



FIFTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE

ON

**PUBLIC UNDERTAKINGS
(2023-26)**

✓
.....15th..... **REPORT**

(Presented on ..01.02.2024.)

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM**

2024

FIFTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE

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(2023-26)**

.....15th.....REPORT

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**The action taken by Government on the Recommendations contained in the
Sixty Fifth Report of the Committee on Public Undertakings (2016-19)
relating to Kerala State Financial Enterprises Limited based on the
Report of the Comptroller and Auditor General of India
for the year ended 31st march 2015**

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COMMITTEE ON PUBLIC UNDERTAKINGS (2023-26)

COMPOSITION

Chairman:

Shri E. Chandrasekharan

Members:

Shri A.P. Anilkumar

Shri Anwar Sadath

Shri Ahammed Devarkovil*

Shri T. V. Ibrahim

Shri P. Mammikutty

Shri K. P. Mohanan

Shri D. K. Murali

Shri P. Nandakumar

Shri Kadakampally Surendran

Shri P. Ubaidulla

Legislature Secretariat:

Shri Shaji C Baby, Secretary in charge

Shri Venugopal R, Joint Secretary

Smt. Jayasree. M, Deputy Secretary

Shri Mohanan. O, Under Secretary

* In the vacancy of Shri. K.B Ganesh Kumar sworn in as Transport Minister w.e.f. 16-01-2024

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2023-26) having been authorised by the Committee to present the Report on their behalf, present this ..15th..... Report on the Action Taken by Government on the Recommendations contained in the Sixty Fifth Report of the Committee on Public Undertakings (2016-19) relating to Kerala State Financial Enterprises Limited based on the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2015.

The Statement of Action Taken by the Government included in this Report was considered by the Committee at its meeting held on 21.12.2021 and 11.4.2023.

This Report was considered and approved by the Committee at its meeting held on 26.08.2023.

The Committee place on record their appreciation for the assistance rendered to them by the Accountant General (Audit), Kerala who was present during the examination of the Action Taken Statements included in this Report.

Thiruvananthapuram,
..01..02..2024


E. CHANDRASEKHARAN
Chairman,
Committee on Public Undertakings.

REPORT

This Report deals with the action taken by the Government on the recommendations contained in the Sixty Fifth Report of the Committee on Public Undertakings (2016-19) relating to Kerala State Financial Enterprises Limited based on the Report of the Comptroller and Auditor General of India for the year ended 31st March 2015.

The Sixty Fifth Report of the Committee on Public Undertakings (2016-19) was presented to the House on 22nd March 2018. The Report contained seven recommendations and the Government furnished replies to these recommendations.

The Committee (2021-23) considered the replies received from the Government at its meeting held on 21.12.2021 and 11.04.2023.

The Committee accepted the replies to the recommendations in Para Nos. 7, 10, 11, 12 and 13 without remarks. These recommendation and the replies furnished by the Government form Chapter I of this Report.

The Committee accepted the replies to the recommendation in Para No. 8 and 9 with remarks. These recommendations, the replies furnished by the Government and remarks of the Committee form Chapter II of this Report.

CHAPTER - I

REPLIES FURNISHED BY THE GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE WHICH HAVE BEEN ACCEPTED BY THE COMMITTEE WITHOUT REMARKS

Sl. No.	Para No.	Department Concerned	Conclusions/Recommendations	Action Taken by the Government
(1)	(2)	(3)	(4)	(5)
1	7	Taxes	The Committee wants to be furnished with an authentic explanation regarding the huge variation in the advance tax calculation in the years 2011-12 and 2012-13.	Section 209(1)(a) of the Income Tax Act 1961 stipulates that for the purpose of payment of advance tax, the assessee shall first estimate his current income. As per G.O.(MS)No.95/08/TD dated 08.05.2008, Company has to submit its annual budget to the Government for approval. The Estimated profit as per approved budget (as approved by Government)of the Company is considered as the base for payment of advance tax. The annual budget of the Company shows budgeted profits of Rs.44.52 crores and Rs.62.07 crores for the FY 2011-12 & 2012-13 respectively. However, on the basis of subsequent information/figures received, the said estimates were revised and estimated profits

