

CHAPTER III
STAMP DUTY AND REGISTRATION FEES

3.1 Results of audit

Test check of the records of the departmental offices conducted during the year 2008-09 indicated undervaluation, misclassification and other observations amounting to Rs. 88.84 crore in 1,073 cases which could be classified under the following categories:

(Rupees in crore)			
Sl. no.	Category	No. of cases	Amount
1.	Misclassification	374	34.62
2.	Undervaluation	259	25.04
3.	Others	440	29.18
Total		1,073	88.84

During the year 2008-09, the department accepted underassessments etc., amounting to Rs. 8.02 crore in 201 cases, of which Rs. 5.16 crore involved in 69 cases were pointed out during 2008-09 and the rest in earlier years. The department collected Rs. 0.90 crore pertaining to 56 cases.

After the issue of one draft paragraph, the department collected Rs. 33.45 lakh.

A few illustrative audit observations involving Rs. 10.73 crore are mentioned in the succeeding paragraphs.

3.2 Audit observations

Scrutiny of the records in the offices of Registration department relating to revenue received from stamp duty and registration fees indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of stamp duty/registration fees and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out in audit. Although such omissions are pointed out every year, the irregularities do persist and remain undetected till the next audit is conducted. There is need for the Government to consider directing the department to improve the internal control system including strengthening internal audit so that such omissions can be avoided, detected and corrected.

3.3 Misclassification of instruments

3.3.1 As per the provisions of the Article 58 of the Schedule 1 to the Indian Stamp Act, 1899, any instrument of settlement executed in favour of a member or members of a family is leviable to stamp duty at the rate of one *per cent* of the market value of the property subject to a maximum of Rs. 10,000. In any other case, stamp duty is leviable at the rate of eight *per cent* of the market value of the property. As per the explanation under Article 58, family means father, mother, husband, wife, son, daughter, grand child and also includes adoptive father and mother, adopted son and daughter.

3.3.1.1 Test check of the records in seven District Registries³¹ and 44 Sub-Registries³² between July 2008 and January 2009 indicated that through 645 settlement deeds registered during the year 2007-08, properties were settled by the executants in favour of their brothers/sisters. In each case stamp duty and registration fees were collected at the rate of one *per cent* subject to a maximum of Rs. 10,000 and Rs. 2,000 respectively. As brothers/sisters do not come under the purview of Article 58, the settlements made should be classified as among non family members and stamp duty of Rs. 5.86 crore and registration fees of Rs. 0.73 crore should have been collected as against Rs. 0.63 crore collected. This had resulted in short collection of stamp duty and registration fees of Rs. 5.96 crore.

The matter was reported to the department (between August 2008 and February 2009) and to the Government (between January 2009 and April 2009). The Government stated (April 2009) that for the purpose of settlement there cannot be any pre-existing right over the property in the form of either co-parcener or co-owner. As such settlement deeds executed in favour of brother or sister are to be regarded as instruments in favour of a family member as defined in Article 58. The reply is not in consonance with the

³¹ Coimbatore, Dindigul, Gobichettipalayam, Kanchipuram, Krishnagiri, Madurai (S) and Tiruchirappali.

³² Acharapakkam, Alangudi, Ambattur, Annur, Annanagar, Arakkonam, Arasaradi, Attur, Avadi, JT II Chengalpattu, Chokkikulam, JT II Coimbatore, Coonoor, Dharapuram, Ganapathy, Gandhipuram, Guduvancherry, JT II & III Kanchipuram, Kanniyur, Jt IV Madurai, JT II Manavalanagar, Nagalnaickenpatti,, Nallur, P.N.Palayam, Peelamedu,, Perambalur, Periamet, Pollachi, Ponneri, Poonamallee, K.Sathanur, Satyamangalam, Sembium, Srirangam, Suramangalam, Tallakulam, Thamaraiappatti, Jt II Thousand Lights, Thiruvellore, Thiruverambur, JT III Trichy, Tirupattur, Tiruparankundram and JT II Tiruppur.

provisions of the Article 58 in which brothers and sisters have not been mentioned in the definition of family.

3.3.1.2 Test check of the records in Joint III Sub-Registry, Tiruchirappali in September 2008 indicated that through a settlement deed registered in February 2008, property valued at Rs. 30.68 lakh was settled by an executant who was adopted by an adoptive mother in May 1997, in favour of his natural father who is not a family member. This had resulted in short levy of stamp duty and registration fees of Rs. 2.64 lakh.

After this was reported in May 2009, the Government accepted (July 2009) the audit observation and stated that instructions have been issued to initiate action to realise the amount.

