



Chapter-II
Audit Findings

Chapter-2 Audit Findings

Department of Trade and Taxes

2.1 Tax administration

The receipts from VAT are administered by the Commissioner of Department of Trade and Taxes (DTT) assisted by four Special Commissioners. There are 10 zones each headed by a Joint Commissioner/Deputy Commissioner who work under the Additional Commissioners. Delhi has been divided into 114 wards headed by the Value Added Tax Officers (VATOs).

The total number of registered dealers as on 31 March 2013 was 3,20,854, out of which, 17,474 dealers submit their returns on monthly basis and remaining 3,03,380 dealers submit their returns on quarterly basis.

Out of registered dealers of 3,20,854, only 2,48,845 dealers filed their returns during the year 2012-13, 1,653 dealers were large tax payers (depositing tax of more than ₹ one crore) and 10,4281 dealers were small tax payers (depositing less than ₹ one lakh).

2.2 Results of audit

Test check of the records of 68 units showed an underassessment of tax and other irregularities involving ₹ 1,691.65 crore in 870 cases which fall under the following categories:

| (₹ in crore) | | | |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | Objection and Appeal cases in VAT | 01 | 491.80 |
| 2. | Irregular claim of exemption/ concessional rate of tax on statutory forms | 831 | 1,175.83 |
| 3. | Others; such as irregular claim of tax concession on defective forms, short deduction of TDS, short deposit of tax, irregular claim of exempted sales, etc. | 38 | 24.02 |
| Total | | 870 | 1,691.65 |

A few illustrative cases involving ₹ 492.54 crore are discussed in the following paragraphs.

2.3 Audit on 'Objection and Appeal cases'

The Delhi Value Added Tax Act 2004, (the DVAT Act) and Central Sales Tax Act, 1956 (CST Act) and Rules framed thereunder govern the levy, assessment and collection of VAT.

Section 74 of the DVAT Act, 2004 provides that any person who is dissatisfied with (a) an assessment made under this Act (including an assessment under section 33 of this Act); or (b) any other order or decision made under

this Act, may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner, within two months of the date of service of the assessment, or order or decision, as the case may be.

Audit covering period 2009-10 to 2011-12 was conducted with the objective to see whether statutory provisions were complied, recovery of revenue was prompt and internal control for monitoring, recording and disposal of objections was in place. Records of one out of three Special Commissioners (Objections/Appeals above ₹ 15 lakh), two out of 10 Additional Commissioners (Objections/Appeals upto ₹ 15 lakh) were examined.

2.3.1 Poor handling of remanded cases

(i) Under DVAT Act

Under sub-section 7 of Section 74 of the DVAT Act, the Objection Hearing Authority (OHA) shall accept or reject the objection in whole or in part. Also, as per the DVAT-Tribunal decision (30 September 2010) in the case of 'Shree Cement Ltd. vs. CTT', Act does not include power of remanding back the cases to the assessing authorities.

Audit observed that in contravention of the above provisions, OHAs remanded (returned) back 4,414 objection cases to the Assessing Authority for re-assessment during the period 2009-10 to 2011-12. After remanding the cases, OHAs did not watch the disposal of the remanded cases by the Assessing Authority.

Audit selected for test check, 263 remanded cases involving ₹ 5,150.27 crore, as per the details given in the **Table 2.1**.

Table 2.1
Handling of remanded cases under DVAT Act (₹ in crore)

| Sl. No. | Nature of observation | No. of selected cases | Demand involved | Amount recovered | Percentage of recovery made |
|---------|------------------------------------------------|-----------------------|-----------------|------------------|-----------------------------|
| 1. | Re-assessed | 45 | 98.56 | 8.15 | 8.26 |
| 2 | Files not traceable in wards. | 14 | 102.28 | Nil | 0.00 |
| 3 | Non-receipt of order of OHA in wards | 04 | 10.78 | Nil | 0.00 |
| 4 | Change of address/RC cancelled | 01 | 00.51 | Nil | 0.00 |
| 5 | Pending with wards from May 2010 to March 2012 | 23 | 103.28 | Nil | 0.00 |
| 6 | Files not pertaining to wards as per system | 28 | 474.14 | Nil | 0.00 |
| 7 | Reply not received from the wards by Audit | 148 | 4,360.72 | Nil | 0.00 |
| | Total | 263 | 5,150.27 | 8.15 | |

The above table shows that out of 263 cases involving an amount of ₹ 5,150.27 crore, the Department reassessed only 45 cases (17 per cent) involving demand of ₹ 98.56 crore, but could recover only an amount of ₹ 8.15 crore (8.26 per cent). This shows that the monitoring and internal control mechanism

was weak in the Department in respect of remanded cases. The action of the OHA to remand back the cases was not correct as he has no power to remand back the cases under the Act.

