

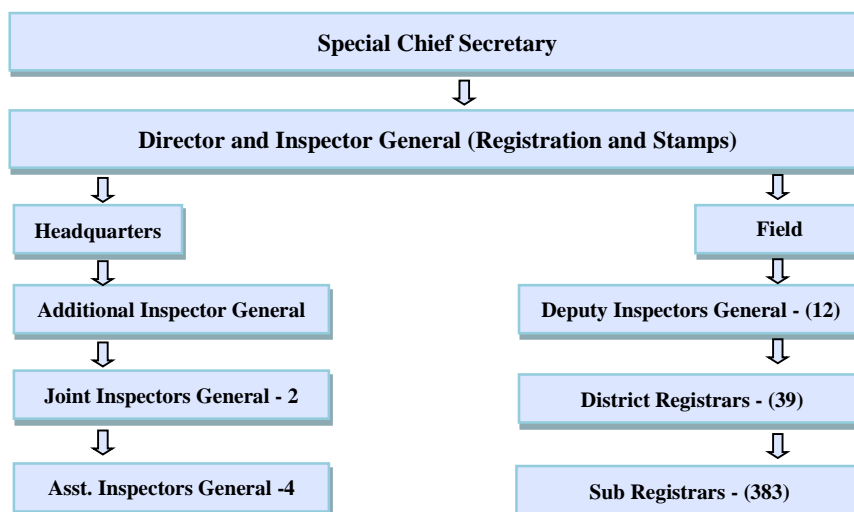
CHAPTER IV
STAMP DUTY
AND
REGISTRATION FEES

CHAPTER IV STAMP DUTY AND REGISTRATION FEES

4.1 Tax Administration

Receipts from Stamp Duty and Registration Fee are regulated under the Indian Stamp Act 1899, (IS Act), Registration Act, 1908 and the rules framed there under as applicable in Andhra Pradesh State. These are administered at the Government level by the Special Chief Secretary, Revenue (Registration & Stamps). The Director and Inspector General of Registration and Stamps (DIGRS) is the head of the Department, who is empowered with the task of superintendence and administration of registration work in the State. The organisational chart of the department is as detailed below

Organogram



4.2 Internal Audit

There is a separate Internal Audit wing in the Department. The team is headed by DR (Market Value and Audit) to conduct audit of SR offices periodically. DIGRS intimated (January 2019) that 4,574 paras were pending as on 1 April 2017. During the year 2017-18, 1,529 observations were made. Of the total 6,103 paras, 1,787 were cleared during the year and 4,316 were pending at the end of March 2018. The monetary impact of the observations was not furnished by the department.

4.3 Audit Methodology and Results of Audit

The Stamps & Registration Department of Andhra Pradesh uses an IT application, 'Computer Aided Administration in Registration Department (CARD)', developed by NIC for providing online services to the public. The core functions of the department, i.e., registration of immovable properties,

marriages, firms, societies, chits have been computerized in CARD. CARD has service-oriented architecture with a central server located at the Commissionerate and all the Sub Registrars accessing it with web enabled application. Functions like generation of check slips, creation and updating of Encumbrance Certificates (ECs) and link documents, valuation of the properties mentioned in the documents for levy of stamp duties are performed by all Sub Registrars through CARD. Documents registered by the Sub-Registrars are scanned and uploaded to the central server at the end of the day.

The district offices are connected with central server through Andhra Pradesh State Wide Area Network (APSWAN). Citizens have access to the services of the department through its website.

Audit teams were provided access, through login credentials, to various reports viz., number of registrations done, type of documents registered, value of the documents, ECs etc., of all the Registrar offices. Based on the type of documents and the value of properties involved, the audit teams select the documents with higher duty leviable for audit scrutiny. The documents selected are downloaded from the website for scrutiny.

Records of 167 units out of 321 auditable units of Registration and Stamps Department were test checked during 2017-18¹¹⁰. The revenue realised by the State for the year 2016-17 was ₹ 3,476 crore and that of audited units was ₹ 2,672.98 crore. Test check revealed underassessments and other deficiencies involving monetary impact of ₹ 129 crore in 540 cases. The results of Audit are detailed in **Table 4.1**.

Table 4.1: Results of Audit

(₹ in crore)

| Sl.No. | Category | No. of cases | Amount |
|--------------|---|--------------|---------------|
| 1. | Detailed compliance audit on “Functioning of Registration and Stamps Department” | 1 | 116.51 |
| 2. | Short levy of duties and fees due to conversion of agricultural land to non-agricultural purposes | 37 | 1.48 |
| 3. | Short levy of duties and fees due to undervaluation of properties | 128 | 2.02 |
| 4. | Short levy of duties and fees due to adoption of incorrect rates | 150 | 4.60 |
| 5. | Short levy of duties and fees due to misclassification of documents | 40 | 0.42 |
| 6 | Non-levy of duties and fees due to non-registration of agreements of sale / partition deeds | 85 | 0.59 |
| 7 | Non-levy of fees on instruments creating <i>pari-passu</i> | 02 | 2.51 |
| 8 | Short levy of duties on distinct matters | 32 | 0.47 |
| 9 | Other irregularities | 65 | 0.40 |
| Total | | 540 | 129.00 |

¹¹⁰ Audit of 21 offices sampled for Detailed compliance audit was conducted between April and July 2018.

The Department accepted underassessment and other deficiencies of ₹ 93.55 crore in 54 cases. Of these, seven cases involving ₹ 93.43 lakh were pointed out during the year 2017-18 and the rest in earlier years. An amount of ₹ 13.67 lakh in 48 cases was realised during the year 2017-18.