3.3.2 As per the Indian Stamp Act, 1899, conveyance includes a conveyance on sale and every instrument by which property is transferred and which is not otherwise specifically provided for by the Schedule I. As per the Article 17, on an instrument of cancellation, if attested and not otherwise provided for, stamp duty is to be levied at Rs. 50. There cannot be a thing as cancellation of a conveyance under which right of property has already been passed. A property can be retransferred only by a reconveyance.

Test check of the records in Sub-Registry, Coonoor and Gandhipuram in August 2008 indicated that two pieces of agricultural land were conveyed in December 2002 and March 2005 and the possession of the land was handed over to the purchasers on receipt of the consideration of Rs. 42.72 lakh. These transactions were, however, cancelled through cancellation deeds executed and registered in June 2004 and September 2007 respectively. The value of the properties as per guideline rates at the time of cancellation was Rs. 6.31 crore. Since the right of the property had been passed to the purchasers, the cancellation deeds should have been classified as reconveyance deeds instead of cancellation deeds and stamp duty and registration fees of Rs. 56.73 lakh was chargeable instead of Rs. 50 per instrument. This misclassification had resulted in short collection of stamp duty and registration fees of Rs. 56.73 lakh.

After this was reported (September/October 2008 and May 2009) to the Government, it stated (June 2009) that for reconveyance, there must be transfer of property in favour of the vendor. Since the document in question is a deed *pole*, it cannot be construed by any stretch of imagination as reconveyance. The reply is untenable since the right of the property was retransferred to the original vendors.

3.3.3 According to the clause 1 (b) of the “Table of Fees” under section 78 of the Indian Registration Act, 1908, the registration fees leviable on an agreement to sell or resell shall be on the advance or earnest money. The rate of registration fees leviable on sale agreement was one *per cent* on the advance money received.

Test check of the records in the office of the Sub-Registrar, Ponneri in January 2009 indicated that two instruments were registered as mortgage deeds in February 2008 on payment of registration fees of Rs. 10,000 titled as “creation of charge by deposit of title”. The recitals of the deeds indicated that a sum of Rs. 15.53 crore was received as advance for the purpose of conveyance of the land measuring 15.53 acres pursuant to a ‘Memorandum of Understanding’ entered into between the mortgagors and the intended purchaser in February 2008. This advance was to be adjusted against the sale consideration. In the event of failure to convey the land, the advances were to be repaid alongwith an interest at 12 *per cent* per annum. The documents should have been treated as ‘sale agreements’ and the registration fee of Rs. 15.53 lakh was required to be collected. The misclassification of the documents as mortgage deeds instead of the sale agreements resulted in short collection of registration fee of Rs. 15.53 lakh.

After this was reported to the Government (May 2009), it stated (June 2009) that previous transactions entered into in different deeds were recorded and such transactions were not liable for stamp duty. The reply is untenable since the facts of the case as available in the documents clearly indicate that the instrument is a sale agreement and should have been taken into account in the interest of revenue.

3.3.4 As per the Article 23 of the Schedule 1 to the Indian Stamp Act 1899, in the case of conveyance of an immovable property, stamp duty is leviable at the specified rate on the market value of the property. As per Article 18, a certificate of sale (in respect of each property put up as a separate lot and sold) is granted to the purchaser of any property sold by public auction by a civil or revenue court or collector or other revenue officer.

Test check of the records in the office of the Sub-Registrar, Neelangarai in February 2008 indicated that an instrument of certificate of sale issued by the Debts Recovery Tribunal, Chennai in June 2006, in favour of a company for the purchase of land measuring 58.66 cents with the superstructure thereon was treated as rectification. It was, however, noticed in audit that as the properties were not sold through public auction but were purchased by mutual consent of the executants, the instrument was required to be classified as conveyance deed. Thus, there was misclassification of instrument. The value of the land was Rs. 1.53 crore and consequent short collection of stamp duty and registration fees was of Rs. 13.80 lakh. The value of the building and machinery conveyed has to be ascertained by the department for levy of stamp duty and registration fees.

After this was pointed out (March 2008), the District Registrar stated (June 2008) that the registering officer had been advised to take action for redetermination of the market value of the property and for recovery of the difference in the amount of stamp duty.

The matter was reported to the Government in December 2008; their reply has not been received (January 2010).

3.4 Short levy due to undervaluation of property

As per the provisions of the Article 23 of the Schedule 1 to the Indian Stamp Act 1899, in the case of conveyance of immovable property, stamp duty including the surcharge is leviable at the rate of 8 *per cent* on the market value of the property. According to the Section 27, the consideration, the market value and all other facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein. As per the Rule 3 (4) of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968, the registering officer may also consider the value of the property as per the guide lines register for the purpose of verifying the market value.

The Central Valuation Committee for guideline value had decided in September 2007 that if any document with a value higher than the guideline value was registered for a particular survey number/Street/Nagar before 01 August 2007, the same should be taken into account for registering the document on or after 01 August 2007.

