

***CHAPTER-V***  
***STAMP DUTY AND REGISTRATION FEE***

## 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 (RS) Act, 1998 effective from 27 May 2004 and the rules made thereunder. The SD is leviable on execution of instruments and RF 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 is the head of the Registration and Stamp 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) and Jaipur circle by Additional Collector (AC) (Stamps). There are 33 District Registrars (DRs), 67 Sub-Registrars (SRs) and 289 *ex-officio* SRs<sup>1</sup>.

### 5.2 Trend of receipts

Actual receipts from SD and RF during the year 2007-08 to 2011-12 along with the total tax receipts of the State are exhibited in the following table:

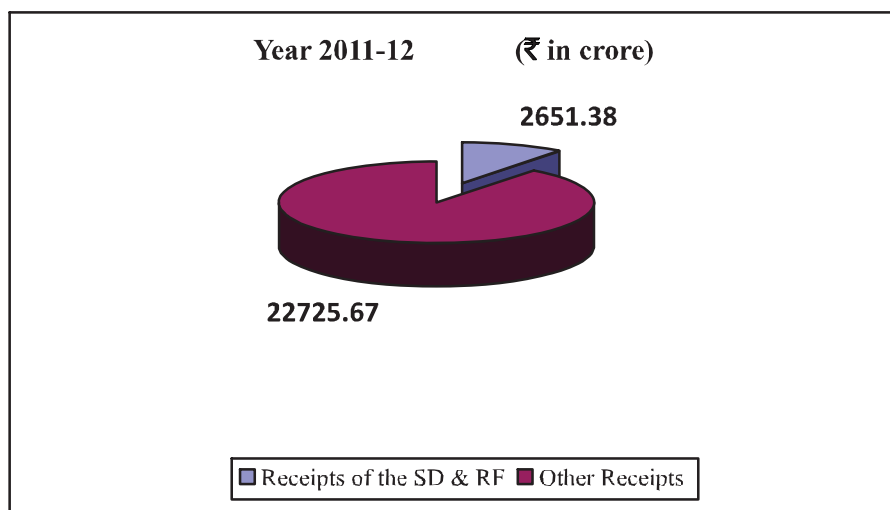
(₹ in crore)

Year	Budget estimates	Actual SD & RF receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts to total tax receipts
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
2010-11	1,750.00	1,941.07	(+) 191.07	(+) 10.91	20,758.12	9.35
2011-12	2,500.00	2,651.38	(+) 151.38	(+) 6.06	25,377.05	10.45

The variations between the Budget Estimates and Actuals in 2008-09 was (-) 13.86 *per cent* and 10.91 *per cent* in 2010-11. In the remaining years it was less than 10 *per cent*.

<sup>1</sup> *Tehsildars* and *Naib Tehsildars* have been declared as *ex-officio* SRs.

A pie chart of actual SD and RF receipts as compared to other receipts for the year 2011-12 is shown below:



The receipts from SD and RF consisted 10.45 per cent of the total tax receipts of the State during the year 2011-12, as against 9.35 per cent during 2010-11. Thus, there has been an increasing trend in collection of revenue under the SD and RF in the total tax receipts of the State.

### 5.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 amounted to ₹ 170.96 crore, of which ₹ 67.36 crore constituting about 39.40 per cent were more than five years old. The following table depicts the position of arrears of revenue upto 2011-12.

Year of Arrear	Total arrears as on 1.4.2011	Recovery during year 2011-12	Recoveries outstanding as on 31.3.2012
Upto 2007-08	67.84	0.48	67.36
2008-09	26.42	0.40	26.02
2009-10	16.48	1.64	14.84
2010-11	29.62	4.83	24.79
2011-12	67.02	29.07	37.95
<b>Total</b>	<b>207.38</b>	<b>36.42</b>	<b>170.96</b>

As ₹ 67.36 crore are outstanding for five years or more, chances of their recovery 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 2007-08 to 2011-12 along with all India average percentage of

expenditure on collection to gross collection of the preceding years are as follows:

(₹ in crore)

Sl. no.	Year	Gross collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average in percentage of the preceding year
1.	2007-08	1,544.35	22.80	1.48	2.33
2.	2008-09	1,356.63	29.09	2.14	2.09
3.	2009-10	1,362.94	31.33	2.30	2.77
4.	2010-11	1,941.07	33.63	1.73	2.47
5.	2011-12	2651.38	43.40	1.64	1.60

The percentage of cost of collection to gross collection was less than the all India average percentage during 2007-08 and 2009-11 but 2011-12 witnessed a reversal in the trend.

