

CHAPTER-VI

OTHER TAX AND NON-TAX RECEIPTS

(A) ENTERTAINMENT TAX DEPARTMENT

6.1 Tax administration

Entertainment Tax is levied and collected under the provisions of the U.P. Entertainments and Betting Tax Act, 1979 and Rules framed thereunder. It is levied on all payments for admission to any entertainment at the rate specified from time to time.

The determination of policy, monitoring and control at the Government level is done by the Principal Secretary, *Vanijya Kar Evam Manoranjan Kar* Uttar Pradesh. The overall control and responsibility for levy and collection of entertainment tax rest with the Commissioner Entertainment Tax Uttar Pradesh, who is assisted by an Additional Commissioner, Joint Commissioner (1), Deputy Commissioners (3) and Assistant Commissioner (1). At district level, the District Magistrate is the controlling officer who exercises control over operation of entertainment, levy and collection of entertainment tax through three Deputy Commissioners Entertainment Tax, 13 Assistant Commissioners Entertainment Tax and 59 District Entertainment Tax Officers assisted by Entertainment Tax Inspectors in the State.

6.2 Results of audit

In 2014-15, Entertainment Tax Department realised revenue of ₹ 498.40 crore. Test check of the records of the 18 units out of 72 units of the Department during the year 2014-15 showed non/short-realisation of tax and interest and other irregularities amounting to ₹ 31.51 crore in 42 cases, which fall under the following categories as indicated in **Table 6.1**.

Table 6.1
Result of audit

Sl. No.	Category	Number of cases	(₹ in crore)
			Amount
1.	Long Draft Paragraph on “Assessment and levy of Entertainment Tax on DTH and DAS in Entertainment Tax Department”	1	30.92
2.	Non charging of interest	4	0.02
3.	Non realisation of tax	14	0.25
4.	Other irregularities	23	0.32
Total		42	31.51

Source: Information available in the Audit office.

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 63.29 lakh in 57 cases of which an amount of ₹ 62.02 lakh was realised in 53 cases. In remaining cases no reply has been received from the Department.

A paragraph on “Assessment and levy of Entertainment Tax on DTH and DAS in Entertainment Tax Department” involving ₹ 30.92 crore and an illustrative case of ₹ 13.04 lakh are discussed in the following paragraphs.

6.3 Audit observations

Our scrutiny of records of the Entertainment Tax Commissioner office and 25 District Entertainment Tax Offices of the Entertainment Tax Department showed cases of non/short levy of entertainment tax, non levy of licence fee/ additional licence fee and non levy of interest on DTH and DAS system. Absence of mechanism to monitor the reports/returns regarding DTH and DAS connections and internal control weakness are mentioned in the succeeding paragraphs of this chapter. There is need for the Government to improve the internal control system so that recurrence of such lapses in future can be avoided.

6.4 Assessment and levy of Entertainment Tax on Direct To Home and Digital Addressable System in Entertainment Tax Department

6.4.1 Introduction

Cable service is a service in which television signals are sent through cables rather than the air. Government of Uttar Pradesh framed “The Uttar Pradesh Cable Television Network (Exhibition) Rules, 1997 for regulating cable TV services.

Central Government had taken a decision to switch over from analog to digital mode for reception of TV signals. The digitalisation of cable TV systems shall take place in phases and it has been completed in seven cities¹ in the State. As per notification dated 11 November, 2011 of Ministry of Information and Broadcasting it shall be obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through Digital Addressable System (**DAS**). The DAS is assisted by Multi system Operators (**MSOs**) and local cable operators (**LCOs**) who provide cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network.

Direct to Home (**DTH**) service is basically a digital satellite service that provides satellite television programming directly to subscribers’ home anywhere in the country. This service does not involve the usage of cables and any other wiring infrastructure. DTH is assisted by television signal receiver agency (**TSRA**) which provides television signal receiver by selling or letting on hire or distribution on exchange or putting into circulation in any manner.

Set-Top-Box (**STB**) is compulsory for both the systems which is connected to a television set to allow a subscriber to view encrypted channels of his choice on payment.

6.4.2 Organisational setup

The determination of policy, monitoring and control at the Government level is done by the Principal Secretary, *Vanijya Kar Evam Manoranjan Kar*, Uttar Pradesh. The overall control and responsibility for levy and collection of entertainment tax on DTH and DAS rest with the Commissioner

¹ Agra, Allahabad, Ghaziabad, Kanpur, Lucknow, Meerut and Varanasi

Entertainment Tax, Uttar Pradesh. Entertainment Tax on DTH is deposited by DTH service providers at Commissionerate Entertainment Tax. Levy and collection of tax on STB, verification of data of DTH connections and licence issued to television signal receiver agencies (TSRA) is done at district level.

6.4.3 Audit objectives

Audit was conducted with a view to ascertain whether:

- levy and collection of entertainment tax on DTH and DAS is being done in accordance with the provisions of the Act, Rules, circulars and orders issued by the Government and Department from time to time;
- internal control mechanism in the Department is functioning properly and efficiently.

6.4.4 Audit scope and Methodology

We conducted the audit between July 2014 and June 2015. We segregated the units into high, medium and low risk areas on the basis of revenue realised by the District Entertainment Tax Offices (DETOs). We examined the records of all the 12 DETOs identified as high risk, 10 DETOs out of 33 districts identified as medium risk and three DETOs out of the remaining 30 district identified as low risk areas.

The records of office of the Entertainment Tax Commissioner and DETOs were examined for the period from April 2010 to March 2015. The objectives of the audit were discussed in entry conference held on 25 November 2014 with the Under Secretary to Government and Additional Entertainment Tax Commissioner. We held an exit conference with the Government and Department on 10 July 2015 in which the audit findings were discussed with Special Secretary to Government and Additional Entertainment Tax Commissioner. The views of the Government/Department have been incorporated in the report.