Detailed compliance audit of the “Functioning of Registration and Stamps Department” involving monetary impact of ₹ 116.51 crore has been discussed in the succeeding paragraphs.

4.4 Detailed compliance audit on “Functioning of Registration and Stamps Department”

4.4.1 Introduction

‘Stamp duty’ is payable on certain documents specified by statute to make them legally effective. ‘Registration fee’ refers to the fee levied and collected by the State Government for registration of documents.

Stamp duty on Bills of Exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts are levied by the Central Government as per Entry 91 of the Union List and are collected by the State Government in which they are levied. Stamp duties on documents other than those mentioned above are levied and collected by the States by virtue of the legislative entry 63¹¹¹ in the State List in the seventh Schedule of the Constitution of India.

4.4.2 Trend of Revenue

The total revenue of the Registration and Stamps department during the period from 2013-14 to 2017-18 was ₹ 18,916 crore. The trend of revenue is as indicated below:

Table 4.2: Trend of Revenue

(₹ in crore)

| Financial Year | Receipts under Stamps and Registration Fees | Total tax receipts of the State | Percentage of Stamps and Registration receipts vis-a-vis total tax receipts |
|----------------|---|---------------------------------|---|
| 2013-14 | 4,393* | 64,124* | 6.85 |
| 2014-15 | 689* | 12,761* | 7.63 |
| 2014-15 | 2,561 | 29,857 | |
| 2015-16 | 3,527 | 39,987 | 8.80 |
| 2016-17 | 3,476 | 44,181 | 7.87 |
| 2017-18 | 4,270 | 49,486 | 8.63 |

* these receipts pertain to the composite State of Andhra Pradesh for 23 districts. The figures in the rest of columns relate to the successor state of Andhra Pradesh with 13 Districts.

¹¹¹ Entry 63 in the State List empowers the State Government to prescribe the rates of stamp duty in respect of documents other than those specified in List 1.

The department attributed reasons for decrease in the share of Registration revenue in the State's tax revenue to separate State agitations in the combined State during the year 2013-14 and to lack of real estate boom for the year 2016-17. The increase in revenue during the year 2014-15 was due to increase in stamp duties on sale deeds, gifts and settlements. However, increase in number of registered documents and increased developmental activities in the new Capital region of the State are the reasons for the increase in revenue during the year 2017-18. Contribution of revenue from Stamp Duty and Registration Fee to the total tax receipts of the State ranged between 6.85 *per cent* and 8.80 *per cent* during the period from 2013-14 to 2017-18.

4.4.3 Audit Objective

Detailed compliance audit was conducted with a view to verify the compliance with the Acts, Rules, GOs and procedures relating to assessment, levy and collection of Stamp duty, Registration fee etc.

4.4.4 Audit Criteria

The Audit criteria were derived from the following sources:

- Indian Stamp Act, 1899 and Rules framed thereunder;
- Registration Act, 1908;
- AP Revision of Market Value Guidelines Rules, 1998;
- The Transfer of Property Act, 1882;
- AP Stamps (Inspection) Rules, 1998;
- Indian Stamp (Andhra Pradesh Amendment) Act, 2002 (Act No 16 of 2002);
- AP Apartments (Promotion of construction and ownership) Act, 1987;
- Indian Partnership Act, 1932;
- Union and State legislations from time to time;
- Circular instructions issued by the DIGR (R&S), Government Orders and amendments issued from time to time.

4.4.5 Scope of Audit

The present detailed compliance audit was conducted (between February 2018 and July 2018) in 32 field offices¹¹² (out of 296), apart from the office of the DIGRS covering the period of five years from April 2013 to March 2018. The offices for test check were selected by using Random Sampling technique. Besides scrutiny of records in the test checked offices, relevant information was obtained from the office of the DIGRS and the District Registrars (DRs).

Audit findings were sent to the Government in September 2018 for which replies were received in November 2018.

¹¹² DRs: Anakapalle, Bhimavaram, Guntur, Hindupur, Kakinada, Kurnool, Nellore, Tirupati, Vijayawada and Visakhapatnam; SRs: Adoni, Amalapuram, Anandapuram, Ananthapuramu (Rural), Bhogapuram, Chilakaluripet, Dwarakanagar, Gajuwaka, Gannavaram, Jammalamadugu, Kadapa (Rural), Kallur, Koretipadu, Madhurawada, Mangalagiri, Nallapadu, Patamata, Ramachandrapuram, Renigunta, Sarpavaram, Tadepalligudem, and Tanuku.

Audit findings

4.4.6 Lack of coordination with other User departments

4.4.6.1 Registration and Land Revenue Departments

Due to lack of coordination between registration and land revenue department, land already converted for non-agricultural purposes was undervalued by ₹ 32.38 crore resulting in short levy of duties of ₹ 2.11 crore.

Section 27 of the Indian Stamp Act requires that an instrument contains details like consideration, market value of the property and all other facts and circumstances affecting the levy of duties without any suppression. The registering officer or any other officer appointed under the Registration Act, may inspect the related property, make necessary local enquiries, call for and examine all the connected records to ensure that the provisions of this Section were complied with.

As per Rule 7 of Andhra Pradesh Revision of Market Value guidelines (APRMVG) Rules 1998, acreage rate for agricultural lands and square yard rate for non-agricultural lands have to be adopted for levy of stamp duty.

Revenue Department accords permission for conversion of agricultural land to non-agricultural use. After issue of conversion proceedings, the land should not be valued at agricultural rates. It was observed that several pieces of land converted for non-agricultural use was assessed and registered at agricultural rates due to failure of Revenue Department to intimate the Registration Department about such land conversions. Absence of coordination between the Revenue and Registration departments led to loss of revenue by way of undervaluation of properties.

