

## **CHAPTER-VI: OTHER TAX – NON TAX RECEIPTS**

### **6.1 Results of audit**

Test check of records relating to land revenue, stamp duty and registration fee, Public Works divisions etc. conducted in audit during the year 2004-2005, revealed non recovery of money, non/short levy of stamp duty and registration fee, short recovery of cost of tender documents and other irregularities amounting to

Rs. 6.76 crore in 164 cases, which fall under the following categories:-

(Rupees in crore)

		<b>Number of cases</b>	<b>Amount</b>
1.	Non recovery of lease money	4	0.35
2.	Non/short levy of stamp duty and registration fee	53	0.16
3.	Long para on <b>Receipts from Stamp Duty and Registration Fee</b>	1	4.73
4.	Short recovery of cost of tender documents	3	0.05
5.	Other irregularities	103	1.47
<b>Total</b>		<b>164</b>	<b>6.76</b>

During 2004-05, the departments accepted under assessments of Rs. 1.81 crore involved in 157 cases which had been pointed out in audit in earlier years.

A few illustrative cases highlighting important observations involving financial effect of Rs. 5.02 crore are given in the following paragraphs.

**A STAMP DUTY AND REGISTRATION FEE**

**6.2 Receipts from Stamp Duty and Registration Fee**

**Introductory**

**6.2.1** Registration of a document attracts levy of stamp duty and registration fee. The levy and collection of stamp duty in Himachal Pradesh on various types of instruments such as conveyance, exchange, mortgage, lease, gift, settlement, partition, power of attorney, agreement etc. is governed by the Indian Stamp Act, 1899, as amended by Indian Stamp (Himachal Pradesh Amendment) Act, 1976. The duty is paid by the executor of instruments either by using impressed stamps of the proper denomination or by affixing stamps (non judicial) of the proper denomination.

Rates of stamps duty leviable in Himachal Pradesh on different types of instruments are given in Schedule I-A to the Indian Stamp (Himachal Pradesh Amendment) Act, 1976. The rate of stamp duty chargeable on sale, gift and mortgage with possession is 12 *per cent* and on mortgage deeds without possession the rate is one and a half *per cent*. Stamp duty falls under two categories viz. judicial and non judicial. Judicial stamp duty represents fee payable in connection with legal proceedings, while non judicial stamp duty is levied on instruments executed for legal validity of the transactions carried out. The levy of registration fee on the instruments, presented for registration, is governed by the Indian Registration Act, 1908 and Rules framed thereunder. Registration fee is levied at the prescribed rates subject to a minimum of Rs. 5 and maximum of Rs. 25,000.

A test check of records of 60 Sub-registrar (SR) offices, relating to levy, collection, exemption and remission of stamp duty and registration fee for the years 1999 to 2003 was conducted between July 2004 and March 2005. The results are discussed in the following paragraphs.

**Undervaluation of Immovable Property**

**6.2.2** The Indian Stamp Act, 1899, as applicable to Himachal Pradesh, provides that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty with which it is chargeable, shall be fully and truly set forth therein. If the registering officer, has reasons 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 of consideration and the proper duty payable. The registering officer is required to verify the

consideration shown in the conveyance deeds with parta<sup>§</sup> prepared by the Patwari of the Halqua.

Test check of records of 43\* SRs revealed that 925 conveyance deeds were registered between 1999 and 2003 for Rs.13.20 crore. A comparison of the consideration set forth, in the deeds with partas prepared by the Patwaris revealed that the actual market value of the properties was Rs. 29.69 crore. Thus undervaluation of the property resulted in short realisation of stamp duty and registration fee to the tune of Rs.2.21 crore. A few instances are detailed below:

Name of unit/ deed no.	Area sold	Consideration as per Govt. orders on parta	Consideration as per deed executed	Stamp Duty leviable/levied	R/Fee leviable/levied	(Rupees in lakh)		
						Stamp Duty	Regn. Fee	Total
Dalhousie 191/02, 138/02, 21/03, 156/03, 197/03	0-16-43 hectare	131.04	34.30	15.73 4.12	1.16 0.62	11.61	0.54	12.15
Dehra 978/2K, 979/2K, 980/2K, 1011/2K	872 Square meters	61.84	11.00	7.42 1.32	0.96 0.22	6.10	0.74	6.84
Hamirpur 503/99, 702/99, 926/99, 881/99, 868/99, 15/03, 306/03, 734/03, 1177/03, 1347/03	1352.19 Square meters	86.31	15.91	10.36 1.96	1.36 0.31	8.40	1.05	9.45
Nahan 309/03, 336/03, 459/03, 476/03, 478/03, 403/03, 41/03, 420/03-	114-6-0 bigha	164.03	94.45	19.68 11.33	1.80 1.49	8.35	0.31	8.66
Nalagarh 493/03, 538/03, 1004/03, 1661/03, 87/03, 155/03, 437/03	22-11-0 bigha	105.65	44.12	12.68 5.29	1.07 0.63	7.39	0.44	7.83

There was nothing on records to show that correctness of levy of stamp duty and registration fee had been monitored at any stage by the Registrars. Besides, no internal audit system existed in the Department to monitor levy of registration fee and stamp duty.

After this was pointed out in audit, the Department stated that an amount of Rs. 14.44 lakh in 140 cases had been recovered. While in other cases, final reply had not been received (September 2005).