The Department accepted (January 2014) the audit observation and stated that the data of all pending cases has been compiled and action is being taken for disposing the remanded cases in time. It was further stated that the observation of Audit that out of a total demand of ₹ 5,150.27 crore in 263 cases, only ₹ 8.15 crore could be recovered, is misleading because after remanding of the cases, in general, the demand gets reduced substantially.

The reply is not acceptable as demand of ₹ 5,150.27 crore was raised by the Department itself. Further, the Department has reassessed only 45 cases out of 263 cases and recovered only ₹ 8.15 crore, out of the objected amount of ₹ 5,150.27 crore.

(ii) Under DST Act

Sub-section 6 of Section 43 of Delhi Sales Tax Act, 1975 provides that the Appellate Authority may, after giving the appellant an opportunity of being heard, (a) confirm, reduce, enhance, or annul the assessment, or (b) set aside the assessment and direct the Assessing Authority to make a fresh assessment after such further inquiry as may be directed, or (c) pass such order as it may think fit.

As per circular No. 7 of 1999-2000 dated 16 June 1999, the Commissioner (DTT) directed all assessing authorities to immediately clear assessment of all remanded cases pending with them. All such cases, as far as possible, when time limit has not been prescribed by the Appellate Authorities concerned, should be disposed of within one year from the date of remand.

Audit selected 35 appeal cases each involving money value above ₹ 15 lakh, with total demand of ₹ 57.96 crore. The analysis showed as under:

Table 2.2
Handling of remanded cases under DST Act (₹ in crore)

| Sl. No. | Nature of observation | No. of cases | Amount disputed |
|---------|----------------------------------------------------------------|--------------|-----------------|
| 1. | Re-assessed | 02 | 01.64 |
| 2. | Not traceable in ward | 03 | 04.26 |
| 3. | Change of address/RC cancelled | 02 | 02.31 |
| 4. | Under Tribunal | 04 | 02.91 |
| 5. | Not pertaining to ward as per system/transferred to other ward | 05 | 15.11 |
| 6 | Reply not received from the wards by Audit | 19 | 31.73 |
| | Total | 35 | 57.96 |

The above table shows that out of 35 cases, the Department reassessed only two cases involving an amount of ₹ 1.64 crore and 'Nil' demand was created. Thus, the remaining 33 cases involving an amount of ₹ 56.32 crore of DST period were pending for re-assessment as of January 2014.

The Department accepted (January 2014) the audit observation and stated that the officers of the Department have been sensitized and instructed to clear the remanded cases under DST Act in a time bound manner.

2.3.2 Non-realization of demand of ₹ 480.12 crore due to delay in finalization of assessment

Sub-section (1) of Section 34 of the DVAT Act, 2004 provides that no assessment or re-assessment under Section 32 of this Act shall be made by the Commissioner after the expiry of four years from (a) the date on which the person furnished a return under Section 26 or Sub-section (1) of Section 28 of this Act, or (b) the date on which the Commissioner made an assessment of tax for the tax period, whichever is earlier. Provided also that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

Audit observed that Assessing Authority had finalised the default assessment of tax and interest under Section 32 and penalty under Section 33 of DVAT Act in respect of HDFC Bank Limited for the period April 2005 to November 2005 on different dates and issued a demand of ₹ 480.12 crore including tax, interest and penalty against the Bank. The details of assessments are given in the **Table 2.3**.

