

CHAPTER V STAMP DUTY AND REGISTRATION FEES

5.1 Results of audit

Test check of the records of the offices of District Registries and Sub-Registries conducted during the year 2008-09 revealed non/short levy of stamp duty and registration fees amounting to Rs. 47.98 crore in 508 cases which could be classified under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Short levy of stamp duty and registration fees	279	30.86
2.	Misclassification of documents	130	8.60
3.	Undervaluation of properties	48	4.04
4.	Incorrect exemption of duties	14	2.68
5.	Loss of revenue due to incorrect adjustment of stamp duty	12	0.59
6.	Other irregularities	25	1.21
Total		508	47.98

During the year 2008-09, the department accepted underassessments and other deficiencies of Rs. 6.89 crore in 126 cases, of which 57 cases involving Rs. 5.68 crore were pointed out in audit during the year 2008-09 and the rest in the earlier years. Out of this, Rs. 57.09 lakh was collected in 39 cases.

A few illustrative audit observations involving Rs. 29.16 crore are mentioned in the succeeding paragraphs.

5.2 Audit observations

Scrutiny of the records in the offices of the District Registries (DRs) and Sub-Registries (SRs) relating to revenue received from stamp duty, transfer duty and registration fees indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of duties and fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to consider directing the department to improve the internal control system including strengthening the internal audit to ensure that such omissions are detected and rectified.

5.3 Short levy of duty and fees

5.3.1 According to Section 27 of the Indian Stamp (IS) Act, 1899, the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. As per Article 31(c) of the Schedule IA to the IS Act, where the lease is granted for a fine or premium or for money advanced in addition to the rent reserved, stamp duty is leviable at five *per cent* of the market value of the property or the amount or value of such fine or premium or advance, as set forth in the lease, whichever is higher, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered. Further, Section 17 (d) of the Registration Act, 1908, specifies that leases of immovable property are compulsorily registerable with effect from 1 April 1999.

5.3.1.1 Test check of the records of the Prohibition and Excise Department (November 2008 and February 2009) indicated that 11 sub-leases of nine distilleries¹ were registered in seven SRs² between August 2006 and March 2008. Cross verification of the records with the sub-lease deeds registered in the Registration Department revealed that advances of Rs. 84.70 lakh were paid by the lessees to the Excise Department which were not disclosed in the documents registered. According to the above provision stamp duty was payable on the market value of the properties valued at Rs. 109.27 crore, which was higher than the money advanced. **Audit observed that there was no system in the department to capture the particulars of all the payments made prior to the registration in order to correctly determine the stamp duty payable.**

¹ M/s Aroma Winery and distillery, Sanathnagar, M/s Continental Wines Pvt. Ltd., Vijayawada, M/s Durga liquors India (P) Ltd., Davuluru, Kankipadu, M/s Hyderabad distilleries and Wineries Pvt. Ltd., Uppal, M/s Paras Collins Distilleries Pvt. Ltd., Shamshabad, M/s Pearl Distilleries Pvt. Ltd., Singarayakonda, M/s Rhyzome Distilleries Pvt. Ltd., Medchal, M/s Soaring Spirits Pvt. Ltd., Chebrolu, West Godavari District and M/s Viva Dholen Spirits Inc., Rajendranagar, Ranga Reddy District.

² Kankipadu, Medchal, Patamata, Sanjeeva Reddy Nagar, Shamshabad, Singarayakonda, and Uppal.

The registering officer levied stamp duty on the Annual Rent Reserved only resulting in short levy of stamp duty and registration fees of Rs. 5.56 crore.

After the cases were pointed out (May 2009), the Government stated (February 2010) that the sub-registrar had to determine the stamp duty as per the recitals of the document and could not go beyond the subject matter of the document. The reply is not tenable as the Registration Department needs to capture the particulars of all the payments made prior to the registration in the interest of the revenue.

The Government may consider putting in place a system to capture the particulars of all the payments made prior to the registration to ensure correct levy of stamp duty and registration fees.

