

CHAPTER V: OTHER TAX RECEIPTS

5.1 Results of audit

Test check of the records relating to stamp duty, registration fee, entertainment duty, assessment and collection of land revenue during the year 2008-09 revealed non-assessment/underassessment of revenue and non-raising of demand amounting to Rs. 328.07 crore in 48,521 cases which can be categorised as under:

(Rupees in crore)

Sl. no.	Category	Number of cases	Amount
A : STAMP DUTY & REGISTRATION FEE			
1.	Short realisation of stamp duty and registration fee due to under valuation of properties	1,298	18.66
2.	Inordinate delay in finalisation of cases	2,429	11.98
3.	Loss of revenue due to misclassification of documents	312	5.95
4.	Loss of revenue due to execution of instruments in favour of co-operative housing societies	3,506	2.41
5.	Others	2,568	13.42
Total		10,113	52.42
B : ENTERTAINMENT DUTY			
1.	Non/short deposit of entertainment duty by the proprietors of VCRs	1,237	0.59
2.	Non-realisation of entertainment duty	1,014	0.26
3.	Incorrect exemption from payment of entertainment duty	878	0.12
4.	Evasion of entertainment duty due to non-accountal of tickets	55	0.06
5	Others	1,417	0.40
Total		4,601	1.43
C : LAND REVENUE			
1.	Non-levy of stamp duty on partition/gift deed of the building on <i>nazul</i> ground	174	91.78
2.	Non-registration of revenue recovery certificates	9,651	50.90
3.	Short assessment of diversion rent and premium	451	30.42
4.	Loss of revenue due to application of incorrect rates of premium and ground rent of the land	1,062	19.02

5.	Loss of revenue due to short assessment of premium and ground rent	3,411	18.39
6.	Non-execution and non-registration of lease deeds	33	12.02
7.	Non-recovery of collection charges	7,673	8.03
8.	Non-raising of demand of diversion rent, premium and fines	642	5.41
9.	Non-levy/recovery of process expenses	8,861	3.17
10.	Non-renewal of lease of <i>nazul</i> plots	271	1.08
11.	Others	1,578	34.00
Total		33,807	274.22
Grand total (A+B+C)		48,521	328.07

During the year 2008-09, the departments accepted underassessment of tax of Rs. 304.33 crore involving 45,709 cases. An amount of Rs. 8.49 crore had been recovered in 765 cases.

Few illustrative audit observations involving Rs. 22.74 crore are mentioned in the following paragraphs.

5.2 Audit observations

Scrutiny of records of various tahsil offices, Sub-Registrars, Assistant Excise Commissioners/District Excise Officers revealed several cases of non-compliance of the provisions of the Indian Stamp Act, Registration Act, Madhya Pradesh Entertainment Duty and Advertisement Tax Act and Madhya Pradesh Lokdhan Shodhya Rashiyon Ki Vasuli Adhiniyam etc. and Government orders 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 on the part of the departmental officers 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 Government to improve the internal control system so that such errors can be detected, avoided and prevented in future.

A - STAMP DUTY AND REGISTRATION FEE

5.3 Loss of revenue on instruments submitted before public officer

5.3.1 Under Section 33 read with section 38 of Indian Stamp Act, 1899, (IS Act) every public officer before whom, any instrument chargeable to duty is produced, shall, if it appears to him that such instrument is not duly stamped, impound the same. He shall admit the instrument in evidence upon payment of penalty/duty leviable under the Act or send it to the Collector for determination of proper duty leviable thereon.

Test check of records of *tahsil*, Ujjain in September 2008 revealed that sale deed valued at Rs. 21.71 crore was produced before *tahsildar* during mutation/diversion case of a land. The recital of the sale deed executed in April 2006 revealed that the market value of the immovable property as per guidelines was Rs. 55.27 crore and the leviable stamp duty and registration fee was Rs. 6.19 crore. However, stamp duty and registration fee of Rs. 2.43 crore was levied on the sale value of Rs. 21.71 crore mentioned in the instrument. The instrument was not referred to the Collector for determination of proper duty leviable thereon. This resulted in short levy/realisation of stamp duty and registration fee of Rs. 3.76 crore.

After the case was pointed out, the *tahsildar* stated in September 2008 that the case would be referred to the District Registrar (DR), Ujjain for necessary action. Further report in the matter has not been received (October 2009).

The matter was reported to the Inspector General, Registration (IGR) and the Government in March 2009; their reply has not been received (October 2009).

5.3.2 The instruments of lease deeds having lease period of more than 12 months are to be compulsorily registered under section 17 of the Registration Act, 1908, and three fourth of the stamp duty is chargeable as registration fee. Further, stamp duty is charged on such instruments at the rate prescribed in article 33 of schedule 1-A of the IS Act. As per instructions issued by the IGR (March 2005), stamp duty at the rate of eight *per cent* of consideration/advance royalty is payable on quarry lease.

5.3.2.1 Test check of records of Mining Officer (MO), Gwalior in November 2008 revealed that Madhya Pradesh State Mining Corporation (MPSMC) sub-leased the right of extraction and sale of sand to a contractor for the period from 17 August 2007 to 16 August 2008 for Rs. 13.79 crore. It was, however, seen that the agreement to this effect was executed on stamp paper of Rs. 100 against the leviable stamp duty of Rs. 1.10 crore. The MO did not initiate any action for levy of correct stamp duty. This resulted in short levy/realisation of stamp duty of Rs. 1.10 crore.