				<p>of Rs.58.53 crores and Rs.120 crores were considered for computation of advance tax for the FY 2011-12 and 2012-13 respectively.</p> <p>The profits considered for payment of advance tax is the budgeted profits as per Government approved annual budget of the company, suitably revised based on subsequent information received. Usually advance tax is paid in 4 installments during a financial year.</p> <p>Original & revised IT returns for the FY 2011-12 were filed on 28.09.2012 and 24.02.2014 respectively. Whereas Original & revised IT returns for FY 2012-13 were filed on 30.09.2013 and 31.03.2015 respectively. Variations were there in profits as per estimated and audited accounts which resulted in variation in tax amount. Inordinate delay in completion of audit of accounts also resulted in delayed filing of IT returns and in turn resulted in interest being levied under Section 234 for a longer period of time.</p> <p>Tax liability arrived as per Original IT returns were based on estimated / revised profits of the</p>
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				<p>Company computed in accordance with Government approved budget, as subsequently revised, based on information received from branches/ROs/HO. Difficulties in obtaining timely data from over 400 branches skewed throughout the State owing to various factors viz. Nonsynchronized operations of different wings of the Company, non-computerization of branch operations resulting in absence of integrated real time information system etc in turn seriously hampered the timely revision of estimates. Also difficulty arose in projecting estimated income due to the peculiar nature of Company's main business i.e. chitty. It is pertinent to note that these aforesaid difficulties were highlighted before various authorities/forums by the Company on numerous occasions and the same were accepted.</p>
2.	10	Taxes	<p>The Committee recommends that the KSFE authorities should not repeat the instances of non-payment of required amount of advance tax in due date and to avoid payment of interest due to default in payment of advance tax in future.</p>	<p>Noted for future guidance. Company is taking all efforts to prepare its annual budget after collecting relevant data from various departments, branches and Ros. Considering the dynamics of chitty it becomes difficult to make exact estimation with regard to income from chit</p>

				<p>operations after factoring in probable default. Similarly a Company with social commitments, at times, many waiver/ benefit schemes not originally envisaged in the budget needs to be rolled out. Thus exact estimation of income, to a large extent becomes extremely difficult. However, to overcome this, Company had made available online facility to the branches to submit their estimated profit and loss account on periodical basis so as to have a more realistic revision of estimated/budgeted profits. Roll out of Core software is also expected to expedite the audit process and delay faced in filing of IT returns be minimized. Core Banking software is expected to assist branches in ascertaining their profit/loss figure and thereby minimizing the variance levels between estimates and actual. These steps are expected to go a long way in bringing down the gap between taxable income computed for advance tax purpose vis-a-vis profits as per audited accounts.</p>
3.	11	Taxes	The Committee wants KSFE to furnish a detail report on the payment of defaulted amount of	Interest paid u/s 234B & 234C by the Company for the last few years is tabulated below-

			advance tax interest under section 234B&C of The Income Tax Act, 1961, and the details of progress made by the KSFE in implementing the rectification measures to avoid payment of interest on Advance Tax	<table border="1"> <thead> <tr> <th>FY</th> <th>234B</th> <th>234C</th> <th>Refund due on account of excess advance tax paid</th> </tr> </thead> <tbody> <tr> <td>2012-13</td> <td>94,46,232</td> <td>1,25,65,325</td> <td></td> </tr> <tr> <td>2013-14</td> <td></td> <td>1,27,42,747</td> <td></td> </tr> <tr> <td>2014-15</td> <td></td> <td>27,43,853</td> <td></td> </tr> <tr> <td>2015-16</td> <td></td> <td></td> <td>22,62,05,520 (IT returns already filed & Assessment not yet over)</td> </tr> <tr> <td>2016-17</td> <td></td> <td></td> <td>88,39,38,600 (IT returns already filed & Assessment not yet over)</td> </tr> </tbody> </table>	FY	234B	234C	Refund due on account of excess advance tax paid	2012-13	94,46,232	1,25,65,325		2013-14		1,27,42,747		2014-15		27,43,853		2015-16			22,62,05,520 (IT returns already filed & Assessment not yet over)	2016-17			88,39,38,600 (IT returns already filed & Assessment not yet over)
FY	234B	234C	Refund due on account of excess advance tax paid																									
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4	12	Taxes	The Committee recommends that KSFE should maintain the accounts promptly in order to avoid penal interest for delayed tax payment.	Core Banking software (CASBA) has been rolled out during the FY 2016-17 and in the following year, the Company was able to complete finalization of accounts at an early date. The roll out has its desired effect as accounts for the FY 2017-18 i.e. year ended 31.03.2018 is almost finalized and the Company will be in position to file its IT returns before the due date on the basis audited accounts. As CASBA has stabilized and performing satisfactorily, Company do not foresee problem in finalizing the accounts in a time bound manner.																								