### 5.5 Impact of Audit Reports

During the last five years upto 2010-11, 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 ₹ 207.02 crore in 19 paragraphs were pointed out through audit reports. Of these, the Department/Government had fully/partly accepted audit observations in 16 paragraphs involving ₹ 134.36 crore and had since recovered merely ₹ 5.56 crore (September 2012). The details are shown in the following table:

(₹ in crore)

Year of audit	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number of paragraph	Amount
2006-07	3	81.10	3	78.72	2	2.99
2007-08	6	58.36	5	4.14	4	0.90
2008-09	4	10.47	4	10.47	4	1.51
2009-10	5	27.31	3	19.79	3	0.16
2010-11	1	29.78	1	21.24	-	-
<b>Total</b>	<b>19</b>	<b>207.02</b>	<b>16</b>	<b>134.36</b>	<b>13</b>	<b>5.56</b>

The Government may make efforts for early recovery of the accepted audit observations. Recovery of ₹ 5.56 crore (4.14 per cent) out of ₹ 134.36 crore indicates lackadaisical approach of the Department towards the recoveries.

## 5.6 Working of Internal Audit Wing

Financial Adviser is the Head of the Internal Audit Wing. Planning for internal audit of units is made on the basis of importance and revenue realisation. The position of the internal audit during the years 2007-08 to 2011-12 was as under:

Year	Pending units	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remained unaudited	Shortfall in per cent
2007-08	-	369	369	68	301	81.57
2008-09	301	369	670	458	212	31.64
2009-10	212	369	581	360	221	38.04
2010-11	221	369	590	353	237	40.17
2011-12	237	369	606	386	220	36.30

Source - Figures shown in the table are based on the latest Information provided by the IG Registration & Stamps, Ajmer.

It was noticed that 9,591 paragraphs were outstanding at the end of 2011-12. Year-wise breakup of outstanding paragraphs of internal audit reports is as under:

Year	Upto 2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Paras	5,488	235	792	942	1,031	1,103	9,591

Source - Figures shown in the table are based on the latest Information provided by the IG Registration & Stamps, Ajmer.

As many as 5,488 paragraphs of internal audit reports were outstanding upto 2006-07, action on which becomes increasingly difficult with passage of time as such these need immediate and focused attention of the Government. Thus, the outstanding paras defeated the very purpose of internal audit.

**The Government needs to strengthen the internal audit wing so that timely detection and correction of errors in levy and collection of revenue are ensured. Further, efforts may be made for expeditious settlement of outstanding paras of internal audit.**

## 5.7 Results of audit

During test-check of the records of 193 units of the Department of Registration and Stamps conducted during the year 2011-12, Audit noticed short realisation of SD and RF amounting to ₹ 74.71 crore in 4,286 cases which broadly fall under the following categories:

(₹ in crore)			
Sl. no.	Category	Number of cases	Amount
1.	Undervaluation of properties	2,859	33.58
2.	Other irregularities	1,427	41.13
<b>Total</b>		<b>4,286</b>	<b>74.71</b>

The Department accepted (2011-12) under assessment and other deficiencies of ₹ 12.41 crore pertaining to 2,674 cases of which 533 cases involving ₹ 9.84 crore were pointed out during the year 2011-12 and the others in the earlier years. The Department recovered ₹ 1.27 crore in 1,337 cases during the year 2011-12, of which 32 cases involving ₹ 2.42 lakh related to the year 2011-12 and the others to the earlier years.