Table 2.3
Details of default assessments

| Sl No. | Tax period | Last due date of assessment | Date of assessment | Date of dispatch/handing over the assessment order | Total demand* (₹ in lakh) | Date of set aside |
|--------------|----------------|-----------------------------|--------------------|----------------------------------------------------|----------------------------------------------------|-------------------|
| 1 | April 2005 | 27.5.2011 | 27.5.2011 | 24.6.2011 | 47,174.06 | 15.12.2011 |
| 2 | May 2005 | 27.6.2011 | 24.6.2011 | 02.9.2011 | 25.13 | 03.1.2012 |
| 3 | June 2005 | 27.7.2011 | 25.7.2011 | 02.9.2011 | 113.00 | 03.1.2012 |
| 4 | July 2005 | 27.8.2011 | 26.8.2011 | 02.9.2011 | 55.58 | 03.1.2012 |
| 5 | August 2005 | 27.9.2011 | 28.9.2011 | 08.12.2011 | 66.53 | 30.3.2012 |
| 6 | September 2005 | 27.10.2011 | 28.10.2011 | 08.12.2011 | 96.00 | 30.3.2012 |
| 7 | October 2005 | 27.11.2011 | 23.11.2011 | 08.12.2011 | 421.34 | 30.3.2012 |
| 8 | November 2005 | 27.12.2011 | 20.12.2011 | 27.1.2012 | 60.47 | 30.3.2012 |
| Total | | | | | 48,012.11 (or say ₹ 480.12 crore) | |

**including tax, interest and penalty*

The above table shows that Assessing Authority passed the assessment orders within the prescribed time limit, except in two cases (Sl. No. 5 and 6), but dispatched the assessment orders after the expiry of the prescribed time limit of six years.

The assessee filed objection u/s 74 of the DVAT Act, against the default assessment of tax and interest (u/s 32) and penalty thereon (u/s 33) of the DVAT Act. The OHA set aside these assessment orders on the ground that Assessing Authority passed default assessments on due date, but the same were not dispatched by the Assessing Authority within due date.

Due to delayed dispatch of assessment orders, the OHA set aside all default assessments. This resulted in non-realization of demand of ₹ 480.12 crore.

The Department stated (January 2014) that the specific case number and ward number is not mentioned in the draft audit report due to which clear cut reply is not possible.

The reply is not acceptable as date of assessment, assessment year, name of the dealer and other details were provided during the course of audit.

2.3.3 Irregular assessment resulted in non-realization of demand of ₹ 7.97 crore

Software including a module 'Dealer Assessment System' is being used in the Department since September 2006. The Commissioner directed (March 2007) that all the Assessing Authorities should pass default assessments orders through the computer system only. Section 32 (d) of the DVAT Act, 2004 provides that the Commissioner may for reasons to be recorded in writing, assess or reassess to the best of his judgment the amount of net tax due for a tax period or more than one tax period by a single order so long as all such tax periods are comprised in a year.

Audit observed that the Assessing Authority raised a demand of ₹ 7.97 crore against M/s Globe Civil Projects Pvt. Ltd. (assessee) for the assessment years 2008-09 and 2009-10 through a single order manually. Assessee filed an objection with OHA against the order and OHA remanded back the case (26 April 2010) to Assessing Authority for re-assessment. Assessing Authority re-assessed the case and raised the same demand of ₹ 7.97 crore (25 April 2011). The assessee filed an objection against re-assessment order, but this time OHA set aside the assessment and penalty order on grounds that the Assessing Authority did not pass the order through computer system and passed single order for both the years in violation of Section 32 (d) of the DVAT Act, 2004.

The Department stated (January 2014) that it was in the process of creating new software to plug in the gaps of older software. It further stated that the specific case number and ward number is not mentioned in the audit para, due to which the Department is unable to locate concerned files for preparing proper replies.

The reply is not acceptable as date of assessment, assessment year, name of the dealer and other details were provided during the course of audit.

2.3.4 Casual approach in handling of remand cases

Sub-section 7 of Section 74 of the DVAT Act provides that the OHA can either accept the objection or reject the same, which does not include power of remand.

Audit noticed that in case of M/s Standard Electrical for the assessment year 2007-08, Assessing Authority finalized the assessment (January 2011) and raised a demand of ₹ 3.71 crore including interest and penalty. The assessee filed an objection u/s 74 of the Act with OHA. The OHA remanded back the case to the Assessing Authority with the direction to get some of the Inter State Sale transactions verified from the concerned State Authorities and in case, any negative reference is received, the duty should be cast upon the objector. The assessee filed the review application u/s 74 (b) of the DVAT Act

against the remand order of OHA on grounds that the OHA had no power to remand the case as per provisions of the Act. This time, OHA set aside the assessment and penalty order.