Scrutiny of records in offices of four DRs and five SRs¹¹³ disclosed that in respect of 26 documents¹¹⁴, agricultural rate was adopted for the land already converted for non-agricultural purpose. Non-coordination between the departments helped the registering parties to suppress the fact of conversion. The properties were thus undervalued by ₹ 32.38 crore resulting in short levy of duties of ₹ 2.11 crore.

DIGRS accepted (December 2018) that the issue needs to be coordinated with the Revenue department. There is a need to evolve a procedure for continuous flow of information on land conversions from the Revenue department for fixation of appropriate value for the lands converted to non-agricultural purposes.

¹¹³ DRs: Anakapalle, Bhimavaram, Kakinada and Kurnool; SRs: Adoni, Bhogapuram, Gannavaram, Nallapadu and Tadepalligudem test checked between June 2017 and June 2018.

¹¹⁴ 18 sale deeds, five AGPAs, one release deed, one GPA and one Sale certificate registered between July 2013 and January 2018.

The Government had accepted similar observation (October 2016) (Para No.4.4.7.6 in the Audit Report No.7 of 2016) and had assured to issue instructions in this regard to Revenue authorities. Despite such assurance lack of coordination, resulting in undervaluation of properties still prevails in the Department.

4.4.6.2 Non-registration of Conveyance deed on merger of Companies

Immovable property valuing ₹ 15.99 crore conveyed to the company consequent to merger orders was not registered. The Stamp duty and Registration fees leviable on this property amounted to ₹ 71.95 lakh.

Conveyance is the act of transferring an ownership interest in property from one party to another. As per Section 2 (10) of IS Act, conveyance includes conveyance of sale and every instrument by which movable or immovable property is transferred *inter vivos*¹¹⁵.

During the course of audit of office of the DR Tirupati, it was observed (April 2018) in an Agreement on Deposit of Title Deeds (DOTD) (2016) document that a company had borrowed loan from consortium of six banks. It was recited in the document that the borrowing company took over another company through merger orders (July 2003) with effect from 1 April 2002. The fact of merger was not brought to the notice of the Registration Department by the Registrar of Companies (ROC). Audit observed that the conveyance of immovable property of 94,057 sq. yards valuing ₹ 15.99 crore was transferred to the borrower company and this was not registered. The stamp duty and registration fee leviable on this property conveyed was ₹ 71.95 lakh.

The ROC had to inform the cases of merger/ amalgamation to the Registration department as and when such events happen to safeguard registration revenue. Lack of co-ordination/ inbuilt mechanism to transfer merger/ amalgamation cases to Registration department led to non-levy of stamp duty on transfer of ownership.

In response, DIGRS contended (November 2018) that as the document was not executed by the person who had right to convey the property, the instrument did not amount to conveyance and duty was not leviable.

The reply is not correct as any compulsorily registerable transaction that subsequently comes to notice should be brought to duty though it has reference to past. Incidentally, merger of the two companies pertain to year 2002-03. Hence, as per the then applicable provisions, transfer of immovable property should be brought to duty and instrument registered.

¹¹⁵ Between living people.

4.4.6.3 Non-levy of stamp duty on hypothecation agreements of vehicles

Stamp duty of approximately ₹ 86.82 crore was not levied on vehicles hypothecated to private banks and institutions due to lack of coordination between Transport and Registration Departments.

As per Article 7(b) of Schedule I-A to the IS Act, the pawn, pledge, or hypothecation of movable property, where it has been made by way of security on loans, or an existing or future debt, is leviable with stamp duty of 0.5 *per cent* of the amount secured subject to a maximum of ₹ two lakh. Every instrument shall be properly stamped as per the provisions of the IS Act.

Scrutiny of records in the office of Transport Commissioner revealed (May 2018) that 9,23,830 vehicles (both transport and non-transport) were hypothecated to private banks and other financial institutions during the period from April 2015 to January 2017 on which the Government sustained approximate loss of stamp duty of ₹ 86.82 crore due to non-registration of these agreements. The Commissioner of Transport is of the view that these hypothecation agreements need not be registered as there was no such provision under the AP Motor Vehicles Act.

Though the issue was being commented upon repeatedly in earlier Audit Reports, the RS department is yet to coordinate with the Transport department to safeguard the revenue of the State exchequer.

DIGRS replied (December 2018) that matter would be taken up with Transport Department, to accept only registered deeds of hypothecation agreements and the officers of the Registration Department would be instructed to ensure compliance on this issue.

Government though assured (December 2013) in the previous Performance Audit (for the year ended 31 March 2013) to take up the matter with the Department of Transport to ensure collection of duties, the issue still remains unaddressed.

4.4.7 Short collection of Registration Fee on instruments creating *Pari Passu*¹¹⁶ Charge

Registration fee of ₹ 12.62 crore was not levied on account of not considering the *Pari Passu* charge created on documents Deposit of Title Deed Agreements.

As per the definition of ‘Charge’ under Section 100 of Transfer of Property Act, 1882, where an immovable property of one person is made as security for payment of money to another, the latter is said to have a charge on the property. When more funds are required by companies, they approach multiple banks and offer assets as security for loans. This situation is managed by securing consent from all the banks involved for creation of proportionate charge on the assets.

¹¹⁶ The rights in the properties, created in favour of the lenders would rank equal without any preference or priority for any lender over the others for all intents and purposes.