After issue of draft paragraph, the Department recovered ₹ 1.18 crore pertaining to a single observation pointed out during 2011-12.

A few illustrative audit observations involving ₹ 4.86 crore are discussed in the following paragraphs.

## **5.8 Audit observations**

*During scrutiny of records of various registration offices, several cases of non-compliance of the provisions of the Rajasthan Stamp Act, 1998 and Indian Registration Act, 1908 were noticed. These cases are illustrative and based on a test-check carried out in audit. Some of these omissions are pointed out in audit each year. However, such irregularities still persist year after year. There is a need for the Government to improve the internal control system so that recurrence 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 SD on the amount of consideration, interest, penalty etc. where immovable property is allotted/sold by the Government, UITs etc;*
- (iii) levy of SD and RF on unregistered/misclassification of developer agreement plus transfer of land where it is presented as purely developer agreement;*
- (iv) levy of SD on irrevocable power of attorney of other state not duly stamped in Rajasthan;*
- (v) levy of SD on partition deed as per Schedule amended in RS Act, 1998;*
- (vi) levy of SD in cases of lease not executed and 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*
- (vii) recovery of exemption of SD where rules were not followed as per Rajasthan Investment Policy Scheme, 2003.*

*During audit, it was noticed that registering authorities did not observe some of the above provisions in cases mentioned in the succeeding paragraphs.*

## 5.10 Underassessment/non-execution of lease deeds

### 5.10.1 Short levy of Stamp Duty (SD) on registration of lease deeds due to non-inclusion of interest amount in the consideration

As per the notification dated 22.05.2003, on all the instruments executed by the Rajasthan Industrial Investment Corporation Limited (RIICO) in respect of immovable property allotted/sold by it, SD is charged as conveyance on the sum of the total amount of consideration including interest, penalties, any other amount paid as consideration and average rent of two years, if any, instead of the market value of the property.

During test check (February 2012) of the records of Sub Registrar (SR), Bhiwadi (Alwar), it was noticed that five lease deeds pertaining to the plots allotted to five firms<sup>2</sup> by RIICO were registered during the year 2010-11 to establish industries. It was seen that the SR charged Stamp Duty at the rate of five *per cent*

on consideration amount excluding interest amount as per details given below:

(Amount in ₹)

Sl. no.	Document no. and date	Consideration amount including interest	Consideration amount adopted	SD		
				Leviable	Levied <sup>3</sup>	Difference
1	1430/19.04.10	13,49,55,229	12,00,09,650	33,73,880	30,00,245	3,73,635
2	3282/30.08.10	16,13,01,307	14,61,73,374	40,32,533	36,54,340	3,78,193
3	411/03.02.11	16,97,08,070	15,10,26,096	42,42,702	37,75,660	4,67,042
4	468/10.02.11	25,47,330	20,87,270	63,683	52,190	11,493
5	586/18.02.11	40,48,545	36,00,550	1,01,214	90,020	11,194
<b>Total</b>				<b>1,18,14,012</b>	<b>1,05,72,455</b>	<b>12,41,557</b>

This resulted in short levy of SD of ₹ 12.42 lakh.

The matter was brought to the notice of the Department (March 2012) and reported to the Government (May 2012). The Government in its reply stated (October 2012) that the concerned SR has been instructed to recover the amount. Further progress was awaited (November 2012).

<sup>2</sup> (i) M/s Hythrow Power Corporation Limited, New Delhi (ii) M/s Clutch Auto Limited, New Delhi (iii) M/s Surendra Enterprises (iv) M/s Narayan Steel Fabrication, Bhiwadi (v) M/s Sun Beam Private Limited, Haryana.

<sup>3</sup> The SD was levied allowing 50 *per cent* rebate under the Rajasthan Investment Promotion Scheme (RIPS) 2003.



