records of Electronics Corporation of India Limited (ECIL) for the Assessment years 2007-12 revealed that the advance tax paid by ECIL was far less than the income-tax due during the years 2007-08 and 2008-09 and far in excess of the actual income tax due during the years 2009-10 to 2011-12 as below:

(₹ in crore)

Assessment year	Advance tax deposited (₹)	Income tax due (₹)	Short(-)/Excess Income tax paid (₹)	Percentage of Income tax paid short/in excess
2007-08	31.09	57.95	(-)26.86	46
2008-09	45.24	58.15	(-)12.91	22
2009-10	50.00	12.98	37.02	285
2010-11	17.75	9.76	7.99	82
2011-12	13.50	nil	13.50	---

Audit observed that the Company had incorrectly worked out the estimated profit resulting in short/excess payment of advance tax in the assessment years 2007-08 to 2011-12. Resultantly, the Company paid interest at higher rate (i) on short payment of advance tax than the interest earned on deposits (ii) on excess payments towards borrowings than the interest earned on refunds from the income tax department amounting to ₹ 5.34 crore as shown below which was avoidable:

(₹ in crore)

Assessment year	Interest paid on tax/ borrowings	Interest earned on deposits/refunds	Differential loss of interest
2007-08 to 2008-09 (short payment of tax)	3.58	2.72	0.86
2009-10, 2010-11 & 2011-12 (excess payment of tax)	11.55	7.07	4.48
Total			**5.34**

Audit observed that incorrect estimation of income was due to the following reasons:

- There was no documented procedure/system in place to estimate the advance tax for each quarter.
- The estimation of taxable income was based on MOU targets and budget estimates for the entire financial year. Actual income varied but the estimated taxable income was not reworked for each quarter which led to excess payment of tax.
- There was no system of revisiting estimated profit and accordingly taxable income in each quarter for the subsequent period of financial year after considering the actuals of previous quarters.

While accepting the audit observation for future guidance, Ministry stated (November 2011) that the incorrect taxable income worked out by the Company was due to the following reasons:

- *The Company is basically a R&D unit and each and every order was first of its kind as per customer specifications/requirements. Hence, it was difficult to estimate the contribution from these projects. Due to volatility in getting orders, it was difficult to estimate profit also.*
- *During the year 2008-09, there was a substantial increase in the provision for wage revision arrears payable to the employees from 1 January 2007. The said provisions for the years 2006-07 (for 3 months), 2007-08 and 2008-09 were made based on the DPEs OM which resulted in lower profit for the year 2008-09. As said provision for wage revision arrears was disallowed by the Income Tax Department, the same was added while computing the taxable income for advance tax purposes.*
- *During the year 2009-10, the contribution level went down to 32 per cent due to change in actual product mix and margins thereof have registered a significant positive change towards the end of this year.*
- *During the year 2010-11, the Company implemented Fringe Benefits to officers and workmen which resulted in additional provision of ₹ 57 crore. There was also increase in the interest expenditure to the extent of ₹ 5 crore over the estimates. Expenditure was estimated based on the 2009-10 actuals, however there was an increase in manufacturing, administration and selling expenses of around ₹ 25 crore over the previous year.*
- *Considering the above factors which were clear at the time of payment of fourth installment of advance tax (FY 2010-11), the estimated taxable income was reviewed and the Company has not made any further payment of advance tax either on 15 March or on 31 March 2011.*

The reply is not tenable on account of the following:

- These orders are customer based specifications and not basic R&D projects. Even for R&D projects, tax relief is given for qualifying revenue costs on eligible R&D activities when calculating their taxable profits. In fact, the estimation of taxable income worked out by the Company was based on MOU targets and budget estimates for the entire financial year. Though, actual income varied, the estimated taxable income was not revisited for each quarter which led to excess payment of tax.