6.4.5 Audit criteria

We conducted the long draft paragraph with reference to the provisions of following:

- Uttar Pradesh Cinema (Regulation) Act, 1955
- Uttar Pradesh Entertainments and Betting Tax Act, 1979
- Uttar Pradesh Cable TV Network (Exhibition) Rules, 1997
- Uttar Pradesh Advertisement Tax Act, 1981
- Uttar Pradesh Cinema (Regulation of Exhibition by means of Video) Rules, 1988 as amended in 2011

6.4.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of Entertainment Tax Department for providing necessary information and records for audit.

6.4.7 Trend of revenue

The budget estimates and actual receipts alongwith the revenue realised from DTH and cable TV under the head (0045) entertainment tax are given in **Table 6.2**.

Table 6.2
Trend of Revenue

Years	Budget estimate	Actual receipt	Growth Percentage (with reference to previous year's actual receipts)	Shortfall / Surplus over budget estimate		Revenue from DTH & Cable TV*	Percentage on Actual Receipt
				Amount	Percentage		
2010-11	225.18	245.13	26.68	(+) 19.95	8.86	99.53	40.60
2011-12	285.55	312.45	27.46	(+) 26.90	9.42	143.19	45.83
2012-13	360.00	385.11	23.25	(+) 25.11	6.98	171.04	44.41
2013-14	440.00	469.82	22.00	(+) 29.82	6.78	227.87	48.50
2014-15	560.00	498.40	06.08	(-) 61.60	11.00	267.58	53.69
Total	1870.73	1910.91	—	—	—	909.21	47.58

Source: Information provided by the Department.
* including DAS

The above table shows that 47.58 *per cent* of entertainment tax was realised from DTH and cable TV and the rest was from cinema, video cinema, video library, hotel, exhibition, racing and amusement park etc.

Audit findings

Digital Addressable System (DAS)

6.4.8 Non/short realisation of additional licence fee for operation of local channels under DAS

Department realised additional licence fee of ₹ 2.88 crore only against ₹ 12.29 crore due from MSOs for operation of local channels. This resulted in non/short realisation of ₹ 9.41 crore.

Under the provision of Rule 17(1) of Uttar Pradesh Cinema (Regulation of Exhibition by means of video) Rules, 1988, licence fee of ₹ 2,400 per channel is leviable in every financial year for video cinema including exhibition by means of video in case of cable television network. Further, Rule 17(2) provides that in case there is any such arrangement where exhibition is given by means of video on a number of different television screens, video screen or video scopes, an additional licence fee of ₹ 100 per year or part thereof, shall be levied for each such screen, fed by the said apparatus, by whatsoever name it may be called.

We examined the licence fee register of sampled DETOs and observed that in seven DETOs, additional licence fee of ₹ 12.29 crore was levied for the period between 2011-12 and 2014-15 from 13 out of 23 MSOs. Only ₹ 2.88 crore of additional licence fee was realised by the Department and ₹ 9.41 crore remained unrealised till the date of audit. Though a period of three years has been passed, the Department neither made any effort to recover the additional licence fee nor took any action to cancel the licence. Thus the Government was deprived of licence fee of ₹ 9.41 crore as shown in **Appendix-XIX**.

We reported the matter to the Government/ Department (June 2015). In reply, the Government stated that in Uttarakhand licence fee & additional licence fee were treated as illegal by the hon'ble Supreme Court (December 2014). We do not agree with reply of the Government because provisions of the Act in the State of Uttarakhand were different from that of Uttar Pradesh.

Moreover, in the UP Cinemas (Regulation) Act 1955 there is clear provision for the levy of additional licence fee on cable operators. Further in six DETOs we found that the licence fee and additional licence fee were regularly being levied and realised by the Department. In five cases in which observation was raised, auditee units accepted (between January 2015 and June 2015) the audit observation and assured for recovery.(November 2015)

Government may consider ensuring timely levy and realisation of licence fee and additional licence fee on MSOs.

6.4.9 Non-levy of entertainment tax on activation charges of set-top-box.

Entertainment Tax of ₹ 17.94 crore was not levied on the activation charges of ₹ 71.76 crore on 5.98 lakh STBs installed in subscriber's premises between 2012-13 and 2014-15 by 23 MSOs.

Under the provision of Section 3 of Uttar Pradesh Entertainment and Betting Tax Act, 1979 as amended by UP Act 25/2009 entertainment tax is leviable on the payment made by a person. The Commissioner Entertainment Tax issued letter dated 9 June 2014 addressed to all District Magistrates of Uttar Pradesh clarifying that activation charges of set-top-box (STB) also comes within the category of "payment for admission" and entertainment tax as per Rule is leviable on it. The rate of activation charges per STB was provided by entertainment tax offices of Allahabad, Muzaffarnagar and Saharanpur of ₹ 1,499, ₹ 1,200 and ₹ 1,199 respectively. In none of the other district activation charges of STB was found on record.

We examined the files of cable operators of sampled DETOs and observed that in 11 DETOs, 5.98 lakh STBs were installed between 2012-13 and 2014-15. However, Department did not levy entertainment tax of ₹ 17.94 crore at the rate of 25 *per cent* on total activation charges of STBs amounting to ₹ 71.76 crore on 23 MSOs, worked out by audit at the rate of minimum activation charges of ₹ 1,199 per STB. Details are shown in **Appendix-XX**.

We reported the matter to the Government/ Department (June and November 2015). The Department stated (November 2015) that at the instance of audit letter has been issued to concerned districts to report regarding action taken and position of recovery. On the basis of our observations five out of 11 DETOs have also issued notices to MSOs for payment of tax due under the provisions of the Act. The Department further assured that information from the remaining districts will be made available soon.

Government may consider ensuring the assessment and levy of entertainment tax on activation charges of set-top-box.

