PAC - 122

COMMITTEE ON PUBLIC ACCOUNTS
(2009-2011)

HUNDRED AND TWENTY SECOND REPORT

(TWELFTH ASSEMBLY)

REPORT OF THE COMMITTEE ON PUBLIC ACCOUNTS, ASSAM LEGISLATIVE ASSEMBLY ON THE REPORTS OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA (R/R) FOR THE YEARS 1988-89 AND 1989-90 RELATING TO FINANCE (TAXATION) DEPARTMENT ON AGRICULTURAL INCOME TAX GOVERNMENT OF ASSAM.

Presented to the House on 29-06-2009.

ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT
DISPUR : : GUWAHATI-6.

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COMPOSITION OF THE COMMITTEE

Chairman:

1. Shri Phani Bhusan Chaudhury

Members:

2. Shri Rajendra Prasad Singh
3. Shri Rameswar Dhanowar
4. Shri Gobinda Chandra Langthasa
5. Shri Abdul Khaleque
6. Shri Rajib Lochan Pegu
7. Shri Padma Hazarika
8. Shri Girindra Kumar Barua
9. Smti Kamali Basumatari
10. Shri Ranjit Dutta
11. Shri Jagat Singh Engti
12. Shri Anwarul Hoque
13. Shri Membor Gogoi

Secretariat:

1. Shri G.P.Das, Secretary
2. Shri B. Basumatari, O.S.D.
3. Shri P.K.Hazarika, Deputy Secretary.
4. Shri K. Rahman, C.O.

PREFATORY REMARKS

I, Shri Phani Bhusan Chaudhury, Chairman, Committee on Public Accounts, Assam Legislative Assembly having been authorized to submit the report on its behalf present this Hundred and Twenty Second Report of the Committee on Public Accounts on the Audit paras contained in the Report of the Comptroller and Auditor General of India (R/R) for the years 1988-89 and 1989-90 pertaining to the Finance (Taxation) Department on Agricultural Income Tax, Government of Assam.

2. The Report of the Comptroller and Auditor General of India(R/R) for the years 1988-89 and 1989-90 were laid before the House on 30-7-91 and 21-12-1992 respectively.

3. The Report as mentioned above relating to the Finance (Taxation) Department were considered by the erstwhile Sub-Committee on Public Accounts under the Convenorship of Shri Parimal Suklabaidya, MLA (as at Annexure-A) in their sittings held on 28-11-08, The Sub-Committee also adopted the draft Report on the same day for the consideration and approval by the main Committee under the Chairmanship of Shri Brindaban Goswami (as at Annexure-B) who could not present this report thereof owing to expiry of their term.

4. The present Committee on Public Accounts has considered the draft 122nd Report and finalized in their sitting held on 23-6-09 for presentation before the House.

5. The Committee wishes thanks to the erstwhile Committee for their strenuous works. The Committee has also appreciated the valuable assistance rendered by the Principal Accountant General (Audit), Assam as well as his Junior Officers and Staff during the examination of the Department.

6. The Committee thanks to the departmental witnesses as well as Finance Department for their kind co-operation and offers appreciation to the officers and staff dealing with the Committee on Public Accounts, Assam Legislative Assembly Secretariat for their strenuous and sincere service rendered to the Committee.

7. The Committee earnestly hope that the Government would promptly implement the recommendations made in this report.

PHANI BHUSAN CHAUDHURY
Chairman
Committee on Public Accounts

Dispur:
The 23rd June,2009

PREFATORY REMARKS

I, [illegible] Chaudhury, Chairman, Committee on Public Accounts, Assam Legislative Assembly, having been authorized to submit the report on its behalf, present [illegible] Report of the Committee on Public Accounts on [illegible] contained in the Report of the Comptroller and Auditor General of [illegible] 1989-90 pertaining to the Finance (Taxation) Department [illegible] Government of Assam.

The Report of the Comptroller and Auditor General of India (R/R) for the years [illegible] 1989-90 [illegible] laid before the House on [illegible] and 21-12-1992 [illegible]

[illegible] Report [illegible] relating to the Finance (Taxation) Department [illegible] Public Accounts under the [illegible] (Annexure A) in their [illegible] adopted the draft Report on the same day for [illegible] the main Committee under the Chairmanship of [illegible] could not present this report [illegible]

The [illegible] Committee on Public Accounts has considered the draft [illegible] Report and adopted it in their sitting held on [illegible] for presentation before the House.

The Committee wishes thanks to the erstwhile Committee for their strenuous works. The Committee has also [illegible] the valuable assistance rendered by the [illegible] Assistant General [illegible] as well as the Junior Officers and staff during the examination of the Department.

The Committee [illegible] the departmental witness as well as Finance Department [illegible] and offers appreciation to the officers and staff [illegible] Assam Legislative Assembly Secretariat [illegible] strenuous and sincere [illegible] the Committee.

The Committee [illegible] that the Government would [illegible] implement the recommendations made in this Report.

PHANI BHUSAN CHAUDHURY
Chairman
Committee on Public Accounts

Dispur,
The [illegible] June [illegible]

CHAPTER-I

THE REPORT
Finance (Taxation) Department on Agricultural Income Tax

Agricultural Income escaping assessment (Audit para 3.2/C & A.G/1988-89 R/R)

1.1 The audit has pointed out that under the Assam Agricultural Income Tax Act,1939 read with Rule 8 of Income Tax Rules, 1962 where an assessee himself grows and manufactures tea, sixty **percent** of the income derived by him from cultivation, manufacture and sale of tea, should be treated as agricultural income while the remaining 40 **percent** of the income in such cases is taxable as business income.

An assessee of Karimganj district, engaged in cultivation, manufacture and sale of tea, received refund and rebate of Central Excise Duty amounting to Rs.4.13 lakhs and Rs. 31.38 lakhs respectively during the accounting year relevant to the assessment year 1983-84. Instead of apportioning the amounts of refund and rebate between agricultural income and business income in the ratio of 60 and 40 **percent**, the whole amounts of refund and rebate were treated as business income and assessed to tax by the Income Tax Officer. The mistake was not even noticed by the Agricultural Income Tax Officer while computing income of the assessee for the purpose of assessment of agricultural income tax. As a result, assessee's income of Rs. 2.48 lakhs and Rs. 18.83 lakhs being 60 **percent** of refund and rebate respectively escaped assessment to Agricultural Income Tax. This resulted in short levy of tax amounting to Rs. 9.67 lakhs.

1.2 The Department by their written replies has stated that the Agricultural Income Tax Officer on 22-2-90 verified the records of the assessment year 1982-83 and 1983-84. It transpires that Central Excise of Rs. 428566/- in the assessment year 1982-83 and Central Excise rebate of Rs. 3138430/- and Central Excise refunded of Rs. 412922/- of assessment

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year 1983-84 were incorporated in the respective P & L a/cs under the head "other income". The Central Assessment authority computed loss for the instant years as per P & L a/cs. The amounting did not add back the said amount separately for business income after applying Rule 8. In other words, these amounts were treated as mixed income. As such, there was no loss of agriculture income tax revenue to the State.

OBSERVATIONS / RECOMMENDATIONS

1.3 The Committee directed the department to furnish a copy of the AITO report to the A.G. for verification. After verification of the report A.G. will give their views to the Committee for consideration of the para.

Non – levy of interest
(Audit para 3.3 (a)/C & A.G./1988-89 R/R)

1.4 The audit has pointed out that under Section 20 C (1) of the Assam Agricultural Income Tax (Amendment) Act, 1984, if the amount of tax paid by or on behalf of any assessee in respect of any financial year on or before the 31st day of December of the said financial year falls short of the amount of tax as finally assessed for that year, he shall be liable to pay simple interest on the amount of shortfall at the rate of 12 **percent** per annum from the 1st day of January of the said financial year up to the date of assessment.