As per Government Order dated 17 August 2013¹¹⁷, on Agreements of Deposit of Title Deeds (DOTD), registration fee is to be levied at the rate of 0.1 per cent subject to maximum of ₹ 10,000 on the amount of loans secured. However, on documents creating charge on 'Pari Passu' basis, registration fee was prescribed as 0.5 per cent. DIGRS in his proceedings dated 15 October 1982¹¹⁸ clarified that the *Pari Passu* charge comes into existence when an industrial unit obtains credit facilities from more than one financial institution by offering securities on 'Pari Passu' basis in the form of 'simple mortgage', 'mortgage by deposit of title deeds' and Hypothecation of movable properties.

Scrutiny of records in four DR and three SR¹¹⁹ offices disclosed that ten documents were registered as Agreement of deposit of title deeds¹²⁰, where the loanees availed loans from various banks by creating *Pari Passu* charge, keeping their properties as security. Registration Fee is therefore required to be levied at the rate of 0.5 per cent on the loan amount. However, the registering officers treated these documents as Deposit of Title Deeds (DOTDs) and levied Registration fee of ₹ 10,000 each. This resulted in short collection of registration fee of ₹ 12.62 crore.

DIGRS replied (December 2018) that all the mortgagees have not joined in execution of the documents and hence can't be treated as *Pari Passu* charge. The reply is not correct as the above documents involve lending of money by more than one bank which obviously denote that 'Pari Passu' charge was created. The creation of *Pari Passu* charge was also mentioned in the recitals of these documents. No bank sanctions any loan without proper security and such agreements among the banks where consortium of banks provide loan facilities to any firm or to an individual would certainly be signed by all lending banks which form basis for presentation of DOTDs for registration. Therefore, these documents are required to be treated as *Pari Passu* for levy of higher registration fee.

4.4.8 Short levy of duties on sale of apartments

4.4.8.1 Intentional split of sale transactions of apartments

The sale of flats had been disguised as sale of undivided land followed by construction agreements resulting in short levy of duties amounting to ₹ 2.14 crore.

Government order¹²¹ dated 13 June 2005 effective from 1 July 2005 specified that stamp duty be levied on sale of flats/ apartments including semi-finished structures. The transactions of sale under Article 47A of Schedule IA to IS Act attract stamp duty and registration fee at an aggregate rate of 7.5 per cent on the total sale consideration, whereas construction agreements under Article 6B of IS Act attract stamp duty of 0.5 per cent only.

¹¹⁷ G.O.Ms.No. 463 Revenue (Registration-I) department dated 17 August 2013.

¹¹⁸ CIGR Proceeding No. S2/24846/82, dated 15 October 1982.

¹¹⁹ DRs: Hindupur, Kurnool, Nellore and Tirupati; SRs: Chilakaluripet, Ramachandrapuram and Tadepalligudem test checked between March to June 2018.

¹²⁰ Registered between August 2014 and December 2017.

¹²¹ G.O.M.s.No.1127, Revenue (Registration-I) Department, dated 13 June 2005.

During scrutiny of records of two DRs¹²² and five SRs¹²³, it was observed that in 192 apartments, the vendor/ developers had got approval from municipal authorities for construction of apartments/residential complexes. In all these cases, the developers were selling apartments to the purchasers. It was further observed that the developers, however had subsequently executed sale of the undivided land along with construction agreements on the same day in favour of purchasers. The sale transactions were intentionally split into two separate transactions viz., sale of undivided portion of land and construction agreements for the structure to be built.

The registering officers, however, could not refuse registration of these as two separate transactions though they were aware of sale of apartments only on the reason that these two documents were valid documents under articles 6B and 47 A of Schedule IA of IS Act 1899.

As the developers had constructed structures as per the approved plans, it is clear that the developer / vendor was selling the flats. Hence, the amount paid by the purchaser had to be treated as cost of flats and stamp duty and registration fee was to be levied accordingly. The sale of flats had been disguised as sale of undivided land followed by construction agreements resulting in short levy of duties amounting to ₹ 2.14 crore.

DIGRS replied (December 2018) that the procedure adopted need not be objected to as there is no bar in execution of separate deeds and duties were levied at applicable rates. Since the constructions were made as per already approved plans and not as per the plans given by the purchasers, the question of entrusting the developer for construction of structures did not arise. These were clear cases of short levy of duties due to intentional split of sale transactions by misusing the provisions of the IS Act.

4.4.8.2 Non-adoption of composite rate for valuation of Apartments / Multi-storeyed buildings

Not adopting composite rate applicable for valuation of flats led to short levy of duties of ₹ 37.58 lakh.

In Government Order dated 30 July 2010¹²⁴, composite rates were introduced for valuation of the apartments/ flats/ portion of a multi-storeyed buildings/ part of such structures. As per circular instructions of DIGRS dated 10 October 2013, it was mandatory to adopt composite rate for multi-storeyed buildings/ Apartments whose stage of construction was complete. The method of valuation is adopted on square foot basis as per market value guidelines for RCC structures constructed in any floor without inclusion of land value.

As per Article 47-A of Schedule IA to IS Act, sale deeds are to be levied stamp duty on the market value of the property or the consideration received

¹²² Bhimavaram, Anakapalle test checked during February and May 2018.

¹²³ SRs:Dwarakanagar, Madhurawada, Ramachandrapuram, Sarpavaram and Tadepalligudem test checked between February and June 2018.

¹²⁴ G.O.Ms. No. 720 (Revenue) Regn.I, Department dated 30 July 2010.

whichever is higher. Further, settlement deeds are chargeable to duties as per Article 49 of Schedule IA to IS Act.