5.3.1.2 Test check of the records of the five offices of the Prohibition and Excise Superintendents (PESs)³ (between August 2008 and February 2009) indicated that 55 lease deeds executed on stamp papers were not presented for registration in the concerned registration offices by the parties. Non-insistence on registration of the lease deeds by the excise authorities and non-registration of these by the offices resulted in short levy of stamp duty and registration fees of Rs. 9.66 lakh.

After the cases were pointed out (May 2009), the Government stated (February 2010) that the documents were chargeable as counterpart agreements at a fixed stamp duty of Rs. 100. The reply is not tenable as the documents are not licenses but leases involving rent and therefore chargeable under Article 31 of the IS Act.

5.3.2 As per Article 31 (b) of the Schedule I-A to the IS Act, lease granted for a fine, premium or for money advanced, shall be chargeable with stamp duty of five *per cent* on such fine, premium or money advanced. As per Section 17(1)(c) of the Registration Act, non-testamentary instruments which acknowledge the receipt or the payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest shall be registered.

Test check of the records of 13 District Panchayat offices⁴ and 19 Assistant Directors⁵ of Mines and Geology (between July and October 2008) indicated that 355 sand lease agreements were concluded with the contractors between 2003-04 and 2007-08 for certain bid amounts. Of these, in 309 agreements, stamp duty of Rs. 2.29 crore was collected on the first year's premium only even though the leases were extended for the second year. In another 46 agreements concluded for a period of one year, stamp duty was levied at three *per cent*, instead of five *per cent* on the premium. Further, out of 355 agreements concluded, 284 were not registered even though leases are

³ Dhoolpet, Medchal, Hyderabad, Saroornagar and Visakhapatnam.

⁴ Eluru, Guntur, Kadapa, Kakinada, Karimnagar, Khammam, Kurnool, Machilipatnam, Nalgonda, Nellore, Ongole, Srikakulam and Vizianagaram.

⁵ Anakapalli, Dachepalli, Eluru, Guntur, Kadapa, Karimnagar, Kothagudem, Kurnool, Mahabubnagar, Miryalaguda, Nandigama, Nizamabad, Ongole, Rajahmundry, Srikakulam, Vijayawada, Vizianagaram, Warangal and Yerraguntla.

compulsorily registerable under the Act. Non-inclusion of the second year's bid amount while computing the premium, adoption of lesser rate of stamp duty and non-insistence for registration of the lease deeds resulted in non/short levy of stamp duty and loss of registration fees of Rs. 4.67 crore.

After the cases were pointed out (May 2009), the Government accepted (February 2010) the audit observation and recovered Rs. 29.44 lakh in five cases and stated that instructions had been issued to the district registrars to recover the deficit amounts. Report on recovery of the balance amount has not been received (February 2010).

5.4 Short levy of duty and fees on mortgage deeds

As per section 58 (a) of Transfer of Property Act 1882, "mortgage" is the transfer of an interest on property for the purpose of securing repayment of a loan and chargeable at three *per cent* on the value secured under Article 35(b) of Schedule I-A to the IS Act.

As per section 58 (f) of the Act, where a person delivers to the lender, documents of title to an immovable property with intent to create a security thereon, such transaction is called a mortgage by deposit of title deed and chargeable with stamp duty of 0.5 *per cent* on the value secured subject to a maximum of Rs. 50,000 under Article 7 of Schedule I-A to the IS Act.

In case of "mortgage" charge is created over the property in favour of the lender; whereas charge is not created over the property in case of "deposit of title deeds".

Test check of the records of seven DRs⁶ and 15 SRs⁷ (between December 2007 and October 2008) indicated that 191 documents styled as "memorandum of deposit of title deeds" securing debt of Rs. 240.74 crore were registered between April 2006 and January 2008. The documents contained recitals either to the effect that the borrower shall not create any other mortgage on the property and keep the property free of any encumbrance or in case of default, the mortgagees shall have the right to cause the mortgaged properties to be sold and the sale proceeds applied to the payment of dues by the mortgagors. Therefore, these documents were to be treated as "mortgages" and charged with stamp duty and registration fees of three *per cent* and 0.50 *per cent*, respectively. Instead, these were treated as 'deposit of title deeds' and charged at lesser rates. This resulted in short levy of stamp duty and registration fees of Rs. 8.24 crore.