6.4.10 Short realisation of entertainment tax from cable operators

Entertainment tax of ₹ 4.24 crore was due on cable operators but only ₹ 3.09 crore was deposited and ₹ 1.15 crore is still unrealised.

As per Rule 11 of Uttar Pradesh Cable Television Network (Exhibition) Rules, 1997, the proprietors of cable TV shall deposit the amount of entertainment tax collected from their consumers into Government account within one week from the last day of every month.

- We examined the files of cable operators in DETO Agra and observed that there were 57,569 connections between April 2013 to July 2013 which raised to 1,49,241 connections upto March 2014 in DAS system. Entertainment tax of ₹ 3.56 crore was due at the rate of ₹ 100 per connection per month upto March 2014. Against this only ₹ 3.05 crore was deposited by cable operators. This resulted in short realisation of entertainment tax of ₹ 51.09 lakh. No effective steps were taken for the realisation of the balance dues of ₹ 51.09 lakh from the defaulters even after a lapse of one year.

We reported the matter to the Government/ Department (June 2015). In reply the Department stated that action is underway and will be finalised after receipt of reply from the concerned parties (November 2015).

- We examined the Appendix-II register pertaining to details of collection, of sampled DETOs and observed that in eight DETOs, entertainment tax of ₹ 68.25 lakh was due from 96 cable operators out of total 1,183 between November 2009 and March 2015. Against this only ₹ 4.06 lakh was deposited by the cable operators. This resulted in short realisation of entertainment tax of ₹ 64.19 lakh. In all these cases, no effective steps were taken for the realisation of the balance dues of ₹ 64.19 lakh from the defaulters even after a lapse of three months to six years. The details are given in **Appendix-XXI**.

We reported the matter to the Government/ Department (June 2015). In reply the Department stated that information regarding recovery and action taken has been sought from the concerned district officers (November 2015).

6.4.11 Non/short levy of advertisement tax on local channels

Advertisement tax of ₹ 12.50 lakh was due from six MSOs but only ₹ 4.42 lakh was realised resulting in short realisation of ₹ 8.08 lakh.

Under the provisions of Section 3 of Uttar Pradesh Advertisement Tax Act, 1981 as amended from 1 May 2012 rates of advertisement tax has been revised as ₹ one lakh for Municipal Corporation, NOIDA or Greater NOIDA, ₹ 50,000 for Municipal Council and ₹ 25,000 for any other places per channel. Under the provisions of section 10 (1) of the Act, any person who fails to pay, or evades the payment of any tax due under this Act shall, in conviction, liable to a fine not exceeding ₹ 5,000.

We examined the advertisement tax register of sampled DETOs and observed that in three DETOs, advertisement tax of ₹ 8.08 lakh for the period between 2012-13 and 2014-15 was not levied on six out of eight MSOs. Further, penalty of ₹ 1.25 lakh was also imposable on these MSOs. Thus, the

Government remained deprived of advertisement tax and penalty of ₹ 9.33 lakh as shown below in **Table 6.3**.

Table 6.3

Non/short levy of advertisement tax on local channels

								(₹ in lakh)
Sl. No.	Name of Units	No. of MSOs	Year	No. of Channels	Tax due ₹ 50,000 per channel	Payment made	Non/short levy of tax	Penalty
1	AC, Bijnor	1	2014-15	1	0.50	0	0.50	0.05
2	AC, Mathura	2	2012-13 to 2014-15	9	4.50	1.50	3.00	0.45
3	AC, Muzaffar nagar	3	2013-14 to 2014-15	15	7.50	2.92	4.58	0.75
TOTAL		6	2012-13 to 2014-15	25	12.50	4.42	8.08	1.25

Source: Information available on the basis of the audit findings.

We reported the matter to the Government/ Department (June 2015). In reply, the Department stated that recovery certificates of ₹ 4.58 lakh were issued in Muzaffarnagar and notice for ₹ 50,000 were issued in Bijnor. No information was furnished by the Department in remaining cases (November 2015).

Regarding non-levy of penalty of ₹ 1.25 lakh the Department stated that it is the power of hon'ble court. We do not agree with the reply of the Department because convictions of cases were not instituted by the DETOs.

6.4.12 Non deposit of security by local cable operator

The Department permitted 1,453 cable operators to operate cable TV without depositing security of ₹ 29.06 lakh.

As per Rule 12 of the UP Cable TV Network (Exhibition) Rules, 1997, the District Magistrate shall fix the amount of security to be deposited in the post office saving bank by the proprietor of a cable television, which shall not be less than ₹ two thousand or three months average tax, whichever is greater.

We examined the security registers of sampled DETOs and observed that in 13 DETOs, security deposit of ₹ 29.06 lakh for the period from 2010-11 to 2014-15 was not deposited by 1,453 out of total 1,793 cable operators. However, the Department permitted these LCOs to operate cable TV without furnishing required security deposit. Due to laxity of the Department, the provisions of Rules have not been followed.

We reported the matter to the Government/ Department (June 2015). In reply, the Department accepted our observation and stated that the respective departmental officers have been directed to clarify the position in this regard (November 2015).

6.4.13 Non-levy of interest on belated payment of entertainment tax on cable operators

Interest amounting to ₹ 16.32 lakh on belated payments was neither charged nor realised by the Department.

As per Rule 11 of the UP Cable TV Network (Exhibition) Rules, 1997 simple interest is chargeable at the rate of two *per cent* per month on belated payment of tax by cable operators.

We examined the files of cable operators of sampled DETOs and observed that in 13 DETOs, entertainment tax of ₹ 1.59 crore pertaining to the period from November 1997 to February 2015 was deposited between February 2011 and March 2015 with delay ranging from one day to seven years and 10 months. However, interest amounting to ₹ 16.32 lakh, on the belated payments was neither charged nor realised by the Department as shown in **Appendix-XXII**.

