

CHAPTER-III: Stamp Duty and Registration Fee

3.1 Results of audit

Test check of records of various registration offices conducted in audit during the year 2006-07 revealed non/short levy of stamp duty and registration fee amounting to Rs.8.99 crore in 3,476 cases which broadly fall under the following categories:

Sl. No.	Nature of irregularity	Number of cases	Amount (Rupees in crore)
1.	Short levy/recovery of stamp duty due to under valuation of immovable property	1,195	4.00
2.	Short recovery of stamp duty due to non charging of residential rates on purchase of rural land by builders	67	0.50
3.	Irregular exemption of stamp duty on mortgage deeds	887	0.16
4.	Loss of stamp duty due to misclassification of deeds	16	0.35
5.	Short levy of stamp duty on release deeds	32	0.12
6.	Miscellaneous irregularities	1,279	3.86
	Total	3,476	8.99

During the year 2006-07, the department accepted under assessments of Rs.6.67 crore involved in 2,352 cases. An amount of Rs.3 lakh in 104 cases had been recovered, which pertained to earlier years.

A few illustrative cases highlighting irregularities involving financial effect of Rs.33.67 lakh are mentioned in this chapter.

3.2 Short levy of stamp duty due to application of incorrect rates of immovable property

3.2.1 The Indian Stamp Act, 1899 (IS Act) and rules made thereunder provide that consideration, if any, and all other facts and circumstances affecting the chargeability of an instrument of transfer of property with duty should be fully and truly set forth therein. The instruments are liable to stamp duty at rates prescribed in the Act on the basis of nature and value of properties of each instrument. With a view to check undervaluation of property at the time of registration, evaluation committees, constituted under the directions of Government, suggest minimum market value of property in various areas of the State for the guidance of registering authorities (RAs). Under section 47-A of the Act, if the registering officer, while registering any instrument relating to transfer of any property, has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration and the proper duty payable.

During test check of records of Joint Sub Registrar (JSR), Ladwa for the year 2005-06, it was noticed in May 2006 that two vendees purchased in April 2005 cinema building comprising land measuring six *kanals* (3,600 square yards) and building with 9,000 square feet covered area for a consideration of Rs.30 lakh. The RA levied stamp duty of Rs.2.80 lakh on the consideration of Rs.30 lakh as set forth in the instrument. Though the value of land determinable on the basis of price fixed by the Collector for that locality worked out to Rs.1.83 crore, the RA failed to refer the same to the Collector for determination of the value or consideration and proper duty payable. This resulted in short levy of stamp duty of Rs.11.82 lakh.

After this was pointed out in May 2006, JSR Ladwa stated in August 2006 that the case was referred to the Collector, Kurukshetra in July 2006 for decision. The Collector, Kurukshetra, intimated in November 2006 that notice had been issued to the purchaser. Further progress had not been received (August 2007).

3.2.2 In order to check evasion of stamp duty in sale deeds, Government issued instructions in November 2000 to all RAs in the State to the effect that agricultural land sold with area less than 1,000 square yards in urban areas and near residential areas in villages be valued at the rate fixed for the residential property of that locality for the purpose of levying stamp duty.

During test check of records of Sub Registrars (SRs), Kaithal and Thanesar (Kurukshetra) for the year 2005-06, it was noticed in May and August 2006 that 18 sale deeds of plots with area less than 1,000 square yards were registered between April 2005 and March 2006. The deeds were liable to be assessed for Rs.1.51 crore based on the rates fixed for residential areas and stamp duty of Rs.11.97 lakh was chargeable. However, the RAs assessed the deeds for Rs.43.94 lakh on the rate fixed for agricultural land and levied stamp duty of Rs.3.33 lakh. This resulted in short levy of stamp duty of Rs.8.64 lakh.

After this was pointed out in May and August 2006, SRs Thanesar and Kaithal referred these cases to the Collector for decision in August and November 2006. Further report had not been received (August 2007).

The matter was referred to Government in July and November 2006; reply had not been received (August 2007).

3.3 Non levy of stamp duty on plant and machinery

Under the IS Act, “conveyance” includes conveyance on sale and every instrument by which property, whether movable or immovable, is transferred. Further, the Indian Registration Act, 1908 provides that immovable property includes land, building and things attached to the earth. Government clarified in August 2003 that plant and machinery, installed in the factory premises for running the business when sold alongwith the factory land and building, would constitute a part of the immovable property for ascertaining value of property for stamp duty.

During test check of records of JSR, Sampla (Rohtak) for the year 2005-06, it was noticed in September 2006 that a vendee purchased a factory land, building, plant and machinery for a consideration of Rs.2.74 crore (Rs.1.63 crore for land and building and Rs.1.11 crore for plant and machinery) in an auction conducted by the official liquidator attached to the Punjab and Haryana High Court at Chandigarh. While executing the conveyance deed in December 2005, stamp duty of Rs.9.78 lakh was paid on the cost of land and building amounting to Rs.1.63 crore. The RA did not levy stamp duty on the cost of plant and machinery amounting to Rs.1.11 crore. This resulted in short levy of stamp duty of Rs.6.63 lakh on the cost of plant and machinery.

After this was pointed out in September 2006, JSR Sampla issued notice to the party in November 2006 to deposit the deficit amount of duty of Rs.6.63 lakh. Further report on recovery had not been received (August 2007).

The matter was referred to Government in November 2006; reply had not been received (August 2007).

3.4 Evasion of stamp duty

The IS Act provides that consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of duty with which it is chargeable, should be fully or truly set forth therein. The Act further provides that any person who, with intent to defraud Government, executes an instrument in which all the facts and circumstances required to be set forth in such instrument are not fully and truly set forth, is punishable with a fine which may extend to Rs.5,000 per instrument.

During test check of records of six* registering offices, it was noticed between June 2005 and October 2006 that 15 conveyance deeds were registered between April 2004 and May 2006 on account of sale of immovable properties. The total value of properties set forth in all these conveyance deeds was Rs.1.01 crore. Cross verification of these with agreements executed between affected parties during January 2004 to January 2006 and recorded with the various document writers revealed that the total sale value of the agreements worked out to Rs.2.21 crore. Thus, the conveyance deeds were got executed and registered at a consideration less than that agreed upon between the parties. Undervaluation of immovable properties in conveyance deeds resulted in evasion of stamp duty of Rs.6.58 lakh. Besides, penalty not exceeding Rs.75,000 for undervaluation made with intent to defraud Government was also leviable.

After this was pointed out between June 2005 and October 2006, JSR, Alewa and SRs, Bahadurgarh and Jhajjar stated in January and February 2007 respectively that notices to effect the recovery of stamp duty had been issued to concerned parties. SR, Hathin intimated in July 2007 that deficient stamp duty of Rs.1.14 lakh had been recovered in one case in May 2007. SR, Palwal stated in January 2007 that deficit stamp duty of Rs.16,760 has been recovered in one case and in remaining cases notices had been issued to effect recovery. SR, Naraingarh intimated in January 2007 that case had been referred to the Collector under section 47 A of the Act for determination of value of immovable property. The reply of SR Naraingarh is not tenable as the value of property had already been agreed upon between the parties and there was no need to refer the case to the Collector for decision. Final reply had not been received (August 2007).

The matter was referred to Government between October 2005 and January 2007; reply had not been received (August 2007).

* SRs at Naraingarh (District Ambala), Palwal (District Faridabad), Bahadurgarh and Jhajjar (District Jhajjar), Hathin (District Mewat) and JSR at Alewa (District Jind).