**5.10.2 Short levy of SD and RF on lease deeds granted for Premium etc. in addition to rent**

As per the provisions of Article 33(c) (i) of the Schedule to the RS Act, 1998, if a 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 20 years, the SD is chargeable as a conveyance for a consideration equal to the amount or value of such fine, premium or advance and the amount of average rent of two years as set forth in the lease. The RF is also chargeable at one *per cent* of the valuation subject to maximum of ₹ 25,000 upto 8.04.2010 and ₹ 50,000 since 9.04.2010.

During test check of the records of four SR offices<sup>4</sup>, it was noticed that 18 lease deeds with lease terms spanning two to 19 years and 11 months were registered during the year 2010-11. The SRs had charged RF at the rate of one *per cent* and SD at the rate of two *per cent* in the case of commercial property and at the rate of one *per cent* in the case of residential property 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 SD and RF aggregating ₹ 57.26 lakh.

The matter was reported to the Government (May 2012). The Government stated (October 2012) that in two cases recovery of ₹ 2.04 lakh has been made, in 14 cases references have been made against the executants and in the remaining two cases notices have been issued to the executants asking them to deposit the amount. Further progress was awaited (November 2012).

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<sup>4</sup> Jaipur-VI, Jaipur-VII, Jaipur-VIII and Phagi.

### 5.11 Short levy of SD and RF on developer agreement

As per Section 3 of the RS Act, 1998, every instrument shall be chargeable with duty at the prescribed rates mentioned in the Schedule to the RS Act. Various judgments pertaining to levy of SD clarify that an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

As per the provisions of Article 5(bbbb) to the Schedule of the RS Act, an agreement or memorandum of agreement, if relating to giving authority or power to a promoter or a developer, by whatever name it may be called, for construction or development of any immovable property, is chargeable to SD at the rate of one *per cent* of the market value of the property.

Further as per Section 6 of the RS Act, 1998, any instrument comprising or relating to several distinct matters, shall be chargeable with the aggregate amount of the duties with which separate instrument, each comprising or relating to one of such matters would be chargeable under the Act.

(i) During test check of the records of three SR offices<sup>5</sup>, it was found that six developer agreements<sup>6</sup> had been registered between April and December 2010. The SRs classified these agreements on the basis of their title and levied SD at the rate of one *per cent* of the market value of the property as per Article 5(bbbb) of the Schedule appended to the RS Act.

On scrutiny of these six developer agreements, it was found that the owners of the land had authorised the developers to take possession of the land with the right to construct, develop and deal with the land in exchange of entitlement

to the extent of 30 to 58 *per cent* of the developed land. The developers were entitled to dispose of remaining portion of developed land without requiring any consent from the owners.

Stamp duty ₹ 69.79 lakh<sup>7</sup> was required to be charged instead of ₹ 21.01 lakh. Thus, incorrect levy of SD resulted in non-realisation of ₹ 48.78 lakh.

The matter was reported to the Government (May 2012). The Government stated (October 2012) that in the cases of Udaipur-I and II, SRs had been instructed to either recover the amount or make references against the executants to the Collector (Stamps). The reply further stated that in the case of Jaipur-VI, reference had been made against the executant to the Collector (Stamps) Jaipur. Further development was awaited (November 2012).

(ii) During test check of the records of SR, Sanganer-II, it was noticed that a sale deed was registered between the developer (M/s. Alokik Buildcom Pvt. Ltd. Jaipur) and the purchaser for purchase of ready built flats. On scrutiny of

<sup>5</sup> Udaipur-I, Udaipur-II and Jaipur-VI

<sup>6</sup> Miraj Developer Pvt. Ltd. Udaipur, Miraj Developer Pvt. Ltd. Udaipur, M/s CORAL Infra Gold, Pvt. Ltd. Jaipur, M/s Unique Builders (Ganesh) Jaipur, M/s Rashmi Realty Builders Pvt. Ltd. Mumbai and M/s Shree Krishna Abodes Pvt. Ltd. Jaipur

