

Chapter-2
Audit Findings
(Revenue Sector)

CHAPTER - 2

A. GENERAL

2.1 Tax administration

2.1.1 Sales Tax/ Value Added Tax

Sales Tax/ Value Added Tax laws and rules framed thereunder are administered at the Government level by the Principal Secretary to Government Finance Department. The Commissioner Commercial Taxes of the State Government is responsible for overall control and superintendence of Commercial Taxes Department. He is assisted by three additional Commissioners of Taxes (one each in Jammu and Kashmir Divisions and one for Tax Planning) and 13 Deputy Commissioner of Commercial Tax (Jammu 06 Kashmir: 05 one each for headquarter and judicial matters). The State is divided 52 Commercial Tax Assessment Circles (Jammu: 25; Kashmir: 27) each headed by one Commercial Taxes Officer.

2.1.2 State Excise

The J&K State Excise Department is responsible for charging of Excise duties under the J&K Excise Act 1901 AD and the rules made thereunder. The department is headed by Excise and Taxation Commissioner who is assisted by five Deputy Excise Commissioners (03 Jammu; 02 Kashmir) and seven Excise and Taxation Officer (06 Jammu; 01 Srinagar). There are 18 Distilleries Bottling Plants in Breweries which functions under the control of Excise and Taxation Officer, Distilleries Jammu.

2.1.3 Taxes on Vehicles, Goods and Passengers

The receipts from the Transport Department are regulated under the provisions of the Central and the State Motor Vehicle Acts and rules made thereunder and are under the administrative control of the Transport Commissioner. The receipts from the goods and passengers tax are regulated under the provisions of the Jammu & Kashmir Motor Vehicle Taxation Act, 1957 and the Jammu and Kashmir Motor Vehicle Rules 1991 administered by the Transport Commissioner of the state.

2.2 Results of audit

Test-check of the records of 36 units of sales tax/ Value Added Tax, State Excise, Motor Vehicles, conducted during the year 2013-14 showed under assessment/ short levy/ loss of revenue aggregating ₹84.60 crore in 517 cases as elaborated in **Table-2.1**.

Table -2.1

		(₹ in crore)	
Sl. No.	Categories	Number of cases	Amount
Taxes/VAT on Sales, Trade etc.			
1.	Under-assessment of tax	156	51.38
2.	Acceptance of defective statutory forms	1	0.01
3.	Evasion of tax due to suppression of sales / purchase	220	19.03
4.	Irregular / incorrect / excess allowance of ITC	30	1.26
5.	Other irregularities	43	0.65
Total		450	72.33
State Excise			
1.	Non / short realization of excise duty	-	-
	Non / short recovery of license fee / interest / penalty	-	-
2.	Other irregularities	08	0.14
Total		08	0.14

Taxes on Vehicles, Goods and Passengers			
1.	Non/ short realisation of • Token tax and composite fee • Passenger and goods tax	06	3.58
2.	Evasion of • Token tax • Passenger and goods tax	07	1.12
3.	Other irregularities • Vehicles tax	46	7.43
Total		59	12.13
Grand Total		517	84.60

During the course of the year, the Department accepted underassessment and other deficiencies as under:

- ₹87 lakh in 59 cases of **Taxes/VAT on Sales, Trade etc.** which were pointed out in audit during the earlier years. An amount of ₹36.62 lakh was realised in 57 cases during the year 2013-14.
- ₹70,000 in five cases of **State Excise** which were pointed out in earlier years. An amount of ₹1.01 lakh was recovered in six cases during the year 2013-14.
- ₹61 lakh in three cases of **Taxes on Vehicles, Goods and Passengers**, which were pointed out in earlier years. An amount of ₹ 35,000 was realised in one (1) case during the year 2013-14.

B. AUDIT OF TRANSACTIONS

FINANCE DEPARTMENT

2.3 Levy and collection of Entry Tax

The collection of Entry Tax in the State had increased by 76 per cent from ₹83.23 crore during 2009-10 to ₹146.38 crore during 2013-14. Audit noticed cases of short levy of tax, taxation of ineligible scheduled goods and grant of irregular exemption of tax.