After the cases were pointed out (February and May 2009) the Government stated (February 2010) that though the documents contain contingent clauses in the recitals, they are basically only agreements/memoranda relating to

⁶ Adilabad, Hyderabad, Hyderabad (South), Kadapa, Narasaraopet, Ranga Reddy and Warangal.

⁷ Bowenpally, Gadwal, Hiramandalam, Kodangal, Mancherial, Medchal, Miryalaguda, Nakrekal, Narsampet, Narsapur, Rajendranagar, Secunderabad, Siddipet, Vallabh Nagar and Wanaparthy.

deposit of title deeds. The reply is not tenable as the documents contained recitals to the effect that the borrower shall not create any other charge on the property or that in case of default the mortgagees shall have the right to cause the mortgaged properties to be sold. These are in the nature of securing repayment of a loan which make these classifiable as mortgages only.

5.5 Undervaluation of properties

Section 47-A (6) of the IS Act stipulates that the market value of any property shall be the value shown in any instrument executed by or on behalf of the Central Government or State Government or any authority or body incorporated by or under any law for the time being in force and wholly owned by the Central/State Government.

5.5.1 Test check of the records of the SR, Mancheril, Adilabad district (January 2008) indicated that a sale deed was executed and registered in June 2006 by the Associated Cement Companies Limited in favour of Mancheril Cement Company Private Limited for a consideration of Rs. 15.13 crore and the registering officer levied stamp duty on the market value of Rs. 15.80 crore. However, verification of the annual audit report of the vendor company revealed that Rs. 37.30 crore was received by the vendor company from the vendee company towards the sale consideration. Therefore, stamp duty and registration fee were leviable on the sale consideration of Rs. 37.30 crore. Non-disclosure of the actual consideration received by the parties resulted in undervaluation of the property and consequential short levy of duties and fees of Rs. 2.04 crore.

After the case was pointed out (May 2009) the Government stated (February 2010) that the Sub-Registrar had to examine the market value of scheduled property as per recitals of the document and accordingly the Sub Registrar levied stamp duty on the market value which was higher than the consideration. The reply is not tenable as the department needs to take steps to ascertain the details of all payments etc., made prior to the registering of a document. Also, based on the facts and figures pointed out by audit, remedial action could be taken by the department in the interest of state revenue.

5.5.2 A certificate of sale is granted to the purchaser of any property sold by a public auction by a civil or revenue court or collector or other revenue officer chargeable with stamp duty of five *per cent* on the amount of the purchase money under Article 16 of the Schedule I-A to the IS Act.

The Government in November 2005 allotted⁸ a piece of Andhra Pradesh Housing Board land to a purchaser⁹. At that time the value of the land was fixed at Rs. 100 per sq. yard. Subsequently, in August 2007 the value of the land was revised¹⁰ and fixed at Rs. 25,000 per sq. yard. The deed was registered for 3,000 sq. yards in September 2007. Thus, the stamp duty and registration fees were payable on market value of Rs. 7.50 crore. Instead, the

⁸ G.O.Ms.No.76 Housing (H.B II) Department dated 25.11.2005.

⁹ Andhra Pradesh Congress Committee.

¹⁰ G.O.Ms.No.26 Housing (H.B.II.I) Department dated 18.08.2007.

registering officer incorrectly valued the land at the rate of Rs. 100 per sq. yard i.e., Rs. 3 lakh. Thus, incorrect valuation resulted in short levy of duties and registration fees of Rs. 70.97 lakh.

After the cases were pointed out (May 2009) the Government stated (February 2010) that valuation of property would be done as per recitals of the document. The reply is not tenable, as the Registration Department needs to capture the particulars of all the payments etc., made prior to the registration in the interest of the revenue.