After this was pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Director of Geology and Mining (DGM), IGR and the Government in February 2009; their reply has not been received (October 2009).

5.3.2.2 Test check of records of *tahsil*, Huzur in January 2009 revealed that the Government granted (May 2008) permanent lease on land measuring 78.661 hectares to a society in consideration of premium of Rs. 4 crore and ground rent of Rs. 8 lakh per annum. The agreement was executed on 13 October 2008. It was, however, seen that the *tahsildar* did not initiate any action to get the agreement of lease registered. This resulted in non-realisation of revenue of Rs. 59.40 lakh (stamp duty of Rs. 34.65 lakh and registration fee of Rs. 24.75 lakh).

After the case was pointed out, the *tahsildar*, Huzur stated (January 2009) that letter had been issued to the society about the registration of lease deed. Further report has not been received (October 2009).

The matter was reported to the Commissioner, Bhopal division, IGR and the Government in March and April 2009; their reply has not been received (October 2009).

5.3.2.3 Test check of records of MOs, Dewas and Morena between October and December 2008 revealed that 30 quarry leases for extraction of sand were granted to MPSMC by the Government between June 2004 and May 2006 in consideration of Rs. 3.57 crore. However, the department did not take any action for execution and registration of agreement of quarry lease. This resulted in non-levy/realisation of stamp duty and registration fee of Rs. 50.05 lakh.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the DGM and the Government between December 2008 and March 2009; their reply has not been received (October 2009).

5.4 Delay in disposal of cases referred by Sub-Registrars

As per departmental instructions of July 2004, a maximum period of three months has been prescribed for disposal of cases referred to the Collector by the Sub-Registrar (SR) offices for determination of correct market value of properties and duty leviable thereon.

Test check of five SR offices¹ between February and August 2008 revealed that 294 cases referred by the registering authorities between April 2004 and March 2008 for determination of market value of properties had not been finalised though the period of three months had already elapsed. Such inordinate delay resulted in non-realisation of Rs. 4.85 crore being difference of stamp duty worked out by the SRs.

After the cases were pointed out, the IGR intimated (August 2009) that an amount of Rs. 57.88 lakh had been recovered in 162 cases and that action was in progress in remaining cases. Further report has not been received (October 2009).

The matter was reported to the Government between March 2008 and January 2009; the reply has not been received (October 2009).

5.5 Loss of revenue due to inconsistency in rules

Article 33 of schedule 1-A to the IS Act provides for levy of duty as on conveyance an amount equal to five times the average annual rent reserved plus premium where a lease purports to be for a term exceeding 20 years but not exceeding 30 years. Where the lease purports to be for a period exceeding 30 years or does not purport to be for a definite period, the same duty as on a conveyance on market value of property leased out, is leviable. The rent would be disregarded in case of a lease of more than 30 years. As per the explanation below section 47-A of the IS Act, market value of any property shall be the price which would have been fetched if it is sold in the open market on the date of execution of the instrument. Further, Rule 3-A of MP Prevention of Undervaluation of Instruments Rules, 1975, provides that in case of any property which is subject matter of a lease by State Government or any undertaking of the State Government, the market value of the property shall be the amount or value of such fine, or premium or advance as setforth in the instrument. This implies that duty on lease deed for a period of more than 30 years would be lesser than that on a lease of 30 years. Treating the premium setforth in the document as market value is also contrary to the explanation below section 47-A of the Act. Thus, there is inconsistency in rules.

Test check of records of SR, Bhopal in July 2008 revealed that two lease deeds were registered in August 2007 and March 2008 respectively, in which the lease period exceeded 30 years. In one case, the Government leased out land to MP Housing Board (MPHB) while in the other case MPHB leased out land and sold building to a private party. In these cases, stamp duty and registration fee of Rs. 1.94 crore was levied by the SR on the basis of value setforth in the documents. However, in accordance with the market value guidelines, the market value of above properties worked out at Rs. 40.13 crore and accordingly stamp duty and registration fee of Rs. 5.65 crore was leviable on these documents. Thus, inconsistency of rules resulted in loss of revenue of Rs. 3.71 crore.

¹ Bhind, Bhopal, Jabalpur, Panna and Raisen.

After the cases were pointed out, the IGR stated (August 2009) that a proposal for deletion of rule 3-A and 3-B of MP Prevention of Undervaluation of Instruments Rules, 1975 had been sent to the Government. Further development has not been reported (October 2009).

The matter was reported to the Government between September 2008 and May 2009; the reply has not been received (October 2009).

5.6 Short levy of stamp duty and registration fee on instruments of power of attorney

Schedule 1-A of the IS Act provides that when power of attorney is given without consideration and authorising the agent to sell, gift, exchange or permanently alienate any immovable property situated in Madhya Pradesh for a period not exceeding one year, duty of Rs. 100 is chargeable on such instruments. Further, when such rights are given with or without consideration for a period exceeding one year or when it is irrevocable or when it does not purport to be for any definite term, the same duty as a conveyance on the market value of the property is chargeable on such instruments.