Levy and collection of Entry Tax in the State is regulated by the provisions of Jammu and Kashmir Entry Tax on Goods, Act-2000 and Rules made thereunder. Entry Tax is levied on the entry of scheduled goods imported for use or consumption, under J&K VAT Act 2005, J&K GST Act 1962 or J&K Motor Spirit and Diesel Oil (Taxation of Sales) Act Samvat 2005, at rates notified by the Government from time to time.

The Act is administered by the Commercial Taxes Department under overall control of the Commissioner Commercial Taxes. The Check post at Lakhanpur in Kathua district is the biggest entry point of goods imported into the State by road and 95 per cent of the import of trade goods takes place through this check post. Besides, there are four minor inter-state check posts as well.

The collection of Entry Tax at Check Post Lakhanpur was between 94 and 95 per cent of the total Entry Tax collection in the State during the period 2009-14. The collection of Entry Tax in the State had increased by 76 per cent from ₹83.23 crore during 2009-10 to ₹146.38 crore during 2013-14.

The collection of Entry Tax at Check post Lakhanpur had increased by 77 per cent from ₹78.56 crore in 2009-10 to ₹139.42 crore in 2013-14 with annual growth ranging between 15 to 40 per cent during 2011-12 to 2013-14. However, there was considerable decrease (22 per cent) in the collection of tax during 2010-11 as compared to 2009-10. This decrease was attributed to extension of exemption from payment of tax on import of earth moving machinery with effect from 2010-11. Further there was an increase of 40 per cent in collection of Entry Tax during 2013-14 over the year 2012-13 which was attributed (May 2014) to introduction of various power projects in the State.

As part of our audit during 2013-14, we carried out test-check of records of the Deputy Commissioner, Commercial Taxes Check Post, Lakhanpur to examine the system of assessment, levy, collection and recovery of Entry Tax. Audit noticed cases of short levy of tax, taxation of ineligible scheduled goods and grant of irregular exemption of tax as instanced below:

2.3.1 Incorrect levy of Entry Tax

2.3.1.1 Short levy of tax

As per S. No 161 of Schedule D of J&K, VAT Act, 2005, water supply and sanitary equipments and fittings of every description are taxable at the rate of 13.5 per cent. Further according to the Commissioner Commercial Taxes clarification (No. 13 of 2010) surgical goods including surgical masks are to be taxed at the rate of 13.5 per cent as unspecified items.

Audit scrutiny showed that in 95 cases, tax had been levied at 4/5 per cent as against the prescribed rate of 12.5/13.5 per cent during the year 2009-10 to 2013-14 which included pipes and pipe fittings (32 cases), surgical gloves (27 cases) other items (36 cases). This resulted in short levy of tax of ₹41.15 lakh.

2.3.1.2 Irregular exemption of tax

Section 3 (2) of the Act envisages grant of exemption from payment of Entry Tax on import of goods subject to the fulfillment of prescribed conditions. The Government vide notification dated 31 March 2010 exempted earth moving machines (newly purchased as well as hired) imported into the State by registered dealers who require such equipment for execution of works contract of various Centrally sponsored schemes from levy of Entry Tax. This was, however, subject to production of a certificate in original issued by the Administrative Secretary controlling such schemes, giving particulars like requirement of the earth moving machinery, details of the scheme, the particulars of contractor with TIN etc., at the time of import of the machinery.

Audit scrutiny showed that exemption from payment of Entry Tax had been allowed for earth moving machinery imported by the dealers without obtaining the requisite documents at the time of import and instead, security in the shape of Fixed Deposit equivalent to the amount of Entry Tax had been obtained from the importers. Audit

noticed that during 2013-14, Department obtained security of ₹18.59 crore in the shape of FDRs from 138 importers who had failed to produce requisite documents. Out of this, in 105 cases, security valuing ₹17.10 crore had subsequently been released on production of documents by the importers after delay ranging between two days and 181 days from the date of its receipt in the shape of FDRs. Further, in respect of 18 cases the security valuing ₹58 lakh had been forfeited which included ₹39 lakh forfeited after pointed out by the Audit, whereas no action was taken in respect of remaining 15 cases. The release of goods based on furnishing of security was not in accordance with the provision of the Act.