5.5.3 Test check of the records of the DR, Ranga Reddy and two SRs¹¹ (between December 2007 and November 2008) revealed that 63 sale deeds registered between September 2006 and December 2007 by adopting the agricultural (also called the acreage) rates instead of house site¹² rates. This resulted in undervaluation of properties and consequential short levy of stamp duty and registration fees of Rs. 63.64 lakh.

After the cases were pointed out (April and May 2009), the Government stated (February 2010) in respect of DR, Ranga Reddy that the District Registrar was directed to inspect the property to determine the market value for levy of proper stamp duty. In respect of SR, Champapet it was stated that acreage rate was fixed as per market value guidelines and land was described as agricultural land in the document. Further in respect of SR, Kalwakurthy it was stated that the land was an agricultural land. The replies are not tenable as the properties mentioned in the deeds were divided into house sites each having a distinct plot number by the vendors and also in Kalwakurthy the properties sold were shown as plots at the time of registration by the parties themselves for which square yard rate only was applicable.

5.5.4 Test check of the records of the SR, Medchal (August 2008) indicated that a sale deed was registered in August 2007 conveying the property as an agricultural farmland. But, it was noticed from the previous documents linked with the property registered in 1996 and registration plans enclosed thereto that the property sold was not an agricultural farm land but consisted of a number of plots/house sites bearing distinct plot numbers joined together which should have been recited as such. Therefore, house site rate of Rs. 4,000 per sq. yard had to be adopted for the purpose of the levy of stamp duty and fees. However, the registering officer adopted the agricultural/acreage rate of Rs. 1,301.65 per sq. yard. Non-disclosure of the fact by the parties resulted in undervaluation of the property and consequential short levy of duties and fee of Rs. 37.28 lakh.

After the case was pointed out (April 2009), the Government stated (February 2010) that the scheduled property involved in the document was an agricultural land and there were no instructions to adopt house site rate if house sites are joined together and sold as agricultural land. The reply is not tenable as the property cannot be treated as agricultural land in the absence of recitals of handing over of pattadar pass books and title deeds to the purchaser

¹¹ Champapet and Kalwakurthy.

¹² House site means the word commonly used for residential plots.

and the property was already registered as house plots in 1996 itself by adopting house site/sq.yard rate.

5.5.5 As per the IS Act, for determining the market value of the property for the purpose of levying duties, the registering officers should adopt¹³ the highest rate applicable to a property in the neighbourhood in the case of a missing house/survey/sub-division number.

Test check of the records of the DR, Karimnagar (July and August 2008) indicated that three documents were registered between December 2007 and January 2008 by adopting the market values applicable to the door numbers, which were not the nearest door numbers of the properties involved. As actual door numbers of the properties were missing in the market value guidelines, the highest market value applicable to the nearest door number should have been adopted as market value for the purpose of the registration. Adoption of the incorrect market value resulted in undervaluation of the properties and the short levy of stamp duty and registration fees of Rs. 14.63 lakh.

After the cases were pointed out, the District Registrar, Karimnagar stated (July and August 2008) in respect of one document that the market values have been fixed for ward No. 8, block No. 6 segment-wise for the land abutting to the by-pass road. The reply is not tenable as the main road of 100 feet width with market value of Rs. 6,600/Rs. 7,050 happened to be the boundary of the properties involved in the documents and the same rate was required to be adopted as the market value for the registration of the above document. Reply in respect of the remaining documents has not been received (February 2010).

The matter was referred to the department in February 2009 and the Government in April 2009; their reply has not been received (February 2010).

5.5.6 Test check of the records of the DR, Kurnool (August 2007) indicated that a sale deed was registered in August 2006 for a consideration of Rs. 15 lakh in respect of a property admeasuring 581.33 sq. yards at the rate of Rs. 2,580 per sq. yard. However, the value of the property as per the 'market value guidelines' was Rs. 70.06 lakh at the rate of Rs. 12,050 per sq. yard. This resulted in undervaluation of the property of Rs. 55.06 lakh and short levy of stamp duty and registration fees of Rs. 5.23 lakh.