Test check of records of 23 SR offices² between February 2008 and February 2009 revealed that out of 214 instruments of power of attorney registered between February 2006 and March 2008, in 138 documents, though the power to sell, gift, exchange or permanent alienation of immovable property was given, but there was no mention in the documents whether the power of attorney was without consideration for a period not exceeding one year and in 71 instruments, the power of attorney was irrevocable, while in five instruments power of attorney was with consideration. In these cases, stamp duty and registration fee of Rs. 2.05 crore was leviable in accordance with the above provisions. However, it was noticed that in 209 cases, the instruments were treated as power of attorney to sell without consideration for a period not exceeding one year and duty was levied at the rate of Rs. 100 in each case while in remaining five cases duty was levied at the rate of two *per cent* against the duty as a conveyance on market value of the property. This resulted in short levy of duty and registration fee of Rs. 2.05 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between May 2008 and May 2009; the reply has not been received (October 2009).

5.7 Incorrect determination of market value

Under Section 47-A of IS Act, if the registering officer, while registering any instrument finds that the market value of any property set forth was less than the market value shown in the market value guidelines, he should, before registering such instrument, refer the same to the Collector for determination of the correct market value of such property and duty leviable thereon.

² Anuppur, Ashoknagar, Bhind, Bhopal, Dhar, Dindori, Gwalior, Guna, Ichhawar (Sehore), Kolaras (Shivpuri), Lakhanadon (Seoni), Mhow (Indore), Multai (Betul), Nateran (Vidisha), Panna, Raghogarh (Guna), Raisen, Sagar, Sanawad (Khargone), Sonser (Chhindwara), Sehore, Seoni and Shahdol.

Test check of 15 SR offices³ between December 2005 to December 2008 revealed that in 129 instruments registered between December 2004 and March 2008, the market value as per guidelines was Rs. 61.59 crore against registered value of Rs. 41.07 crore. The SR did not refer these instruments to the concerned Collector for determination of correct value of properties and duty leviable thereon. This resulted in short levy of stamp duty and registration fee of Rs. 1.49 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between January 2006 and April 2009; the reply has not been received (October 2009).

5.8 Short levy of stamp duty and registration fee on lease deeds

Article 33 of schedule 1-A of the IS Act provides for levy of stamp duty on lease deeds at the rates prescribed therein. Further, as per article 2 of the registration table under the Registration Act, registration fee at three fourth of the stamp duty is chargeable on such instruments.

Test check of records of 10 SR Offices⁴ between October 2007 and February 2009 revealed that stamp duty and registration fee of Rs. 2.95 crore as against Rs. 4.15 crore was levied on 65 documents of lease deeds registered between April 2005 and March 2008 by treating lesser period of lease in six cases and due to computation mistake in 59 cases. This resulted in short levy/realisation of stamp duty and registration fee of Rs. 1.20 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between December 2007 and May 2009; the reply has not been received (October 2009).

5.9 Non-imposition of penalty on delayed presentation of instruments

According to section 23 of Registration Act, no document except will deed, shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of execution. If the delay in presentation is more than three months of the initial grace period of four months, but less than four months, penalty of 10 times of the registration fee shall be chargeable according to article XV (d) of table of registration fee.

Test check of records of SR, Narsinghpur in February 2009 revealed that an instrument was executed on 10 August 2007, but was presented before the SR for registration on 19 March 2008. Though the instrument was presented for registration after lapse of period beyond three months, yet the registering authority did not levy penalty of Rs. 45.61 lakh.

³ Ashta (Sehore), Badnagar (Ujjain), Betul, Bhind, Bhopal, Gohad (Bhind), Gwalior, Indore, Jabalpur, Khargone, Kolaras (Shivpuri), Mhow (Indore), Nagda (Ujjain), Raisen and Seoni.

⁴ Anuppur, Badnagar (Ujjain), Betul, Dindori, Gohad (Bhind), Gwalior, Karera (Shivpuri), Mehgaon (Bhind), Sidhi and Sonsar (Chhindwara).

After this was pointed out, the SR replied (February 2009) that both the parties signed the instrument on 19 March 2008. Reply is not acceptable because the instrument was executed on 10 August 2007 and the vendee applied for high-tension electricity connection on 1 September 2007 on the basis of this instrument. Besides, vendee also applied for the exemption from the payment of duty on this instrument on 14 August 2007. Further report in the matter has not been received (October 2009).

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

5.10 Non-reimbursement of duty and fee

According to the Government notification dated 12 July 2002, stamp duty and registration fee leviable on lease/sale deeds executed to acquire land in favour of member of a family displaced on account of Narmada Valley Development Projects (NVDP) is to be reimbursed by the Narmada Valley Development Authority (NVDA) to the Government on the basis of the demand letter produced by the respective SR.

Test check of records in four SR offices⁵ between July 2007 and August 2008 revealed that 61 documents were executed/registered between April 2003 and March 2008 in favour of persons displaced due to NVD project. It was further observed that on account of execution of above documents, stamp duty and registration fee of Rs. 25.90 lakh was reimbursable to the Government by the NDVA, but the same was not reimbursed, though the demand in all cases except 12 of Bhopal and Mhow was raised by the respective SRs against NVDA. This resulted in non-realisation of revenue of Rs. 25.90 lakh.