2.3.2 Non-auction of seized goods

Rule 4 of Jammu & Kashmir Entry Tax on Goods Rules, 2000 provides that in case the amount of tax or penalty is not paid within one month of the seizure of the goods, the officer incharge shall have the power to dispose of the goods by auction and remit the sale proceeds towards the recovery of tax, penalty and costs incurred on auction, if any and the remaining amount shall be refunded to the person concerned. Further, Section 67 (12) of the Jammu & Kashmir Value Added Tax Act 2005, envisage that if goods seized under Section 67 (5) or 67(10) are not claimed within a period of 90 days from the date of seizure or in the case of perishable goods in a lesser period as determined by the authority making the seizure, such goods shall be sold by auction in the prescribed manner and sale proceeds thereof as reduced by the amount of penalty and security payable under the Act, besides, other expenses incurred on handling, unloading and auctioning are to be deposited in the treasury under appropriate head of account.

It was seen that unclaimed goods valuing ₹60 lakh seized during July 2011 to October 2013 from individuals and registered dealers had not been auctioned. Non-disposal of goods seized had resulted into prolonged storage of goods and their deterioration with consequential impact of revenue by way of lesser sale/ auction proceeds.

On this being pointed out, it was stated that conducting of auction was a lengthy process and exercise regarding auction of seized goods had been initiated.

The above points were issued (June 2014) to the Department/ Government; their reply was awaited (August 2014).

(Sales Tax/ Value Added Tax)

2.4 Irregular grant of remission of tax

Irregular grant of remission of tax to a dealer by the Assessing Authority resulted in short levy of tax and interest of ₹12.78 lakh.

Government notification dated 16th March 2006 governing grant of exemption to industrial unit from payment of taxes provide that the industrial unit shall in no case procure finished product from outside the state and shall not dispose of the raw material in any manner whatsoever except as provided in the certificate of registration issued by the Department of Industries and Commerce/ Directorate of Handicrafts/

Handlooms and Department of Commercial Taxes. If at any point of time, the industrial unit is found guilty of importing finished product or disposing of the raw material in any other manner except as envisaged in the certificate of registration, the industrial unit shall not be entitled to remission of tax for the year in which such default is made.

Audit check of records (August 2011) of Commercial Taxes circle, Pulwama showed that a dealer registered as SSI unit for formulation of Insecticides, Fungicides and Weedicides had not purchased all the ingredients of raw material required for preparation of the finished products as per assessments made by the DIC Pulwama during the year 2007-08. Further there was no balance of such ingredients with the dealer before making purchases. This indicated that no manufacturing activity was carried out by the dealer during the year 2007-08 and instead the raw material purchased was resold as such without putting it to manufacturing process for obtaining the approved finished product. The dealer had thus violated the provision of the Government notification and was as such not entitled to tax remission of ₹7.10 lakh claimed/ allowed on turnover of ₹1.78 crore under section 39 (5) of J&K VAT Act 2005 by the Assessing Authority. This resulted in grant of irregular tax remission of ₹7.10 lakh alongwith interest of ₹5.68 lakh to the dealer.

On this being pointed out (August 2011), the Assessing Authority admitted the mistake and disallowed remission of tax granted to the dealer and raised (March 2012) a demand of ₹13.92 lakh including interest of ₹6.82 lakh.

The matter was referred to the Government/ Department in March 2014. The Department reported (July 2014) that out of the demand of ₹13.92 lakh raised by the Assessing Authority an amount of ₹four lakh had been recovered from the dealer and efforts were on to recover the balance amount of the arrears. Further progress of recovery was awaited (August 2014).

2.5 Irregular grant of remission of tax

Failure of Assessing Authority to detect concealment of purchases leading to Irregular exemption of ₹10.15 lakh from Sales tax.

The Government notifications issued (20 August 1998 and 31 January 2004) under Section 8 (5) of the Act, provide for exemption from payment of General Sales tax on the sale of finished goods manufactured by an Industrial unit (Small, Medium and Large scale) registered with Industries and Commerce Department. However, dealer is required to maintain a correct and regular account of purchase of goods including raw material as also to file returns of sales regularly. Any dealer found guilty of concealing his turnover or furnishing inaccurate particulars thereof is not entitled to any exemption for the year in which such offence is committed.