Out of the assessed tax of Rs.33.33 lakhs for the assessment year 1985-86 in respect of two assesses of Dibrugarh district, tax amounting to Rs. 31.60 lakhs was shown to have been deposited into Government account on 23rd December 1985 (i.e. within the prescribed time limit). But, a scrutiny of assessment records revealed that the assesses presented challans to the treasury on 23rd December 1985 but did not actually deposit any tax on that day. Subsequently, the assesses got the

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challans revalidated by the treasury officer and deposited tax on 31st March 1986. Interest amounting to Rs.94,800 was chargeable at the rate of 12 **percent** on the belated deposit of tax but was not charged taking into account the original date of presentation of challans into treasury as the date of actual deposit of tax.

On the omission being pointed out in audit (February 1988) in respect of one assessee the department stated (November1989) that a cheque in payment of tax by the assessee was received in the office on 22nd December 1985, that the date of receipt of the cheque was considered as the date of payment of cheque and that no interest was therefore levied. The reply of the department is not tenable since the amount of tax was actually deposited into the treasury, by the assessee, on 31st March 1986 only as revealed by the supporting treasury challans.''

1.5 The Department by their written replies has stated that the first case, the payment of taxes were made by the assessee vide his cheque No. 001722 dated 12.12.85 received on 22.12.85 by the office. The office presented the cheque to the SBI for deposit into Govt. Account on 23.12.85. The same was deposited into the Govt. a/c on 31.03.86. The tax was not deposited by the assessee but by the Department to the S.B.I. Guwahati to the Govt. a/c. As payment by cheque, provided that it is not dishonoured, is a payment. As such, question of levy of interest does not arise. In this second case also, the assessee paid taxes vide cheque No. 002023 dated 13.12.85 which was received at the office on 20.12.85. The same was presented to the SBI for deposit into Govt. Account on 23.12.85 and was en-cashed on 31.03.86. The date of payment as discussed above is treated as the date of receipt of the cheque as the deposition of the cheque to the S.B.I. was made by the A.I.T.O. and not by the assessee. As such, the question of levy of interest does not arise.

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OBSERVATIONS / RECOMMENDATIONS.

1.6 The departmental representatives deposed that in both the cases (i) taxes were made by the assessee to the SBI in December 1985. but the same was deposited by the Bank in the Government Account on 31st March 1986. (2) as regards M/S Ethel wood Estate Pvt. Ltd., the assessee paid the taxes timely but in this case also, SBI delayed on payment of taxes in the Government Accounts. It is not the fault of the assessee but of the SBI. The Committee satisfied with the deposition of the Government witnesses and decided to drop the para.

Non levy of interest

(Audit Para 3.3 (b)/C & A.G./1988-89 R/R)

1.7 The audit has pointed out that under Section 20 C (3) of the Assam Agricultural Income Tax (Amendment) act,1984, where the amount of tax paid on or before the 31st day of March 1984 by or on behalf of any assessee under the Act, in respect of any financial year falling during the period 1st April 1967 to 31st March 1984 falls short of the amount of tax due from him in respect of such financial year, whether or not such tax has been assessed, the assessee shall be liable to pay simple interest on the amount of shortfall at the rate of 12 **percent** per annum until the tax is paid in full.

(i) In 3 cases, the assesses did not pay within the prescribed time limit, tax dues in full; relating to various assessment years falling between 1978-79 and 1982-83. But interest amounting to Rs. 2.78 lakhs (Calculated up to the date of assessment) payable by the assesses on the amount of tax (Rs.9.47 lakhs) paid short till the date of audit (February 1988) was not charged.

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(ii) In 4 other cases, for delayed payment of taxes due relating to various assessment years falling between 1978-79 and 1983-84 interest amounting to Rs. 1.95lakhs was chargeable against the assesses but was not charged (February 1988).

On the above omission being pointed out in audit (February 1988), the department stated (November 1989) that demand for interest in 2 out of the 3 cases, as referred to in sub-para (b) (i), had been raised and in respect of 4 cases in sub-para (b) (ii), interest amounting to Rs. 2.44 lakhs was levied, out of which interest amounting to Rs. 1.78 lakhs has since been realised.

1.8 The Department by their written replies have stated that (i) in this case there was a demand of Rs.5,03,371/- for assessment year 1978-79. This demand was adjusted against refundable amount of Rs. 5,62,572/- for assessment year 1971-72 to assessment year 1977-78. After adjusting Rs. 24,505/- during assessment year 1974-75 therein a balance refundable of Rs.34,696/- during the above years. Amount refundable during assessment year 1981-82 was Rs. 43,366/-. Hence, total balance refundable was Rs. 78,062/-. During assessment year 1979-80 total demand was Rs. 1,10,613/- less balance refundable amount Rs. 78,062/- as above there was a balance of payable amount of Rs. 32,551/- paid vide challan No.1437 dated 14.12.89. The adjustment as above being more than 75% of the total demand, no interest is leviable under section 20 C (3) as all the above payments were made earlier to01.04.84. In case of assessment year 1980-81 the interest under section 20 C (3) had been levied from 01.04.84 to 15.02.89 @ 12% for Rs. 1,42,806/- and demand raised. The demand has been adjusted against excess refundable to assessment year 1984-85 of Rs. 1,76,544/- as prayed by assessee.

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(ii) In this case, interest had been levied as per Audit objection as below:

Assessment year 1981-82	-	Rs. 7,897.00
Assessment year 1982-83	-	Rs. 8,456.00
Total	-	Rs.16,353.00

Paid vide challan No. 1 dated 09-04-90.

M/s. Lankashi Tea & Seeds Ltd.
A/Yr. 1980-81.

In this case, assessment was rectified as per High Court judgment on 18.10.97 for assessment year 1980-81. No demand was raised and an excess payment of Rs. 1,996.00 was determined. Arrear Certificate issued to Supdt. Of Taxes (Recovery) was vacated.

(b) (a) In this case, the interest as per the Audit Objection had been levied as below :

A/Yr.	Amount	Paid vide Ch. No.& Dt.
1978-79	Rs. 6,529.00	2988 dt 23.03.88
1979-80	Rs. 6,871.00	2989 dt. 23.03.88
1980-81	Rs. 2,967.00	2990 dt. 23.03.88
1981-82	Rs. 4,158.00	2991 dt 23.03.88
1982-83	Rs. 4,938.00	2992 dt. 23.03.88
Total --	Rs.25,468.00	

(b) In another case interest was accordingly levied as per Audit Objection and a demand for Rs.28,812/- was raised. But subsequently the Central Assessment Order was revised and the assessee furnished certified copies of Central Assessment Order dated 23.09.87 u/s 251 of Income Tax Act. Hence, the earlier assessment order had to be revised and resulted in excess payment (Refundable) of Rs. 94,121/-. The assessment was further rectified u/s 20(3)/31, which resulted in excess payment of Rs. 1,90,876/-. Hence, the question of interest does not arise.

Contd.....7/-

(c) In this case, interest was levied as per the Audit Objection @ 12% on Rs. 9,03,853/- w.e.f. 01.04.84 to 24.04.85 till the date of assessment under section 20C(3). The assessee on demand had paid the amount vide challan No.13 dated 28.04.88 for Rs. 1,15,693/-.

(d) Interest at already been levied at @ 12% on Rs. 66,111/- w.e.f. 1.4.84 to 25.3.85 amounting to Rs. 7821/- in the assessment order itself which the Audit mistook in not noticing. The interest for the remaining period (w.e.f. 23.3.85 to 16.6.85) on Rs. 66,111/- @ 12% is Rs. 16,988/-which had been paid vide challan No. 10 dt. 23.11.89.

OBSERVATIONS / RECOMMENDATIONS

1.9 (i)The Committee is pleased to drop the para as the entire amount had been realised.

(ii)The Committee, having heard the deposition of the departmental representatives is satisfied and decided to drop the para.

(i) The department informed the Committee that assessment was rectified as per Hon'ble High Court judgment on 18-10-97 for assessment year 1980-81. The Committee is satisfied and hence decided to drop the para.

(b) (ii) (a) The department stated that, interest as per audit objection had been levied. The Committee is satisfied with reply of departmental witnesses and pleased to drop the para.