After the cases were pointed out, the IGR intimated (August 2009) that action to recover the dues from NVDA was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between August 2007 and April 2009; the reply has not been received (October 2009).

5.11 Short levy of stamp duty and registration fee due to misclassification

Under the IS Act, stamp duty is leviable on instruments as per their recital at the rates specified in schedule 1-A or prescribed by the Government through notifications.

⁵ Sub Registrar Dhar, Bhopal, Budhni (Sehore) and Mhow (Indore).

Test check of records of five SR Offices⁶ between May and December 2008 revealed that there was misclassification of documents in 18 cases resulting in short levy of stamp duty and registration fee of Rs. 20.64 lakh as mentioned below:

(Rupees in lakh)

Sl. no.	No. of cases Registered between	Nature of irregularities	Stamp duty and registration fee leviable/levied	Stamp duty and registration fee levied short
1.	<u>01</u> December 2006	Partition with sale treated as sale.	<u>3.99</u> 1.53	2.46
2.	<u>01</u> March 2008	Partition with agreement to sell with possession treated as agreement to sell without possession	<u>1.22</u> 0.16	1.06
3.	<u>08</u> between August 2005 and March 2008	Gift treated as release	<u>4.58</u> 2.17	2.41
4.	<u>04</u> between August 2006 and January 2008	Agreement to sell with possession treated as agreement to sell without possession	<u>6.24</u> 1.00	5.24
05.	<u>02</u> June and July 2007	Builder agreement treated as power of attorney	<u>1.83</u> 0.004	1.83
06.	<u>01</u> July 2006	Gift treated as partition	<u>2.80</u> 0.006	2.79
07.	<u>01</u> June 2007	Conveyance treated as builder agreement	<u>7.42</u> 2.57	4.85
Total	18		<u>28.08</u> 7.44	20.64

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between June 2008 and May 2009; the reply has not been received (October 2009).

5.12 Irregular exemption of stamp duty

The Government in its notification dated 25 September 2006 exempted documents of mortgage deeds from payment of duty which are executed by agriculture land holders for obtaining loans not exceeding Rs. 10 lakh from banks for agriculture purpose, irrespective of their holding. Prior to it, the exemptions were available to land holders belonging to Scheduled Caste/Scheduled Tribe or possessing land not exceeding 10 hectares. Further, agriculture purpose was also defined by the Government in its notification of September 2006 and the specific purpose for which loan was to be obtained was required to be mentioned in the documents.

⁶ Betul, Gwalior, Jabalpur, Mehgaon, (Bhind) and Raisen.

Test check of records of nine SR offices⁷ between February and September 2008 revealed that exemption from payment of duty of Rs. 17.92 lakh was granted on 138 documents of mortgage deeds executed by the land holders for obtaining loans of Rs. 4.24 crore from banks between April 2004 and February 2008. During scrutiny of these documents, it was seen that specific purpose of loan was not mentioned in 81 documents, while in 42 documents, the purpose of loan was other than agriculture and in six cases, holding of land was more than 10 hectares (cases pertaining to the period prior to 25 September 2006). Besides, in nine documents executed between May and December 2007, the loan amount in each case was more than Rs. 10 lakh. This resulted in irregular grant of exemption from payment of duty of Rs. 17.92 lakh.

After this was pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between April 2008 and April 2009; the reply has not been received (October 2009).

5.13 Non-realisation of revenue on instruments executed in favour of co-operative housing societies

As per Government notification of 24 October 1980, instruments executed by or in favour of primary co-operative housing societies for acquisition of land for housing purpose of its members were exempted from payment of stamp duty and registration fee. The exemption was available up to 5 September 2004.

Test check of records of two SR offices Jabalpur and Gwalior, between May 2008 and January 2009 revealed that land valued at Rs. 1.38 crore purchased between September 1996 and August 2003 for housing purpose through seven instruments by four societies was not utilised for housing purpose of the members of the societies and was subsequently disposed of between April 2007 and February 2008 to persons other than members of societies such as builders, individuals etc. Thus, stamp duty and registration fee of Rs. 16.18 lakh was recoverable on these instruments but no action was taken by the registering officer to recover the same.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between January and May 2009; the reply has not been received (October 2009).

⁷ Bhind, Dewas, Jabalpur, Manawar (Dhar), Mhow (Indore), Nagda (Ujjain), Nawgaon (Chhatarpur), Panna and Dhar.

B - ENTERTAINMENT DUTY

5.14 Non-realisation of entertainment duty from cable operators

The Madhya Pradesh Entertainment Duty and Advertisement Tax (MPEDAT) Act, 1936 and Madhya Pradesh Cable Television network (Exhibition) Rules, 1999, provide that every proprietor of cable television network and hotel or lodging houses providing entertainment through cable service shall pay entertainment duty (ED) at the prescribed rates.

Test check of records of three AECs⁸ and 11 DEOs⁹ between February and December 2008 revealed that ED of Rs. 47.27 lakh was not deposited by 549 cable operators and four proprietors of hotel or lodging houses providing entertainment through cable service during March 2004 to November 2008. The department also did not take any action for recovery the dues. This resulted in non-realisation of duty of Rs. 47.27 lakh.