Test-check of records (April 2008) of Commercial Taxes Circle Pulwama showed that an Industrial unit disclosed a turnover of ₹70.42 lakh during the year 2003-04 and claimed exemption of tax thereon being a Small Scale Industrial Unit (SSI) which was allowed by the Assessing Authority (AA) while making (May 2006) assessment in the

case under section 7 (6) of the J&K GST Act 1962. Check of records filed, however, showed that the dealer has actually made purchase of ₹72.78 lakh as per import statement instead of ₹71.14 lakh shown in the trading account thereby concealing inter-State purchase of ₹1.64 lakh. The dealer was as such not eligible for exemption from payment of tax for the year 2003-04. Failure of the AA to detect the concealment of turnover resulted in irregular exemption and short payment of tax of ₹10.15 lakh (Tax: ₹3.03 lakh; Interest: ₹4.09 lakh and Penalty: ₹3.03 lakh).

On this being pointed out (April 2008), the dealer was reassessed (October 2011) after determining an overall concealment of ₹3.47 lakh and was subjected to tax on entire turnover of ₹74.18 lakh. A demand of ₹35.15 lakh (Tax: ₹9.35 lakh; Interest: ₹16.45 lakh and Penalty: ₹9.35 lakh) was raised (October 2011) against the dealer.

The matter was reported to the Government/ Department in March 2014. The Department reported (July 2014) that since there had been no response from the dealer to the summon issued (December 2013) by the Deputy Commissioner Commercial Taxes (Recovery) Srinagar, his moveable/ immoveable property was ordered (May 2014) to be attached by the Deputy Commissioner.

2.6 Short levy of tax

Failure of the Assessing Authority to disallow undue input tax credit during the period of suspension of registration resulted in short levy of tax of ₹4.39 lakh.

Section 27 (7) of the J&K VAT Act, 2005 stipulates that when any dealer to whom a certificate of registration is granted, fails to furnish any return or fails to pay any tax, penalty or interest payable under the Act, the certificate of registration of such dealer may be suspended by the prescribed Authority. Section 27 (8) of the Act ibid stipulates that suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return or returns within 90 days of suspension. Proviso 2 to the sub section 27 (8) of the Act further provide that during the period the certificate of registration of a dealer remains suspended, he shall not be entitled to any of the benefits that a dealer whose certificate of registration is in force, is entitled to.

Audit check (January 2012) of records of the Commercial Taxes Circle 'A' Jammu showed that for non-furnishing of quarterly return and non-payment of tax for 3rd quarter of Accounting year 2007-08, the registration of a dealer was suspended for the period from 09 February 2008 to 22 February 2008. He was not as such entitled to any benefit for the said period. The dealer claimed an input tax credit of ₹4.75 crore during 2007-08 which, however, included an amount of ₹4.39 lakh pertaining to the period during which his registration remained suspended. The same was allowed to him by the Assessing Authority while passing (March 2011) the assessment order under section 39 (5) of the Act. The allowance of undue input tax credit resulted in short demand of tax of ₹4.39 lakh besides interest of ₹3.86 lakh.

On this being pointed out (January 2012), the Assessing Authority while rejecting the input tax credit of ₹4.39 lakh pertaining to the period of suspension (09 February 2008 to 22 February 2008) passed (March 2013) reassessment order under section 42 of the Act and raised a demand of ₹8.60 lakh against the dealer which included interest of ₹4.21 lakh.

The matter was referred to the Government/ Department in April 2014. The Department reported (July 2014) that since the dealer had not responded to the attachment notice (April 2014), the Deputy Commissioner Commercial Taxes (Recovery) had sought information from Executive Engineer (R&B) Division-II Jammu regarding value of land and structure owned by the dealer and also taken up the matter with the Tehsildar concerned to provide details of ownership status of the property. It was further stated that after receipt of valuation report from the Executive Engineer the property attached would be put to auction under law.

REVENUE DEPARTMENT

2.7 Acquisition of land for public purposes

Acquisition of private land had been carried out despite availability of Government Land. The land compensation had been fixed by the CLAs without any speaking orders justifying the rate in the awards. Test check showed cases of avoidable interest payment, non-accountal of compensation money, payments without deduction of Income tax and weak internal control mechanism.

J&K Land Acquisition Act, 1934 (A.D) and the Land Acquisition Rules (LARs) form the basis of all types of land acquisitions for public purposes in the State. Under the Act, the Government is authorised to acquire private lands for public purposes. Under Rule 7 of the LARs there are two ways for acquiring land for public purposes: (i) Compulsory Acquisition of land and (ii) Direct purchase from land owners with price negotiated by a Price Negotiation Committee. In the State, the acquisition of land is primarily done for public purposes such as for Central and State Government Departments including Defence, Police, Railways, Highways, etc.

