

CHAPTER-V: STAMP DUTY AND REGISTRATION FEE

5.1 Tax administration

Receipts from Stamp Duty and Registration Fee (SD & RF) in the State are regulated under the Indian Stamp Act, 1899, Registration Act, 1908; Rajasthan Stamp Law (Adaptation) Act, 1952; Rajasthan Stamp (RS) Act, 1998 (came into effect from 27.5.2004) and the rules made thereunder. Stamp duty is leviable on the execution of instruments and registration fee is payable on registration of instruments.

The determination of policy, monitoring and control at the Government level is done by the Secretary, Finance (Revenue) Department. The Inspector General, Registration and Stamps (IG) is the head of the Department. He is assisted by an Additional Inspector General in administrative matters and by a Financial Adviser in financial matters. The entire State has been divided into 13 circles, of these 12 circles are headed by Deputy Inspector General (DIG) cum *ex-officio* Collector (Stamps). There are 32 District Registrars (DRs), 67 Sub-Registrars (SRs) and 289 *ex-officio* SRs¹.

5.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee during the year 2005-06 to 2009-10 along with the total tax receipts of the State are exhibited in the following table:

(₹ in crore)

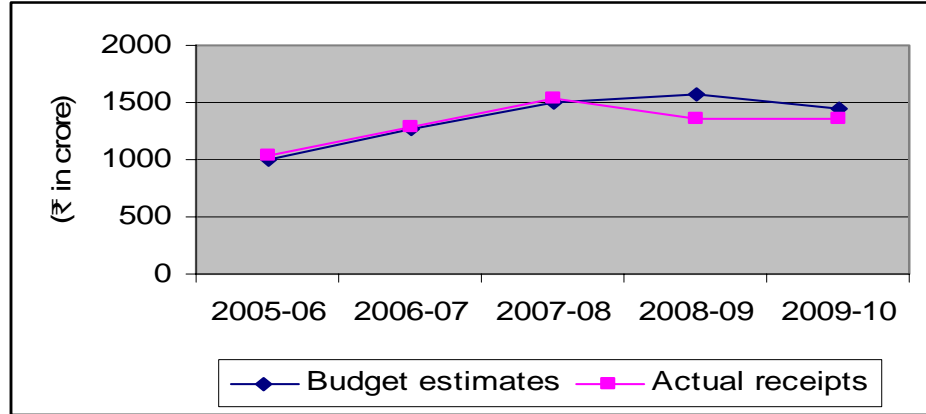
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	1,000.00	1,031.79	(+) 31.79	(+) 3.18	9,880.23	10.44
2006-07	1,275.00	1,293.68	(+) 18.68	(+) 1.47	11,608.24	11.14
2007-08	1,500.00	1,544.35	(+) 44.35	(+) 2.96	13,274.73	11.63
2008-09	1,575.00	1,356.63	(-) 218.37	(-) 13.86	14,943.75	9.08
2009-10	1,450.00	1,362.94	(-) 87.06	(-) 6.00	16,414.27	8.30

The actual receipts from Stamp Duty and Registration Fee were 13.86 *per cent* less of the budget estimates (BEs) during 2008-09.

Line graph of BEs and actual receipts from Stamp Duty and Registration Fee

¹ Tehsildars and Naib Tehsildars have been declared as *ex-officio* SRs.

during the period 2005-06 to 2009-10 is shown below:



The receipts from stamp duty and registration fee consisted 8.30 *per cent* of the total tax receipts of the State during the year 2009-10, as against 11.63 *per cent* during 2007-08. Thus, there has been a decreasing trend in collection of revenue under the stamp duty and registration fee in comparison to the total tax receipts of the State.

The Government may investigate the reasons for decrease in receipts and take appropriate corrective steps.

5.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2010 amounted to ₹ 119.60 crore, of which ₹ 38.41 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue upto 2009-10.

(₹ in crore)			
Arrears related to the year	Opening balance of arrears	Amount collected during the year 2009-10	Closing balance of arrears
upto 2004-05	40.41	2.00	38.41
2005-06	13.46	0.06	13.40
2006-07	13.70	1.81	11.89
2007-08	10.40	1.01	9.39
2008-09	39.68	12.74	26.94
2009-10	39.23	19.66	19.57
Total	156.88	37.28	119.60

The chances of recovery of dues ₹ 38.41 crore pertaining to the period upto 2004-05 are bleak.