After the case was pointed out (March 2009), the Government accepted (February 2010) the audit observation and stated that instructions were issued to the District Registrar, Kurnool to collect the deficit amount. A report on recovery has not been received (February 2010).

5.6 Non/short levy of duties and fees on the lease deeds

5.6.1 According to Article 31 (a) (vi) (a) of the Schedule I-A to the IS Act, where the lease purports to be for a period in excess of thirty years or in perpetuity or does not purport to be for a definite period, stamp duty is

¹³ Item (iv) of proceedings No. MV1/20363-A/90 dated 10.8.1990.

leviable at five *per cent* on the market value of the property or value of ten times of the average annual rent reserved (AAR), whichever is higher.

5.6.1.1 Test check of the records of the DR, Ranga Reddy (August 2008) indicated that two lease deeds were executed in December 2005 by the lessor in favour of the lessees for the development and maintenance of an integrated project consisting of a township, golf course and mixed-use project. The leases were granted for a period of 66 years from 1 January 2005. The lease deeds were registered without the levy of stamp duty and registration fees. In the absence of the specific orders, the exemption of stamp duty and registration fees of Rs. 2.26 crore is incorrect. This resulted in non-realisation of revenue to that extent.

The matter was referred to the department in February 2009 and the Government in May 2009; their reply has not been received (February 2010).

5.6.1.2 Test check of the records of the SR, Secunderabad (May and June 2008) indicated that a lease deed was registered in April 2007 by a lessor in favour of a lessee for a term of 33 years. The market value of the property was Rs. 8.58 crore and was liable to stamp duty of Rs. 42.90 lakh, whereas Rs. 1.51 lakh only was levied on the average annual rent reserved of Rs. 30.20 lakh by the registering authority. This resulted in short levy of stamp duty of Rs. 41.39 lakh.

After the case was pointed out (April 2009), the Government accepted (February 2010) the audit observation and stated that instructions were issued to the District Registrar, Hyderabad to collect the deficit amount. A report on recovery has not been received (February 2010).

5.6.2 Under Article 31 (vi) (c) of the Schedule I-A to the IS Act, where the lease is granted for a fine or premium or for money advanced in addition to the rent reserved, stamp duty is leviable at five *per cent* on the market value of the property or the amount or value of such fine or premium or advance whichever is higher.

Test check of the records of the DR, Ranga Reddy and SR, Sanjeevareddy Nagar (May and August 2008) indicated that four lessors executed lease deeds and security deposit agreements separately with four lessees. In the lease deeds executed (March 2007 and March 2008), the terms and conditions of the lease rent were mentioned while in security deposit agreements, advances were paid by the lessees to the lessors in pursuance of the terms and conditions mentioned in the lease deeds. The registering officer while registering the documents levied stamp duty on security deposit agreements at five *per cent* on the amount of the advances instead on the market value of the properties. This resulted in short levy of stamp duty of Rs. 53.10 lakh.

After the cases were pointed out (May 2009), the Government stated (February 2010) that the applicability of market value arises in cases where the lease is more than 30 years but the leases in the present deeds is for a period less than 30 years. The reply is not tenable as the documents are chargeable as per the provisions of Article 31 (vi) (c) of schedule IA to the Act which

stipulates that stamp duty shall be levied at five per cent on the market value of the property or the amount of fine/premium of money advanced whichever is higher irrespective of period of lease.

5.6.3 According to Section 5 of the IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. Under Section 3(bb)(3) of the IS Act, stamp duty is exempted on any instrument executed by or on behalf of or in favour of, the developer or unit or in connection with the carrying out of the purposes of the special economic zone. However, as per the Commissioner and Inspector General (Registration and Stamps) {C & IG (RS)} circular instructions¹⁴ dated 5 February 2008, stamp duty but not registration fees and transfer duty was to be exempted on the leases executed by the special economic zones.

