

CHAPTER III: STAMP DUTY AND REGISTRATION FEE

3.1 Results of audit

Test check of the records of various registration offices during the year 2008-09 revealed non/short levy of stamp duty (SD) and registration fee amounting to Rs. 6.52 crore in 1,290 cases, which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
A- Revenue Department			
1.	Non/short recovery of stamp duty due to undervaluation of immovable property	922	4.51
2.	Short realisation of stamp duty due to sale of property at lower consideration than the amount mentioned in the agreement deeds	53	0.53
3.	Short recovery of stamp duty due to misclassification of instruments	31	0.28
4.	Short recovery of stamp duty due to non-charging of residential rates on purchase of land by builders	1	0.14
5.	Irregular exemption of stamp duty on mortgage deeds	13	0.03
6.	Miscellaneous irregularities	137	1.01
Total		1,157	6.50
B- Land Revenue			
7.	Miscellaneous irregularities	133	0.02
Total		133	0.02
Grand total		1,290	6.52

During the year 2008-09, the department accepted underassessments and other deficiencies of Rs. 1.90 crore involved in 310 cases, of which 304 cases involving Rs. 1.89 crore had been pointed out during 2008-09 and the remaining in the earlier years. The department recovered Rs. 1.49 lakh in seven cases during the year 2008-09, of which one case involving Rs. 16,543 related to the year 2008-09 and the balance to the earlier years.

After the issue of draft paragraph, the department further recovered Rs. 1.43 lakh in one case.

A few illustrative audit observations involving Rs. 74.56 lakh are mentioned in the succeeding paragraphs.

3.2 Audit observations

Scrutiny of records of various registration offices revealed several cases of non-compliance of the provisions of the Indian Stamp Act, 1899 (IS Act) and Indian Registration Act, 1908 and Government notifications/instructions and other cases 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 the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided.

3.3 Non-compliance of provisions of the Acts/Rules

The provisions of the Indian Stamp Act, 1899 (IS Act) and Indian Registration Act, 1908 require:-

- (i) levy of stamp duty at the prescribed rate;*
- (ii) exemption of stamp duty on fulfillment of prescribed conditions; and*
- (iii) correct classification of documents.*

The registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the paragraphs 3.3.1 to 3.3.2. This resulted in short levy/evasion of stamp duty of Rs. 20.28 lakh.

3.3.1 Evasion of stamp duty due to undervaluation of immovable property

Under Section 27 and 64 of the IS Act, as applicable to Haryana, consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amounts of duty with which it is chargeable, should be fully or truly set forth therein. The IS Act further provides that any person who, with intent to defraud the Government, executes an instrument in which all the facts and circumstances required to be set forth in such instrument are not fully and truly set forth, is punishable with a fine which may extend to Rs. 5,000 per instrument.

During test check of the records of six¹ registering offices between July and November 2008, it was noticed that ten conveyance deeds were registered between April 2007 and May 2008 on account of sale of immovable properties. The total value of properties set forth in all these conveyance deeds was Rs. 1.97 crore. Cross verification by audit of these deeds with the agreements executed between the concerned parties between March 2007 and February 2008 and recorded with the various document writers revealed that the total sale value of the agreements worked out to Rs. 3.95 crore. Thus, the conveyance deeds were got executed and registered at a consideration less than that agreed upon between the affected parties. Undervaluation of immovable properties in conveyance deeds resulted in evasion of stamp duty of Rs. 10.41 lakh. Additionally, penalty not exceeding Rs. 50,000 for

¹ JSRs Alewa, Jakhal and Pillukhera; SRs Palwal, Safidon and Samalkha.

undervaluation made with intent to defraud the Government was also leviable.

After the cases were pointed out between July and November 2008, the Joint Sub Registrar (JSR) Jakhal and Sub Registrars (SRs) Safidon and Samalkha stated between November 2008 and January 2009 that the cases had been referred to the Collector under Section 47-A of the Act for determination of value of the immovable property. The reply of the registering authorities does not explain why these cases had been referred to the Collector since there was no need to refer the cases to the Collector for decision as the value of the property had already been agreed upon between the affected parties. The JSR Alewa and SR Palwal stated between July 2008 and January 2009 that progress of recovery would be intimated after taking necessary action as per provisions of the IS Act. The JSR Pillukhera stated in April 2009 that Rs. 16,543 had been recovered in October 2008. Further report has not been received (August 2009).