(b) The departmental witnesses deposed that as per audit objection, interest was levied and a demand for Rs. 28,812/- was raised. But subsequently, the Central Assessment Order was revised and the assessee furnished certified copies of Central Assessment order dated 23-9-87 u/s 251 of Income Tax Act. Hence the earlier assessment order had to be revised and resulted in excess payment (Refundable) of Rs. 94,121/-. The assessment was further rectified, which resulted in excess payment of Rs. 1,90,876/- and hence, the question of interest does not arise. The Committee is satisfied with the reply of departmental witness and pleased to drop the para.

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(c) The department informed the Committee that the interest was levied as per audit objection and the assessee on demand had paid the amount vide Challan No.13 dated 28-04-88. The Committee is satisfied and decided to drop the para.

(d) The departmental witnesses deposed that the interest for the remaining period had been paid vide Challan No. 10 dated 23-11-89. The Committee pleased with the reply and decided to drop the para.

Omission to take entire agricultural income into computation.
(Audit para 3.4/C&AG/1988-89/R/R)

1.10 The audit has pointed out that under the Assam Agricultural Income Tax Act, 1939, any income derived by a cultivator or receiver of rent-in kind, by the sale of the produce raised or received by him from land used for agricultural purposes is agricultural income, provided no process has been performed in respect of the produce other than the process ordinarily employed to render the produce fit to be taken to market. Income from such agricultural operation is therefore, wholly assessable to Income Tax.

In the case of a tea company, against purely agricultural income of Rs.1,14,394 derived by the assessee by sale of tea seeds, plants and green tea leaves duringthe accounting year 1980-81, income of Rs. 14,179 only on that account was taken for the purpose of computation of agricultural income of the assessee for the assessment year 1981-82. The omission to take the whole income as agricultural income for the purpose of assessment resulted in shot levy of tax amounting to Rs. 75,617.

1.10 The Department by their written replies have stated that on scrutiny of the case records, it is found that it is not correct to hold that

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Rs. 1,14,394/- represents the total income from tea seeds. In fact, Rs. 14,179/- is the net income from tea seeds. This has been verified at the time of the assessment by the Agricultural Income Tax Officer. Hence, the question of adding back Rs. 1,14,394/- being the sale proceeds only in respect of sale of tea seeds etc. does not raise.

1.12 **OBSERVATIONS / RECOMMENDATIONS.**

The Committee observes that this is a very old case hence the Committee decided to drop the para.

Incorrect set off of loss
(Audit para 3.5/C&AG/1988-89/R/R)

1.13 The audit has pointed out that under the Assam Agricultural Income Tax Act, 1939, if an assessee sustains loss in any year, he is entitled to have the amount of loss set off against his income, profit or gain under any other item in the same year. If the loss cannot be set off in the same year, it may be carried forward and set off against the profits or gains from the agricultural income of the following year(s) subject to a maximum period of six years.

In the original agricultural income tax assessment (June 1983) for the years 1980-81 and 1981-82 in respect of an assessee of Dibrugarh district, losses were determined at Rs. 1.11 lakhs and Rs. 84,862 respectively. The assessments were, however, revised (July 1985) determining profit of Rs. 2,908 and Rs. 27,149 respectively for the aforementioned assessment years. But while assessing agricultural income of the assessee for the assessment year 1983-84, losses amounting to Rs.83,795 (Rs. 1,10,944 minus Rs.27,149 being income for the year 1981-82) and Rs. 84,862 relating to the assessment years 1980-81and 1981-82 were wrongly set off which resulted in short levy of Agriculture Income Tax of Rs.1.01 lakhs.

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1.14 The Department by their written replies have stated that in this case the assessment for 1983-84 has been revised on 07-03-90 as follows :

Net Agril. Income as per original order - Rs. 1,68,657.00
Less : Adjusted un-absorbed loss of - Rs. 1,68,657.00
Asstt. Year 1982-83 for Rs.2,88,479/- (A part thereof)

Net Agril. Income - Nil
Tax Payable - Nil

As such, there is no question of short levy of Agril. Income Tax and the mistake in adjustment of loss from assessment year 1981-82 and assessment year 1980-81 as pointed out by audit in the final analysis.

OBSERVATION / RECOMMENDATIONS.

1.15 The Committee satisfied with the reply of the departmental representatives and pleased to drop the para.

Irregular allowance of deduction on account of provision of gratuity
(Audit para 3.6/C&AG/1988-89 R/R)

1.16 The audit has pointed out that under the Assam Agricultural Income Tax Act, 1939 there is no provision for allowance of deduction from taxable income on account of 'provision for gratuity'.

In the case of two assesses of Dibrugarh district, while assessing agricultural income for the assessment years 1983-84 and 1986-87, 60 **percent** of the provision for gratuity amounting to Rs. 1.53 lakhs was allowed as deduction. The irregular allowance of deduction resulted in short-levy of tax of Rs. 91,010.

1.17 The Department by their written replies as well as oral deposition have stated that (a) in the case of this assessee, for the assessment year 1983-84, the assessee approached the Assam Board of Revenue against the

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suo-moto order of the Deputy Commissioner of Taxes, Assam for both the assessment year 1983-84 and 1984-85. The A.B.R. had remanded back the case to the Revisional Authority for fresh haring and disposal. In the mean time the Revisional Authority has passed an order by rejecting the claim of the petitioner. Necessary subsequent action will follow. And for the assessment 1986-87, the assessee was re-assessed on submission of C.C. of C.A.O. u/s 254 and 260 dt. 18.2.99, which had resulted in an excess payment of Rs. 53,820/-.

(b) In the case, the assessment was completed on 6.1.86 by the Agricultural Income Tax Officer. The Deputy Commissioner of Taxes, Guwahati vide suo-moto revisional order dt.23.10.90, disallowing the deduction against gratuity. The order of the Deputy Commissioner of Taxes, Guwahati was challenged by the assessee before the Hon'ble Board of Revenue, Assam. The Assam Board of Revenue vide his judgment dt. 17.1.98 upheld the suo-moto revision order passed by the Deputy Commissioner of Taxes, Guwahati. Accordingly, the Agricultural Income Tax Officer assessed the assessee for the assessment year 1983-84 on 14.6.2006 and a demand notice of Rs.95,982/- was issued.

Subsequently, an Arrear Certificate was issued [on 21.07.2008] to the S.T. (Recovery), Dibrugarh for an amount of Rs. 1,23,142/- (which includes up-to-date interest) for realization.

OBSERVATIONS / RECOMMENDATIONS.

1.18 (a)The Committee satisfied with the reply of departmental representatives and decided to drop the para.

(b)The Committee satisfied with the deposition of departmental witnesses and decided to drop the para.

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Short levy of tax due to allowance Of excess deduction
(Audit para 3.7/C&AG/1988-89 R/R)

1.19 The audit has pointed out that under the Assam Agricultural Income Tax Rules1939, any sum paid as bonus or commission to any employee for services rendered in connection with cultivation is an allowable deduction provided the amount of bonus or commission is reasonable, inter alia, with reference to (i) the pay of the employee and the conditions of his service and (ii) the assessee's income for the year in question. As per Section 10 of the Payment of Bonus Act, 1965 the maximum limit of payment of bonus is 20 **percent** of wages and salaries paid.

In Jorhat district, an assessee paid bonus amounting to Rs.99,632 in the previous year relevant to the assessment year 1986-87. While assessing (February 1987) the agricultural income, the amount was allowed in full as deduction instead of limiting it to the permissible amount of Rs. 27,308. The irregular allowance of excess deduction of bonus resulted in short levy of tax amounting to Rs. 37,608.

1.20 The Department by their written replies have stated that the case was examined in the list of Audit Objection. Total salary and wages were found as below :

(i)	Labour wages (cultivation and plucking)		- Rs. 6,03,470.63
(ii)	Salary and Wages		- Rs. 1,36,548.01
		Total	- Rs. 7,40,018.00
	Bonus paid	--	Rs. 99,632.00

The comes to 13.46%. In view of the above, it clear that bonus is paid within 20% limit of wages and salaries paid.

OBSERVATIONS / RECOMMENDATIONS.

1.21 The Committee is satisfied with reply of the departmental witnesses and decided to drop the para.

Contd....13/-

Payment of interest on delayed refund of tax.