5.6.3.1 Test check of the records of the DR, Ranga Reddy (August 2008) indicated that a document styled as “agreement” was registered in March 2008. The document contained recitals to the effect that the lessor granted lease of the demised land in favour of the lessee for 49 years commencing from 31 August 2007 at an annual rent of Rs. 87.12 lakh per acre to operate and maintain a special economic zone. The registering officer did not levy registration fees on the document. This resulted in non-realisation of registration fees of Rs. 32.33 lakh.

After the case was pointed out (March 2009), the Government accepted (October 2009) the audit observation and stated that instructions had been issued to the District Registrar, Ranga Reddy to recover the amount. A report on recovery of the balance amount has not been received (February 2010).

5.6.3.2 Test check of the records of the DR, Ranga Reddy (August 2008) indicated that a document styled as “co-developer agreement” executed in April 2007 was registered in August 2007 by the parties for the development, construction and management of a large commercial infrastructure project as a part of the special economic zone. The document contained two distinct matters *viz.*, one relating to the development agreement and another relating to perpetual lease granted by the developer to the co-developer. Though stamp duty and registration fees were correctly levied on the development agreement, these were not levied on the perpetual lease. This resulted in non/short levy of transfer duty/registration fees of Rs. 17.49 lakh.

After the case was pointed out (April 2009), the Government stated (February 2010) that registration fee was exempted¹⁵ on instruments executed by the developer for carrying out the purposes of special economic zone and there was no need to pay transfer duty when stamp duty is exempted. The reply is not tenable as exemption of registration fee pertains to documents registered after May 2008. Further, there are no specific orders for exemption of transfer duty leviable separately under the AP municipalities Rules, 1965.

¹⁴ CCRA1/13492/07 dated 05.02.2008.

¹⁵ G.O.Ms.No.659 dated 12.5.2008

5.7 Misclassification of deeds

5.7.1 As per Section 2 (10) of the IS Act, conveyance includes a conveyance on sale, every instrument and every decree or final order of any civil court by which property, whether movable or immovable, or any estate or interest in any property is transferred to another.

Test check of the records of DR, Hyderabad and four SRs¹⁶ (between May and December 2008) indicated that seven documents registered as “agreements of sale-cum-general power of attorney (GPA)” between March and July 2007 contained the recitals that the purchasers paid the entire sale consideration to the vendors, the vendors delivered physical possession of the properties, handed over the original link documents of the properties to the purchasers and all other ingredients that were essential for classifying them as sale deeds but were incorrectly stamped as agreements of sale-cum-GPA. This resulted in short levy of stamp duty and registration fees of Rs. 1.25 crore.

The matter was referred to the department in March 2009 and the Government in May 2009; their reply has not been received (February 2010).

5.7.2 According to Article 41 (c) of the Schedule 1-A to the IS Act, where the property which belonged to one partner or partners when the partnership commenced is distributed or allotted or given to another partner or partners in case of dissolution of partnership, stamp duty is leviable at five *per cent* on the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution, in addition to the duty which would have been chargeable on such dissolution if such property had not been distributed or allotted or given.

Test check of the records of the DR, Kurnool (August 2007) indicated that a partition deed was registered in March 2007 by the partners of a partnership firm dividing the property among them. The document was registered as a partition among family members and stamp duty and registration fees were levied accordingly. However, the recitals of the documents revealed that the partition deed was executed in the capacity of partners of a firm and not as family members. Thus, the document was chargeable as ‘dissolution of partnership’ with stamp duty at five *per cent* instead of one *per cent* on the market value of the properties distributed. Misclassification of ‘dissolution of partnership’ as ‘partition among family members’ resulted in short levy of stamp duty and registration fees of Rs. 20.33 lakh.