Test check of the records in five registering offices between September 2007 and December 2008 indicated that in 10 documents there was undervaluation of properties to the extent of Rs. 20.90 crore resulting in short levy of the stamp duty and registration fees of Rs. 1.86 crore as detailed below:

(Rupees in lakh)				
Sl. no.	Name of the Registry (No. of documents)	Nature of irregularity	Property under valued by	Deficit stamp duty and registration fees
1.	Tiruporur (3)	Two sale deeds and one exchange deed of land measuring 2.5 acres, 4 acres and 5.77 acres were executed by a company in May 2006. The value of the land as per the guidelines amounted to Rs. 27.36 crore. However, the deeds were executed for Rs. 10.69 crore resulting in undervaluation of Rs. 16.67 crore.	1,667.00	150.00
After this was pointed out (October 2007); the District Registrar, Chengalpattu accepted the audit observation (May 2008) and recommended the collection of deficit amount. Report on collection has not been received (January 2010).				
2.	Neelangarai (1)	A piece of land was conveyed for a consideration of Rs. 1.09 crore and a sale deed was executed and registered in September 2006. The cost of the building of Rs. 2 crore was, however, not included in the deed. Thus, the suppression had resulted in undervaluation of property.	200.00	17.97
3.	Villivakkam, Ambattur (4)	In four instruments of conveyance registered (August and December 2007), in four villages, the value of the land measuring 23,611 square feet was arrived by adopting incorrect rates of Rs. 2,050, Rs. 375, Rs. 2,255 and Rs. 500 per square feet instead of adopting the correct rates of Rs. 6,185, Rs. 521, Rs. 3,046 and Rs. 1,104 per square feet respectively fixed by Central Valuation Committee. This had resulted in under valuation of the properties	136.49	11.66
After this was pointed out in May 2009, the Government accepted (June 2009) the audit observation in two cases pertaining to Villivakkam and stated that action under Section 47A(3) had been initiated to collect the deficit amount of Rs. 7.50 lakh. It was further stated that in respect of one case, the deficit amount of Rs. 1.22 lakh had been collected. The Sub-Registrar, Ambattur replied that the deficit amount would be collected. Further report has not been received (January 2010).				

4.	Gummidipoondi, (2)	Arithmetical mistakes were noticed in conversion of the area of building from square feet into square meters in two instruments of conveyance of buildings with different extents of land executed and registered in August 2006 and February 2007. Consequently the buildings were undervalued by Rs. 86.18 lakh.	86.18	6.17
After this was pointed out in May 2009, the Government accepted (June 2009) the audit observation and stated that the case had been referred under Section 47A(3). Further report has not been received (January 2010).				
Total			2,089.67	185.80

3.5 Excess allocation of transfer duty surcharge to local bodies

According to the Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998 and the Section 175 of the Tamil Nadu Panchayat Act, 1994, a duty on transfer of immovable property shall be levied in the form of a surcharge (transfer duty surcharge) alongwith the duty imposed under the Indian Stamp Act, 1899 on the instruments of sale, exchange, gift, mortgage with possession, lease in perpetuity, etc. It shall be levied and collected at the rate of two *per cent* on the market value of the property transferred and subsequently allocated to the concerned local bodies.

Test check of the records in the office of the three Sub-Registrars³³, between April and September 2008 indicated that the transfer duty surcharge (TDS) of Rs. 66.60 lakh was allowed in excess to the local bodies due to clerical error.

After this was pointed out in May 2009, the Government accepted (July 2009) the audit observation in the case of Sivagiri and stated that action would be taken to adjust the excess allocation. Reply in respect of the other two cases have not been received (January 2010).

3.6 Non-levy of stamp duty due to incorrect grant of exemption

The Government of Tamil Nadu issued orders in May 2004 under the Section 9 of IS Act exempting all industrial units and their expansions located in the Special Economic Zones (SEZ), from payment of the stamp duty and registration fees in respect of land transactions.

Test check of the records in the office of the Sub-Registrar, Tambaram in January 2008 indicated that a building with a floor area of 1.80 lakh square feet valued at Rs. 7.17 crore and constructed on the land in the Madras Export Processing Zone in Kadaperi village was conveyed in October 2006 by Ambattur Clothing Limited in favour of Celebrity Fashions Limited. The registering authority allowed exemption from payment of stamp duty of Rs. 57.35 lakh on the ground that it was situated in the SEZ. However, as per the Government order, the exemption was admissible in respect of land transaction only and not for sale of a building. The incorrect exemption resulted in non-levy of stamp duty of Rs. 57.35 lakh.

After this was pointed out, the Registering authority replied in January 2008 that the document was registered as per the Government orders in SEZ Act, 2005 (Central Act 28 of 2005) which exempted levy of the stamp duty and registration fees from 10 February 2006. He added that the SEZ Act notified

³³ Sivagiri, Sriperumbudur and Tiruvellore.

by the Tamil Nadu Government exempted the levy of stamp duty and registration fees. The reply is not in line with the Government order of May 2004, in which exemption was granted in respect of land only and not on building constructed on the land.