After the cases were pointed out, AECs Jabalpur, Bhopal and DEOs, Datia, Dewas, Betul, Burhanpur, Vidisha, Badwani, Damoh and Tikamgarh stated between February and December 2008 that action for recovery was being taken. The AEC, Sagar and DEOs, Harda and Shivpuri stated between September and December 2008 that necessary action would be taken after investigation and intimated to audit. The DEO, Rajgarh stated (March 2008) that entire amount had been deposited. However, documentary proof of deposit of amount and further developments in other cases have not been received (October 2009).

The matter was reported to the Excise Commissioner (EC) and the Government in January and February 2009; their reply has not been received (October 2009).

5.15 Non-levy of penalty for breach of rules

MP Cable Television Network (exhibition) Rules, 1999 lays down that a proprietor of Cable Television Network (cable operator) shall, within last three days of every month, submit a monthly statement on the basis of a prescribed register maintained by him along with treasury challan for verification to the DEO. It further stipulates that cable operator committing breach of rules shall be punishable with fine up to Rs. 5,000.

Test check of records of three DEOs¹⁰ and AEC, Ujjain between February and October 2008 revealed that 312 cable operators failed to submit the monthly statements during April 2005 to September 2008. Consequently, account of the ED payable by the cable operators remained unverified/unreconciled with the challans. The departmental authorities, however, did not take any action to realise penalty of Rs. 15.60 lakh from cable operators responsible for non-submission of the monthly statements. This resulted in non-realisation of revenue of Rs. 15.60 lakh.

⁸ Assistant Excise Commissioners: Bhopal, Jabalpur and Sagar.

⁹ District Excise Officers: Badwani, Betul, Burhanpur, Damoh, Datia, Dewas, Harda, Rajgarh, Shivpuri, Tikamgarh and Vidisha.

¹⁰ Badwani, Katni and Sehere.

After this was pointed out, the DEO, Badwani stated (October 2008) that the amount of duty was being paid by the cable operators on time and DEOs, Katni, Sehore and AEC, Ujjain stated (between February and September 2008) that instructions for submission of monthly statements had been/would be issued. Reply is not acceptable because submission of monthly return is a mandatory provision and accuracy of the accounts of the ED Register can not be verified in the absence of submission of the monthly statements on due dates. Besides, the replies do not explain why action to levy penalty was not taken. Further replies have not been received (October 2009).

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

5.16 Non-levy/recovery of advertisement tax

The MPEDAT Act provides that every proprietor of an entertainment shall pay advertisement tax on every advertisement exhibited at a rate not exceeding Rs. 50 per month.

Test check of records of AEC, Bhopal and 14 DEOs¹¹ between March and December 2008 revealed that though 991 cable operators during April 2004 to November 2008 did not pay advertisement tax for the period ranging from 6 to 52 months, yet the department did not take any action to realise the same. This resulted in non-realisation of advertisement tax Rs. 12.37 lakh considering minimum of one advertisement per operation per month.

After the cases were pointed out, the AEC/DEOs stated between March and December 2008 that under the rules there was no provision for recovery of advertisement tax from the cable operators. However, fact remains that advertisement tax is leviable under Section 3-C and 2-1 (aa) of the Act *ibid*.

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

5.17 Non-levy of entertainment duty on cinema houses

The MPEDAT Act provides that where cinematographic exhibitions are carried out in a cinema hall, no duty shall be levied on an amount not exceeding Rs. 2 per ticket charged on account of facilities provided to persons admitted in the cinema hall. The details of facilities provided and the amount spent thereon certified by the chartered accountant (CA) shall be presented by the proprietor of the cinema hall to the collector of the district through the AEC/DEO latest by 30th June of the following financial year. If the collector is not satisfied with the facilities provided, he may recover the duty in respect of the amount allowed for facilities from the proprietor of the cinema house.

Test check of records of six DEOs¹² between February and November 2008 revealed that 24 proprietors of cinema houses collected Rs. 38.39 lakh between April 2004 and March 2008 on sale of tickets for providing facilities to spectators in the cinema houses. The details of facilities provided in cinema halls and accounts of expenditure thereof duly certified by the CA were not

¹¹ Badwani, Bhind, Burhanpur, Chhindwara, Damoh, Datia, Harda, Katni, Khandwa, Rajgarh, Sehore, Shivpuri, Tikamgarh and Vidisha.

¹² Betul, Harda, Khandwa, Morena, Rajgarh and Tikamgarh.

submitted by the proprietors to the Collectors, but no action was taken by the DEOs for levy of ED on this amount. Thus, ED of Rs. 10.97 lakh leviable on collected amount was not levied.

After the cases were pointed out, the DEO, Tikamgarh stated (July 2008) that there was no provision in the rules for levy of duty on such amount collected by proprietors. The reply is factually incorrect. In remaining cases, the DEOs stated between February and November 2008 that necessary action would be taken and intimated to audit. Further report has not been received (October 2009).

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

C - LAND REVENUE

5.18 Non-levy/recovery of process expenses

As per Section 4 of the Madhya Pradesh *Lokdhan Shodhya Rashiyon Ki Vasuli Adhiniyam*, 1987, process expenses at the rate of three *per cent* of principal amount shall be recovered from the defaulters and deposited in the treasury.