<sup>7</sup> (one *per cent* on 30 to 58 *per cent* value and five *per cent* on 42 to 70 *per cent* value of the property)

the recital of the sale deed, it was found that multi-storeyed flats were constructed by the developer on behalf of the owner of the land as per terms and conditions of the agreement (July 2005). This agreement was attested by the Notary Public wherein it was mutually agreed by the owner and the developer that in lieu of the land, the owner of the land was entitled to get 67.5 per cent share of the built-up area upon all the floors and entitlement of the remaining 32.5 per cent share of the total built up area upon all floors would go to the developer in lieu of his investments and expertise involved in development of the said land. The developer was thus, entitled to dispose of remaining 32.5 per cent share of developed land without requiring any consent from the owner. The owner of the land handed over the actual physical possession of the said land measuring 1431.22 square metres valuing ₹ 9.93 crore to the developer in March 2006.

It was noticed that while registering the sale deed, the SR did not levy SD on this distinct matter *i.e.* transfer of the share of land to the extent of 32.5 per cent to the developer by the owner and on the basis of development agreement.

The non-registration of the development agreement (July 2005) resulted in non-levy of SD of ₹ 6.70 lakh at the rate of one per cent on the owner's share *i.e.* 67.5 per cent of land valuing ₹ 6.70 crore. Further, the said agreement (July 2005) was also, in fact, an instrument of conveyance to the extent of 32.5 per cent share of land valuing ₹ 3.23 crore and therefore, SD of ₹ 16.14 lakh at the rate of five per cent of the value of ₹ 3.23 crore of the land was leviable. Thus, non-registration of agreement and non-levy of SD on conveyance resulted in non-levy of SD and RF of ₹ 22.84 lakh.

The matter was brought to the notice of the Department (March 2012) and reported to the Government (May 2012). The Government stated (October 2012) that reference has been made against the executants to the DIG (Stamps). Further progress was awaited (November 2012).

**(iii)** During test check of the records of SR, Jaipur-VI, it was noticed that a sale deed (no.1386 dated 21.05.2010) was registered between the owner, the developer (Shri Krishna Abods Pvt. Ltd.) as one party and the purchaser as the other party for purchase of ready built flat. On scrutiny of the recital of the sale deed, it was found that multi-storeyed flats were constructed by the developer on behalf of the owner of the land as per terms and conditions of the agreement (July 2007) along with a supplementary agreement (March, 2008) wherein both the parties had agreed to divide the developed property in the ratio of 60 : 40 per cent. It was noticed that both the agreements were not registered by the owner or the developer in the SR office and SD on conveyance of transferred land measuring 1025.46 square metres valuing ₹ 7.21 crore (40 per cent) was not paid.

It was further noticed that on presentation of sale deed, the SR did not levy SD on this distinct matter *i.e.* 40 per cent share of developed land transferred to the developer by the owner (whereby the developer could sell 40 per cent share of developed land without requiring any consent from the owner) and for registration of development agreement.

Non-registration of the agreement by the SR on the owner's share of 60 *per cent* land valuing ₹ 4.33 crore<sup>8</sup> resulted in non-levy of SD amounting to ₹ 4.33 lakh (at the rate of one *per cent*). Further, the said agreement was also instrument of conveyance to the extent of 40 *per cent* share of land valuing ₹ 2.88 crore<sup>9</sup> and therefore, SD ₹ 14.42 lakh at five *per cent* of the value ₹ 2.88 crore of the land should have been levied. Thus, non-registration of agreement and non-charging of SD on conveyance resulted in non-levy of SD aggregating ₹ 18.75 lakh.

The matter was brought to the notice of the Department (March 2012) and reported to the Government (May 2012). The Government stated (October 2012) that reference has been made against the executants to the DIG (Stamps) Circle Jaipur (Vigilance). Further progress was awaited (November 2012).

(iv) During test check of the records of SR, Jodhpur-I, it was noticed that an instrument of sale deed was executed (April 2010) between the developer (M/s. Parshwnath Developers) and the purchaser for purchase of a plot. Scrutiny of the recital of the instrument of sale deed revealed that a development agreement was executed between the developer and the owner (M/s. Time Bound Contracts Pvt. Ltd.) of the land for developing individual plots situated at village Sangria, *Tehsil* Jodhpur.