After the case was pointed out (March 2009), the Government accepted (October 2009) part of the objection for Rs. 7.16 lakh stating that as the partition was amongst persons other than family members, stamp duty was chargeable at three *per cent* under Article 40 of the Schedule I-A to the IS Act. It, however, contended that since there was no mention in the deed regarding the dissolution of the partnership it could not be charged with the duty under Article 41 (c). The reply is not tenable as the parties executed the deed for division of the property in the capacity of partners of a firm and there could not be any division of the property of the firm unless the firm was dissolved.

¹⁶ Choutuppal, Kukatpally, Peddamberpet and Vallabhnagar.

5.8 Incorrect adjustment of stamp duty

The Government in their notification¹⁷ dated July 2005 reduced the stamp duty on the documents styled as 'agreement of sale-cum-GPA' to one *per cent* from 1 August 2005 subject to a maximum of Rs. 50,000 on the condition that stamp duty so paid shall not be adjustable at the time of the registration of the sale deed.

Test check of the records of three DRs¹⁸ and 16 SRs¹⁹ (between September 2007 and January 2009) in 285 documents indicated that stamp duty of Rs. 1.08 crore paid on the 'agreements of sale-cum-GPA' registered on or after 1 August 2005 was incorrectly adjusted on the subsequent sale deeds. This improper adjustment of stamp duty resulted in short realisation of revenue of Rs. 1.08 crore.

After the cases were pointed out (May 2009), the Government stated (February 2010) that the registering officers collected stamp duty at six and seven *per cent* as per the explanation I to Article 47A of schedule IA and adjusted the same at the time of registration of sale deeds. The reply is not tenable in the light of the notification dated 30 July 2005, which stipulated that no such adjustment is admissible.

5.9 Incorrect computation of the lease period

5.9.1 Under Article 31 (a) (iv) of the Schedule I-A to the IS Act, where the lease purports to be for a term exceeding ten years but not exceeding twenty years, stamp duty is chargeable at five *per cent* on the value of three times of the AAR.

Test check of the records of the SR, Kukatpally (October 2007) indicated that a lease deed was registered in December 2006 for the period from 1 December 2006 to 31 December 2016. As the period of lease exceeded 10 years, stamp duty was leviable at five *per cent* on three times of the AAR of Rs. 3.62 crore. However, the stamp duty was levied incorrectly on one and half times of the AAR of Rs. 1.81 crore treating the lease period as ten years. This resulted in short levy of stamp duty of Rs. 9.04 lakh.

After the case was pointed out, the Government stated (June 2009) that instructions had been issued to the SR, Kukatpally to collect the deficit stamp duty. A report on recovery has not been received (February 2010).

5.9.2 According to Article 31(a) (iii) of the Schedule 1-A to the IS Act, where the lease purports to be for a term exceeding five years but not exceeding 10 years, stamp duty is leviable at five *per cent* for a market value equal to the amount or the value of one and half times of the AAR.

¹⁷ G.O.Ms.No.1475 Revenue (Registration - I) Department dated 30.7.2005.

¹⁸ Guntur, Medak and Narasaraopet.

¹⁹ Choutuppal, Dubbaka, Ghatkesar, Hyderabad East, Malkajgiri, Kukatpally, Kalwakurthy, Parigi, Peddamberpet, Pedana, Secunderabad, Siddipet, Sanjeevareddy Nagar, Vallabhnagar, Vikarabad and Wyr.

Test check of the records of the SR, Secunderabad (May and June 2008) indicated that a lease deed was registered in August 2007 for a period of five years with effect from 1 November 2007 to 31 October 2012. The recital of the deed revealed that the property was demised to the lessee on 27 August 2007. Therefore, the lease period was more than five years and was liable to stamp duty of five *per cent*, instead of three *per cent* levied by the registering officer. This resulted in short levy of stamp duty of Rs. 6.56 lakh.

After the case was pointed out (May 2009), the Government stated (February 2010) that though physical possession was given on 27 August 2007, the lease period commenced from 1 November 2007 only as rent was payable from 1 November 2007. The reply is not tenable as physical possession for enjoyment of the property as per the definition of 'lease'²⁰, was handed over to the lessee on 27 August 2007 and payment of rent at a later date does not alter the date of commencement of lease being 27 August 2007.