We reported the matter to the Government/ Department (June 2015). In reply, the Department accepted our observation and stated that updated information has been sought for from the concerned districts (November 2015).

Direct to Home (DTH)

6.4.14 Non-compliance of Government orders in the cases of DTH

The Department failed to conduct the extensive survey/verification of DTH connections and to enforce the submission of statement/return by DTH service providers of the amount collected from subscribers and hence, could not assess the actual amount for levy of correct amount of entertainment tax on DTH connections.

In order to ensure regular and proper recovery of entertainment tax payable on DTH services operating in the districts, a circular was issued on 12 July 2009 to conduct survey of number of connections issued by various DTH service providers and to recover the entertainment tax due as per process prescribed under Rules.

We examined the files of DTH service providers of office of the Commissioner Entertainment Tax and 25 DETOs and observed that only 13 DETOs conducted a random survey of 50 connections of each service provider between October 2012 and March 2013, which was a very small sample. In a sample survey of connections of Reliance Big TV conducted in eight districts, number of connections found, were more than that of declared and penalty of ₹ 15000 was imposed by the Commissioner in each districts. This shows that there is discrepancy in the data which could have been rectified through periodical survey but no survey was conducted even details of DTH connections was circulated by the commissioner to DETOs in January 2015.

Further, we found that monthly return was not being furnished by the DTH service providers. Thus, Department could not assess and levy correct entertainment tax on DTH service providers.

We reported the matter to the Government/ Department (June 2015). During exit conference (July 2015), the Department accepted that an action plan for physical survey and a pilot study would be done in some selected model districts. Department assured to collect the correct figure on which entertainment tax is to be levied.

Government may consider ensuring correct levy of entertainment tax on DTH connections and proper verification of those connections through periodical surveys as directed by the Commissioner.

6.4.15 Television Signal Receiver Agency (TSRA)

Under section 4 of Uttar Pradesh Cinemas (Regulation) Act, 1955 (UP Act No. 3 of 1956), Rules 12, 16 and 18(2) of The UP Cinema (Regulation of exhibition by means of video) Rules 1988 and Rule 18(2) of Uttar Pradesh Cinemas (Regulation of exhibition by means of video) Rules, 2011, the Licensing Authority may grant or renew the licence for a period not exceeding three financial years at a time for keeping a television signal receiver agency in a local area on payment of fee for a financial year or part thereof at the rates specified in column III of **Table 6.4** in addition to Bank Guarantee of ₹ 25,000 in each case.

Table 6.4

Rate of Licence fee

Column I (Local area)	Column II (license fee for video library)	Column III (license fee for television signal receiver agency)
(a) Municipal Corporation, NOIDA and Greater NOIDA	Five Thousand rupees	Ten thousand rupees
(b) Municipal board	Three thousand rupees	Six thousand five hundred rupees
(c) Town Area/other places	One thousand five hundred rupees	Three thousand rupees

6.4.15.1 Non-levy of licence fee

The licence fee amounting to ₹ 46.98 lakh for the year 2011-12 to 2014-15 was neither assessed nor levied on 207 TSRAs.

We examined the licence register of sampled DETOs and observed that in 13 DETOs, no licence fee was assessed and levied as per Rule on 207 out of 285 television signal receiver agencies test checked in concerned districts for the period from 2011-12 to 2014-15. The IAW of the Department had also raised similar objections, which shows that the Department was not serious in levying licence fee. Thus, Government was remained deprived of licence fee of ₹ 46.98 lakh.

We reported the matter to the Government/ Department (June 2015). During exit conference (July 2015), the Department replied that clarifications would be sought from the concerned district offices.(November 2015).

6.4.15.2 Non-furnishing of Bank Guarantee

The Department allowed 280 TSRAs to operate agencies without submission of Bank guarantee amounting to ₹ 70.00 lakh. As per Rule bank guarantee of ₹ 25000 in each case was to be furnished.

We examined the security registers of sampled DETOs and observed that in 18 DETOs bank guarantee of ₹ 70.00 lakh for the period from 2011-12 to 2014-15 was not furnished by 280 out of 285 TSRAs. This was a big fault on the part of the Department because as per provision before grant or renewal of licence, the Department should have obtained the bank guarantee. The Department allowed these TSRAs to operate without submission of required bank guarantee. Thus, due to laxity of the Department provision of Rules had not been followed.

We reported the matter to the Government/ Department (June 2015). During exit conference, the Department stated that submission of the Bank Guarantee was not found appropriate and a proposal for its deletion from the Rule 1988 has been submitted to the Government on 10 April 2015. We do not agree with the reply of the Department as no decision has been taken by the Government in this regard and this provision exists till date. (November 2015)

6.4.16 Non-levy of interest on belated payment of entertainment tax on DTH service providers

Interest amounting to ₹ 29.13 lakh on belated payments was neither charged nor realised by the Department.

As per Section 34A of The UP Entertainment and Betting Tax Act, 1979, if the tax payable under any provision of the Act remains unpaid after the expiry of the period specified in the Rules made thereunder for payment of tax by the proprietor of an entertainment, simple interest at the rate of one and half *per cent* per month upto three month and thereafter at the rate of two *per cent* per month on the unpaid amount of tax calculated from the date of such expiration shall become due and be payable.

We examined the files of DTH service providers of Entertainment Tax Commissioner Office and observed that entertainment tax of ₹ 95.14 crore pertaining to the period from September 2013 to April 2015 was deposited by DTH service providers with delay ranging from one to 28 days. However, interest amounting to ₹ 29.13 lakh, on the belated payments was neither charged nor realised by the Department as shown in **Appendix–XXIII**.

We reported the matter to the Government/ Department (June 2015). In reply, the Department accepted the audit observation and assured for the recovery (November 2015).

6.4.17 Recovery of entertainment tax against RCs issued

Recovery certificates of ₹ 49.48 lakh were issued against which only ₹ 8.73 lakh was realised. Entertainment tax of ₹ 40.75 lakh is still pending for recovery.