- A review of the estimates vis-a-vis actuals for the FY 2008-09 revealed that material consumption varied by 23.3 *per cent* (₹ 604.17 crore (actual) against ₹ 490 crore (estimates) which had a major impact in the estimation of profit before tax. Other expenditure varied only by 2.18 *per cent* which was very marginal. As per section 43B of income tax Act, 1961, provisions are allowed unless such sums have actually been paid before the due date of filing return. Hence, it is a clear lapse on the part of the Management not to estimate the taxable income correctly by taking into account all provisions and expenditure on quarterly basis that were admissible under the income tax act.
- The material consumption for all the four quarters FY 2009-10 (AY 2010-11) was taken as ₹ 689.40 crore as against the actual of ₹ 712.75 crore. Similarly, there was reduction in Sales during the year. But, the Company did not revise their estimates till the fourth quarter based on these inputs .and therefore the profit before taxes was incorrectly estimated resulting in excess payment of advance tax.
- It is a clear lapse on the part of the Management not to estimate the allowable expenditure under Section 43B of income tax act for FY 2010-11, based on expenditure incurred up to the fourth quarter. Though the taxable income was 'Nil', the Company paid advance tax of ₹ 13.50 crore.

Thus, due to absence of a well defined system for working out the taxable income based on realistic inputs after due consideration of the trends; advance tax was incorrectly assessed which resulted in avoidable loss of ₹ 5.34 crore.

Nuclear Power Corporation of India Limited

1.2 Avoidable expenditure due to non-admittance of claim under defect liability period

Failure to trip the generator resulted in damage to stator and non-admittance of claim under defect liability by supplier necessitating avoidable expenditure of ₹ 31.08 crore.

Nuclear Power Corporation of India Limited (Company) commissioned its 220 MWe Kaiga 3 generating unit in May 2007 at a cost of ₹ 1325.50 crore. The unit stopped generating electricity on 26 August 2007 due to a fault in the Turbine Generator (TG). The unit remained shut till 31 March 2008.

A joint investigation by the Company and the suppliers revealed (October 2007) that failure of a bolt of the rotor caused damage to the cooling system of the stator resulting in interruption of stator water through conductors and escape of hydrogen from generator casing to stator water system. Though the stator water flow low alarm appeared in the control room, the auto trip device did not actuate. By the time the operating personnel involved in fixing the hydrogen escape problem realized the actual situation, there was overheating and damage to the insulation of stator conductors and caused subsequent tripping of the TG.

As the cost of repair (USD 6.171 million) by the suppliers was higher than the purchase price including spares (USD 4.80 million), the Company decided (February 2008) to replace the damaged stator. Accordingly, a fresh purchase order was placed. Meanwhile, stator of Kaiga 4 was used to replace the damaged stator of Kaiga 3 by incurring an additional cost of ₹ 0.86 crore. The new stator was received in March 2009 at a total cost of ₹ 30.22 crore.

Audit observed that though the damaged stator was under defect liability period, the claim for repairs without any cost to the Company was not accepted (October 2007) by the suppliers on the plea that the damage to the stator would not have taken place if the generator had been tripped timely either by automatic means or by operator's action subsequent to failure of rotor components and loss of water flow through stator conductors. The generator continued to operate for 23 minutes from the start of the incident which resulted in tripping of TG on stator earth fault.

The Management stated (October/November 2011) that:

- *The operating personnel accorded priority on attending fluctuation in hydrogen pressure in the stator due to its hazardous nature.*
- *The generator failure occurred due to confluence of several factors and therefore, it was not possible to fix responsibility on any single agency and a negotiated settlement was arrived at for sharing the responsibility. The manufacturer of generator modified all the rotors and software of the other projects and supplied to the Company free of cost.*
- *The potential disruption of schedule of the other upcoming projects in which the supplier was same was also considered.*
- *The cost of the new stator formed a small percentage of the project cost, which was accounted for in working out the tariff and it was decided to repair the damaged stator to keep as insurance spare.*

The reply is not convincing due to the following:

- Management brought (March 2008) to the notice of its Board of Directors that damage to the stator would not have taken place if the generator had been tripped timely either by automatic means or by operator's action.
- Supply of modified rotor and software for other projects, after a failure, was normally expected from the supplier for avoidance of such instances in future.
- Linking of the issue with the possible disruption of schedule of other upcoming projects by the same supplier was not justifiable as the supplier was contractually liable to supply the equipment under those contracts.
- The inclusion of the cost in the tariff resulted in capitalization of the stator cost twice. Moreover, decision to get the damaged stator repaired and use it as insurance spare was not understandable as the initial decision to replace the same was on the ground that the repair cost exceeded the replacement cost.

Thus, failure to trip the generator timely led to non-admittance of claim under defect liability resulting in an avoidable expenditure of ₹ 31.08 crore.

The matter was reported to the Ministry in October 2011; their reply was awaited (May 2012).