The reasons for non-recovery of arrears were not furnished to audit.

5.4 Cost of collection

The gross collection of the revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during

the period from 2005-06 to 2009-10 along with all India average percentage of expenditure on collection to gross collection are as follows:

(₹ in crore)

Sl. no.	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage
1.	2005-06	1,031.79	15.79	1.5	2.87
2.	2006-07	1,293.68	19.21	1.5	2.33
3.	2007-08	1,544.35	22.80	1.5	2.09
4.	2008-09	1,356.63	29.09	2.1	2.77
5.	2009-10	1,362.94	31.33	2.3	NA

The percentage of cost of collection to gross collection was lesser than the all India average percentage.

5.5 Impact of audit reports

During the last five years upto 2008-09, we through our audit reports had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, application of incorrect rate of tax, incorrect computation *etc.*, with revenue implication of ₹ 159.79 crore in 17 paragraphs. Of these, the Department/Government had accepted audit observations in 17 paragraphs involving ₹ 98.68 crore and had since recovered ₹ 3.60 crore. The details are shown in the following table:

(₹ in crore)

Year of audit	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2004-05	3	5.20	3	4.09	3	0.17
2005-06	3	4.66	3	1.26	3	0.38
2006-07	3	81.10	3	78.72	2	0.50
2007-08	4	58.36	4	4.14	3	0.17
2008-09	4	10.47	4	10.47	3	2.38
Total	17	159.79	17	98.68	14	3.60

As compared to accepted amount of audit observations, the short recovery was due to cases lying pending with the courts.

5.6 Working of Internal Audit Wing

Internal audit is conducted by the IG, Registration and Stamps. The number of existing units, units planned for audit and actually audited during the years 2005-06 to 2009-10 was as follows:

Year	Number of units			Amount under objection (₹ in crore)
	Total	Planned for audit	Actually audited	
2005-06	358	131	131	4.01
2006-07	369	182	182	6.09
2007-08	369	68	68	1.78
2008-09	369	157	157	6.85
2009-10	369	148	148	10.20

Audit preference was given to major revenue earning units.

5.7 Results of audit

During test-check of the records of 187 units of the Department of Registration and Stamps conducted during the year 2009-10 we noticed short levy/realisation of Stamp Duty and Registration Fee amounting to ₹ 68.45 crore in 7,439 cases which broadly fall under the following categories:

Sl. no.	Category	Number of cases	Amount (₹ in crore)
1.	Undervaluation of properties	3,026	8.64
2.	Other irregularities	4,413	59.81
Total		7,439	68.45

During the year 2009-10, the Department accepted underassessment and other deficiencies of ₹ 8.39 crore pertaining to 2,768 cases, of which 789 cases involving ₹ 2.27 crore were pointed out during 2009-10 and the rest in the earlier years. The Department recovered ₹ 1.90 crore in 1,287 cases, out of which 115 cases involving ₹ 6.55 lakh related to the year 2009-10 and the rest to earlier years.

A few illustrative audit observations involving ₹ 27.31 crore are discussed in the following paragraphs.

5.8 Audit observations

During scrutiny of records of various registration offices, we noticed several cases of non-compliance of the provisions of the RS Act, 1998 and Registration Act, 1908. These cases are illustrative and are based on a test-check carried out in audit. Some of these omissions are pointed out in audit each year, but not only did 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.

5.9 Non-observance of provisions of Acts/Rules

The provisions of Rajasthan Stamp Act, 1998 (RS Act) and Indian Registration Act, 1908 (IR Act)/ notifications of the Government require:-

- (i) *Levy of duty on market value of the property;*
- (ii) *levy of stamp duty on the amount of consideration, interest, penalty etc. where immovable property is allotted/ sold by the Government, UITs etc.;*
- (iii) *levy of stamp duty in cases of lease as on a conveyance for a consideration equal to the amount or value of such fine, premium or advance and amount of average rent of two years; and*
- (iv) *levy of registration fee at the rate of one per cent of the value or consideration subject to maximum of ₹ 25,000 in respect of power of attorneys executed under Article 44(ee) (ii) of the Schedule of the RS Act, 1998.*

During audit, we noticed that registering authorities did not observe some of the above provisions in cases mentioned in the succeeding paragraphs. This resulted in short levy stamp duty and registration fee of ₹27.31 crore.