Audit observed that the practice of remanding the case back was normal in the Department to dispose of the objection cases. But in this case, the OHA set aside the order of Assessing Authority on the grounds that it had no power to remand back the objection. This resulted in non-realization of demand of ₹ 3.71 crore.

The Department stated (January 2014) that it has initiated steps to plug the gaps in monitoring of the remanded cases and software module is being prepared to address this issue. It further stated that the case number and ward number was not mentioned in the audit paragraph.

The reply is not acceptable as the para is not related to any system/software module. The issue is only that the OHA has no power to remand back the case. Further, the date of assessment, assessment year and the name of the dealer was provided during the course of audit.

2.3.5 Lack of internal control mechanism

Internal control and monitoring of recording and disposal of objections was not effective. As has been highlighted in preceding paragraphs, there were discrepancies in number of objections cases remanded back by OHAs to the concerned Wards and the number of cases available with the Wards. There are also cases which are not traceable. Audit also observed that the frequent changes in jurisdiction of OHAs caused many files/cases to be untraceable or misplaced, indicating that the track of movement of files was not monitored.

The Department accepted (January 2014) the audit observation and stated that it has initiated steps through use of technology to have better control and monitoring of cases.

The above points were also reported to the Government (October 2013); reply has not been received (February 2014).

2.4 Incorrect claim of exemption on 'F' Forms containing multiple month's transactions

Under Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, a dealer may claim exemption of tax by filing a declaration in form 'F' covering transfer of goods effected during a period of one calendar month, to any other place of his business or to his agent or principal outside the State, as the case may be. Otherwise, the transactions are to be treated as inter-state sales and taxed accordingly.

Audit noticed during the test check of the records of Ward 48 and 204 of DTT, between April 2012 and March 2013, that in two cases of the assessment year 2010-11 (default assessed case), the dealers claimed exemption of tax on account of branch transfer or consignment sale of ₹ 14 crore on the basis of 'F' forms which covered transactions beyond one calendar month and were thus, liable to be treated as inter-state sales not supported by valid declarations. This resulted in short realisation of tax of ₹ 61.55 lakh. Besides, interest of ₹ 12.55 lakh was also leviable under Section 42 (2) of the Act.

On this being pointed out, the Department stated (January 2014) that assessment has been made in one case and a demand of ₹ 2,861 was created. The reply of the Department is not acceptable as it has given reply in respect of missing 'C' forms amounting to ₹ 2861, whereas the para relates to exemption on 'F' forms containing multiple month transactions.

2.5 Department of Revenue

2.5.1 Tax administration

The Indian Stamp Act, 1899 (the Act), the Delhi Province Stamp Rules, 1934, the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007 and notifications issued from time to time govern levy of stamp duty on instruments, specified in various Schedules of the Act, in the National Capital Territory of Delhi. The NCT of Delhi is divided into 11 Zones for revenue purpose, each headed by a Deputy Commissioner. Each Zone is further divided into three sub-zones, headed by a Sub-Divisional Magistrate having power of Collector of Stamps also. The Sub-Registrar functions under the direct control of the Deputy Commissioner of the respective zone and is vested with the responsibility of registration of documents. There are 16 Sub-Registrars' offices in NCT of Delhi.

2.5.2 Result of audit

Test check of records of six units relating to Department of Revenue, Government of NCT of Delhi showed non-levy, short levy and non-realisation of stamp duty and registration fee and other irregularities involving ₹68.46 crore in 771 cases which falls under the following categories mentioned in Table 2.4.

Table 2.4
Category wise irregularities (₹ in crore)

| Sl. No. | Category | No. of cases | Amount |
|-----------------------|-----------------------------------------------------------------------------|--------------|--------------|
| Department of Revenue | | | |
| 1. | Performance Audit " Levy and collection of stamp duty and registration fee" | 1 | 43.46 |
| 2. | Others | 770 | 25.00 |
| | Total | 771 | 68.46 |

The performance audit on "Levy and collection of stamp duty and registration fee" involving ₹ 43.46 crore is discussed in the following paragraphs:

2.6 Performance Audit on Levy and collection of stamp duty and registration fee

Highlights

- ❖ Non-levy of stamp duty and registration fee in 551 cases resulted in loss of stamp duty of ₹ 28.05 crore and registration fee of ₹ 0.03 crore to the Government.