After the matter was reported to the Government in February 2009, the Government stated in May 2009 that in such cases, jurisdiction lies with the Collector under section 47-A of the Act to decide the stamp duty so chargeable in quasi judicial capacity. The concerned SRs/JSRs and Courts of Collectors would require time to verify the facts and decide the cases as per provisions of the stamp law procedure.

3.3.2 Evasion of stamp duty due to misclassification of documents

Under the provisions of the IS Act, separate rates have been prescribed for different types of instruments. The classification of an instrument depends upon the nature of the transactions recorded therein. In case possession of the property is handed over after receipt of full amount of consideration, the instrument becomes a conveyance deed and stamp duty becomes leviable under the IS Act.

During test check of the records of five² offices of registering authorities for the year 2007-08 between June and September 2008, it was noticed that eight instruments conveying possession and transfer of property valued as Rs. 1.62 crore to the vendees were executed between May 2007 and March 2008. In all the cases, the vendors received full amount in lieu of the property sold and the possession of immovable property was also handed over to the purchasers. The deeds were liable to be treated as conveyance deeds and stamp duty of Rs. 9.87 lakh was leviable. However, the registering authorities misclassified these documents and registered the deeds as agreements to sell charging stamp duty of Rs. 440 which was incorrect. This resulted in evasion of stamp duty of Rs. 9.87 lakh.

After the cases were pointed out between June and September 2008, the SRs Ambala City, Hisar and Sohna stated between June and September 2008 that progress of recovery would be intimated after taking necessary action as per provisions of the IS Act. The JSR Ambala Cantonment and SR Farukhnagar stated in September and October 2008 that the cases had been sent (September and October 2008) to the Collector under section 47-A of the

² JSR Ambala Cantonment, SRs: Ambala City, Farukhnagar, Hisar and Sohna.

Act for decision. Further report has not been received (August 2009).

The matter was reported to the Government in February 2009; their reply has not been received (August 2009).

3.4 Non-compliance of Government notification/instructions

- (i) *Government instructions of November 2000 prescribes for levy of stamp duty on land sold within municipal limits with an area less than 1,000 square yards be valued at the rates fixed for the residential property of that locality.*
- (ii) *Government instruction of September 1996 prescribes for registration of mutated property on the basis of a compromise decrees which is not bonafide as conveyance deed.*
- (iii) *Government notification of August 1995 provides for exemption for purchase of agriculture land from the compensation received for acquired land.*

Non-compliance of some of provisions in the above notifications/instructions in some of the cases as mentioned in paragraphs 3.4.1 to 3.4.3 resulted in non/short realisation of duty of Rs. 54.28 lakh.

3.4.1 Short levy of stamp duty due to application of incorrect rates of immovable property

In order to check evasion of stamp duty in sale deeds, the Government issued instructions in November 2000 to all registering authorities in the State to the effect that land sold within municipal limits with an area less than 1,000 square yards or in case where purchasers are more than one and the share of each purchaser is less than 1,000 square yards be valued at the rate fixed for the residential property of that locality for the purpose of levying stamp duty.

During test check of the records of 15 offices⁵ of SR for the year 2007-08 between April and October 2008, it was noticed that 50 sale deeds of plots in municipal limits with an area less than 1,000 square yards and in case where purchasers were more than one and the share of each purchaser was less than 1,000 square yards were registered between April 2007 and January 2008. The deeds were liable to be assessed for Rs. 9.22 crore based on the rates fixed for residential areas and stamp duty of Rs. 67.06 lakh was chargeable. However, the registering authorities assessed the deeds for Rs. 2.94 crore based on the rates fixed for agricultural land and levied stamp duty of Rs. 22.86 lakh. This resulted in short levy of stamp duty of Rs. 44.20 lakh.