Scrutiny of records in four DRs and three SRs¹²⁵ disclosed that in seven sale deeds and one settlement deed¹²⁶, composite rate was not adopted for valuation of Apartments/ multi-storeyed buildings though it was mandatory. These properties were valued separately for land and construction as per the basic value register which fell short of composite value. Such valuation is permissible only when composite values are not prescribed. The registering officers failed to invoke the composite rates as per provisions of AP Apartments Act. Non-adoption of composite rates had undervalued the properties by ₹ 5.98 crore and resulted in short levy of duties and fees of ₹ 37.58 lakh.

DIGRS contended (December 2018) that the affected documents do not require adoption of composite rate. The reply is not correct as in all these cases, the constructions had more than five units and require application of composite rate for levy of duties.

4.4.9 Undervaluation of properties

4.4.9.1 Misrepresentation of facts in documents affecting the chargeability of duties

Misrepresentation of facts by executants while declaring property details at the time of registration led to undervaluation of properties by ₹ 102.39 crore and subsequent short levy of duties of ₹ 5.09 crore.

As per Section 3 read with Article 6(B), 46 and 47A of Schedule IA to IS Act, instruments of sale, release and Agreements of Sale cum General Power of Attorney (AGPA) are chargeable to stamp duty on Market value of the property as per the basic value register or on the consideration received by the party whichever is higher, besides Registration fees. Under Section 73 of AP Gram Panchayats Act, 1964 read with Section 120 of AP Municipalities Act, 1965, Transfer duty is also to be levied on sale deeds/ gift deeds/ exchange deeds. Under Article 6B of IS Act, read with Government Order dated 30 November 2013¹²⁷, instruments of Development Agreements cum General Power of Attorney (DGPA) are chargeable to stamp duty at the applicable rates on the market value of the property as per the basic value guidelines maintained by the Registration and Stamps department or sale consideration shown in the document or estimated market value for the land and complete construction made or to be made in accordance with the schedule of rates approved from time to time by the DIGRS¹²⁸, whichever is higher. Further, instruments of GPA issued under Article 42, Settlements under Article 49 are chargeable to stamp duty at separate rates in case of family members and in case of others.

¹²⁵ DRs: Kakinada, Kurnool, Nellore and Tirupati; SRs: Dwarakanagar, Gajuwaka and Patamata test checked between March and July 2018.

¹²⁶ Registered between April 2015 and March 2018.

¹²⁷ G.O.Ms.No.581 Revenue (Registration-I) Department, dated 30 November 2013.

¹²⁸ Powers vested under Rule 4(2)(d) of Andhra Pradesh Revision of Market value Guidelines Rules 1998.

Scrutiny of records of the offices of eight DRs and 17 SRs¹²⁹ disclosed that in 160 documents¹³⁰, the properties were undervalued by ₹ 102.39 crore. Of these, in 103¹³¹ cases, higher values were not adopted; in 19 cases, value of structures was wrongly computed; in 17 cases, house sites were valued at the rates applicable to agricultural land; in 14 cases, nearest door numbers were wrongly mentioned; in five cases, agricultural land fit for house sites were valued at agricultural rates and in two other cases, the plant and machinery available was not disclosed while disposing the property.

These misrepresentations were made by the executants while declaring the details of their properties at the time of registration. The correct values were worked out by Audit by cross checking of the details with the relevant link documents as per the Encumbrance certificates. The registering officers had not verified the correct location of the properties and correct market values applicable while registering the documents. Thus, the undervaluation of properties had resulted in short levy of duties and fees of ₹ 5.09 crore.

DIGRS accepted (December 2018) the audit observations in respect of 78 cases and did not give any reply for 16 cases. In 66 cases, the DIGRS contended that the higher values were applicable only when exact door number or bi-door number was included in Form II.

The fact, however is that the cases pointed out were valued in deviation to the prescribed procedures for valuation of properties for the purpose of registration.

4.4.9.2 Adoption of incorrect procedure for valuation of properties

Adoption of incorrect procedure for valuation of properties in 24 documents resulted in short levy of duties for ₹ 2.28 crore.

As per Rule 7 of APMVG Rules, the market values are to be divided under four categories and different Forms are prescribed for different categories of land. The market values of urban properties valued on square yard basis are given in Form I and Form II whereas market values for agricultural properties valued on acreage basis are given in Form III and Form IV. While Form III consists of market values for general agricultural properties of different classes, Form IV consists of higher values as per specific survey numbers allotted by the Revenue department on the basis of location of properties. As per DIGRS Memo dated 10 October 2013¹³², when specific rate could not be found for the survey numbers mentioned in schedule of property, the highest rate applicable to the

¹²⁹ DRs: Anakapalle, Hindupur, Kakinada, Kurnool, Nellore, Tirupati, Vijayawada and Visakhapatnam;

SRs: Adoni, Amalapuram, Bhogapuram, Chilakaluripet, Dwarakanagar, Gajuwaka, Gannavaram, Jammalamadugu, Kadapa (Rural), Kallur, Nallapadu, Patamata, Ramachandrapuram, Renigunta, Sarpavaram, Tanuku and Tadepalligudem test checked between July 2017 and July 2018.

¹³⁰ 125 sale deeds, nine gift deeds, seven settlement deeds, 11 DGPAAs, two GPAs, four rectification deeds, one release deed and one AGPA registered between March 2014 and March 2018.

¹³¹ In 19 cases, properties were facing Highways, in 84 cases, higher market values as per basic value register was not adopted.

¹³² CIGR Circular Memo No. MV1/8483/2013-2 Dated 10 October 2013.

survey numbers of the land located in any of the boundaries of property, mentioned in the schedule of property is to be adopted.