Powers have been vested with designated officers¹ (Collectors) to issue statutory notification for acquisition of land, hear and dispose of objections and determine the compensation payable to rightful owners of the acquired lands. Their decisions are subject to judicial review under Section 18 of the Act.

As part of our audit during 2013-14, we reviewed the cases of land acquisition for public purposes by the Revenue Department by test-check of records in the offices of six² Deputy Commissioners. Audit findings are elaborated below:

¹ Deputy Commissioners/ Additional Deputy Commissioner/ Assistant Commissioner (Revenue)/ Sub-Divisional Magistrates (SDMs)

² Jammu, Kathua, Udhampur, Samba, Srinagar and Budgam

2.7.1 Acquisition of private land despite availability of public land

The administration should ensure proper utilisation of available State lands and their preferential utilisation for public purposes. Some land acquisition are highly location-specific but in many cases the location of the public facility can be changed to alternative location where cheaper land or State land is available.

Test-check of land acquisition records in four districts³ showed that the District Collectors had acquired 101 Kanals (K) 10 Marlas (M) private land costing ₹2.95 crore in nine cases of land acquisitions in different Tehsil headquarters despite the fact that sufficient quantum of vacant State Land was available within short distance of the site of proprietary lands acquired (*Appendix-2.1*). This was despite the fact that such acquisitions had been made for non-location specific purposes viz., construction of School/ college, PHE store/ tank, Medical Centre, Waste disposal, filtration plant etc. It was seen that neither the land acquisition awards contained details of specific requirements put forth by the indenting departments nor the indents placed were produced to Audit. Audit enquiry from six (6) indenting authorities about the location and type of land demanded in their indents, showed that one indenting department⁴ had requested for Government Land. However, reply from other five indenting departments was awaited (August 2014).

The Commissioner/ Secretary to Government, Revenue Department stated (July 2014) that the Collector has no role in land identification as same is done by the indenting department and that substantial Government lands had been transferred for the public purposes. The fact remains, that CLA being aware of the available vacant State land should provide an option to the indenting departments of the available State lands, which would save the time consuming acquisition process and eventual speedy implementation of the projects.

2.7.2 Fixation of rates

Section 23 of the Act provides for factors to be taken into consideration by the CLA for determining the compensation under the Act. This includes (i) market value of the land (ii) damage sustained by the interested person by reason of taking any standing crops or trees, (iii) damage sustained by reason of severing such land from his other lands, (iv) damage sustained by reason of acquisition injuriously affecting his other property, (v) reasonable expenses incidental to change of residence/ business in consequence of acquisition and (vi) any damage resulting from diminution of the profits of the land.

Audit test-checked 30 land acquisition cases finalized during the period 2009-14 in four districts⁵ involving land measuring 1705 Kanal 07 Marla for ₹37 crore. Scrutiny of the land awards showed that the CLAs had not factored in all the parameters as per the above provisions of the Act and also had not followed a consistent method in

³ Budgam, Jammu, Kathua and Udhampur

⁴ Power Development Department

⁵ Kathua, Samba, Jammu and Udhampur

arriving at the compensation rates. In respect of 16 cases the compensation rates were finalized by taking into account sale rates for last three years, prevailing market rate and the stamp duty rates, whereas in 12 cases the compensation rates had been finalized after taking into account either the sale rates for last three years or the stamp duty rates only and in two cases none of the above aspects had been taken into account. The final compensation in all these cases had been arrived at by the CLAs without any speaking orders justifying such rate.

Similarly, in a case of land acquisition in Budgam district involving land measuring two Kanal and one Marla, the rate of compensation had been fixed arbitrarily ignoring the provisions of the Act and the laid down procedure of fixation of compensation as elaborated below:

Construction of road to Migrant colony, Budgam

On the basis of indent placed by Relief Commissioner (Migrant), the Collector Land Acquisition, Budgam notified (March 2004) land measuring two Kanal and one Marla under section 4 (1) of J&K Land Acquisition Act for construction of road to Migrant colony, Budgam. The case was submitted by the CLA to the Administrative Department for issue of declaration under Sections 6, 17 and 17A which was subsequently conveyed in February 2006. The CLA issued award under Compulsory Acquisition proposing therein rate of ₹7.60 lakh plus 15 per cent Jabarana per kanal amounting to ₹17.92 lakh. Scrutiny of records showed that land owners refused to take the compensation and demanded a higher rate. The Collector instead of invoking Sections 17, 32, 44 and 45 of the Land Acquisition Act initiated acquisition proceedings afresh in terms of Section 11-B of the Act and fresh notification under section 4 (1) of the Act was issued @ ₹20 lakh per Kanal for land measuring one Kanal eight Marlas and 13Sft to the extent of ₹28.05 lakh (129 per cent above the previously approved rate). As Section 17 (Compulsory mode of acquisition) of the Act had been invoked previously for acquisition of the land, neither annulment of the award was practicable nor the application of Section 11-B was permissible.

2.7.3 Contingent liability for interest

During test-check of records of Deputy Commissioner Office, Udhampur, it was noticed that four land awards were finalized without ensuring depositing of compensation amount by the indenting departments⁶. Since the possession of the land had already been taken over by the indenting departments during 2012-13, the land owners were not paid compensation (March 2014). The Deputy Commissioner Udhampur stated (May 2014) that concerned departments were being requested for depositing amount of compensation. The reply is not acceptable in view of the fact that no draft/ final award was to be issued without availability of amount of compensation with the Collector.

⁶ Public Works Department (PWD) and Public Health Engineering Department (PHE)

Similarly, the District Collector, Samba had finalized (2012-14) land acquisition cases of National Highway in five villages without ensuring depositing of amount of compensation. After being pointed out, the District Collector replied (June 2014) that NHAI had been asked to place funds at the disposal of Collector.

Non-deposition of funds by the indenting departments had the potential of the land owners claiming interest for the delay in making payments of compensation.

2.7.4 Payment of compensation for acquisition of community lands

Community lands referred as *Shamilat/ Kacharai* are reserved for grazing of animals of the neighbouring villages (*Mahfooz Kahcharie*) and other community needs and cannot be individually owned. As per Revenue Department order (February 1980) the compensation of land classified as *Shamilat and Kacharai* and not under the personal cultivation of any person in Kharif 1971, is to be credited to the Government account and the occupants (*Makbooz Malikan*) whatsoever are not entitled for any land compensation.

In Udhampur district audit noticed seven cases of land acquisition in seven villages involving 628 Kanal of land wherein payment of ₹18.01 crore had been allowed to the persons in possession of *Makbooz Malikan* lands without ensuring personal cultivation of such lands by such individuals in *Kharif* - 1971 in disregard to standing instructions of the Government.

On being pointed out, the Deputy Commissioner Udhampur stated that no doubt compensation stands recorded against *Makbooz Malikan* but the payment had not been made. The reply is not tenable as the amount of compensation in respect of *Makbooz Malikan* and under *Shamilat Deh* was not required to be announced by the Collector in favour of any individual.

2.7.5 Loss of interest

Government Order (February 2010) envisages that the CLA will draw the amount of land compensation lying with them in the various Bank accounts and credit the same into revenue deposit Head of accounts (MH 8443) and draw the same in parts or in full as and when required for immediate disbursement. Such amount of compensation on account of land was to be transferred to the treasury within a period of seven days from the issue of order. However during the test check of records of Deputy Commissioners Kathua, Samba and Jammu it was noticed that in 20 cases there had been delay ranging from 5 to 519 days in transfer of money into treasury which resulted in avoidable loss of interest to the extent of ₹2 crore. The CLAs (Jammu and Kathua) in reply attributed the delay to non-availability of trained manpower and rush of work.

Similarly, the office of District Collector, Budgam had operated nine Current Bank accounts in different branches of the J&K Bank Limited. A minimum balance of ₹36.53 lakh was noticed lying at the credit of the above accounts without earning any interest from April 2010 to January 2014. After being pointed out, the District Collector issued (February 2014) instructions to Bank for closure of these five Bank

accounts. The Commissioner/ Secretary Revenue Department stated (July 2014) that action had already been taken by all the Deputy Commissioners.

2.7.6 Non-accountal of compensation money

Amounts received by the CLAs on account of the compensation for land acquisition from the indenting departments are to be remitted into Treasury pending disbursement to the claimants.