As per Section 34 of The UP Entertainments and Betting Tax Act, 1979, any sum due on account of tax under any provision of this Act, shall without prejudice to any other mode of recovery available to the State Government under any other law for the time being in force, be recoverable as arrears of land revenue.

We examined the RC register of sampled DETOs and observed that in six DETOs, 64 recovery certificates were issued against arrears of ₹ 49.48 lakh pertains to period between March 2003 and December 2013. Against this only ₹ 8.73 lakh was realised till the date of audit. Arrears of ₹ 40.75 lakh which was recoverable as arrears of land revenue is still pending for recovery even after a lapse of two to ten years as shown in the **Table 6.5**.

Table 6.5

Recovery of entertainment tax against RCs issued

(₹ in lakh)							
Sl. No.	Name of District	No. of cases	Period of tax arrear	Period of RC issued	Amount of Entertainment Tax involved in RC	Amount recovered	Amount pending for recovery
1	Agra	8	May 2007 to March 2013	December 2011 to February 2014	12.94	0.54	12.40
2	Allahabad	2	June 2003 to May 2004	July 2004 to August 2004	0.92	0	0.92
3	G.B. Nagar	5	February 2012 to December 2013	July 2013 to February 2014	5.20	0	5.20
4	Ghaziabad	8	March 2003 to October 2012	October 2008 to April 2013	9.96	3.16	6.80
5	Kanpur Nagar	2	January 2004 to April 2007	July 2006 to May 2007	6.76	0	6.76
6	Muzaffarnagar	39	April 2003 to May 2013	May 2008 to July 2013	13.70	5.03	8.67
	Total	64	March 2003 to December 2013	July 2004 to February 2014	49.48	8.73	40.75

Source: Information available on the basis of the audit findings.

We reported the matter to the Government/ Department (June 2015). In reply, the Department stated that instructions have been issued to district officers to recover such amount effectively (November 2015).

6.4.18 Internal Audit Wing (IAW)

Internal Audit Wing (IAW) of an organisation is a vital component of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well and it is controlled by Finance Controller. Internal Audit Wing was established in 1974 in the Department.

In IAW, one Finance Controller and two Sr. Auditors have been posted against the sanction post of one Finance Controller, one Sr. Auditor and one Auditor. The details of internal audit planning such as number of units planned for audit, number of units audited and shortfall are shown in the **Table 6.6**.

Table 6.6
Internal Audit Wing

Year	Total number of units available for IA	Number of units planned for IA	Number of units audited during the year	Short fall	Percentage of shortfall
2010-11	73	27	22	5	18.52
2011-12	76	35	32	3	8.57
2012-13	76	36	27	9	25.00
2013-14	76	32	20	12	37.50
2014-15	76	34	19	15	44.12

Source: information provided by the Department

Despite having adequate manpower the audit planning of the IAW was not realistic as shortfall ranged from 8.57 to 44.12 *per cent* during the year 2010-11 to 2014-15.

We examined the files of IAW in Commissioner Entertainment tax office and observed that nearly 50 *per cent* of total revenue was collected from DTH and cable services. However, the internal audit wing did not raise any objection on DTH and cable services before 2013-14. IAW raised only one observation regarding non-deposit of entertainment tax on enhanced connections of DAS and 22 observations regarding non-deposit of licence fee on TSRA in 23

districts offices between April 2013 and March 2015. Only in four cases recovery has been made by the Department.

Government may consider ensuring that the internal audit wing carries out its functions regularly and effectively.

6.4.19 Conclusion

As regards Digital Addressable System (DAS) our audit indicated that:

- Department failed to realise additional licence fee from Multi System Operators of ₹ 9.41 crore.

Recommendation: Government may consider ensuring timely levy and realisation of licence fee and additional licence fee on Multi System Operators.

- Department could not assess the actual amount of activation charges of set-top-box due to which entertainment tax due on activation charges on set-top-box amounting to ₹ 17.94 crore was not levied.

Recommendation: Government may consider ensuring the assessment and levy of entertainment tax on activation charges of set-top-box.

As regards Direct To Home (DTH) our audit indicated that:

- The Department failed to conduct the extensive survey/verification of DTH connections and to enforce the submission of statement/return by DTH service providers of the amount collected from subscribers and hence, could not assess the actual amount for levy of correct amount of entertainment tax on DTH connections.

Recommendation: Government may consider to conduct periodical surveys for ensuring correct levy of entertainment tax on DTH connections and proper verification of those connections.

- Department failed to enforce the television signal receiver agencies to deposit the licence fee and bank guarantee.

Recommendation: Government may consider for ensuring levy and collection of licence fee and furnishing of bank guarantee by television signal receiver agencies.

- Department did not charge interest on belated payment of entertainment tax.

Recommendation: Government may consider for charging of interest on belated payment of entertainment tax.

- Internal control mechanism of the Department was not effective and internal control tools such as internal audit was not used timely and effectively.

Recommendation: Government may consider to ensure that the internal audit wing carries out its functions regularly and effectively.

6.5 Non-levy of licence fee and penalty on Television Signal Receiver Agencies

The licence fee and penalty amounting to ₹ 13.04 lakh for the year 2014-15 was neither assessed nor levied on 32 TSRAs.

Under section 4 of Uttar Pradesh Cinemas (Regulation) Act, 1955 (UP Act No. 3 of 1956), Rules 12, 16 and 18(2) of The UP Cinema (Regulation of exhibition by means of video) Rules 1988 and Rule 18(2) of Uttar Pradesh Cinemas (Regulation of exhibition by means of video) Rules, 2011, the Licensing Authority may grant or renew the licence for a period not exceeding three financial years at a time for keeping a television signal receiver agency in a local area on payment of fee for a financial year or part thereof at the rates specified in column III of **Table 6.4** as depicted earlier, in addition to Bank Guarantee of ₹ 25,000 in each case.