The above circular clearly stipulates the procedure for valuation of properties where no specific value was fixed under Form IV of the market value guidelines. The land with no specific higher rate in Form IV is to be valued at the highest rate applicable to the land in any of the four boundaries.

Scrutiny of records in four DRs and seven SRs¹³³ disclosed that in 24 documents¹³⁴, the higher rates applicable to survey numbers mentioned in the boundaries were not adopted. The registering officers failed to apply the higher rates applicable to the lands mentioned in boundaries while registering these scheduled properties. This resulted in undervaluation of the properties by ₹ 31.42 crore with short levy of duties of ₹ 2.28 crore.

DIGRS replied (December 2018) that instructions issued in the circular was applicable only when the main survey number was found in Form-IV. The reply is not correct as clause 9 of the circular clearly stipulates that rate of Form-IV for the survey numbers mentioned in the boundaries was to be adopted when specific rate could not be found with the survey numbers mentioned in the schedule of property.

4.4.9.3 Incorrect computation of total extent of properties

Not considering the total extent of property involved in the transactions resulted in short levy of duties of ₹ 62.20 lakh.

As per Section 3 read with Articles 6B and 47(A) of schedule IA to IS Act, instruments of Development Agreement cum General Power of Attorney (DGPA) and sale deeds are chargeable to stamp duty, Registration fee on the market value of the property. Instruments of partition (Article 40(ii)) are chargeable to stamp duty on the value of separated share (VSS) and the major share is considered as residual part of the main property and is exempted from levy of stamp duty. In all these cases, the value of the total extent of the property proposed to be constructed/ partitioned/ sold has to be taken into consideration and duties levied as per the rates prescribed.

Scrutiny of 26 registered documents¹³⁵ in the offices of four DRs and nine SRs¹³⁶ disclosed that the total extent of the property involved in the transaction was not taken into account for levy of duties. This resulted in short levy of duties of ₹ 62.20 lakh.

¹³³ DRs: Bhimavaram, Hindupur, Kakinada and Kurnool; SRs: Adoni, Anandapuram, Ananthapuramu (Rural), Bhogapuram, Gannavaram, Jammalamadugu and Renigunta test checked between September 2017 and June 2018.

¹³⁴ 21 sale deeds, one AGPA, one settlement and one partition deed registered between June 2015 and January 2018.

¹³⁵ 19 DGPAs, five partition deeds and two sale deeds registered between April 2015 and March 2018.

¹³⁶ DRs: Kakinada, Kurnool, Nellore and Visakhapatnam; SRs: Anandapuram, Ananthapuramu (Rural), Gannavaram, Kallur, Nallapadu, Patamata, Renigunta, Sarpavaram and Tanuku test checked between March 2017 and June 2018.

DIGRS replied (December 2018) that in specific cases on market values, audit objection was accepted and instructions would be issued for recovery under the relevant provisions of the IS Act, 1899 and for other cases, it was stated that duties were levied based on recitals of the documents and the subsequently registered documents cannot form basis for levy of duties. The reply is not correct as the total extent of the properties computed by Audit was only on the basis of previously registered documents but not on the basis of subsequently registered documents. In the cases pointed out, the total extent of property involved was incorrectly recited in the documents leading to short levy of duties.

4.4.10 Short levy of stamp duty on lease deeds

Not considering the facts such as service tax component while computing lease rentals, premium advanced for lease, improvements undertaken to the leased property and incorrect computation of average annual rent resulted in short levy of duties amounting to ₹ 1.90 crore

Article 31 of Schedule I-A to IS Act prescribes the rates of stamp duty¹³⁷ to be levied on leases. As per Explanation to the Article *ibid*, if the lessee undertakes to pay any recurring charge on behalf of the lessor including taxes/ fees due to the Government, it shall be taken to be part of the rent and duties levied accordingly. Besides stamp duty, registration fee is also to be levied at applicable rates¹³⁸ on the value of Average Annual Rent (AAR) as per the provisions of Registration Act.

Under Article 31(b), in case of leases given on conditions of fine or premium or money advanced etc., stamp duty is to be levied at a fixed rate of two *per cent* on such fine, premium or money advanced.

During scrutiny of records of the offices of five DR and five SRs¹³⁹, it was observed that in four¹⁴⁰ of 12 lease deeds, specific clauses stipulated that Goods and Services Tax was to be paid by the lessees on behalf of the lessors. In six deeds¹⁴¹ the premium/ money advanced for leases was excluded from levy of duties. In another deed¹⁴² the improvements undertaken to the leased property was ignored. In the other deed¹⁴³, average annual rent on lease deed was wrongly computed. This resulted in short levy of duties of ₹ 1.90 crore.

DIGRS accepted (December 2018) the audit observation and stated that orders would be issued to collect the deficit amounts.

¹³⁷ G.O.Ms.No.588, Revenue (Registration-I) Department, dated 4 December 2013.

¹³⁸ G.O.M.s.No.463, Revenue (Registration-I) Department, dated 17 August 2013.

¹³⁹ DRs: Bhimavaram, Guntur, Kakinada, Nellore and Vijayawada;

SRs: Bhogapuram, Chilakaluripet, Patamata, Ramachandrapuram and Tadepalligudem (between July 2017 and June 2018).

¹⁴⁰ DRs Bhimavaram, Nellore, Vijayawada and SR Patamata (registered between June 2016 and March 2018).

¹⁴¹ DRs: Guntur and Kakinada, SRs: Chilakaluripet, Patamata, Ramachandrapuram and Tadepalligudem.

¹⁴² DR Nellore.

¹⁴³ SR Bhogapuram.

4.4.11 Non-levy of duties on distinct matters¹⁴⁴

Stamp duty on distinct matters amounting to ₹ 0.66 crore was short levied.