Cross check of records relating to land acquisition amounts received by the Collector Land Acquisition (ACR), Budgam during 2009-14 with the balances reflected in the District Treasury, Budgam, showed that 9 remittances amounting to ₹68.69 lakh were reported to have been made into Treasury. However the details of these remittances were not appearing in the records of Treasury Officer, Budgam. Further there was variation of ₹3.19 lakh between the records of Treasury and Collector during the same period.

The CLA Pulwama received (March 2009) ₹one crore from DDC Pulwama for payment of land compensation to land owners for acquisition of land for circular road Pulwama. However, it was seen that no details of the credit of the amount to Civil-deposit (Major Head 8443) were available with the CLA which resulted in non-accountal of the funds. The CLA Pulwama stated (June 2014) that reconciliation would be conducted with the Treasury to ascertain the status of ₹1 crore. Further progress in the matter was awaited (August 2014).

2.7.7 Irregularities in land acquisition

The Principal Government Medical College Srinagar placed (May 2009) an indent with the CLA, Srinagar for acquisition of 15K-18M-5½ Sirsa land for establishment of Regional Institute of Ophthalmology at Tashwan, Srinagar. Scrutiny of records showed that the Collector had disbursed payment of compensation in favour of five different persons instead of the rightful owner existing in revenue records. The Commissioner/ Secretary of the Department reported (July 2014) that the specific reply from the concerned Deputy Commissioner was awaited. Further progress in the matter was awaited (September 2014).

Audit scrutiny further showed that the indenting department had requested the Collector to proceed for the said acquisition through compulsory mode of acquisition. The collector, instead started acquisition process through the mode of Private Negotiation (PNC) and negotiated compensation @ ₹66 lakh plus 15 *per cent* Jabrana *per kanal*. One of the four persons in interest was provided 20 kanals land @ ₹15 lakh *per kanal* on Bye Pass road, Srinagar, in exchange of his share of land. However, the land on Bye Pass road was recorded as Municipal property under revenue records and before negotiating the deal of transfer, NOC was not obtained from Srinagar Municipal Corporation (SMC). Consequently, the SMC filed a petition before Hon'ble High Court against the arbitrary transfer of their plot.

Further, cross check of land acquisition case files, Record of Right (ROR) and allied revenue records showed that the land acquired measured 11 Kanals three Marla and 140 sft as per the ROR whereas the final awards had been issued for 15K-18M-5½ Sirsa resulting in excess payment of ₹3.60 crore, which remained unexplained to Audit (August 2014).

2.7.8 Non-deduction of Income tax at source

As per provisions of Section 194LA of the Income Tax Act, 1961, any person responsible for paying to a resident any sum, being in the nature of compensation of any immovable property (other than agricultural land) situated in any area not beyond eight kilometres from the local municipal limits, shall at the time of payment of such sum deduct an amount equal to ten *per cent* of such sum as Income tax, if the amount of such payment had exceeded ₹one lakh (revised to ₹two lakh from 01 July 2012). Moreover, as per provisions of Section 206AA of the Income Tax Act, 1961, any person entitled to receive any sum on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the rate of 20 *per cent*. Following deviations were noticed in Audit.

- During audit scrutiny of Land Acquisition records, non-observance of Section 194 LA and 206-AA of the Income Tax Act, 1961 by Collectors land acquisition had resulted in non-recovery of income tax at source to the following extent:-

Table-2.3

District	Period of payment	Amount of income tax due (₹ in crore)	Status of TDS
Budgam	2006-14	4.16	Not recovered
Srinagar	May 2009 to January 2012	5.04	TDS amount charged to Indenting Department instead of to land owners

The District Collector, Budgam defended (February 2014) the action of CLA by describing the transferred lands as agriculture lands. The reply, however, was not correct as under the IT Act, the said lands did not qualify for classification as agriculture lands as same were within the municipal limits. Meanwhile, Audit referred (February 2014) the cases to Income Tax Commissioner for clarification. The Income Tax Officer (Incharge TDS) being asked for clarification of the issue agreed with the contention of the Audit.

- In other four districts (Udhampur, Kathua, Samba and Jammu), it was seen that income tax of ₹30.18 lakh⁷ had not been deducted at source on acquisition of non-agriculture lands/ structures, resulting in extension of undue benefit to the land owners. The DCs Jammu and Samba intimated that TDS could not be made in absence of clear instruction from the Income Tax Department.