(Audit para 3.8/C&AG/1988-89 R/R)

1.22 The audit has pointed out that section 39 (2) of the Assam Agricultural Income Tax Act, 1939 provides that if for reasons of delay a refund due to an assessee, is not made within 90 days of such refund becoming due, the State Government shall pay to such assessee simple interest at the rate of 6 percent per annum on the amount refundable. Under Section 39(3) refund becomes due on the date an application is made by an assessee claiming such refund. Rule 28 further provides that when an amount is due to an assessee by way of refund, the same may be set off against the sum due from him in respect of any other assessment year.

In Guwahati, on the basis of assessment order for the assessment year 1976-77, a refund of tax amounting to Rs. 2,63,277 became due to an assessee of Darrang district. Accordingly, the assessee applied (9th September 1980) for refund of tax with interest. But instead of making refund within the statutory period of 90 days the amount of tax so refundable was set off against thesum due from the assessee in respect of the assessment years 1977-78 to 1984-85, the assessments for which were completed during the period from 8.8.1984 to 8.4.1986. For the delay (ranging from 44 months to 64 months) in making refund or in adjustment of the amount refundable towards payment of tax due from the assessee in respect of subsequent assessment years, interest amounting to Rs.78,161 had to be paid to the assessee.

1.23 The Department by their written replies have stated that the delay in granting refund to the assessee had accrued due to the following reasons :

During the intervening period there was changes of officers, which also caused delay in considering the refund petition.

24 **OBSERVATIONS / RECOMMENDATIONS.**

The Committee decided to drop the para with the stricture that such delay should not be recurred in future.

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Short levy of tax due to allowance of excess deduction of donation.

(Audit para 3.9/C&AG/1988-89 R/R)

1.25 The audit has pointed out under the Assam Agricultural Income Tax Act,1939 and the rules made there under, a sum actually donated for charitable purposes is an allowable deduction, if such deduction is not more than Rs.1.00 lakh or 10 percent of the total agricultural income of the relevant assessment year, whichever is less. Donations beyond these limits are to be disallowed and treated as taxable income.

In the case of a tea company, the taxable agricultural income for the assessment year 1982-83 was determined at Rs.22.01 lakhs and assessed to tax by the Agricultural Income Tax Officer after allowing deduction of Rs. 1 lakh against the assessee's claim for deduction of Rs.33,280 actually donated by him for charitable purpose. The excess deduction allowed resulted in short levy of tax amounting to Rs.50,041.

1.26 The Department by their written replies have stated that the objection raised by the Audit was examined. After the completion of assessment on 19.09.86 under Agricultural Income Tax Act, 1939, the Central Asstt. Order was revised on 25.10.86 and again on 31.3.94 under Sections 203/143(3)/254. Accordingly, the assessment of Agricultural Income Tax Act, 1939 was revised on 03.10.96 where Agricultural income was determined at Rs.22,42,708/- So, as per the provision in the Section 8(2)(g) of Agricultural Income Tax Act, 1939 for allowance of donation, assessee is entitled to get relief of Rs. 1,00,000/- as deduction for donation paid (10% of the Income or Rs.1,00,000/-whichever is less). So, the assessment order dated 03.10.96 allowing donation to the tune of Rs. 1,00,000/- was correct.

1.27 **OBSERVATIONS / RECOMMENDATIONS.**

The Committee is not satisfied with the report submitted by the department and directed to furnish a fresh report to the A.G. for verification.

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Short levy of tax due to incorrect Computation of income
(Audit para 3.10/C&AG/1988-89 R/R)

1.28 The audit has pointed out that under Rule 8 of the Income Tax Rules, 1962, 40 **percent** of income of tea manufacturers is taxable under Income Tax Act and the balance 60 **percent** income as agricultural income. According to *judicial pronouncement the compensation paid by an insurance company for the damage caused to growing crops by hail storm is agricultural income and is exempt from tax under the Income Tax Act. Assessment of assesses cultivating and manufacturing tea is generally made after the completion of assessment by Income Tax Authorities.

In the case of an assessee of Sibsagar district, Agricultural Income Tax assessment was completed on the basis of the Central Income Tax assessment order, wherein 40 **percent** of total insurance claim amounting to Rs. 1.42 lakhs received by him during the accounting year 1977 was treated as business income. Agricultural Income Tax was assessed on the balance 60 percent of the total insurance claim received. The omission to include the entire amount of the insurance claim under total agricultural income of the assessee in the assessment year 1978-79 resulted in short levy of agricultural income tax by Rs. 39,616.

The Department contended (November 1989) that the agricultural income tax assessment was based on Central Income Tax assessment orders and hence 60 **percent** of the receipts on account of insurance claim was taken into account for the purpose of agricultural income tax assessment. The contention of the Department is not tenable in the light of the judicial decision cited above.

* C.I.T. West Bengal Vs. B. Gupta (Tea)Pvt. Ltd. 741 TR 337

Contd.....16/-

1.29 The Department by their written replies have stated that in the instant case, the receipt of hail-storm claim was treated as composite income by the Income Tax Authority for assessment. The amount of premium paid to effect insurance against loss or damage of crops was considered as a mixed expenditure by the Income Tax Authority and hence there was no irregularity in the apportionment made in the Central Assessment for taking hail storm claim as mixed income. In this connection, it can be mentioned that the Agricultural Income Tax Act does not provide for any add-back of income that has been computed by the Central Authority under provision of the Rule 5 of the Agricultural Income Tax Rules. The state authority has no dis-creation to reject the computation made by the Central Authority as has been held by the Hon'ble Supreme Court in the case of :

(i) Anglo American Direct Tea Trading Company Ltd.

-Vrs –

Commissioner of Agricultural Income Tax, Kerela
(1968) 69 ITR-667.

(ii) Tata Tea Ltd. Vs. State of West Bengal (1988) 173 ITR 18 (SC) where it was held that an Agricultural Income Tax Officer has no power to levy Agricultural Income Tax except in respect of 60% of the income derived by an assessee from the sale of tea grown and manufactured by him and computed in the manner laid down under the relevant Central Income Tax Act and the Rules framed there under.

1.30 **OBSERVATIONS / RECOMMENDATIONS.**

The Committee satisfied with the deposition of the departmental witnesses and decided to drop the para.

Contd....17/-

CHAPTER – II

Short levy of Tax and Interest

(Audit para 3.2/C&AG/1989-90 R/R)

1.1 The audit has pointed out that chapter IV of the Income Tax Act,1961 provided for special concessions in levy of tax to domestic companies engaged in export by way of deduction of a sum equal to one and one third times the expenditure incurred for development of export markets. No such provision for any weighted deduction in excess of actual expenditure has, however, been made in the Assam Agricultural Income Tax Act, 1939.

(a) In the Central Income Tax assessment, in respect of an assessee company, weighted deductions of Rs. 47.50 lakhs, Rs.33.24 lakhs, Rs.24.32 lakhs and Rs.15.64 lakhs , being one third of actual expenditure of Rs.142.50 lakhs, Rs. 99.72 lakhs, Rs.72.96 lakhs and Rs. 46.93 lakhs were allowed during the assessment years 1981-82, 1982-83, 1983-84 and 1984-85 respectively. As the benefit of weighted deductions on the amount of actual expenditure for increased export activity is not an allowable deduction under the Assam Agricultural Income Tax Act, 1939, 60 percent of the amount of such weighted deductions allowed by the Income Tax Officer in the Central Income tax assessment was to be added back to the agricultural income of the assessee for the purpose of computation of his assessable agricultural income. But this was not taken into account while making Agricultural Income Tax assessments for the aforementioned years. The omission resulted in short levy of tax and interest amounting to Rs. 83.85 lakhs.

On this being pointed out in audit, the department stated (April 1990) that under Rule 5 of the Assam Agricultural Income Tax Rules,1939, it was obligatory on the part of the Agricultural Income Tax Officer to accept the computation made under the Income Tax Act, 1961. The argument of the department is not tenable because as per proviso to Rule 5 of the Agriculture Income Tax Rules, 1939, the Assam Agricultural Income Tax Officer is

Contd.....18/-

entitled to refuse to accept the computation made by the Income Tax Officer on the basis of further examination of the books of accounts of the assessee by him. Moreover, there is no provision in the Assam Agricultural Income Tax Act,1939 for any allowance by way of weighted deduction.