As per Section 5 of IS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of duties with which separate instruments would be chargeable under the Act.

As per DIGRS's circular dated 2 November 2001¹⁴⁵, if rights on terrace were exclusively given to the developer, the stamp duty shall be levied on 70 per cent of the site value corresponding to the area of open terrace.

During scrutiny of records in the offices of seven DRs and 13 SRs¹⁴⁶, it was observed that 32 documents¹⁴⁷ contained distinct matters. In four sale deeds, there were distinct matters of conveyance, partition and Development Agreement. In 16 DGPA's, cash conveyance, sale, settlement, goodwill and terrace rights were included. In 11 partition deeds, conveyance, release and settlements were included. In one Development Agreement, the distinct matter of conveyance was included. The registering officers did not take these into consideration for levy of duties as per the provisions resulting in short levy of duties of ₹ 66 lakh.

In response, the DIGRS accepted (December 2018) the audit observation in 15 cases. In 17 cases, it was contended that duties leviable depend on recitals of the documents but not on the transactions. The reply is against the provisions of Section 5 of the IS Act which clearly stipulated levy of aggregate amount of duties where several distinct matters are involved in a single document.

4.4.12 Misclassification of documents

Misclassification of documents by executant and non-verification of recitals by registering office led to short levy of duties of ₹ 80.38 lakh.

As per Government Memo dated 16 October 2000¹⁴⁸, the registering officers have to thoroughly verify the recitals of all the documents presented for registration so as to arrive at correct classification and levy of appropriate stamp duty.

Scrutiny of records in the offices of five DRs and 12 SRs¹⁴⁹ disclosed that 55 documents were misclassified by the executants and the registering officers had not verified the recitals of these documents before registering these documents

¹⁴⁴ Separate transactions embodied in one document.

¹⁴⁵ DIGRS Proceedings No. MV1/30324/2000 dated 2 November 2001.

¹⁴⁶ DRs: Bhimavaram, Guntur, Hindupur, Kurnool, Tirupati, Vijayawada and Visakhapatnam; SRs: Anandapuram, Ananthapuramu (Rural), Bhogapuram, Dwarakanagar, Kallur, Mangalagiri, Nallapadu, Patamata, Ramachandrapuram, Renigunta, Tadepalligudem, Tanuku and Sarpavaram test checked (between July 2017 and June 2018).

¹⁴⁷ Registered between February 2016 and March 2018.

¹⁴⁸ Memo No.FR1/IA/4946/94, dated 16 October, 2000.

¹⁴⁹ DRs: Anakapalle, Guntur, Kakinada, Nellore and Visakhapatnam; SRs: Anandapuram, Ananthapuramu (Rural), Bhogapuram, Dwarakanagar, Koretipadu, Madhurawada, Mangalagiri, Nallapadu, Patamata, Ramachandrapuram, Sarpavaram and Tadepalligudem.

and levied duties as per the classification declared by the executants. The details of misclassification of documents which resulted in short levy of duties of ₹ 80.38 lakh are discussed below:

Table 4.3: Misclassification of documents

(₹ in lakh)

| SI No | Registering authority | No. of cases | Details of transaction | Classification by the registering authority | Document's actual classification | Short levy |
|-------|---|--------------|--|---|---|------------|
| 1 | DRs: Anakapalle, Guntur, Kakinada and Visakhapatnam; SRs: Mangalagiri, Koretipadu and Nallapadu. | 26 | Section 122 of Transfer of Properties Act defines 'Gift' as transfer of existing property by donor to donee voluntarily without any consideration and if the same is accepted by the donee. In these cases properties were transferred to others voluntarily without any consideration and the receivers accepted the gifts. But these were wrongly classified as settlements. | Settlement | Gift | 48.41 |
| | DIGRS replied (December 2018) that mere acceptance of the donee cannot alter the nature of the deed from settlement to that of a Gift. Reply of the DIGRS is not correct as the Transfer of property Act clearly differentiates Gifts from settlements deeds. Donees in the above mentioned cases accepted gifts and this necessitates documents to be treated as Gift Deeds for levy of stamp duties. | | | | | |
| 2 | SRs: Anandapuram, Bhoghapuram, Tadepalligudem | 3 | Properties self acquired by parents should be settled among their children. In these cases, such properties were partitioned among children. | Partition | settlement | 2.37 |
| | DIGRS replied (December 2018) that if any property was purchased in the name of family members, there was no restriction to include the same in partition deed as the same was under joint possession and enjoyment of all the members of joint family. Purchase of property in the name of the individual forms the basis of self-acquisition. In the cases pointed out, evidence in proof of joint procurement was not available. | | | | | |
| 3 | SRs: Patamata, Ramachandrapuram | 2 | In these cases properties were settled to others but incorrectly classified as settlements among family. | Settlement among family members | Settlement among others | 3.29 |
| | DIGRS accepted (December 2018) the audit observation and agreed to recover the deficit amount. | | | | | |
| 4 | DR Nellore SRs: Ananthapuramu, (Rural), Tadepalligudem | 6 | In these cases, properties were partitioned among members belonging to different families and children of a live family member also got share in the ancestral property. These transactions were incorrectly classified as partition within family. | Partition among family members | Partition among other than family members | 7.86 |
| | DIGRS replied (December 2018) that the executants involved in partition deeds belong to same family and therefore classified as partition among family members. The reply is not correct as children of any family member cannot get separate right over the joint property when the parents of such children are alive and any such partition will have to be classified as partition among others. | | | | | |
| 5 | SR Tadepalligudem | 1 | Originally, property was partitioned among father and his two daughters. Later, the same property was again partitioned among them without cancelling the first partition and daughters accepted cash from their father. Thus, the later partition should be treated as conveyance to father as the daughters were absolute owners of land by virtue of the first partition. | Partition | conveyance | 9.24 |
| | DIGRS accepted (December 2018) the misclassification and stated that transaction is to be treated as 'release' instead of 'conveyance'. The classification of 'Release' as observed by the department is not correct as the daughters became absolute owners of the property through first partition and the question of release did not arise. | | | | | |