Test check of records of 28 *tahsils*¹³ between April 2008 and January 2009 revealed that process expenses of Rs. 1.53 crore was recoverable from the defaulters in 3,259 cases, but the *tahsildar* did not include the same in the relevant demand notices of the principal amount of Rs. 51.14 crore. This resulted in non-levy/realisation of process expenses of Rs. 1.53 crore.

After the cases were pointed out, the Government intimated (September 2009) that in case of *Tahsildar*, Sendhwa an amount of Rs. 30,007 had been recovered. The *Tahsildars*, Bhitwar, Tonk khurd, Gwalior, Pipariya, Shajapur, Sehore, Ashta and Nateran (Vidisha) stated (October 2008) that action would be taken to recover the process expenses. The *Tahsildars*, Begumganj, Dabra, Huzur, Mandla, Pichhore, Shivpuri, Khargone and Ujjain stated (September 2008) that matter will be taken up with banks for demanding process expenses. *Tahsildar*, Datia stated (December 2008) that action would be taken after apprising the district office of the position. Further developments have not been reported (October 2009).

The *Tahsildar*, Bhawara (Jhabua) and Amla (Betul) stated (September 2008) that the Banks had mistaken in not depositing the money of process expenses. *Tahsildar*, Bandhavgarh stated (September 2008) that the amount relating to process expenses was received through cheques. However, the fact remains that there was nothing on record to prove that the amount has been deposited under proper heads.

¹³ Ambah (Morena), Amla (Betul), Ashta (Sehore), Bhawara (Jhabua), Bhind, Bhitwar (Gwalior), Bandhavgarh (Umariya), Begumganj (Raisen), Chachoda (Guna), Dabra (Gwalior), Datia, Gwalior, Huzur (Bhopal), Itarsi (Hoshangabad), Khargone, Mandla, Mehgaon (Bhind), Nateran (Vidisha), Pipariya (Hoshangabad), Pichhore (Shivpuri), Pushparajgarh (Anuppur), Sagar, Sehore, Shivpuri, Shajapur, Sendhwa (Badwani), Tonk khurd (Dewas) and Ujjain.

Tahsildar, Pushparajgarh (Anuppur) stated (September 2008) that there was no such instruction of the Government. The reply is contrary to the provisions of the *Vasuli Adhinyam* *ibid*.

Replies from the remaining six¹⁴ *Tahsildars* have not been received (October 2009).

The matter was reported to the Government between April and December 2008; their reply has not been received (October 2009).

5.19 Non-raising of demand of premium, diversion rent and fines

According to Madhya Pradesh Revenue Book Circular (RBC) issued under the MP Land Revenue Code (MPLRC), 1959, the sub divisional officer (SDO) (Revenue) shall intimate to the concerned *tahsildar*, the demand for re-assessed rent on diverted land used for purposes other than agriculture to incorporate the change in the *tahsil* record. Further, demand of premium, diversion rent and fine imposed under the penal provisions of MPLR Code and RBC is to be noted in the demand and collection register of the concerned *tahsil*.

Test check of records of three *tahsils*¹⁵ between September 2008 and January 2009 revealed that diversion rent, premium and fine of Rs. 1.27 crore in respect of 245 cases for the period from October 2003 to September 2008 was not noted in the demand and collection register of the concerned *tahsils*. Hence, no demand could be raised for the same. This resulted in non-realisation of revenue of Rs. 1.27 crore.

After the cases were pointed out, the Government stated (April 2009) that the *tahsildar* Ujjain had raised the demand of diversion rent and premium. The SDO (revenue), *tahsil* Shajapur stated (September 2008) that B-1¹⁶ was not prepared due to the death of the Revenue Inspector. *Tahsildar*, Huzur (Bhopal) stated (January 2009) that the recovery of diversion rent, premium and fine was under process. Further developments have not been reported (October 2009).

The matter was reported to the Commissioner, Revenue and the Government between January and March 2009; reply of the Government in remaining two cases has not been received (October 2009).

5.20 Non-assessment/short realisation of diversion rent and premium

According to the MPLRC, where land assessed for one purpose is diverted for any other purpose, then revenue payable on such land shall be revised and re-assessed in accordance with the purpose for which it has been diverted from the date of such diversion at the prevailing rates fixed by the Government from time to time. Besides, premium at prescribed rates is also leviable.

¹⁴ Ambah, Bhind, Chachoda, Itarsi, Mehgaon and Sagar.

¹⁵ *Tahsil* Huzur (Bhopal), Shajapur, Ujjain.

¹⁶ B-1 is a *Kistbandi*, *Khatoni* of diversion rent and premium prepared by assessing officer in triplicate.