(b) In the case of another assessee company, weighted deductions of Rs.1.86 lakhs on account of Export Market Development Allowance was allowed in Central Income Tax assessment during the assessment year 1983-84. While determining the agricultural income of the assessee for the said assessment year, the Agricultural Income Tax Officer omitted to add back to other income Rs.1.11 lakhs (being 60 percent of the weighted deduction of Rs. 1.86 lakhs) for the purpose of assessment. The omission resulted in short levy of tax amounting to Rs.83,482 and interest amounting to Rs.50,089 calculated up to March 1989. Further, interest is also payable up to the date of actual payment in full of the tax due.

1.2 The department by their written replies as well as oral deposition have stated that (a) in the instant case Audit Objection relates to allowance of weighted deduction during the assessment year 1981-82, 1983-84 and 1984-85 for Rs. 47.50 lacs, Rs. 33.24 lakhs, Rs.24.32 lacs and Rs. 15.64 lacs respectively. In this connection, it can be stated that in case of a cultivator, manufacturer and seller of tea in India, Indian Income Tax Rules, 1961 provide "Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business and forty percent of such income shall be deemed to be income liable to tax". The Assam Agricultural Income Tax Act, 1939, vide proviso to section 8 and Rules 5 of Rules framed under this Act says that "the portion of net income worked out under the Indian Income Tax Act left un-assessed as being agricultural shall be assessed under the Act". It can be mentioned herein that the income worked out under provision of Rule8 (i) of the Income Tax Rules is completed as if it is an income from profits and gain of business. Section 29 of the Indian Tax Act, 1961 provide that the income referred to in section 28 i.e. income from profit and gain from business shall be computed in accordance with the provisions contained in section 30 to 43 C. This means that the Indian Income Tax

Contd.....19/-

Authority will compute the income of a cultivator, manufacturer and seller of tea in accordance with the provision of section 29. Thereafter, the Income Tax Authority will apportion the income so computed in the ratio of 40% : 60% under Rule 8 (i) of the Income Tax Rule. The Assam Agricultural Income Tax Act empowers states authority only to assess the 60% of income so computed being un-assessed as Agricultural Income. So any deduction allowable within the ambit of ambit of section 30 to 43 C of the Income Tax Act by the central authority is within the jurisdiction of the central authority and is lawfully allowed.

The weighted deduction allowed by central authority in the instant case is allowable under the provision of section 35 B under the head "Export Market Development Allowance" and the same was legally allowed by the Central Authority. The State authority has no discretion to reopen and add back deduction lawfully allowed by the Central Authority. The legal position has been confirmed by the Hon'ble Supreme Court in the case of Anglo-American Direct Tea Trading Corporation Ltd., Vrs – Agricultural Income Tax Officer (1968) 69 ITR-667(S.C.) and recently in a judgment in the case of Tata Tea Ltd. - Vrs – State of West Bengal (1988) 173-ITR-18 (S.C.) wherein it was held that the Agricultural Income Tax Officer is bound to accept the computation already made by the Central Income Tax Authorities and to assess only 60% of the income so computed. It may further be mentioned that the Rule 5 of the A.A.I.T. 1939 has been struck down as ultra-vires by the Hon'ble Supreme Court of India in the case of M/s. Assam Co. Ltd. – Vrs - State of Assam & Ors. (248 ITR 567 SC).

(b) In the instant case audit objection to allowance of weighted deduction of Rs.1.86 lacs during the Assessment year 1983-84. In this case also the Income Tax Authority allowed to weighted as per provision of section 35B of the Income Tax Act, Under the head " Export Market Development Allowance". In the context of foregoing discussion in a similar case the State Authority cannot add back the said deduction lawfully allowed by the Income Tax Authority as the State Act has no such provision to add back any deduction allowed by the Central Authority.

Contd.....20/-

OBSERVATIONS / RECOMMENDATIONS.

1.3 During the course of examination the departmental representatives has stated that weighted deduction allowed by the central authority can not be added back for computation of agricultural income in the state act and moreover rule 5 of the AAIT Rule 1939 has been struck down as ultra-vires by Hon'ble Supreme Court of India (248 ITR 567 SC). The Committee satisfied with the departmental replies and pleased to drop the para.

Undercharge of tax due to short determination of agricultural income.

(Audit para 3.3/C&AG/1989-90 R/R)

1.4 The audit has pointed out that during the course of audit of an assessee tea Company of Dibrugarh, it was noticed (March 1989) that deductions of expenditure incurred as given below were allowed which were not admissible under the Agricultural Income Tax Act, 1939.

(a) Interest free loans were given bythe Company in the accounting years relevant to assessment years 1979-80 and 1982-83 to other firms and companies in which the Directors of the assessee company were interested as Director or partners or co-partners. As per the audit certificate furnished with the accounts, no effective steps had been taken to recover the amount of loan (Rs.20.18 lakhs) which ultimately became bad debts of the company and had to be written off. The deduction of the above bad debts was not an admissible expenditure.

(b) Interest amounting to Rs.22.99 lakhs was paid on loans taken from banks and other parties during the accounting years relevant to the assessment years 1979-80 to 1985-86. However, instead of utilizing the amount of loans for agricultural purposes of the company, the amounts were re-lent as interest free loans to non-agricultural institutions in which the Directors of the assessee company were substantially interested. The assessee was not, therefore, entitled to deductions of interest paid on the amount borrowed.

Contd....21/-

(c) Expenditure of Rs.44.587 incurred by the assessee company on new cultivation in the accounting year relevant to the assessment year 1985-86 was deducted from his total agricultural income at the time of assessment for that year. Expenditure on new cultivation being in the nature of capital expenditure, did not qualify for deduction from the total agriculture income of the assessee.

(d) The assessee company paid Rs. 13.46 lakhs as salaries and wages and Rs.3 lakhs as bonus to its employees during the accounting years relevant to the assessment years 1980-81 and 1981-82. Instead of restricting the expenditure on account of payment of bonus to Rs.2.69 lakhs (being 20 percent of the total wages and salaries paid) which was allowable as deduction, the entire amount of Rs.3 lakhs paid as bonus was allowed. This resulted in excess deductions amounting to Rs.30,711.

(e) Deductions of Rs.1.35 lakhs and Rs.51,646 made during the periods relevant to the assessment years 1984-85 and 1985-86 respectively on account of loss on sale of shares which was not an investment for agricultural purposes, was irregularly allowed in Agricultural Income Tax assessment in respect of the assessee company.

The irregular allowance of the deductions as mentioned above resulted in short levy of agricultural income tax amounting to Rs.32.82 lakhs. Besides tax, interest upto the date of actual deposit of tax due was also chargeable, but was not levied.

1.5 The department by their written replies have stated that as per audit objection, the deduction of bad debt was not an admissible expenditure. Besides interest paid no borrowed amounts, expenditure on new cultivation, payment of bonus and loss on shares are not admissible expenses shown by the assessee for computation of net income. The matter was referred to the Commissioner of Taxes for suo-moto revision, as the case was time barred. Commissioner of Taxes vide revisional order dated 17.09.93 declined to interfere with the order of the Agricultural Income Tax Officer for the assessment year 1979-80 to 1984-85 as he found all allowances made by the A.I.T.O. in the original assessments as legally allowable as per the Act.

Contd....22/-

OBSERVATIONS / RECOMMENDATIONS.

1.6 The department has stated before the Committee that the case was referred to the Commissioner of Taxes for suo-moto revision, but the COT decline to interfere with the order AITO. The Committee decided to drop the para.

Mistake in calculation of interest

(Audit para 3.4/C&AG/1989-90 R/R)

1.7 The audit has pointed out that under Section 20 C(3) of the Assam Agricultural Income Tax (Amendment) Act,1984 where the amount of tax paid on or before 31st day of March 1984 by or on behalf of any assessee under the Act in respect of any financial year falling during the period from 1st April 1967 to 31st March 1984 falls short of the amount of tax due from him in respect of such financial year, whether or not such tax has been assessed, the assessee shall be liable to pay simple interest on the amount of shortfall at the rate of 12 percent per annum until the tax is paid in full.