(Paragraph 2.6.6.1)

- ❖ Short levy of stamp duty and registration fee in 227 cases due to change of land use, wrong calculation and misclassification of instruments, resulted in loss of stamp duty of ₹ 5.31 crore and registration fee of ₹ 0.69 crore to the Government.

(Paragraph 2.6.7)

- ❖ Incorrect allowance of exemption of stamp duty and registration fee in 22 cases resulted in loss of stamp duty of ₹ 1.04 crore and registration fee of ₹ 0.22 crore to the Government.

(Paragraph 2.6.8.1)

- ❖ Non-realization of stamp duty on shares allotted by 523 companies resulted in loss of stamp duty of ₹ 8.12 crore to the Government.

(Paragraph 2.6.9.1)

2.6.1 Introduction

The Government of National Capital Territory of Delhi (GNCTD) introduced 'e-stamping' with effect from 1 April 2008 for the stamp duty of ₹ 501 and above. From June 2012 onwards, the e-stamping was made mandatory for all values of stamp duty, thereby doing away with stamp papers of all denominations. However, lease deed executed by the Delhi Development Authority (DDA) with lessee is an exception in which case, the stamp duty is deposited by cash or bank draft through challans into Government Account.

The levy of registration fee on the instruments presented for registration, is regulated by the Indian Registration Act, 1908, and rules framed there under.

2.6.2 Organisational set up

The Secretary (Revenue), GNCTD is responsible for administration of the Indian Stamp Act, 1899, and Indian Registration Act, 1908, and Rules framed there under. He is assisted by one Deputy Commissioner and one Additional District Magistrate.

The NCT of Delhi is divided into 11 Zones for revenue purpose, each headed by a Deputy Commissioner. Each Zone is further divided into three sub-zones, headed by a Sub-Divisional Magistrate having power of Collector of Stamps also. The Sub-Registrar functions under the direct control of the Deputy Commissioner of the respective zone and is vested with the responsibility of registration of documents. There are 16 Sub-Registrars' offices in NCT of Delhi.

2.6.3 Audit objectives

The objectives of the performance audit were to ascertain whether:

- stamp duty and registration fee were correctly assessed, levied and collected in accordance with the provisions of the applicable Acts, Rules and notifications,
- exemptions of stamp duty and registration fee claimed by the executants were correctly allowed by the Sub-Registrars, and
- effective internal controls were in place to ensure correct levy and collection of stamp duty and registration fee, simultaneously.

2.6.4 Audit scope and methodology

The performance audit of the Department of Revenue, GNCTD, covering the period 2010-13, was conducted during May 2013 to August 2013. Six¹ out of 16 Sub-Registrar offices, were selected for detailed examination on judgmental basis. In these selected offices, all documents (including developers' agreements for reconstruction of buildings and change of use of agricultural land) pertaining to four selected months² were scrutinized. For cross examination, Audit also collected information on contracts, agreements, lease deeds with private entrepreneurs for spaces, shops, tolls etc. from Delhi Metro Rail Corporation (DMRC), East Delhi Municipal Corporation (EDMC), North Delhi Municipal Corporation (NDMC) and South Delhi Municipal Corporation (SDMC). New Delhi Municipal Council (NDMC) did not respond to audit requisitions in this regard. Besides, audit observations made during previous regular audits of the Department, have also been incorporated in the Report.

An entry conference was held with Principal Secretary (Revenue) in July 2013 to discuss audit objectives, scope, criteria and methodology. An exit conference was held with Special Secretary (Finance) in January 2014, where audit findings were discussed and replies provided were suitably incorporated in the Report.

2.6.5 Audit criteria

The audit criteria were derived from the following sources:

- The Indian Stamp Act, 1899
- The Indian Registration Act, 1908
- The Delhi Stamp (Prevention of Under-valuation of Instruments) Rules, 2007
- The Delhi Registration Rules, 1976
- The Delhi Land Revenue Act, 1954 with the Delhi Lands (Restrictions on Transfer) Act, 1972
- Notifications issued from time to time.