We examined the Appendix-II register and files of three Entertainment Tax Offices and observed that no licence fee and penalty as per rule was assessed and levied on 32 out of 79 television signal receiver agencies test checked in concerned districts. Thus, Government remained deprived of licence fee of ₹ 5.14 lakh and penalty of ₹ 7.90 lakh.

We reported the matter to the Government/ Department (June 2015). In reply, the Department stated that the concerned district officers were directed to clarify the position regarding non-levy of licence fee (November 2015).

(B) GEOLOGY AND MINING DEPARTMENT

6.6 Tax administration

The levy and collection of receipts from Mining in the State is governed by the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concession Rules, 1960 and the Uttar Pradesh Minor Mineral Concession Rules, 1963. The Principal Secretary Geology and Mining, Uttar Pradesh, is the administrative head at Government level. The overall control and direction of Geology and Mining Department is vested with the Director, Geology and Mining, Uttar Pradesh, Lucknow.

6.7 Internal audit

Internal Audit of an organisation is a vital component of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well.

Details of organisational setup of the internal audit wing of the Department and staff posted for the same were not provided by the Department. Year in which Internal Audit Wing was established in the Department was also not provided by the Department.

The details of Internal Audit (IA) planning such as number of units planned for audit, number of units audited and short fall are shown in **Table 6.7**.

Table 6.7

Internal Audit (Audit Planning)

Year	Total number of units available for IA	Number of units planned for IA	Number of units audited during the year	Short fall	Percentage of shortfall
2010-11	31	31	26	5	16.13
2011-12	31	31	29	2	6.45
2012-13	31	30	12	18	60.00
2013-14	31	30	14	16	53.33
2014-15	31	13	10	3	23.08

Source: Information provided by the Department.

This shows that the audit planning of the IAW is not realistic as shortfall ranges from 6.45 *per cent* to 60 *per cent* during the year from 2010-11 to 2014-15. Reason for shortfall was not explained by the Department.

The internal audit conducted by the IAW and number and amount of objection raised and settled during the year is mentioned in **Table 6.8**.

Table 6.8**Internal Audit (Audit Observations)**

(₹ in crore)								
Year	Opening balance		Addition during the year		Clearance during the year		Closing balance	
	No. of cases	Amount involved	No. of cases	Amount involved	No. of cases	Amount involved	No. of cases	Amount involved
2010-11	1,157	51.15	65	5.15	6	0.87	1,216	55.43
2011-12	1,216	55.43	82	10.87	5	2.55	1,293	63.75
2012-13	1,293	63.75	41	4.44	8	3.16	1,326	65.03
2013-14	1,326	65.03	38	7.39	0	0.62	1,364	71.80
2014-15	1,364	71.80	21	5.72	0	0	1,385	77.52

Source: Information provided by the Department.

The Department stated that information regarding recovery of ₹ 1.25 crore has been received but due to non-taking of decision by the sub-committee for disposal this has not been incorporated.

6.8 Results of audit

In 2014-15, the Department realised revenue of ₹ 1,029.28 crore. Test check of the records of 37 units relating to the Geology and Mining Department during the year 2014-15 showed non-realisation of royalty, non-realisation of cost of minerals, penalty and interest and other irregularities amounting to ₹ 61.39 crore in 134 cases, which fall under the following categories as indicated in **Table 6.9**.

Table 6.9**Results of audit**

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non-realisation of royalty	42	19.27
2.	Non-realisation of revenue due to non-execution of lease deed	2	2.84
3.	Non-imposition of penalty	8	0.51
4.	Non-realisation of cost of minerals	27	22.72
5.	Other Irregularities	55	16.05
Total		134	61.39

Source: Information available in the Audit office.

During the course of the year, the Department neither accepted nor recovered any amount in any case.

A few illustrative cases of compliance deficiency involving ₹ 25.32 crore are discussed in the following paragraphs.

6.9 Audit observations

Our scrutiny of records in the offices of the Geology and Mining showed cases of unauthorised extraction, non-conformity of Government Orders with Act/Rules, non-observation of Environment Act, non-short charging of interest on belated payment of royalty and non/short realisation of royalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions each year, but not only do the irregularities persist; these remain undetected till we conduct an audit. There is need for the Government to improve the internal control system so that recurrence of such lapses in future can be avoided.

6.10 Excavation of mineral without mining plan

The lessees had excavated 2.01 lakh cubic meters of sand/ morrum without mining plan. Thus, cost of the excavated mineral amounting to ₹ 3.08 crore was recoverable from the lessees.

Under Rule 34 (2) of UPMMC Rules 1963 as amended, mining operation shall in respect of in situ rock deposits and sand or morrum or bajari or boulder or any of these in mixed state exclusively found in river bed be undertaken in accordance with the mining plan, detailing yearly development schemes, duly approved by the Director. Rule 34(3) provides that a mining plan referred to in sub rule (2) shall be prepared by a qualified person recognised in this behalf by the Indian Bureau of Mines in accordance with the provisions of Mineral Concession Rules, 1960.

Rule 22A of MCR, 1960 provides that mining operations shall be undertaken in accordance with duly approved mining plan and modification of the approved mining plan during the operation of a mining lease also requires prior approval.

Under Section 21(5) of the MMDR Act, whenever any person raises without lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised or where such mineral has already been disposed off, the price thereof along with royalty. Further under Rule 21 (2) of UPMMC Rules, the total royalty shall be fixed at the rate of not more than 20 *per cent* of the pits mouth value of minerals.