(a) In Guwahati, out of the assessed tax of Rs.54.55 lakhs for the assessment year 1984-85, an assessee paid (27th December 1984) tax amounting to Rs.34.11 lakhs. On the balance tax of Rs.20.44 lakhs due from the assessee, interest amounting to Rs.8.20 lakhs was chargeable at the rate of 12 percent per annum from 1st January 1985 to 4th May 1988 (i.e. up to the date of revised assessment) but interest amounting to Rs.1.78 lakhs only was calculated and charged by the assessing officer. The mistake in computation of interest resulted in short levy of interest amounting to Rs.6.42 lakhs. Further interest is also leviable up to the date of actual deposit of tax due.

(b) In three other cases at Guwahati, the assesses did not pay within the prescribed time limit tax dues in full relating to the assessment years 1976-77 to 1981-82.For non-payment or delayed payment of tax interest amounting to Rs.4.84 lakhs was leviable but was not levied.

Contd....23/-

On these cases being pointed out in audit (March 1989), the department intimated (April 1990) that interest had been levied and demand notices issued but the report on realization of interest has not been intimated (July 1991).

1.8 The department by their written replies have stated that (a) in the instant case a demand of Rs.20.44 lacs was raised, after a deduction disallowed by Agricultural Income Tax Officer was added back the same to the income computed by Central Income Tax Authority. The assessee disputed this action by the Agricultural Income Tax Officer before the Assistant Commissioner of Taxes (Appeal), Tinsukia. The Assistant Commissioner of Taxes (Appeal) in his order dated 18.11.88 held that the action of the Agricultural Income Tax Officer was erroneous in view of the provision of rule 5 of the Assam Agricultural Income Tax Rules. As the amount added back was treated by Central Authority to be 100% business income the same suffered double taxation both under Income Tax Act as well as Agricultural Income Tax Act. The Assistant Commissioner of Taxes (Appeal) opined that the Agricultural Income Tax Officer should obtain a clarification from the Central Authority before taking such action without obtaining prior permission under the proviso to Rule 5. Moreover the matter could not be finalized as no response was received from Central Income Tax Authority.

(b) The assesse was re-assessed on the basis of revised Central Assessment Order on 23.9.89 for the assessment year 1978-79 which resulted in excess payment of Rs.1,15,780/-. The demand of Rs. 34,592/- for the assessment year 1977-78 was adjusted on 05-12-1989 against the excess of assessment year 1978-79. And the demand dues of Rs.23,568/- of assessment year 1976-77 along with the interest of Rs14,486/- i.e. Rs.38,054/- was adjusted on 21.3.90, against the excess of assessment year 1978-79. In view of the above fact, the objection regarding levy of interest for non-payment of demand cease to exist.

Contd....24/-

(i) In another case the assessee sold the garden to another party in the year 1984. The assessee who sold out its garden in Assam has no other property in Assam. However, the assessee company is in existence having its head quarter at Kolkata. Even after sufficient inquiry and exercise made, the company had not paid the demand tax. Hence, interest under section 20C (3) was levied up-to 10.06.93 and Arrear Certificate was issued to Supdt. of Taxes (Recovery), Kamrup with a request to take up the matter of issuing inter-state Arrear Certificate through Deputy Commissioner, Kamrup.

The following are the amount of interest calculated up-to the date of issue of the certificate i.e. 10.06.93.

Asstt. Yrs.	Amount
1977-78	Rs. 28,151/-
1978-79	Rs. 1,13,857/-
1979-80	Rs. 2,22,692/-
1980-81	Rs. 17,488/-
1981-82	Rs. 16,593/-

The interest for assessment year 1976-77 was not leviable as the assessee had deposited the demand tax by 01.06.80 before the section 20C(3) came into force i.e. 01.04.84.

(ii) In yet another case interest under section 20C(3) as per Audit objection had been levied on assessment year 1976-77 to 1978-79. Total amount of interest Rs. 2,77,690/- had been realized in full vide :-

Challan No. & date	Amount.
27 dt.20.09.91	Rs. 30,000.00
32 dt.28.10.91	Rs. 16,012.00
32 dt.31.10.91	Rs. 30,000.00
33 dt.28.10.91	Rs. 14,000.00
38 dt.22.01.91	Rs. 30,510.00
2 dt.17.03.92	Rs. 30,000.00
22 dt.10.06.92	Rs. 30,000.00
6 dt.14.05.92	Rs. 38,510.00
12 dt.25.02.92	Rs. 30,000.00
37 dt.25.03.92	Rs. 29,168.00

The audit while making the objection calculated interest on the demand up-to the date of assessment only. But the same is leviable up-to the date of full payment. Hence, the difference.

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OBSERVATIONS / RECOMMENDATIONS.

1.9 (a) The Committee heard the Departmental representatives and observes that since the case is 20 years old and the AITO did not get any response from the central income tax authority. The Committee expresses its concern and hopes that it should not be recurred in future. With this recommendation the Committee decided to drop the para.

(b) (i) The department deposed before the Committee that assessee was reassessed on the basis of revised central assessment order dated 23.9.1989 for assessment year 1978-79 which resulted in excess payment of Rs.115780/- which was adjusted for assessment year1976-77, 1977-78, and 1978-79. In view of the departmental reply, the Committee decided to drop the para.

(b)(ii) The department stated that the arrear certificate was issued to ST (Recovery). Secondly, a total interest of Rs. 277690/- had been realised in full upto 25-3-1992. The Committee satisfied with the replies and decided to drop both the paras.

Omission to assess agricultural income

(Audit para 3.5/C&AG/1989-90 R/R)

1.10 The audit has pointed out that under the Income Tax Act, 1961, an assessee was assessed for the assessment year 1981-82 at a loss of Rs.46.59 lakhs, leaving the net income of Rs.1.62 lakhs for that year for being assessed as agricultural income. While assessing the agricultural income of the assessee for the assessment year 1981-82, the Agricultural Income Tax Officer omitted to adjust the income of Rs. 1.62 lakhs against the net loss for that year determined at Rs. 27.25 lakhs. This resulted in excess carry forward of loss to the extent of Rs. 1.62 lakhs.

Contd...26/-

For the assessment year 1984-85, the Income Tax Officer, instead of adding back the total expenditure of Rs. 5 lakhs in respect of assessment under Central Income Tax Act, wrongly deducted the same from the total income of the assessee which resulted in short assessment of income by Rs. 10 lakhs (i.e.double the amount of expenditure). In the revised Central Assessment, the Income Tax Officer added the expenditure of Rs. 5 lakhs only instead of Rs. 10 lakhs, based on which, the Agricultural Income Tax Officer also revised, the assessment leading to corresponding short assessment of agricultural income tax. Further, the Agricultural Income Tax Officer omitted to include net income amounting to Rs.58.429 under the 'Grow-More-Food Scheme' (which was entirely assessable as agricultural income), in the total income of the assessee for the purpose of assessment for the assessment year 1984-85. The mistake in both the Central Income Tax and Agricultural Income Tax assessment orders resulted in undercharge of tax and interest amounting to Rs.5.99 lakhs. Further, interest would be chargeable until the tax due is paid in full.

1.11 The department by their written replies have stated that it has been found on scrutiny of the records that the general head 'Grow More Food' includes only income from sale of Citronella Oil. There were no other items like paddy, etc., income from which are shown under the head.

In the instant case during assessment year 1981-82 Income Tax Authority completed the composite income by excluding the income from Grow More Food as under-

Income out of GMF	---	Rs. 5,25,178/-
Less : Total expenditure on this account	---	Rs. 3,63,545/-
Net income from GMF	---	Rs. 1,61,633/-

But the Income Tax Authority calculated this income separately showing income from Citronella Oil made out of own production at Rs. 1,18,153/- and that of income from Citronella Oil out of purchased grass at Rs. 19,249/- after considering deduction on account of depreciation assets and some other agricultural assets.