It was noticed that the SR registered the sale deed between the developer and purchaser without registering development agreement between the owner and the developer. Non-registration of the development agreement resulted in non-levy of SD at the rate of one *per cent* of market value of the land and RF at the rate of one *per cent* subject to maximum of ₹ 0.50 lakh. As the market value of the land was ₹ 36.27 crore, non-levy of SD and RF thus, resulted in non-realisation of ₹ 36.77 lakh.

The matter was brought to the notice of the Department (December 2011) and reported to the Government (May 2012). The Government stated (October 2012) that reference has been made against the executants to the Collector (Stamps), Jodhpur. Further progress was awaited (November 2012).

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<sup>8</sup> (1538.20 sq mtr x DLC rate ₹ 28,130 per sq. mtr.)

<sup>9</sup> (1025.46 sq mtr x DLC rate ₹ 28,130 per sq. mtr)

### 5.12 Irregular registration of sale deeds through irrevocable general power of attorneys executed out of the State

As per explanation (i) below Article 21 of the Schedule appended to the RS Act, 1998, an irrevocable power of attorney (POA) executed in the course of conveyance shall, in case of transfer of the possession of such property before, at the time of or after execution of any such instrument, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly.

As per Article 44(ee) of the Schedule appended to the RS Act 1998, if a POA is given without consideration to sell immovable property to any other person, the stamp duty is payable at the rate of two *per cent* of the market value of the property which is the subject matter of the POA.

During test check of the records of SR, Pokhran (Jaisalmer), it was noticed that 29 sale deeds worth ₹ 2.75 crore were registered in the month of March 2011, on the basis of irrevocable POA executed out of the State in the office of Notary Public, New Delhi during July 2006 to September 2007. The SD at the rate of five *per cent* was leviable as per explanation (i) of Article 21 of the Schedule. However, the SR, Pokhran had charged SD

amounting to ₹ 6.67 lakh at the rate of two *per cent* on these 29 irrevocable POAs under Article 44(ee) of the Schedule. Thus, incorrect application of rate of SD on irrevocable POA resulted in non-recovery of SD amounting to ₹ 7.06 lakh. Further, the SR should have forwarded the case to the Collector (Stamps) for levy of penalty for non-submission of the POAs within three months. The admission of these 29 irrevocable POAs by the SR, Pokhran under Article 44(ee) of the Schedule resulted in short levy of SD of ₹ 7.06 lakh.

The matter was brought to the notice of the Department (December 2011) and reported to the Government (May 2012). The Government stated (October 2012) that the SR, Pokhran has been instructed to make reference against the executants to the Collector (Stamps), Jodhpur. Further progress was awaited (November 2012).

### 5.13 Under-valuation of property

As per Article 21(i) of the Schedule to the RS Act, 1998, SD on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the RS Rules, 2004 provides that the market value of the land shall be assessed on the basis of the rates recommended by the District Level Committee (DLC) or the rates approved by the IG (Registration and Stamps), whichever is higher.

IG (Registration and Stamps) directed (January 2010) that if an agricultural land is purchased by the firm for the purpose of establishing an industry, then, valuation of agricultural land shall be assessed accordingly for the purpose of levy of SD. The RF was chargeable at the rate of one *per cent* of the valuation subject to maximum of ₹ 25,000 upto 08.04.2010 and ₹ 50,000 since 09.04.2010.

**5.13.1** During test check of the records of SR, Jodhpur-I, it was noticed that a sale deed was registered (August 2010) wherein 29.6 *bigha* agricultural land, already converted into non-agricultural purpose (September 2008) by the Urban Improvement Trust, Jodhpur was sold. Scrutiny of the sale deed revealed that

due to concealment of the fact about conversion of land, the SR, Jodhpur-I charged the SD of ₹ 6.51 lakh at the rate of five *per cent* on the valuation of agricultural land amounting to ₹ 1.30 crore<sup>10</sup> instead of SD payable ₹ 34.04 lakh on the valuation as residential land amounting to ₹ 6.81 crore<sup>11</sup> as the said land was converted into non-agricultural purpose. Thus, under-valuation of the property resulted in short levy of SD of ₹ 27.53 lakh.