We examined (July 2014) mining lease case files and mining plans of DMO Faizabad and Ghazipur and observed that in all the seven cases test checked, the lessees had excavated 2.01 lakh cubic meter of sand/morrum during the period between January 2013 and June 2014, without mining plan on which lessees paid ₹ 61.59 lakh as royalty. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral amounting to ₹ 3.08 crore was recoverable from the lessees. The lessees were excavating minor minerals without mining plans, for which DMOs allowed the excavation of minor mineral by issuing MM-11 transit passes to leaseholders who further issue to carrier for carrying a consignment of minor mineral by a truck or any other means of transport.

We reported the matter to the Government and the Department (September 2014 and February 2015). In reply the Department referred to their previous reply dated 18 September 2014 given regarding para no. 6.12.1 of Audit Report of 2011-12 in which the Department had directed all District Magistrates and DMOs to not allow any mining operation without approved mining plan. We do not agree with the reply of the Department because even after issuing directions the excavation of minerals without mining plan continued (November 2015).

6.11 Non-conformity of Government Orders with Act/ Rules

Government Orders authorised executing agencies to recover only royalty in such cases where minor minerals were supplied without pass in form MM-11, while provisions of MMDR Act stipulate that the recovery of price thereof and imposition of penalty is mandatory in absence of pass. This deprived the Government of ₹ 13.20 crore on account of cost of minerals and penalty of ₹ 77.75 lakh.

As per Section 4(1-A) and Section 21(1) to (5) of the MMDR Act read with Rule 70(1) of the UPMMC Rules, 1963 provides that the holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in form MM-11 to every person carrying, consignment of minor mineral by a vehicle, animal or any other mode of transport. Rule 70(2) provides that no person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued under sub rule (1). Rule 70 (6) provides that any person found to have contravened any provision of this rule shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or fined upto ₹ 25,000/- or with both as amended vide notification no. 7338/86-2011-183/2011 Lucknow: dated 1 December 2011. Government Order no.594/77-5-2001-2002/77 TC-1 Lucknow dated 2 February 2001 and Government Order no. 4951(1)/77-5/2006-506/05 Lucknow dated 25 October 2006 provide that the executing agencies were authorised to recover royalty in such cases where minor minerals were supplied to executing agencies of public works without valid MM-11 or copy of challan as proof of payment of royalty.

We examined (between June 2014 and February 2015) returns and treasury scroll of 16 DMOs, and observed that executing agencies got 311 civil works done through contractors. In all these cases the contractors did not submit the MM-11 forms along with the bills of minor minerals used by them in the work, hence in compliance of above GOs the executing agencies, deducted the royalty from the bills and deposited ₹ 2.64 crore in lieu of royalty.

We noticed that the above GOs were not in consonance with the MMDR Act and UPMMC Rules because as per Government Orders the executing agencies were authorised to recover only royalty in such cases where minor minerals were supplied without MM-11 and copy of treasury *challan* as proof of payment of royalty. Under the provisions of Section 21(5) and 21(1) of the MMDR Act, the recovery of price thereof and imposition of penalty is mandatory. As GOs are silent about the recovery of the price of the minerals and imposition of penalty the same are not being imposed and recovered. In

the above cases of 16 DMO's alone the cost of minerals of ₹ 13.20 crore was leviable as per Act besides penalty of ₹ 77.75 lakh of illegal transportation as shown in **Appendix-XXIV**.

We reported the matter to the Government and the Department (between June 2014 and May 2015). The Department replied (September 2015) that the executing agencies have taken action as per the GO. The Department has not replied to our specific observation which is non-conformity of GO with MMDR Act and UPMMC Rules. The said GOs have been issued without the provision of recovery of the price of minerals and penalty which is the main thrust of the Section 21 of the MMDR Act. The provision of UPMMC Rules that a penalty and /or punishment shall be imposed on the person found transporting minerals without valid MM 11 has also not been taken into account in the GOs. The non-conformity of GOs with the relevant provisions of MMDR Act and UPMMC Rules have left a lacuna by which illegal transportation of minerals and illegal mining of these minerals is indirectly being permitted as there is no deterrent to this illegal transportation of minerals (November 2015).

We have recommended the Government to revise its orders to be in conformity with the MMDR Act and UPMMC Rules in our earlier reports also.

6.12 Non-observation of Environment Act

As prescribed mining lease holder doing mining on one acre or more area shall plant 200 trees per acre at their own cost. Nothing was found on record regarding plantation work in the files of 41 lease holders. As these lease holders violate the provisions of lease deed, the minimum fine of ₹ 41 lakh was not levied for the violation.

Section 15 of the Environment Protection Act, 1986 provides that whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall in respect of each such failure or contraventions be punishable with imprisonment for a term which may extend to five years or with fine, which may extend to one lakh rupees or with both and in case of failure or contravention continues with an additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the fresh such failure or contravention. The mining plan is necessary not only for planned and scientific mining but also to protect environment. The Government issued direction for addition of the clause of plantation in the mining leases, vide order No. 1483 (1)/14-2-08-65/2008-TC dated 4 June 2008. As per this clause, any mining lease holder doing mining on one acre or more area shall plant 200 trees per acre at their own cost.

We examined (February 2015) the files of lease holders of DMO Allahabad and observed that mining of stone ballast was carried out by all 41 lease holders between March 2014 and January 2015. As per condition of lease plantation was required to be done. In all the cases of 41 lease holders nothing was found on record regarding plantation work. The DMO took no steps to ensure lease holders carried out the plantation work. He neither stopped these mining activities nor imposed the required penalty. For the violation the

minimum fine of ₹ one lakh imposable on each lessee amounting to ₹ 41 lakh was not imposed. Apart from this, an additional fine which may extend to ₹ 5,000 per day during such contravention is leviable under section 15 of Environment Protection Act 1986.

We reported the matter to the Government and the Department (March 2015 and June 2015). The Department replied (November 2015) that there is no such provision in UPMCR 1963 for imposition of penalty in case of non-plantation. We do not agree with the reply of the Department as the Government had issued a G.O in 2008 for plantation of trees in the mining leases to follow the provisions of the Environment Protection Act 1986.