Contd....27/-

In the final computation also these deductions were included within the head 'depreciation' 'investment allowance' E.S.A. etc. for Rs.16,88,639/- is not the real income to be considered as pure agricultural income because income out of purchased grass is 100% business income and 40% of income out of own production is also purely business income. This accounted for Rs.19,249/- (Rs. 6,670/- minus Rs. 47,421/-)that has been added by the Income Tax Authority as 100% business income. Hence, we are left with 60% of Rs.1,18,153/- i.e. Rs.70,892/- to be added back as purely Agricultural Income.

The Agricultural Income Tax Officer has completed the assessment on the basis of the certified copy of Central Assessment Order under section 251 as follows :

100% composite loss determined in C.A.O.	Rs.	46,59,470.00
60% thereof agricultural loss	-- Rs.	27,95,682.00
Profit from Citronella Oil	-- Rs.	70,892.00
		27,24,790.00

So the question of adding back entire profit of Rs. 1,61,633/- as pointed out by audit does not arise. Hence, there is no excess carry forward loss from assessment year 1981-82.

In the assessment year 1984-85 the following were noticed.

(1) The Income Tax Authority vide Central Assessment Order under section 143(3) had deducted both the income and expenditure in respect of GMF from the income as per profit and loss account of the assessee and finally arrived at 100% composite income of Rs.1,43,82,729/-

(2) The Income Tax Authority in the subsequent revised order under section 251 had added back 40% of the expenditure on account of GMF to the income so computed vide earlier Central Assessment Order.

This resulted in exclusion of entire income of GMF from the final composite income. This is because Tax Authority made a mistake by not adding back twice the expenditure amount, which was earlier, deducted by mistake. The position therefore remained the same.

Contd...28/-

Hence, as pointed out by audit the assessment was completed as shown below. However, in this case also income from GMF as pointed out by audit from Rs. 58,429/- is not pure agriculture income to be added back since the income from citronella oil included in the GMF contain both income from own grass as well as purchased grass.

Details of assessment :-			
100% income as per CC of CAO	--	Rs.	1,43,82,729.00
Add:			
Rectification of error as discussed above	--	Rs.	9,99,382.00
	Total –	Rs.	1,53,832,111.00
60% thereof Agricultural Income	--	Rs.	92,29,267.00
Add:			
60%investment allowance (Rs.30,875/-)	--	Rs.	21,523.00
60% of Rs. 66,364/- in respect of GMF (Citronella Oil) --	--	Rs.	39,818.00
		Rs.	92,87,610.00
Less :			
60% of Dev. Allowance – Rs. 3,39,793.00 and investment allowance of --		Rs.	3,83,876.00
Agril. Income detd.	--	Rs.	89,03,734.00
Less :			
Loss of earlier years as per original Assessment order	--	Rs.	78,82,627.00
Net Agril. Income	--	Rs.	10,21,107.00
Tax assessed @ 75%	--	Rs.	7,65,830.00
Less :			
Tax Paid	--	Rs.	6,38,018.00
Balance due	--	Rs.	1,27,812.00
Interest levied	--	Rs.	2,05,906.00
Total amount due	--	Rs.	3,33,710.00

The above demand was realized vide challan No. 8 dtd. 23.08.;1993.

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OBSERVATIONS / RECOMMENDATIONS.

1.12 During the course of discussion the department has stated that the AITO completed the assessment on the basis of certified copy of the central assessment order and levid the following :-

Total tax assessed	--	Rs. 769830	
Less tax paid	--	Rs. 638018	
Balance due	--	Rs. 127812	
Interest levid	--	Rs. 205903	
Total dues	--	Rs. 333710	
Less paid	--	Rs. 333710	vide T.C. No.8 dated 23.08.93.

The committee satisfied with the replies of the departmental representatives and pleased to drop the para.

Incorrect determination of agricultural income.

(Audit para 3.6/C&AG/1989-90 R/R)

1.13 The audit has pointed out that under the Assam Agricultural Income Tax Rules,1939, any sum paid as bonus or commission to any employee for services rendered in connection with cultivation is an allowable deduction provided the amount of the bonus or commission is reasonable, inter-alia, with reference to : (i) the pay of the employee and the conditions of his service and (ii) the assessee's income for the year in question.

An assessee tea company of Dibrugarh district exhibited in his accounts a liability of Rs. 1.51 lakhs in the accounting year 1985-86 for payment of bonus to his employees. The assessee had not paid any bonus during that year. While determining the income of the assessee for the relevant assssment year 1986-87, the sum which was shown as liability on account of bonus payment in his account but was actually not paid as such, was required to be added back to the total income of the assessee in respect of the accounting year 1985-86. However, this was not done by the assessing officer. Failure to add back the sum of Rs.1.51 lakhs to arrive at the assessable income of the assessee resulted in short levy of tax amounting to Rs. 1.33 lakhs. In addition, interest up to the actual date of deposit of tax due was also leviable.

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On this being pointed out in audit (March 1989) the department stated (April 1990) that bonus was provided for Rs. 1.51 lakhs for the financial year 1985-86 which was required to be disbursed during the ensuing puja and as such it was shown under the head "Current Liability". The contention of the assessing officer is not acceptable as no bonus was paid during that year.

1.14 The department by their written replies have stated that as per provisions of the Bonus Act,1965, an assessee has to make provisions for bonus for the according year. Hence, the assessee is bound to make provisions for such "Current liability" in a mercantile system of accounting.

In the Assam Agricultural Income Tax Act, 1939 there is no specific provisions to allow deduction on account of payment of bonus. But since such payment of bonus is a liability under an enactment in force i.e. the payment of Bonus Act, 1965 this deduction is allowable under the general provisions covered by section 8(2) (f)(vii) which says that "any expenditure (not being in the nature of capital expenditure) laid out or expended wholly or exclusively. It is, therefore, clear that the bonus payable, laid out, as a current liability is an allowable deduction. However, the Rule 2 (2)(IV) speaks of bonus paid as an allowable deduction. But the Rule does not put any compulsion in payment of bonus during the accounting year itself for claiming deduction similarly as has been done in the case of Indian Income Tax Act, 1962. As a matter of fact, the Agricultural Income Tax Officer while completing the assessment ascertain whether the current liability displayed in the account in the head of 'Bonus' had actually been paid or disbursed or not. In the instant case, it had been examined and found that the bonus provided for amounting to Rs. 1,51,000/- had actually been paid during the assessment year i.e. during the month of October,1986, during the Puja before submission of its return. It is a normal practice followed by the most of the tea gardens in Assam to disburse the bonus during the said occasion. The assessment for the assessment year 1986-87 had been completed in the

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month of March, 1987 after the payment of bonus was already made. In this connection, it may be pointed out that the Hon'ble Supreme Court in the case of J. Dalmia Vs. (1964) 53 Income Tax report-83, 90 (Supreme Court) has interpreted the work 'paid' as under:

"The expression 'paid' does not contemplate actual receipt by the recipient. An item is said be paid when a person discharges its liability and makes the same available to the other person entitled to, unconditionally".

OBSERVATIONS / RECOMMENDATIONS.

1.15 The department during the course of discussion has stated that, in the instant case, the AITO examined and found that bonus amounting to Rs. 151000/- had actually been paid during the assessment year 1986-87. The Committee, satisfied that as per audit objection. The department had taken up the measures and hence decided to drop the para.

Revenue Forgone

(Audit para 3.7/C&AG/1989-90 R/R)

1.16 The audit has pointed out that under the Assam Agricultural Income Tax Act,1939 and the rules framed thereunder, in respect of agricultural income from tea grown and manufactured by the seller in the State of Assam, the portion of net income worked out under the Indian Income Tax Act and left unassessed as being agricultural income shall be assessed under the Assam Agricultural Income Tax Act, after allowing such admissible deductions as have not been allowed under the Indian Income Tax Act in computing the net income from the entire operation provided that the computation made by the Income Tax Officer shall ordinarily be accepted by the Agricultural Income Tax Officer who may, for his satisfaction under Section 20 of the Act ibid, obtain further details from the assessee or from the Income Tax Officer. Under

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sub-section (1) of section 27 of the Act, the Commissioner may call for and examine the records of any proceedings under this Act, if he considers that any order passed therein by any authority appointed under section 18 other than himself is erroneous in so far as it is prejudicial to the interest of revenue, and he may pass order thereon including an order enhancing or modifying/canceling the assessment and directing a fresh assessment.