The matter was reported to the Government in March 2009; their reply has not been received (January 2010).

3.7 Non-realisation of stamp duty due to incorrect exemption

According to the notification dated 29 June 1966 issued under the Co-operative Societies Act, remission of the stamp duty chargeable under the Indian Stamp Act is admissible in respect of instruments executed by a member of a registered co-operative society provided that the executant is a member of such society continuously for a period of not less than two years.

Test check of the records in Joint II Sub-Registry, Chengalpattu in July 2008 indicated that eight sale deeds were registered (between February and March 2008) whereby lands measuring 5.01 lakh square feet were conveyed in favour of a co-operative housing society by persons who were not members of the society, for a consideration of Rs. 4.96 crore. The registering authority exempted these instruments from stamp duty on the ground that the persons conveyed the land through power of attorney who were members of the society. As the notification covers only those transactions executed by the members of the society, the exemption allowed to non-members is not correct and as such stamp duty of Rs. 39.70 lakh is leviable.

After this was pointed out in December 2008, the Government accepted (March 2009) the audit observation and stated that the District Registrar had been instructed to initiate action for recovery of the amount.

3.8 Non-raising of demand for realisation of deficit stamp duty

Under the sub Section 2 of Section 47 A of the Indian Stamp Act, 1899, the collector shall, after giving the parties a reasonable opportunity of being heard and holding an enquiry, determine the market value of the property which is the subject matter of conveyance. As per Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the collector shall pass an order within three months from the date of determining the market value of the properties and duty payable on the instrument and communicate the order so passed to the parties.

Test check of the records in the office of the Special Deputy Collector (Stamps), Vellore in July 2008 indicated that though the market value of a property was determined as Rs. 2.83 crore in June 2006 after inspection of the site by the Special Deputy Collector, no order was passed in this regard. Consequently no demand was raised even after a lapse of two years. This resulted in delay in realisation of the deficit stamp duty to the extent of Rs. 22.26 lakh.

After this was pointed out in January 2009, the Government accepted (October 2009) the audit observation and stated that final orders had been issued in August 2008 for collection of the amount. Report on recovery has not been received (January 2010).

3.9 Incorrect computation of lease amount

As per the provisions of the Article 35 (a) of Schedule I to the Indian Stamp Act, 1899, the stamp duty leviable on an instrument of lease for a period of less than 30 years is at the rate of one *per cent* on the total rent reserved and the advance, fine, premium, etc. received, if any. As per the explanation under Article 35, when a lessee undertakes to pay recurring charges, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.

Test check of the records in the office of the Joint II Sub-Registry, Thousand Lights, Chennai in October 2008 indicated that a lease deed was executed in November 2007 for a value of Rs. 140.99 crore. The lease was for a period of 11 years and stamp duty of Rs. 1.41 crore was levied. However, while working out the value an amount of Rs. 3.50 per square feet per month towards the amortised cost of the diesel generator set for the carpet area of 2.09 lakh square feet was omitted to be included. This works out to Rs. 9.67 crore for the entire period of lease and resulted in consequent short collection of stamp duty of Rs. 9.67 lakh.

After this was pointed out (December 2008), the Sub-Registrar stated that the DG set is a moveable property and rent on moveable properties would not be taken into account as per Section 2(6) of the Stamp Act. The contention of the department is, however, not correct as the DG sets are embedded and are, therefore, immovable properties. The cost should be treated as a component of lease rent.

The matter was reported to the Government in April 2009; their reply has not been received (January 2010).

3.10 Short collection of registration fees

According to proviso under the Clause L of item 1 of the "Table of Fees" prescribed under Section 78 of the Registration Act, 1908, the registration fee is leviable on the intended sale consideration in the case of an agreement to sell, where possession is handed over or is to be handed over.

Test check of the records in the office of the Sub-Registrar, Alandur in April 2008 indicated that a company was in possession of a leased property since May 2005. In January 2008, the company entered into an agreement with the lessor for purchase of land valued at Rs. 7 crore and an advance of Rs. 10 lakh was paid. As the possession of the property was with the intended purchaser at the time of execution of the instrument of sale agreement, registration fees of Rs. 7 lakh was required to be collected at one *per cent* of the intended sale consideration. However, an amount of only Rs. 10,000, being one *per cent* of the amount advanced was collected. This resulted in short collection of registration fees of Rs. 6.90 lakh.

After this was reported to the department (May 2008) and the Government (January 2009), the Government accepted the audit observation (February 2009) and stated that instructions had been issued for collection of the deficit registration fees. A report on collection of the amount has not been received (January 2010).