After the cases were pointed out between April and October 2008, seven⁶ SRs stated between September 2008 and March 2009 that the cases had been sent to the Collector under Section 47-A of the Act for decision. SR Palwal stated

⁵ Ambala City, Ballabgarh, Farukhnagar, Faridabad, Gurgaon, Hodal, Kalka, Karnal, Ladwa, Pehowa, Palwal, Pataudi, Sonipat, Sohna and Thanesar.

⁶ Ballabgarh, Faridabad, Farukhnagar, Hodal, Karnal, Kalka and Pehowa.

in July 2008 that the cases would be sent to the Collector for decision.

Further report and reply from the remaining SRs has not been received (August 2009).

After the matter was reported to the Government in February 2009, the Government stated in May 2009 that these cases had been sent to the concerned Collectors under Section 47 of the Act for decision.

3.4.2 Exemption of stamp duty on collusive decrees⁷

Under Section 17 of the Indian Registration Act, 1908, non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of Rs. 100 and upwards, to or in immovable property are compulsory registrable documents. Thus, a compromise decree⁸ which is not bonafide⁹ is liable to be charged as an instrument of conveyance. The Financial Commissioner Revenue (FCR) issued instructions in September 1996 to all the registering authorities that mutated property registered on the basis of a compromise decree which is not bonafide is liable to be charged as an instrument of conveyance as per Schedule 1-A of the IS Act. The SRs were asked to carefully examine each document so as to ensure that there is no deliberate attempt for evasion of stamp duty and the same is properly stamped under the Act.

During test check of the records of three¹⁰ offices of SRs between May and August 2008 for the year 2007-08, it was noticed that six compromise decrees which were not bonafide were registered between June 2007 and February 2008 without charging stamp duty on total consideration of Rs. 1.31 crore. These parties obtained collusive decrees to evade stamp duty. The SRs did not comply with the instructions of the FCR issued in September 1996 and allowed exemptions from payment of stamp duty without confirming the facts that property mutated was executed between blood relations. This resulted in irregular exemption of stamp duty of Rs. 7.78 lakh.

After the cases were pointed out between May and August 2008, the SRs Gharaunda and Karnal stated between October and December 2008 that all the cases of deficiency of Rs. 5.92 lakh had been referred to the Collector under Section 47 of the IS Act for decision. SR Narnaund stated in August 2009 that the Collector decided these four cases in December 2008 for levy of stamp duty of Rs. 1.86 lakh and efforts were being made to recover the deficient amount of stamp duty. Further report on recovery/progress has not been received (August 2009).

The matter was reported to the Government in March 2009; their reply has not been received (August 2009).

⁷ Collusive decree means the decree obtained by the parties by fraudulent secret understanding.

⁸ Settlement of property by mutual consent.

⁹ Which is related by blood relation.

¹⁰ Gharaunda, Karnal and Narnaund.

3.4.3 Irregular exemption of stamp duty

By a notification issued on 11 August 1995, the Government remitted stamp duty in respect of the sale deeds executed by the farmers whose land is acquired by the Government of Haryana for public purposes and who purchase agriculture land in the State within one year of the amount of compensation received by them for the acquired land. Thus, the remittance is allowed for the purchase of agriculture land only and the purchase of residential land is liable to stamp duty as per rules.

During test check of the records of the office of SR, Panchkula for the year 2007-08 in July 2008, it was noticed that the farmers, whose land was acquired by the Government for public purposes, purchased two residential plots valued as Rs. 38.31 lakh and got registered two sale deeds. The registering authority allowed exemption of stamp duty of Rs. 2.30 lakh under aforesaid notification though stamp duty was leviable since they had purchased residential plots from the amount of compensation received. Thus, irregular exemption of stamp duty resulted in loss of revenue to Government to the extent of Rs. 2.30 lakh.

After the cases were pointed out in July 2008, the SR Panchkula admitted the facts and stated in January 2009 that notices of recovery had been issued to the concerned parties. Progress of recovery has not been received (August 2009).

After the matter was reported to the Government in February 2009, the Government stated in April 2009 that the department was pursuing the cases vigorously. Notices for recovery had been issued to the parties concerned.