5.20.1 Test check of records between April 2007 and October 2008 revealed that there was short realisation of diversion rent and premium of Rs. 54.64 lakh due to underassessment as per details mentioned below:

(Rupees in lakh)

Sl. no.	Name of Unit	No. of cases	Land (in hect.)	Audit observations	Amount of Diversion rent and premium		Short realisation
					Realisable	Realised	
1.	2.	3.	4.	5.	6.	7.	8.
01	Collectorate, Indore	07	15.932	Application of incorrect rates of diversion rent and premium resulted in short assessment.			
				(1) Short levy of premium of Rs. 7.40 lakh (four cases). (2) Short levy of diversion rent of Rs. 5.60 lakh (1 case). (3) Short levy of premium and Diversion rent of Rs. 74,000 and Rs. 6.90 lakh respectively (two cases).	27.20	6.56	20.64
02.	Tahsildar, Morena	03	30.361	(1) Short levy of Diversion rent of Rs. 1.70 lakh (one case). (2) Short levy of Premium and Diversion rent of Rs. 1.01 lakh and Rs. 1.86 lakh respectively (two cases).	14.37	9.80	4.57
03	Collectorate, Khandwa	03	1.540	Short levy of premium and Diversion Rent of Rs. 1.69 lakh and Rs. 1.40 lakh respectively	3.44	0.35	3.09

1.	2.	3.	4.	5.	6.	7.	8.
04.	SDO (Revenue) Indore <i>Tahsil</i>	01	15.896	Incorrect calculation by the SDO resulted in short assessment of diversion rent and premium of Rs. 6.08 lakh and Rs. 12.64 lakh respectively.	23.53	8.59	14.94
05.	Collecto- rate, Bhopal	02	8.822		6.98	3.20	3.78
06.	-do-	03	10.146	The land was assessed incorrectly at residential rates in place of commercial rates resulting in short assessment of diversion rent and premium of Rs. 1.54 lakh and Rs. 6.08 lakh respectively.	15.83	8.21	7.62
Total		19			91.35	36.71	54.64

After the cases were pointed out, the SLR (Diversion), Collectorate Indore stated (September 2008) that necessary action would be taken after examining the cases while SDO (revenue), *tahsil* Morena stated (October 2008) that demand notice would be issued and necessary action will be taken. Further developments have not been received (October 2009).

The SLR (Diversion), Collectorate Khandwa stated (August 2008) that since the rates for the village were not available, the rates for adjoining village had been applied. Moreover, the applicant had demanded diversion of 625 square meters of land. It was observed that Malipura village is situated towards Khandwa city, nearest to Mali village. Hence the rate of Mali village should have been applied. Besides, 0.74 acre land (2,995 square meter) was sanctioned by the Deputy Director of Town and Country Planning, Khandwa vide order dated 19 September 2005 while diversion was admitted only for 625 square meters.

The SDO (Revenue), Indore reassessed the case and raised a demand of Rs. 10.69 lakh (April 2007). Collector (Diversion), Bhopal intimated (June 2009) that the case of Bawadiya Kalan had been reassessed (December 2008) and demand was raised for Rs. 4.88 lakh. In the case of Koluan Kalan it was stated that diversion was allowed for residential purposes and was assessed accordingly. The reply does not explain the constraints in allowing commercial diversion despite applicants request for the same.

The SDO, Bhopal stated (January 2008) that the land was assessed at residential rates as the same had to be used for college building in public interest. Reply is not acceptable because college buildings are not used for residential purposes, instead they are commercial buildings.

5.20.2 Test check of records of Collectorate, Bhopal (Diversion section) in January 2008 revealed that land measuring 31.08 lakh square feet was purchased by the Madhya Pradesh Housing Board (MPHB), Bhopal

for construction of residential colonies at five¹⁷ localities of Bhopal during the period 2001-02 to 2005-06, but neither any survey was conducted by the department, nor was the diversion rent and premium assessed by the department for the land upto January 2008. This resulted in non-assessment of revenue of Rs. 46.80 lakh (diversion rent Rs. 19.18 lakh and premium Rs. 27.62 lakh).

After the cases were pointed out, the SDO (Diversion), Bhopal stated (January 2008) that MPHB had not given any application for diversion of such land. He further added that matter would be referred to the Government. Further development has not been reported (October 2009).

5.20.3 Test check of records of Collectorate, Khandwa (Diversion Section) and SDO, *tahsil* Morena between July and October 2008 revealed that agricultural land measuring 52.727 hectare was purchased by MPHB for construction of residential colonies in village Malipura of Khandwa district and Morena *tahsil* during the year 2002-03. However, diversion of the land was neither carried out, nor diversion rent and premium was assessed for this diverted land. This resulted in non-assessment of diversion rent and premium of Rs. 43.21 lakh (Premium Rs. 24.33 lakh and diversion rent Rs. 18.88 lakh).

After the cases were pointed out, the SDO, Morena *tahsil* and Superintendent of Land Record (SLR), Khandwa (Diversion) stated between July and October 2008 that necessary action would be taken after spot verification. Further developments have not been reported (October 2009).

The cases were reported to the Commissioner, Land Record and Settlement and the Government between April and December 2008; their reply has not been received (October 2009).

5.21 Non-recovery of collection charges

According to the *Panchayat Raj Adhiniyam*, 1993 and instructions (June 1999) issued thereunder, the amount collected by the Government on account of land revenue cess, fee and other taxes shall be credited to the '*Panchayat Raj Nidhi*' after deducting 10 *per cent* of the amount as collection charges.

Test check of records of 24 *tahsils*¹⁸ between April 2008 and January 2009 revealed that revenue of Rs. 3.85 crore was collected and credited to *Panchayat Raj Nidhi*. However, the *tahsildars* concerned failed to deduct collection charges of Rs. 38.50 lakh. This resulted in non-recovery of revenue of Rs. 38.50 lakh.