6.13 Non/ Short charging of interest on belated payment of royalty

185 brick kiln owners deposited royalty of ₹ 93.06 lakh for the period 2011-12 to 2013-14 with average delays of 2 to 462 days. The Department realised the interest of ₹ 1.18 lakh against ₹ 6.73 lakh. This resulted in non/short charging of interest of ₹ 5.55 lakh.

Rule 58 (2) of UPMCR Rules provides that interest at the rate of 24 *per cent* per annum will be charged for the delay in payment of any rent, royalty, demarcation fee and any other dues to the State Government after the expiry of 30 days notice period. The Government issued One Time Settlement Scheme (OTSS) from time to time for levy of royalty and interest chargeable thereon, for brick kiln owners.

We examined (between June 2014 and March 2015) brick kiln registers and concerned files of four DMOs, and observed that 185 brick kiln owners out of 959 brick kiln owners test checked deposited royalty of ₹ 93.06 lakh for the period 2011-12 to 2013-14 with average delays of 2 to 462 days. The Department realised the interest of ₹ 1.18 lakh against ₹ 6.73 lakh. This resulted in non/short charging of interest of ₹ 5.55 lakh. The details are given in **Table 6.10**.

Table 6.10

Non/ Short charging of interest on belated payment of royalty

(Amount in ₹)								
Sl. No.	Name of the District	Period	No. of cases	Amount due and deposited	Interest leviable	Interest realised	Difference	Period of delay in days
1	DMO Allahabad	2013-14	56	30,94,200	2,09,456	0	2,09,456	3 to 332
2	DMO Auraiya	2012-13	29	15,63,300	1,67,212	1,08,918	58,294	4 to 371
		2013-14	11	8,89,650	15,190	3,152	12,038	9 to 73
3	DMO Sant Kabir Nagar	2013-14	39	15,70,050	1,00,178	0	1,00,178	24 to 311
4	DMO Sant Ravi Das Nagar	2011-12	14	4,85,100	97,846	400	97,446	54 to 462
		2012-13	32	14,90,500	70,914	5,850	65,064	9 to 361
		2013-14	4	2,13,250	12,383	0	12,383	2 to 192
Total			185	93,06,050	6,73,179	1,18,320	5,54,859	2 to 462

Source: Information available on the basis of audit findings.

We reported the matter to the Government and the Department (June 2014 to June 2015). In reply the Department accepted our observations and stated that latest position of recovery is being obtained from field offices (November 2015).

6.14 Non-realisation of royalty and permit fees from brick kiln owners

1,430 brick kiln owners did not pay any royalty and permit fees for the period 2011-12 to 2014-15, though it was specified in the scheme. This resulted in non-realisation of royalty of ₹ 6.55 crore and permit fees of ₹ 28.60 lakh.

Under the One Time Settlement Scheme (OTSS) announced by the Government time to time, brick kiln owners are required to pay consolidated amount of royalty at the prescribed rates, based on Category of the brick kiln areas after paying an application fee of ₹ 2000 per brick kiln. Further, the OTSS provides that if the brick kiln owner fails to make payment of consolidated amount of royalty, the competent officer shall stop such business and initiate certificate proceedings for realisation of outstanding royalty/penalty. Besides, interest at the prescribed rate may also be charged on the rent, royalty, fee or other sum due to the Government as per the OTSS. New rate of royalty as per notification of 2 November 2012 is ₹ 27 per thousand bricks.

We examined (between May 2014 and March 2015) the brick kiln register and other relevant records maintained in the individual files of the brick kiln owners in 16 DMOs and observed that in 1,430 brick kilns out of 3,074 brick kilns test checked (Category-A: 160, Category-B: 370 and Category-C: 900) were in operation during the period from October 2011 to March 2015. However, these brick kiln owners did not pay any royalty and permit fees for the period 2011-12 to 2014-15, though it was specified in the scheme. Neither action was initiated to stop their business by the concerned District Mines Officers (DMOs) nor to realise the due royalty of ₹ 6.55 crore and permit fees of ₹ 28.60 lakh. The details are exhibited in **Appendix-XXV**.

We reported the matter to the Government and the Department (June 2014 to June 2015). In reply the Department accepted our observations and stated that update position of recovery is being obtained from field offices (November 2015).

6.15 Short levy of royalty on clay used for brick making

628 brick kiln owners deposited royalty of ₹ 1.96 crore at pre-revised rate instead of ₹ 2.93 crore leviable at revised rate. This resulted in short levy of royalty of ₹ 96.51 lakh on clay used for brick making.

Rule 21 of UPMMC Rules provides that the royalty shall be payable on the basis of revised rate from time to time. The rate of royalty and dead rent was revised with effect from 2 November 2012 by the State Government vide GO No. 2974/86- 2012-200/77 T C II Lucknow dated 2 November 2012. The rate of royalty for clay used for brick making was revised from ₹ 18 per thousand to ₹ 27 per thousand with effect from 2 November 2012.

We examined (between June 2014 and March 2015) the brick kiln files in 12 DMOs and observed that the Department did not levy the royalty at revised rate in 628 cases out of 2,232 cases test checked during the period from March

2012 to February 2015. The brick kiln owners deposited royalty of ₹ 1.96 crore at pre-revised rate instead of ₹ 2.93 crore at revised rate. This resulted in short levy of royalty of ₹ 96.51 lakh as shown in **Appendix-XXVI**.

We reported the matter to the Government and the Department (June 2014 to June 2015). In reply the Department accepted our observations and stated that update position of recovery is being obtained from field offices (November 2015).

Lucknow
The **25 JANUARY 2016**


(VINITA MISHRA)
Accountant General (E&RSA)
Uttar Pradesh

Countersigned

New Delhi
The **27 JAN 2016**


(SHASHI KANT SHARMA)
Comptroller and Auditor General of India