⁷ D.C Kathua: ₹10,77,289/-, Jammu: ₹15,74,568/-; Samba: ₹3,04,662/-; Udhampur: ₹ 61393/-

2.7.9 Blocking of Community development funds

The Joint Director (Planning)/ CPO, Srinagar received (March 2009) ₹16.61 crore on account of funds transferred under acquisition of *Kahcharai* land from Asstt. Commissioner Land Acquisition PWD, Srinagar for community development works in three villages/ locations. The funds had not been utilised for the requisite purpose as of June 2014, resulting in blocking of funds to the extent of ₹16.61 crore with the JD (Planning) CPO Srinagar/Pulwama for over six years.

The Commissioner/ Secretary to the Government, Revenue Department stated (July 2014) that the Deputy Commissioner Srinagar had been asked to prepare and implement the plan for utilization of the funds.

Similarly, Joint Director (Planning)/ CPO, Pulwama received ₹7.92 crore between February 2011 and December 2013 on account of funds transferred under the acquisition of *Kahcharai* Land from CLA (ACR) Pulwama for 11 villages. It was seen that the amount which should have been utilized for community development works was lying unspent (June 2014).

2.7.10 Internal Control mechanism

2.7.10.1 Improper maintenance of basic records

Audit scrutiny in Srinagar and Budgam, showed the following:

- In Srinagar, no record was maintained to keep watch over funds being transferred by different Collectorate offices involved in acquisition of land within district and in the neighbouring districts to the DDC, Srinagar.
- Basic records such as Drawal Register and Cash book relating to land acquisition funds had not been maintained.
- Verification of monthly drawal made from the treasury had not been carried out regularly.
- Mechanism to check title of land at Collectorate level and verification of Khasra Paimaish with Record of Right (ROR) was non-existent.
- Periodical reconciliation of funds pertaining to land acquisition had not been carried out with the Treasury office.

The Commissioner/Secretary Revenue Department stated (July 2014) that the DCs had been directed to take necessary steps for updating the records and to conduct periodical inspection of such records in the Collectorates.

2.7.10.2 Management Information System (MIS)

In order to keep an effective watch over the process of acquisition and allotment of land in the State, a proper management information system was to be put in place at each district level office by preparing database of land records. During the course of audit of four district Collectors (Kathua, Udhampur, Jammu and Samba) it was seen that there was no Management Information System (Computerisation of land records) put in place as a result the complete details of land acquired including land transferred

under Roshni Act and subsequently acquired for public purposes could not be verified.

2.7.11 Other points

The lands have been transferred free of cost or at concessional rate under Roshni Act without any provision for preferential buyback as commented in Audit Report 2012-13. Audit inquired from the DDCs about Khasra number-wise details of lands transferred under Roshni Act and Khasra number-wise details of lands acquired or under acquisition to see whether any lands transferred under Roshni Act have been acquired and at what cost. The information was awaited (August 2014).

However, during test check of records of Deputy Commissioner, Udhampur, it was seen that land measuring 1K-8M was acquired in village Roun, Udhampur under PMGSY for construction of road from Battal Balian to G. Phadar and a compensation of ₹3.22 lakh was paid to a person who had received title to the land the under the Roshni Act. It is apt to mention that the illegal occupant of State land was conferred ownership rights under Roshni Act after paying a small amount of ₹2,320.

In another similar case land measuring 1K-9M under Khasra No 981-Min and 982-Min was acquired in village *Nardi* for construction of road under PMGSY. The land in question was transferred under Roshni Act at a meagre fee of ₹100 per kanal and the same land was re-acquired by the Government at the rate of ₹55,000/- per kanal allowing total compensation of ₹91,710/-.

The above points were referred to the Government/ Department in June 2014. The Government/Department furnished (July 2014) part reply to the observations and same have been incorporated at appropriate places.

2.8 Recoveries at the instance of Audit

Audit had pointed out short levy of tax/interest due to misclassification of stocks and non recovery of interest for delayed recovery of dues as land revenue in three cases in Commercial Taxes Circle 'K','J' and 'O' Jammu amounting to ₹ 22.88 lakh relating to General Sales Tax (GST). The department while accepting the Audit observation reassessed (November 2013) the dealers and recovered the full amount of ₹ 22.88 lakh.