5.10 Short levy of duty and fees on the documents of general power of attorney

Under Article 42(g) of the Schedule I-A to the IS Act, 'power of attorney' when given for construction on, development of or sale or transfer (in any manner whatsoever) of any immovable property is chargeable to stamp duty at five *per cent* on the market value of the property. The Government with effect from 1 July 2005 reduced²¹ stamp duty payable in respect of the GPA documents to Rs. 1,000 when the GPA is given in favour of the family members and to one *per cent* when the GPA is given in favour of other than the family members.

Test check of the records of three SRs²² (April 2008) indicated that 18 documents styled as 'general power of attorney' registered between August 2002 and February 2007 contained recitals to the effect that the attorneys/agents were given the power for the construction/development/sale of the properties. The documents were chargeable with stamp duty of five *per cent* on the market value of the properties upto 30 June 2005 and at one *per cent* thereafter. However, the deeds were executed on a stamp paper of Rs. 100 each. This resulted in short levy of stamp duty and registration fees of Rs. 10.09 lakh.

After the cases were pointed out (February 2009), the Government accepted (June 2009) the audit observation in 10 documents and instructed the SRs to collect the deficit amount. The progress made in recovery and the reply in the remaining cases have not been received (February 2010).

²⁰ Section 105 of Transfer of property Act, 1882 defines 'lease' as a transfer of right to enjoy such property made for a certain time expressed or implied.

²¹ G.O.Ms.No.1128 Revenue (Regn-I) Department dated 13-6-2005.

²² Shamirpet, Shamshabad and Uppal.

5.11 Short levy of stamp duty

As per the explanation below Article 49 (A) (a) of the Schedule 1-A to the IS Act, 'family' means father, mother, husband, wife, brother, sister, son, daughter and includes grandfather, grandmother, grandchild, adoptive father or mother, adopted son or daughter. Stamp duty is leviable at one *per cent* on the market value of the property on the GPA documents executed in favour of other than the members of a family.

Test check of the records of the SR, Patamata (February 2008) indicated that a document styled as 'general power of attorney' was registered in February 2007 in which one of the principal owners appointed the son-in-law as the attorney for the sale of the property. As the GPA was given to a person other than a family member, the deed was chargeable with stamp duty of one *per cent* on the market value of the property. The registering officer levied stamp duty of Rs. 100 and registration fee of Rs. 100 resulting in short levy of stamp duty and registration fee of Rs. 9.10 lakh.

After the case was pointed out (April 2009), the Government accepted (February 2010) the audit observation and stated that instructions were issued to District Registrar, Vijayawada to collect the deficit amount. A report on recovery has not been received (February 2010).

5.12 Short levy of duties and fees on rectification deed

As per the departmental instructions²³, a rectification deed rectifying the name of the claimant should be charged as a fresh deed and it attracts levy of transfer duty²⁴ also. When a deed of rectification is treated as a fresh sale, the market value as on date of execution²⁵ of the original sale deed should be taken into account for the purpose of levy of the duties.

Test check of the records of the DR, Hyderabad (August 2008) indicated that a document styled as 'rectification deed' was registered in March 2006 rectifying the name of the claimant and stamp duty of Rs. 100 was levied. But a rectification deed rectifying the name of the claimant should have been charged as a fresh sale and was chargeable with duties and registration fee as applicable to the sale deed. This resulted in short levy of duties and fee of Rs. 6.34 lakh.

After the case was pointed out (March 2009), the Government accepted (February 2010) the audit observation and stated that Rs. 3.30 lakh had been collected. The report on collection of the remaining amount has not been received (February 2010).

²³ Proceedings No. 563 dated 11-10-1928.

²⁴ Proceedings No. S3/4371/83 dated 19.9.84.

²⁵ Proceedings No. 54/14736/86 dated 28-2-1987.