5	13	Taxes	<p>The Committee recommends to improve the existing financial management in KSFE in more effective manner.</p>	<p>Existing financial management in the company has been improved by effectively streamlining supervisory functionalities. A Manger has been posted additionally in the Department exclusively for handing audit related activities and coordinating activities at branches/ROs/HO and auditors with regard to statutory audit. This has resulted in strengthening supervisory effectiveness leading to optimal utilization of resources in support of overall financial management. Similarly, Company has also inducted one more leading Chartered Accountant firm M/s Cheeran Varghese & Co, in addition to M/s Varma & Varma, Chartered Accountants as the tax consultant for speedy disposal of pending IT cases. In the restructuring proposal, one exclusive position in the cadre of AGM is being created for taking care of taxation matters. Similarly a qualified Chartered Accountant will also be appointed as Senior Manager to take care of treasury operations. All these will help the Company in improving its financial management in an efficient manner.</p>
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CHAPTER - II

REPLIES FURNISHED BY THE GOVERNMENT ON THE RECOMMENDATIONS OF THE COMMITTEE WHICH HAVE BEEN ACCEPTED BY THE COMMITTEE WITH REMARKS

Sl. No.	Para No.	Department Concerned	Conclusions/Recommendations	Action Taken by the Government
(1)	(2)	(3)	(4)	(5)
1	8	Taxes	The Committee recommends to fix responsibility for the loss sustained by the KSFE and impose penalty from the erring officials for violating provisions of the Income Tax Act, 1961.	<p>No monetary loss had been inflicted upon the Company and the ground realities prevalent in the Company at the point of time which resulted in non remittance of at least 90 percent advance tax.</p> <p>i. Section 234B and 234C of the Income Tax Act pertain to interest on shortfall in payment of advance tax. There are numerous decisions of Hon'ble Supreme Court and various High Courts wherein it had been categorically upheld that such interest is compensatory and not penal in nature. Some citing are judgment in CIT vs Anjum Ghaswala 252 ITRI <i>Supreme Court</i>, Dr. S. Reddappa and Ors vs Union of India and Ors- <i>Karnataka High Court</i> 31.01.1997, Union Home Products Ltd vs Union of India and another- <i>Karnataka HC</i> 24/02/1995, Raju Bhojwani vs</p>

CCIT-Delhi HC 09/09/2011, Tuticorin Vegetable Marketing vs ITO-Madras HC 24/09/1999, CIT vs Kotak Mahindra Finance Ltd-Mumbai HC 30/04/2003, Rajashri Productions Private Ltd vs Add. CIT-Income Tax Appellate Tribunal Mumbai 13/11/2013 etc.

ii. No monetary loss had been inflicted upon the Company on account of payment of interest u/s 234B and 234C as the said interest is compensatory and not penal in nature. Company had not sustained any monetary loss on account of shortfall in payment of advance tax and resultant interest paid u/s 234B & 234C as the said shortfall had been profitably redeployed and earned interest at higher rate.

Interest @12% p.a. is paid under Section 234B & 234C whereas average yield on lending schemes of the Company during that period was about 13-14%p.a.

iii. Budget of the Company for the said years were duly approved by the Government and estimated profit as per the approved budget of the Company, as subsequently revised, based on information received from branches/ ROs/HO were considered as the base for payment of

				<p>advance tax. It may be noted that as per Section 209(1)(a) of the Income Tax Act 1961, assessee has to first <i>estimate</i> his current income for the purpose of payment of advance tax.</p> <p>iv. Company has to submit its annual budget to the Government for its approval and budget for said years as recommended by Board were duly furnished to Government for approval. It may be noted that budget proposal of the Company is prepared on the basis of data collected from its various branches and different departments. After detailed discussions, Board of Directors of the Company approves annual budget and the same is then furnished to Government for its approval. Budget for the aforesaid financial years, forwarded on the aforesaid lines were duly approved by the Government.</p> <p>v. Estimated profits of the Company for FY 2010-11 & 2011-12 as per the budget approved by the Government & the estimated profit considered for paying advance tax based as per Government approved budget and as revised from time to time based on information received from branches/ ROs/HO is tabulated hereunder-</p>
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Financial Year	Estimated profits as per Government approved budget (in crores)	Estimated profit actually considered for payment of advance tax (Based on budgeted profit, as revised based on information received from branches/ROs/HO) (In crores)
2010-11	40.49	45.00
2011-12	44.52	58.53

vi. Thus it is evident that due process was followed for arriving at the estimated profit to ascertain advance tax payable. All efforts were taken to ensure that profits considered for payment of advance tax i.e. estimated profits as per Government approved budget was suitably revised based on information/details obtained subsequently during the year so as to arrive at revised estimated profits for the year.