5.9.1 Short levy of stamp duty and registration fee

5.9.1.1 Under valuation of property

Under Article 21(i) of Schedule of the RS Act, 1998; stamp duty (SD) on instruments of conveyance, if relating to immovable property, shall be levied on market value of the property. Rule 58 of the Rajasthan Stamp Rules, 2004, provides that the market value of land shall be determined on the basis of the rates recommended by the District Level Committee (DLC) or the rates approved by the IG Stamps, whichever is higher. Further for purpose of valuation, the location of land/ property as described in the document needs to be considered.

(i) During scrutiny of the records of four offices, for the year 2008, we found that in 11 instruments of conveyance the properties were undervalued by the concerned Sub-Registrar through the information was available from the instruments/ documents that were presented for registration. This resulted in short levy of SD and RF aggregating to ₹ 25.17 crore as per details

given below:

(₹ in lakh)

Sl. No.	Audit observations	SD and RF <u>Leviable</u> <u>Levied</u>	Short levy of SD and RF
1.	SR Jodhpur-II while registering a sale deed, valued the 22.02 bigha land at ₹ 66.06 lakh treating the land as non-irrigated. The correct valuation should be ₹ 1.77 crore as the land was irrigated.	<u>8.82 (SD)</u> 3.30 (SD)	5.52 (SD)
2.	In SR Jodhpur-II, eight cases were registered. The land was situated on 100 feet wide road. However, the valuation of land was taken ₹ 0.64 crore applying rates of Nehra Nagar (Khasara No. 119) and Shyam Nagar (Khasara No. 120) in place of valuation ₹ 2.54 crore at DLC rates of 100 feet road.	<u>16.49 (SD)</u> 4.15 (SD) <u>1.00 (RF)</u> 0.64 (RF)	12.34 (SD) 0.36 (RF)
3.	In SR-Neemrana, an institute transferred 75 Acre land along with academic block and other structure made thereon to a private education institute for education purposes. The valuation of the transferred property was made ₹ 21.79 crore (Agriculture rates) instead of ₹ 332.65 crore (commercial rates).	<u>2,661.21(SD)</u> 174.33 (SD)	2,486.88(SD)
4.	In one case, SR Udaipur-I, made valuation of property situated on National Highways road ₹ 3.99 crore instead of ₹ 6.70 crore as per applicable DLC rates.	<u>33.49 (SD)</u> 22.00 (SD)	11.49 (SD)
Total		2,720.01 (SD)	2,516.23 (SD)
		203.78 (SD)	0.36 (RF)

After we pointed out (between March 2010 and May 2010), the Government replied (August 2010) that the one case pertaining to SR, Neemrana (Alwar) is under consideration in the court of Collector (Stamps). In nine cases of SR, Jodhpur-II, involving ₹ 18.22 lakh, notices for recovery have been issued. In one case of SR, Udaipur, reply is awaited (October 2010).

As per notification dated 28.7.2003, units approved under Rajasthan Investment Promotion Scheme, 2003, are entitled for rebate of 50 per cent on stamp duty on lease/purchase of land.

(ii) On scrutiny of records of Sub-Registrar, Bhiwadi for the year 2008, we found (March 2010) that in respect of one industrial unit approved under the Rajasthan Investment Promotion Scheme, 2003, the Sub-Registrar, while registering sale deeds for the

industrial properties, incorrectly allowed 50 per cent rebate in stamp duty on cost of construction works/other works also, in addition to the cost of land, and realised stamp duty ₹ 40.04 lakh against the chargeable stamp duty of ₹ 67.60 lakh. This resulted in short levy of stamp duty ₹ 27.56 lakh.

When we pointed out (April 2010); the Government replied (September 2010) that matter is under pursuance with the SR, Bhiwadi.

5.9.2 On lease deeds granted for premium *etc.* in addition to rent

Under the provision of Article 33(c)(i) of the Schedule read with section 3 of RS Act, 1998, where lease is granted for a fine or premium or for money advanced or development charges advanced or security charges advanced in addition to rent reserved and such lease purports to be for a term of not more than twenty years, the stamp duty is chargeable as on a conveyance for a consideration equal to the amount or value of such fine, premium or advance and amount of average rent of two years as set forth in the lease. The registration fee is also chargeable at one *per cent* of the value or consideration subject to maximum ₹ 25,000.