The matter was brought to the notice of the Department (January 2012) and reported to the Government (May 2012). The Government stated (October 2012) that the matter was being examined at the Departmental level. Further progress was awaited (November 2012).

**5.13.2** During test check of the records of SR, Pokhran, it was noticed that a sale deed was registered (July 2010) by the SR, Pokhran (Jaisalmer) wherein 1364.75 *bigha* agricultural land was purchased by M/s Rajasthan Solar Processing Zone, Jodhpur (Firm) for establishing an industry at villages Sujasar and Galar, *Tehsil* Pokhran, District Jaisalmer. The firm had obtained an entitlement certificate from the competent authority to avail 50 *per cent* exemption of SD under the Rajasthan Investment Promotion Scheme, 2003.

Scrutiny of the sale deed, revealed that the land was purchased for industrial purposes and the cost of the land was ₹ 77.30 crore<sup>12</sup> as per the rates prescribed by RIICO. After allowing 50 *per cent* exemption, the stamp duty leviable amounted to ₹ 1.93 crore, however the SRs valued the land at ₹ 63.03 lakh<sup>13</sup> at the agricultural rates and levied SD of ₹ 7.01 lakh. This resulted in short realisation of ₹ 1.86 crore.

The matter was brought to the notice of the Department (December 2011) and reported to the Government (May 2012). The Government stated (October 2012) that the SR, Pokhran has been instructed to make reference against the executants. Further progress was awaited (November 2012).

**5.13.3** During test check of records of SR, Chomu (Jaipur), it was noticed that 12 sale deeds were undervalued due to application of residential rates instead of commercial rates, rates of non-irrigated for irrigated land and

<sup>10</sup> (29.6 *bigha* x DLC rates ₹ 4,40,000 per *bigha* for agricultural land)

<sup>11</sup> (5,15,750 square feet x DLC rate 132 per square foot for residential land)

<sup>12</sup> (22,08,460 square metre x DLC rate ₹ 350 per square metre for Pokhran Industrial Area (under developed))

<sup>13</sup> (1364.35 *Bigha* x DLC rate 4,620 per *Bigha* for agricultural land)



second DLC rates instead of first DLC<sup>14</sup> rates *etc.* The under-valuation of the properties resulted in short levy of SD and RF amounting to ₹ 6.58 lakh.

The matter was brought to the notice of the Department (March 2012) and reported to the Government (May 2012). The Government stated (October 2012) that reference has been made against the executants to the DIG (Stamps), Circle Jaipur-II. Further progress was awaited (November 2012).

#### 5.14 Non levy of SD on partition deed

As per Article 42 of the Schedule appended to the RS Act, 1998, SD on an instrument is leviable as a conveyance for the amount or value of the separated share or shares of the property. The note under the Article further clarifies that if the largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than that of the other shares, the one of such equal shares) shall be deemed to be that from which the other shares are separated.

Registration of such partition deed is compulsory under Section 17 of the Registration Act, 1908.

During test check of records of the SR, Jodhpur-I, it was noticed that a sale deed was executed between the seller and the purchaser for purchase of a plot in April 2010. Scrutiny of the recital of the sale deed, revealed that a partition deed was executed (June 2009) between co-owners of the property for partition of plot measuring 1,10,853 square feet situated at village Jhalamand, Tehsil Jodhpur.

The SR registered the sale deed without registering the partition deed in SR office. The market value of separated shares was ₹ 1.34 crore<sup>15</sup>. Thus, non-registration of this partition deed resulted in non-recovery of SD of ₹ 6.68 lakh at the rate of five *per cent*.

The matter was brought to the notice of the Department (December 2011) and reported to the Government (May 2012). The Government stated (October 2012) that reference has been made against executants to the Collector (Stamps), Jodhpur. Further progress was awaited (November 2012).