¹⁷ Arera Hills, Dharampuri; Shyamala Hills; Hinotiya Alam (Rural huzur); Kohefizan Bairagarh and Nishatpura Arif Nagar.

¹⁸ Ashoknagar, Ashta (Sehore), Ambah (Morena), Ater (Bhind), Badwani, Begumganj, Bhind, Bhawara (Jhabua), Datia, Ganjbasoda (Vidisha), Hatta (Damoh), Huzur (Bhopal), Itarsi, Khargone, Lahar (Bhind), Mehgaon (Bhind), Morena, Nateran (Vidisha), Pichhore (Shivpuri), Sagar, Sehore, Shivpuri, Sendhwa (Badwani) and Tonk khurd (Dewas).

After the cases were pointed out, the Government intimated (between June and September 2009) that in case of eight¹⁹ *tahsils* an amount of Rs. 15.66 lakh had been recovered. However, *tahsildars*, Ater (Bhind), Ashoknagar, Begumganj and Khargone stated between June and December 2008 that necessary action would be taken to deposit the charges under proper major head. *Tahsildars*, Bhind, Datia and Mehgaon stated (October and December 2008) that matter would be taken up with the banks towards recovery of collection charges. *Tahsildars*, Ambah, Bhawra, Ashta and Huzur, stated between June and December 2008 that no such order had been received. Reply is not acceptable because it is laid down in the *Adhinyam* itself and no further orders are required to be issued. *Tahsildars*, Itarsi and Lahar stated (September and October 2008) that it was related to district *panchayat* and therefore, had been deposited in the account of *Zila Panchayat*. Their replies are not acceptable because 10 *per cent* collection charges were not deducted and deposited under proper major head. *Tahsildar*, Sehore stated (October 2008) that collection charges were being deposited separately. Reply is not acceptable because no evidence was produced to audit.

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

5.22 Short/non-recovery of premium and ground rent in respect of *Nazul* land and non-levy of interest on unpaid amount

As per instructions of the State Government (Department of Revenue) dated 21 January 1987, if the premium and ground rent is not paid within the stipulated period, interest at the rate of 15 *per cent* per annum is required to be levied.

Test check of records of *tahsil*, Indore (*nazul* branch) in April 2007 revealed that although premium was due in 21 cases, but it was not paid by the lessees within the stipulated period. However, the departmental authorities did not recover the unpaid amount of premium and interest leviable thereon. This resulted in non-realisation of revenue of Rs. 24.69 lakh (premium Rs. 4.20 lakh and interest Rs. 20.49 lakh).

After the cases were pointed out, the *Nazul* officer stated (April 2007) that the renewal of cases were under process and audit would be intimated after these are completed. Further developments have not been reported (October 2009).

The matter was reported to the Commissioner, Land Record and Settlement and the Government in May 2008; their reply has not been received (October 2009).

5.23 Non-assessment and levy of *panchayat* cess on diversion rent

Panchayat Raj Adhinyam, 1993 provides that *Panchayat cess* is leviable for each revenue year on every land holder and the Government lessee in respect of land held by him in the '*gram Panchayat*' area at the rate of 50 paise per rupee of land revenue or rent assessed for each piece of land.

¹⁹ Badwani, Ganjbasoda, Hatta, Nateran, Pichhore, Sagar, Sendhwa and Tonk khurd.

The cess is leviable in addition to the land revenue or rent. Under section 58 (2) of MPLRC, diversion rent is included in the definition of land revenue, hence *Panchayat cess* is leviable on diversion rent also.

Test check of records in four *tahsils*²⁰ and Collectorate, Guna (diversion section) between August and October 2008 revealed that in 525 cases, *panchayat cess* amounting to Rs. 20.52 lakh was not levied on diversion rent of Rs. 41.04 lakh in respect of land pertaining to *gram panchayat* areas. This resulted in non-levy of *panchayat cess* of Rs. 20.52 lakh.

After this was pointed out, *tahsildar*, Gwalior did not offer any specific reply and in the remaining cases, the assessing authorities stated between August and October 2008) that demand would be raised as per rules. Further developments have not been received (October 2009).

The matter was reported to Commissioner, Revenue and the Government between October and December 2008; their reply has not been received (October 2009).

5.24 Non-renewal of permanent lease of *Nazul* plots

Under MPLRC, rent payable for a plot in an urban area (*nazul* plot) held on lease, shall be deemed to be due for revision when the lease becomes due for revision. The revised rent is fixed on the basis of standard rates notified and prevalent at the time of renewal and shall not exceed six times of the rent payable immediately before the revision.

Test check of records of Collectorate, Indore (*nazul* section) in June 2008 revealed that 17 permanent leases granted for 30 years which fell due for renewal between 2003-04 and 2006-07 were not taken up by the department for renewal. This resulted in non-realisation of revenue of Rs. 13.91 lakh.

After the cases were pointed out, the *nazul* officer stated (June 2008) that action for renewal of leases would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the Commissioner, Revenue and the Government in July 2008; their reply has not been received (October 2009).

²⁰ Gwalior, Gohad, Shajapur and Sehore.