During scrutiny of records of five Sub-Registrar offices², we found that 73 lease deeds covered under article *ibid* were registered during the year 2008, but the stamp duty and registration fee were charged at the rate of two *per cent* on average rent of one year and security deposit instead of conveyance rate on average rent of two years and security deposit. This resulted in

short levy of stamp duty ₹ 86.62 lakh and registration fee ₹ 2.79 lakh.

When we pointed out (March and April 2010), the Government replied (August 2010) that notices have been issued for recovery in cases pertaining to SR Bhiwadi. The reply in respect of other cases is awaited (October 2010).

5.9.3 On lease deeds in which rent is fixed but no premium was paid

Under the provision of Article 33(a)(ii) of the Schedule of the RS Act, 1998, where the lease purports to be for a term of not less than one year but not more than twenty years and by such lease, the rent is fixed and no premium is paid or delivered, the stamp duty is chargeable as on a conveyance for a consideration equal to the amount or value of the average rent of two years. Further, registration fee is also chargeable at the rate of one *per cent* of the value or consideration subject to a maximum of ₹ 25,000.

During scrutiny of records of three Sub-Registrars³, for the year 2007 and 2008, we found that 31 such lease deeds were registered (between January 2007 and December 2008) in which the Sub-Registrar had charged stamp duty at the rate of two *per cent* of average rent of one year instead of at conveyance rate on average rent of two years. This resulted in short levy of stamp duty of ₹ 28.96 lakh and registration

fee of ₹ 0.61 lakh aggregating to ₹ 29.57 lakh.

After we pointed out (February 2009 and April 2010), the Government has issued instructions on August 25, 2010.

² Bhiwadi, Jaipur-II, Jaipur-VII, Jodhpur-I and Sanganer-I.

³ Churu, Jaipur II and Jodhpur

5.9.4 On power of attorney

As per notification dated 14.3.1997 issued by the Government of Rajasthan under section 78 of the Registration Act, 1908 and further clarified by IG Stamps on 4.8.2009, the registration fee shall be charged at the rate of one *per cent* of the value or consideration subject to maximum of ₹ 25000 in respect of power of attorneys, executed under Article 44(ee) (ii) of the Schedule of the RS Act, 1998.

Scrutiny of records of five Offices⁴ for the year 2008, we noticed (between January 2010 and March 2010) that in 806 instruments of power of attorney covered under Article 44 (ee) (ii) *ibid*, the Sub-Registrars charged registration fee at the rate of ₹ 100 for each instrument instead of at prescribed rates. Further, in seven cases value of the property was short determined due to undervaluation of

properties by incorrect application of DLC rates by the Sub-Registrar, Sanganer-I. This resulted in short levy of Registration fee ₹ 64.86 lakh and Stamp duty of ₹ 2.61 lakh.

After we pointed out (February and April 2010), the Government replied (August 2010) that action was being taken for recovery.

5.9.5 Non-registration of sale certificates

Sub-section 3(a)(b) of Section 37 of RS Act states that for the purposes of this section in case of doubt the State Government may determine what offices shall be deemed to be public offices and State Government may determine who shall be deemed to be persons in charge of public offices. Section 2(32) of the Act defines "Public Officer" which means a public officer as defined in section 2(17) of Civil Procedure Code, 1908 and Collector of Stamp is deemed to be a public officer by virtue of that definition. Section 64(1) of the Rajasthan Stamp Rules, 2004 contemplates that in case where an unstamped or understamped instruments is detected in course of inspection or otherwise by a public officer, the report, therefore, shall be made forth with to the Collector.

We noticed from scrutiny of records and information furnished by the Debt Recovery Tribunal, Jaipur and two banks that due to failure in repayment of loans, the properties of 37 loanees were attached and auctioned, however, the buyers did not register their sale certificates/sale deeds in the registering offices despite lapse of period ranging from 12 to 68 months after prescribed time limit of maximum

eight months. List was sent by Debt Recovery Tribunal to registering offices about the sale. Action was not taken by registering offices to issue notices nor effective procedures adopted for regular inspection of public offices. The

⁴ Bhiwadi, SR-II Jaipur, SR-I Sanganer, SR-II Sanganer, Sriganganagar.

stamp duty involved due to non-registration was ₹ 54.44 lakh and registration fee of ₹ 0.55 lakh.

We pointed out the matter to the Department and the Government in May 2010; their replies are awaited (October 2010).