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<sup>14</sup> The properties situated on the main road are charged with first DLC rates (which is higher) whereas properties away from main road are charged second DLC rates.

<sup>15</sup> (80914.95 square feet x DLC ₹ 165 per square foot)

### 5.15 Non-levy of SD on the document of transfer of lease by way of assignment

As per the circular issued (August 2004) by the IG (Registration and Stamps), Ajmer, documents executed as supplementary documents, *inter alia*, on change of legal status of the firm or change of partners or dissolution of partnership shall be categorised as 'transfer of lease by way of assignment'. Under Article 55 of the Schedule appended to the RS Act, 1998, in case of document of transfer of lease by way of assignment, the SD is leviable as a conveyance on the market value of the property which is the subject matter of transfer.

During test check of records of the SR, Sanganer-II, it was noticed that a sale deed was registered (June 2010) for a ready built flat in Athena Apartment, Jaipur between M/s. Sunshine Buildtech, Jaipur and a purchaser. Scrutiny of sale deed revealed that land measuring 4,182 square metre (on which Athena Apartment was built later on) belonged to two firms (M/s Kejariwal Resorts Private Limited, Vaishali Nagar, Jaipur and M/s Kejariwal Beverage Private Limited, Andheri (West), Mumbai). These two

firms formed a new partnership firm with M/s Sunshine Buildtech on 16.07.2005. The two firms transferred/assigned this plot as their land investment to M/s Sunshine Buildtech, Jaipur. However, no SD was paid on this transfer of land to M/s Sunshine Buildtech, Jaipur.

The SR, Sanganer-II, while registering the sale deed of the flat between the purchaser and M/s Sunshine Buildtech, Jaipur did not levy the stamp duty earlier transfer/assignment of land by the two firms to M/s Sunshine Buildtech, Jaipur. This resulted in non-levy of SD of ₹ 49.45 lakh on transfer of the plot at the rate of five *per cent* on the market value of the property ₹ 9.89 crore.

The matter was brought to the notice of the Department (March 2012) and reported to the Government (May 2012). The Government replied (July 2012) that reference has been made against executants to Collector (Stamps), Circle Jaipur-II. Further progress was awaited (November 2012).

### 5.16 Non-recovery of irregularly exempted Stamp Duty

As per notification dated 13.02.2003, 100 *per cent* exemption was allowed on the SD payable on the instruments executed for the sale and purchases of land and properties in the Agro Food Parks developed by RIICO at Kota, Jodhpur and Sriganganagar for establishing industrial units therein.

During scrutiny of records of the SR, Jodhpur-III for the year 2010-11, it was noticed (January 2012) that the SR registered a sale deed (Document no. 9762 dated 6.07.2010) pertaining to industrial plots no. E-8, E-9 and G-234 to 236 measuring 12,057 square metres situated at Boranada Agro Food Park,



Jodhpur in favour of a second allottee<sup>16</sup>. It was observed that the original allottee<sup>17</sup> received 100 *per cent* rebate in Stamp Duty ₹ 11.19 lakh and the second allottee had also availed 100 *per cent* rebate in Stamp Duty ₹ 12.12 lakh for new investment. On scrutiny of recital of sale deed it was found that the original allottee of the said plots had availed the benefit of exemption in Stamp Duty ₹ 11.19 lakh under the notification dated 13 February 2003. However, the original allottee sold the allotted plots to the second allottee within six days from the date of first registration of plots in his name without establishing industrial unit which was a breach of condition of the notification dated 13 February 2003. Therefore, the SR should have recovered exemption amount of stamp duty ₹ 11.19 lakh along with interest ₹ 1.51 lakh<sup>18</sup> (till March 2011) before transferring the plots in the name of second allottee.

The Government replied (October 2012) that the matter is under consideration. Further progress was awaited (November 2012).

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<sup>16</sup> Rajasthan Gum Pvt. Ltd.

<sup>17</sup> Sh. Gop Ram Ware Housing Pvt. Ltd.

<sup>18</sup> Interest has been calculated at the rate of 18 per cent per annum from the date of exemption.