Audit findings

2.6.6 Non-levy of stamp duty and registration fee

2.6.6.1 Non-levy of stamp duty and registration fee due to non-registration of lease deeds by DMRC and MCD

As per Section 2(16) of the Indian Stamp Act, 1899 (the Stamp Act), 'lease' means a lease of immovable property, a *patta*, a *kabuliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property. Further, as per item 35 of schedule 1-A of Section 3 of the Stamp Act, any instrument of contract for

¹ Sub-Registrar office at Alipur, Geeta Colony, JanakPuri, Kapashera, Kashmere Gate and Mehrauli.

² February 2011, November 2011, December 2012, March 2013

leasing or sub-leasing immovable property or any agreement to let or sub-let is chargeable to stamp duty. Section 17(1) (d) of the Registration Act provides that lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, is to be registered compulsorily. Stamp duty on lease deed is chargeable at prescribed rates for a consideration, equal to the amount of rent reserve and on the basis of period of lease.

(i) The information collected from DMRC in March 2013 showed that it allotted land and available free spaces on lease for a period ranging from one to 99 years during 2008-09 to 2012-13, to private entrepreneurs for parking, commercial use, other purposes for a total consideration of ₹ 3,092.34 crore in 345 cases. However, the DMRC neither registered the lease deeds in respect of these properties nor had any contractual binding on the lessees to get the lease deeds registered. Thus, due to non-registration of lease deeds by the DMRC or lessees, the Government suffered a revenue loss on account of stamp duty of ₹ 11.96 crore and registration fee of ₹ 0.02 crore.

The DMRC in its reply (June 2013) stated that it was providing parking facility to the genuine metro commuters as a first mile and last mile connectivity. The parking lots were allotted on license basis to parking contractors on a monthly fee. Unlike lease, the license was granted for limited use, i.e., collection of parking charges as specified by DMRC. The license agreement made on stamp paper was, therefore, not registered.

Contention of the DMRC was not acceptable since lease includes any agreement to let or sub-let and is required to be registered compulsorily.

The Department stated (December 2013) that instructions are being issued to all Collectors of stamp duty to issue notices to all such agencies/lessor/lessee informing them that the lease deed is compulsorily registerable and failure to do so can cause penalty and prosecution.

(ii) The information collected from the Municipal Corporation of Delhi (before trifurcation) in March 2013 showed that during the period May 2008 to May 2014, it awarded contracts for toll collection on two occasions for a period of three years (from May 2008 to May 2011 and May 2011 to May 2014) to private entrepreneurs for a total consideration of ₹ 1,499.50 crore. In addition, it awarded a contract during the period 2003 to 2008 initially, for a period of one year (May 2003 to April 2004) followed by two extensions upto May 2008 for a total consideration of ₹ 404.01 crore. However, the MCD neither registered the lease deeds nor had any contractual binding on the lessees to get these lease deeds registered. Thus, failure on the part of the MCD and lessees to register the lease deeds resulted in a loss of stamp duty of ₹ 14.83 crore and registration fee of ₹ 0.01 lakh.

MCD in its reply (August 2013) stated that after inviting tenders, it entered into service contracts for collection of toll and toll plaza development. Contractors are paid collection charges for providing services to the Corporation. It further claimed exemption from payment of Stamp Duty under proviso 1 of section 3 of the Stamp Act.

The contention of MCD was not acceptable since the document by which the right to collect toll was given, was an “instrument” as per Sub-Section 14 of Section 2 of the Stamp Act and, therefore, all instruments, by which tolls of

any description were let, were leases within the meaning of Stamp Act and, hence, chargeable to stamp duty and registration fee.

(iii) The three municipal corporations of NCT of Delhi (EDMC, NDMC and SDMC) also executed agreements and contracts of parking sites with private entrepreneurs in 203 cases for a total consideration of ₹ 215.80 crore³ for periods ranging from two to six years. However, the Corporations neither registered lease deeds in respect of these parking sites nor had any contractual binding on the lessees to get these lease deeds registered.

Thus, due to non-registration of lease deeds for parking sites, by the Corporations or lessees, the Government suffered a loss of stamp duty of ₹ 1.26 crore⁴ and registration fee of ₹ 0.01 crore⁵

The Department stated (March 2014) that public notice for awareness of lesser and lessee about registration fee of lease deeds and consequences of non-registration would be published shortly in the leading newspapers.