vii. Difficulties in obtaining timely data from a vast network of branches skewed through out the State owing to various factors viz. non-synchronized operations of different wings of the Company, non-computerization of branch

				<p>operations resulting in absence of integrated real time information system etc in turn seriously hampered the timely revision of estimates. Also difficulty arises in projecting estimated income due to the peculiar nature of Company's main business i.e. chitty. It is pertinent to note that these aforesaid difficulties were highlighted before various authorities/forums by the Company on numerous occasions and the same were accepted by them.</p> <p>viii. It is also pertinent to note that the difficulties faced by the Company in obtaining timely information from various branches in non-computerized environment and resultant problems hampering revision of estimates on timely basis was already brought to the attention of Dy. Accountant General, O/o Principal AG, Tvm vide letter of the Company dated-02.06.2012</p> <p>ix. From the aforesaid facts, it is evident that proper procedure had been followed in arriving at estimated income for payment of advance tax and all payments, including interest were made based on written notes as approved by the Managing</p>
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Director/Managing Director (l/c). Whatever additional interest had been paid by the Company, it is compensatory in nature and not penal, as stated.

x. Under Income Tax Act, for penalty cases opportunity of being heard is given to the assessee. However, under Section 234 no such opportunity of being heard is given to the assessee as levy of interest is automatic. This clearly further validates the compensatory nature of interest under Section 234B and 234C. Section 234B and 234C are covered under Section F (Interest chargeable in certain cases) of Chapter XVII (Collection and Recovery of Taxes) of The Income Tax Act 1961 whereas the penal provisions under the said Act are covered under Chapter XXI (Penalties Imposable). Penalties imposed under Income Tax Act under Chapter XXI commences from Section 271 onwards only.

xi. It may be further noted that in the past too, Company had paid interest under Section 234B & 234C. 1992-93, 1994-95, 1995-96, 1996-97, 2000-01, 2002-03 etc being some of the years in which interest u/s 234B & 234C were paid and no

action had been contemplated in any case as no monetary loss was inflicted upon Company by paying interest u/s 234B & 234C.

xii. Company had consistently taken stand stating that it had utilized the short remittance of advance tax for carrying out of its lending business which in turn generates higher return (around 13-14%) vis-a-vis rate at which interest (i.e.12%p.a.) under Section 234B and 234C is paid.

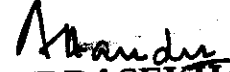
Thus it is evident that Company had not sustained any monetary loss by paying interest under section 234B & 234C on account of shortfall in payment of advance tax and resultant interest paid as the said *shortfall had been profitably re-deployed and earned much higher yield (around 13-14%) as compared to the rate of interest paid (12% pa) under section 234B and 234C.* It may be further noted that interest u/s 234B and 234C are compensatory and not penal in nature as held by Hon'ble Supreme Court and various High Courts. As no monetary loss had been inflicted upon the Company no action needs to be contemplated in this regard.

				Based on the aforesaid factual presentation as Stated, the said para may be kindly treated as settled and dropped.
	9	Taxes	The committee recommends to implement the Core Banking System in all branches of KSFE at the earliest and to submit the report to the Committee.	Core Banking software (CASBA) had been successfully rolled out by the Company during fourth quarter of FY 2016-17. Company was able to derive benefit of having a core banking software by having statutory audit for the next fiscal ie FY 2017-18 (01.04.2017 to 31.03.2018) completed by July 2018 itself. Thus, subsequent to implementaion of CASBA, Company was able to complete its statutory audit within four months from the end of FY 2017-18 and for the first time in the history of the Company, file IT returns on the basis of audited accounts within the due date of filing returns.

Remarks:

The Committee expresses its displeasure in deviating from the committee's recommendation to impose penalty on the erring officials for violating provisions of the Income Tax Act 1961. The Committee recommends that as the core banking system has been implemented in all the branches of KSFE, the provisions of the Income Tax Act should be complied with by calculating the exact profit of the establishment.

Thiruvananthapuram,
..01..02..2024


E. CHANDRASEKHARAN,
Chairman,
Committee on Public Undertakings.