An assessee of Dibrugarh district, engaged in cultivation, manufacture and sale of tea, received rebate (Rs.1.93 lakhs) of Central Excise Duty in the accounting year, relevant to the assessment year 1979-80. Instead of apportioning the amount of rebate between agricultural income and business income in the ratio of 60 and 40 percent. Income Tax Officer from computation of composite taxable income of the assessee. On the basis of the Central Income Tax assessment order, the assessee's income of Rs. 1.62 lakhs (being 60 percent of total income of Rs. 2.70 lakhs) was determined and assessed to agricultural income tax (April 1984). Subsequently, the omission to include the amount of rebate was noticed by the Agricultural Income Tax Officer and the assessment was revised (May 1987) levying tax and interest amounting to Rs. 1.30 lakhs. On appeal by the assessee against the revised assessment order, the Appellate Authority upheld (July 1988) the original assessment of April 1984 and set aside the revised assessment of May 1987 on the ground that the revised assessment was not based on the central Income Tax assessment order. Even though the above order was prejudicial to revenue, no action was taken to review the decision under the powers vested in the Commissioner under Section 27.

On this being pointed out in audit (June 1989), the department stated (April 1990) that the objection was against the order of the Assistant Commissioner of Taxes (Appeals) and so, they had no comments. The stand taken by the department is not tenable in view of the fact that non-exercise of the powers vested in the Commissioner of Taxes under Section 27 of the Act had resulted in foregoing of revenue to the extent of Rs. 1.30 lakhs.

Contd....33/-

1.17 The department by their written replies have stated that the Original Assessment Order dt. 18.8.84 was rectified on 28.5.87 in the light of the objection raised by audit, determining tax payable of Rs. 1,30,408/-. But being aggrieved, the assessee preferred appeal before Appellate Authority and the appellate authority passed order on 20.7.88 mollifying the A.O. dt. 28.5.87 and a result of which original A.O. dt.18.8.89 stood valid. The demand dues of Rs. 993/- as per A.O. dt. 18.8.84, was deposited vide challan. The Addl. C.T. vide order dt. 08.12.97 said that this is no a fit case for suo-moto revision and accorded sanction to apply Rule 5 of the Assam Agricultural Income Tax, 1939. After initiating further proceedings as required in Rule 5 the AITO came to conclusion, after going through the various connected issues, that the 60% of C.E. rebate received happens to be purely considerable only under the Income Tax Act, 1961 and not under the AAIT Act, 1939. In this connection, order of the Hon'ble Supreme Court of India in Civil Appeal No. 5047 of 1996, dated 21st March 2001 is referred to where in the provision in Rule 5 of AAIT. Rules 1939 has been struck down as ultra-vires.

OBSERVATIONS / RECOMMENDATIONS :

1.18 The department has stated that in the light of audit objections the A.ITO rectified the assessment order and demand raised for Rs. 130408/-. The assesee preferred application before appellate authority and AA nullificd the assessment order of AITO. Since the Central assessment agency also agreed, the Committee therefore decided to drop the para.

Contd....34/-

Mistake in computation of Tax

(Audit para 3.8/C&AG/1989-90 R/R)

1.19 The audit has pointed out that under the Assam Finance Act,1982 the tax on the whole of agricultural income for the assessment year 1982-83 is leviable at the rate of 65 paise per rupee in the case of a company the total income of which exceeds Rs. 1 lakh but does not exceed Rs. 2 lakhs, provided that the tax so calculated shall not exceed the difference between the total agricultural income and an amount of Rs. 48,000 increased by one percent of the excess of the total agricultural income over Rs. 1 lakh.

In Guwahati, in the case of a Tea Company, total agricultural income for the assessment year 1982-83 was determined (January 1986) at Rs. 1,89,079 on the basis of Central Assessment Order and tax amounting to Rs. 48,891 was calculated and levied based on the above proviso, but without taking into account the prescribed rate of 65 percent, computed at which rate, the total tax chargeable on the whole of agricultural income amounted to Rs. 1.23 lakhs which is less that the limit of Rs. 1,40,188 (i.e. Rs. 1,89,079 – Rs. 48,891). The mistake resulted in under assessment of tax by rs. 59,835/-. However, the assessee, suo-moto, paid tax amounting to Rs. 63,066 against the assessed tax of Rs. 48,891 and consequently the balance tax due from him came to Rs. 59,835. Interest was also chargeable thereon upto the actual deposit of tax due.

1.20 The department by their written replies have stated that the assessment was rectified on the basis of Audit Objection and an additional demand with interest for Rs.1,45,674/- has been raised. But subsequently, the assessment had to be revised consequent upon revised Central Assessment Order under section 251 reducing the total demand with interest to Rs. 28,377/- The same was realized vide challan No. 21 dated 28.03.90.

Contd.....35/-

OBSERVATIONS / RECOMMENDATIONS :

1.21 During the course of discussion, the department has stated that the assessment had been rectified and an additional amount of Rs. 1,45,674/- raised. But subsequently the assessment was revised consequent upon revised central assessment order and levied interest of Rs. 28,377/- which was realized vide T.C. No.21 dated 28.03.1990. The department had accepted the A.G's objection and measures had been taken later accordingly. The Committee has satisfied with the reply and hence decided to drop the para.

Omission to take agricultural income into computation

(Audit para 3.9/C&AG/1989-90 R/R)

1.22 The Audit has pointed out that under the Assam Agricultural Income Tax Act,1939, any income derived by a cultivator or receiver of rent-in-kind by the sale of the produce raised or received by him from land used for agricultural purposes is agricultural income, provided no process has been performed in respect of the produce other than the process ordinarily employed to render the produce fit to be taken to market. Income from such agricultural operation is, therefore, wholly chargeable to agricultural income tax.

In the case of a tea company, exclusive agricultural income amounting to Rs. 16,550 derived by the assessee by sale of green tea leaves was omitted from the assessment of agricultural income tax for the assessment year 1985-86. This resulted in short levy of tax and interest, calculated up to March 1989, amounting to Rs. 32,176. Further interest is also leviable up to actual date of full payment of tax due.

1.23 The department by their written replies have stated that in the instant case, the assessment was rectified as per audit objection by adding back the 100% Agricultural Income from sale of green leaf of Rs. 16,500/- and a demand of Rs. 27,444/- comprising of tax and interest has been raised which was paid vide challan No.22 dated 06.12.90.

Contd.....36/-

OBSERVATIONS /RECOMMENDATIONS :

1.24 During the course of discussion, the department informed the Committee that the assessment was rectified as pointed by the audit and demand was raised for Rs. 27,444/- which was paid by the assessee vide T.C. No. 22 dated 06.12.1990. The Committee satisfied with the reply submitted by the department and pleased to drop the para.

Annexure-'A'

COMPOSITION OF THE OUT GOING SUB-COMMITTEE

(2006-2008)

Convener :

1. Shri Parimal Suklabaidya

Members :

2. Shri Abdul Khaleque
3. Shri Phani Bhusan Choudhury
4. Smti Kamali Basumatary
5. Shri Jagat Sing Engti
6. Shri Anwarul Hoque

Annexure-'B'

COMPOSITION OF THE OUT GOING COMMITTEE

(2006-2008)

Chairman:

1. Shri Brindaban Goswami

Members:

2. Shri Sarat Borkotoky
3. Shri Rameswar Dhanowar
4. Shri Gobinda Chandra Langthasa
5. Shri Abdul Khaleque
6. Shri Rajib Lochan Pegu
7. Shri Padma Hazarika
8. Shri Phani Bhusan Choudhury
9. Smti Kamali Basumatari
10. Shri Parimal Sukla Baidya
11. Shri Jagat Singh Engti
12. Shri Anwarul Hoque

A.G(Mini) P.-96/09-300.