2.6.7 Short levy of stamp duty and registration fee

The GNCTD introduced the minimum circle rates for valuation of land and buildings vide notification dated 18 July 2007⁶ which were revised in February 2011, November 2011 and again in December 2012. Different circle rates are applicable to different category of area (A to H), as specified in Annexure I of the Delhi Stamp (Prevention of Under-Valuation of Instruments) Rules, 2007. At the time of registration of a property in NCT of Delhi, the stamp duty is charged as per these rates on the consideration amount. Audit noticed cases of short levy of stamp duty and registration fee which are discussed in following sub-paragraph.

(i) Short levy of stamp duty due to change of land use: The entire area of NCT of Delhi is divided into different categories from A to H. While calculating the cost of land for schools, colleges, hospitals and industrial purpose, a multiplicative use factor of two or three is to be applied. At the time of registration of property, stamp duty is required to be calculated and charged on consideration amount worked out by multiplying the area of the property with the minimum rates, as per category of the locality. However, in 49 cases, multiplicative factor of one was used instead of two or three, which resulted in short levy of stamp duty of ₹ 3.21 crore and registration fee of ₹ 0.56 crore.

(ii) Short levy of stamp duty and registration fee due to wrong calculation: In 65 cases, stamp duty and registration fee were calculated on incorrect consideration amount due to various reasons such as incorrect category, incorrect calculation, variation in area, error in land value etc. The incorrect calculation led to a loss of stamp duty of ₹ 0.58 crore and registration fee of ₹ 0.10 crore to the Government.

³ EDMC ₹ 4.07 crore, NDMC ₹ 68.74 crore and SDMC ₹ 142.99 crore

⁴ EDMC ₹ 0.04 crore, NDMC ₹ 0.48 crore and SDMC ₹ 0.74 crore

⁵ EDMC ₹ 0.26 lakh, NDMC ₹ 0.73 lakh and SDMC ₹ 0.34 lakh

⁶ Notification No. F 2(12)/Fin (E.I) Part File/ Vol-1 (ii)/3548 dated 18 July 2007

(iii) Short levy of stamp duty and registration fee due to misclassification of instruments: As per order⁷, in case the power of attorney without consideration, empowers the donee to permanently alienate the immovable property or is irrevocable in nature or is accompanied by a will, such instrument is required to be rewritten as a deed of conveyance or an instrument as per article 48(f) of schedule I A of the Act. As per item 48 (f) of Schedule 1A of Section 3 of the Stamp Act, power of attorney when given for consideration authorising the attorney to sell any immovable property, the duty applicable on 'Conveyance Deed' is levied as per item 23 of Schedule 1A of the Stamp Act.

In 107 cases, power of attorney was given for consideration authorising the holder of power of attorney to sell the immovable property. However, the stamp duty at half the rate of the normal stamp duty chargeable on conveyance deeds, was paid. Further, in six cases, power of attorney was given without consideration and the stamp duty and registration fee was paid @ ₹ 1,050 per deed against the chargeable rate of duty between four and six *per cent*.

Thus, due to misclassification of instruments as 'GPA', instead of 'Conveyance Deed', the Government suffered a loss of stamp duty of ₹ 1.52 crore and registration fee of ₹ 0.03 crore.

The Department in its reply (March 2014) stated that it has already initiated action by asking all Collectors of Stamps for assessing deficient stamp duty as per provisions of the Act.

2.6.8 Incorrect allowance of exemption of stamp duty and registration fee

2.6.8.1 Incorrect exemption allowed on mortgage deed

As per Notification⁸ dated 14 March 2006 of Finance Department (Taxes and Establishment), GNCTD, agricultural loan instruments upto ₹ 5 lakh given to the farmers for agricultural activities in the NCT of Delhi by the Commercial and Co-operative Banks are exempt from payment of stamp duty. Further, as per the Notification⁹ dated 1 July 2010 (amended in June 2011), the registration fee was leviable for the documents (mortgage deeds), subject to a minimum of rupees one thousand, one *per cent* of the consideration amount or the value as per the circle rate, whichever is higher.

Audit noticed that the Department exempted 22 cases of mortgage deeds for loans taken for the purpose of development of business, from stamp duty amounting to ₹ 1.04 crore under the provisions of above mentioned notifications, treating the loans as agricultural loan. Further, in 14 cases, even the registration fee was paid partly and in remaining eight cases, no registration fee was paid, resulting in short payment of registration fee of ₹ 0.22 crore.