(₹ in lakh)

| SI No | Registering authority | No. of cases | Details of transaction | Classification by the registering authority | Document's actual classification | Short levy |
|---|--|--------------|---|---|---|--------------|
| 6 | SR Mangalagiri, Sarpavaram | 4 | GPA's were executed in favour of family members in the capacity of managing partner of firms but were incorrectly classified as GPA to family members. | GPA to family members | GPA to others | 1.84 |
| The DIGRS accepted (December 2018) the audit observation. | | | | | | |
| 7 | SR Dwarakanagar | 1 | GPA was given with permission to the attorney to spend the sale consideration received and therefore to be classified as conveyance instead of GPA. | GPA | Conveyance | 2.20 |
| DIGRS contended that recitals authorising the attorney to use sale proceeds in carrying out other acts on behalf of the principal would not alter the nature of the document. Since attorney was specifically authorised to spend the consideration as he wished without expecting anything in return this would tantamount to 'conveyance' | | | | | | |
| 8 | DR Guntur and SRs: Koretipadu, Madhurawada | 12 | In these cases, developer was authorised to sell the property on behalf of the land owners and hence required to be treated as DGPA. However, these were registered as simple Development Agreements. | Development Agreement | Development Agreement cum General Power of Attorney | 5.17 |
| DIGRS accepted (December 2018) the audit observation | | | | | Total | 80.38 |

4.4.13 Short levy of stamp duty due to application of incorrect rates

Scrutiny of records in two DR and eight SR¹⁵⁰ offices disclosed that duties amounting to ₹ 24.89 lakh was not levied or short levied either due to application of incorrect rate or due to incorrect computation of duties leviable (details in **Appendix 4.1**).

DIGRS partly accepted and partly contested (December 2018) the audit observations. However, the details of accepted and contested cases were not furnished.

4.4.14 Non-adoption of higher values declared in earlier transactions

In circular dated 10 August 1990¹⁵¹, DIGRS instructed that the chargeable value of any property shall not be less than that of the previous transaction.

Scrutiny of records in two DRs and one SR office¹⁵² disclosed that in four sale deeds and one sale certificate issued by a bank¹⁵³, the parties adopted a value of ₹ 4.48 crore for registration of the properties which were registered for a value of ₹ 6.18 crore in the previous transactions. However, the registering officers had not verified the values adopted in the previous transactions while registering the properties. This resulted in undervaluation of the properties by ₹ 1.70 crore and short levy of duties of ₹ 12.76 lakh.

¹⁵⁰ DRs - Kurnool and Nellore, SRs- Adoni, Bhimavaram, Kallur, Koretipadu, Mangalagiri, Nallapadu, Patamata and Sarpavaram.

¹⁵¹ DIGRS Circular No.MV1/20363-A/90 dated 10 August 1990.

¹⁵² DR Kurnool and Visakhapatnam and SR Kallur test checked between September 2017 and June 2018.

¹⁵³ Registered between July 2015 and March 2017.

DIGRS accepted (December 2018) the audit observation and stated that instructions would be issued for collection of deficit duty.

4.4.15 Inspection of Public offices

Provisions of Indian Stamp Act on Inspection of Public offices are not being complied with by the Registration department.

Under Section 33 of the IS Act, every Public Officer¹⁵⁴ has to ensure payment of correct stamp duty on instruments produced before him and to impound those which were not duly stamped. Under the provisions of Section 73 of the I.S. Act, Audit of Public Offices should be conducted to see that the provisions of Section 33 of IS Act are complied with by the Public offices and to detect transactions attracting deficit stamp duty if any. DIGR in his circular dated 11 April 2012¹⁵⁵ directed the departmental officers to conduct audit of at least five public offices every month and take effective steps to collect the amounts determined by them.

From the information furnished by 10 Collectors¹⁵⁶ (between February and June 2018), it was noticed that the inspections of Public offices were not being conducted by eight out of Ten Collectors for the last five years. The remaining two Collectors¹⁵⁷ stated that six Public Offices were inspected during the period of five years and collected an amount of ₹ 4.22 lakh. Thus, out of the total targeted inspections of 3000 for these 10 Collectors, inspections of mere six Public offices (0.2 per cent) were only conducted.

It is evident from the above that inspections of public offices were totally neglected and the Collectors did not comply with the Provisions of IS Act. This negligence may lead to a risk of losing of considerable amount of registration revenue.

In response, DIGRS replied that instructions to all the DRs and DIGs would be issued to conduct the inspection of the prescribed number of Public offices every month and to report leakage of stamp revenue.

¹⁵⁴ Public Officer as defined in Section 2(17) of the Code of Civil Procedure, 1908 *inter alia* includes every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty and every officer whose duty it is to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, authenticate or keep any document relating to the pecuniary interests of the Government.

¹⁵⁵ Circular Memo No.S5/11266/11, dt.11 April 2012.

¹⁵⁶ DRs. Anakapalle, Bhimavaram, Guntur, Hindupur, Kakinada, Kurnool, Nellore, Tirupathi, Vijayawada and Visakhapatnam.

¹⁵⁷ DRs Tirupathi and Vijayawada.