⁷No.FPS/DCW/03/SR/1022/3087-3157 dated 16 June 2004

⁸No. F 5(8)/Fin/T&E/2005-06/1415 kha-1422 kha dated 14.03.2006

⁹No. F1(36)/Regn.Br./HQ/Div.com./2010/353 dated 1 July 2010

Thus, the incorrect exemption allowed on mortgage deeds resulted in loss of stamp duty and registration fee of ₹ 1.26 crore.

The Department in its reply (March 2014) stated that it has already initiated action by asking all Collectors of Stamps for assessing deficient stamp duty as per provisions of the Act.

2.6.9 Evasion of stamp duty and registration fee

2.6.9.1 Non-realization of stamp duty of ₹ 8.12 crore on shares etc.

As per Section 75(1) (a) of the Companies Act, 1956, every company is required to file a return in Form 2 – ‘Return of allotment’ - in the office of Registrar of Company Affairs and furnish the details of allotment of shares and pay stamp duty to the Department of Revenue and then issue shares to the subscriber.

Further, Section 40 of the Stamp Act provides that if a company fails to pay the stamp duty, the amount of stamp duty along with penalty not exceeding 10 times, should be recovered. Section 48 of the Act provide that all dues and penalty may be recovered by the Collector by distress and sale of moveable property of the person from whom the same are due, or by any other process.

As per item 19 of Schedule 1A of Section 3 of the Stamp Act, stamp duty on allotment of shares is chargeable at one rupee for every one thousand, or a part thereof, of the value of the shares, scrip or stock.

The information, collected from the office of the Inspector General of Registration, in respect of cases involving stamp duty of more than ₹ 10,000, showed that 523 companies did not deposit the stamp duty amounting to ₹ 8.12 crore on allotment of shares valuing ₹ 12,709 crore.

The Department in its reply (March 2014) stated that it has issued notices to these companies. As soon as these companies deposit the requisite documents, stamp duty will be charged as per provisions of the Act.

2.6.10 Internal control

Internal control mechanism in a Department is meant to ensure that its activities are carried out according to the prescribed rules and regulations in an economical, efficient and effective manner. The control mechanism in the Department should be guided by Act, Rules, Manuals and Compendium of instructions etc. to protect the resources of the Government and to ensure that revenue is correctly levied and timely realised by the Government. Internal control and monitoring system to ensure realisation of proper duty was not effective as commented in the preceding paragraphs. Other cases of weak control noticed in audit are given in succeeding paragraphs.

2.6.10.1 Absence of monitoring system to ensure realization of proper duty

As per proviso (3) to Section 33 of the Indian Stamp Act, the State may determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices. Further, Section 73 provides that every public officer having in his custody any records, documents and proceedings, the inspection whereof may tend to secure any

duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Collector to inspect for such purpose the records, documents and proceedings etc.

Audit noticed that the Revenue Department had not determined and declared as to which office shall be deemed to be public office and who shall be deemed to be persons in charge of public offices. Thus, the Department does not have a system to collect information from various Departments/public offices to ensure that the documents such as agreements, contracts, leases, conveyance deeds etc. are properly registered and stamp duty and registration fee realized according to the provisions of the Act.

2.6.10.2 Internal audit

The Directorate of Audit, GNCTD conducts the internal audit of the Revenue Department. The Directorate had conducted audit of only three offices¹⁰ upto the period 2011-12. No audit for the year 2012-13 was conducted.

2.6.11 Conclusion

There were cases of evasion/short payment of stamp duty and registration fee through under-valuation of properties, change of land use and category, short payment of stamp duty on documents submitted by the executants, irregular exemption on mortgage deeds, and evasion of stamp duty on issuance of shares. The Department failed to co-ordinate with the various offices receiving registerable instruments that led to leakage of revenue, which remained undetected. Internal control mechanism was weak in the department.

2.6.12 Recommendations

The Government may consider:

- prescribing a periodical return to be furnished by various offices, executing lease mortgage agreements, to the Revenue Department on the number and nature of the documents presented and stamp duty and registration fee paid;
- Declaring all offices in which documents are presented as public offices to ensure that compulsorily registerable documents are registered with the concerned registering authorities and correct stamp duty and registration fee is collected; and
- strengthening the internal audit wing.

¹⁰ Office of the Inspector General of Registration, Sub-registrars' offices at Geeta Colony and Mehrauli.