<sup>§</sup> It is valuation report of the land prepared by the Patwari. The market value is calculated on the consideration amount shown in the deed of the land sold for the preceeding years

\* Amb, Arki, Aut, Baijnath, Balichoki, Barsar, Bhoranj, Bijhari, Bilaspur, Chamba, Dehra, Dalhousie, Dharampur, Dharamsala, Ghumarwin, Hamirpur, Jhandutta, Joginder Nagar, Kandaghat, Kangra, Kasauli, Keylong, Kullu, Kumarsain, Lad Bharol, Manali, Mandi, Nadaun, Nahan, Nalagarh, Nurpur, Pachhad, Palampur, Paonta Sahib, Rajgarh, Sainj, Sarkaghat, Shimla®, Shimla(U), Solan, Sundernagar, Theog and Una

**Incorrect fixation of average price**

**6.2.3** As per notification dated August 1994, patwaris are responsible for preparation of the partas. The average price is based on mutation done on sale deeds registered during the preceeding 12 months.

Test check of records of SR Baldwra, Nahan, Paonta Sahib and Solan revealed that in 17 cases registered during 1999 and 2003, the average market value was incorrectly worked out by changing the kind of land or due to inclusion of periods other than that specified in the notification dated August 1994. This resulted in loss of revenue amounting to Rs. 17.09 lakh.

After this was pointed out in audit, the Department accepted the audit observations. Further reply had not been received (September 2005).

**6.2.4** Test check of the records of seven\*\* SRs revealed that in 51 cases registered during 1999-2003, the consideration of the properties set forth in the deeds of conveyance, was shown as Rs. 9.72 lakh while those shown in the agreements to sell executed earlier by the executants and recorded with the document writers was Rs. 99.94 lakh. The SRs failed to corelate the records with the records of document writers. This resulted in short realisation of stamp duty and registration fee of Rs. 14.05 lakh.

After this was pointed out in audit, the Department stated that an amount of Rs. 2.26 lakh in three cases had been recovered. Report of recovery in the remaining cases had not been received (September 2005).

**Incorrect exemption**

The Himachal Pradesh Cooperative Agriculture and Rural Development Bank Act, 1979, provides that loans other than short terms may be advanced by the bank for different agriculture purposes as mentioned in it and no fee is to be charged in respect of registration of any instrument executed in favour of the Agriculture and Rural Development Bank . The Government also clarified in November 1997 that stamp duty and registration fee was leviabale in all cases where loans had been secured for purposes other than agriculture purpose.

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\*\* Dharamsala, Joginder Nagar, Kangra, Sujampur, Sunder Nagar, Uadipur and Una

**6.2.5** Test check of the records of 48<sup>2</sup> SRs revealed that in 813 instruments executed between 1999 and 2003 in the name of individuals for obtaining loan from the Agricultural and Rural Development Bank, the loans were for non agricultural purposes viz. purchase of trucks/mini trucks/ buses/mini buses/Jeeps/ construction of hotels /guest houses/opening of dhabas/ jewellery shop etc. The SRs, however, while registering these documents did not levy stamp duty and registration fee thereon resulting in non levy of stamp duty and registration fee of Rs. 80.31 lakh.

After this was pointed out in audit, an amount of Rs. 8.66 lakh had been recovered in 103 cases. Report of recovery in remaining cases had not been received (September 2005).

**6.2.6** Mortgage deeds executed by the employees of Central Government, Himachal Pradesh Government, public sector undertakings and autonomous bodies for seeking loan for repayment of house building advances, received by them from their employers for the purpose of construction, purchase or repair of a dwelling house for their own use, were exempted from payment of stamp duty. The exemption was, however, not admissible to the employees of other states and their public sector undertakings and autonomous bodies. Central Government employees taking advance from banks were also not exempted from the payment of stamp duty and registration fee.

During test check it was noticed that 14<sup>3</sup> SRs had allowed exemption from payment of stamp duty and registration fee in the cases of 69 employees of Central Government/ Central Government autonomous bodies/Union Territory/ other states, who had secured house building advances from nationalised banks during the period 1999 to 2003. The exemption granted was incorrect and resulted in non realisation of stamp duty and registration fee of Rs. 5.78 lakh.

After this was pointed out in audit, an amount of Rs. 0.54 lakh in nine cases was recovered; final reply in other cases had not been furnished (September 2005).

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<sup>2</sup> Amb, Arki, Aut, Baijnath, Balichowki, Bangana, Banjar, Barsar, Bhoranj, Bijhali, Bilaspur, Chamba, Dehra, Dharampur, Dharmasala, Ghumarwain, Harmirpur, Jandutta, Joginder Nagar, Junga, Kandaghat, Kangra, Kasuali, Keylong, Kotli, Kullu, Ladbharol, Mandi, Manali, Nadaun, Nahan, Nalagarh, Nurpur, Pachhad, Palampur, Paonta Sahib, Rajgarh, Sainj, Sarkaghat, Shahpur, Shimla(R), Shimla (U), Solan, Sujampur, Sunni, Theog, Udaipur and Una  
<sup>3</sup> Baijnath, Barsar, Bhoranj, Chamba, Dehra, Jaisinghpur, Kangra, Kotli, Kullu, Mandi, Nadaun, Nalagarh, Sarkaghat and Shimla (R)

**Misclassification of documents**

**6.2.7** Under the Indian Stamp (Himachal Pradesh Amendment) Act, 1976, read with the Himachal Pradesh Land Record Manual, “Release” is an instrument whereby a person renounces a claim in favour of another person or against any specified property. When one co-owner of a property, by a deed, relinquishes his right to possession and his title in favour of another co-owner, such a deed is a release deed. The person in whose favour there can be a release, must possess a pre existing right or interest in the property. In October 2001, the Financial Commissioner cum Secretary (Revenue) to the Government of Himachal Pradesh, clarified that “release” can only be made in favour of brothers and sisters who are off springs of the same mother. It was also clarified that a widow cannot release her share in favour of her son. She can only gift her share of the property.

Test check of the records of 39<sup>1</sup> SRs, revealed that in 224 cases, release deeds were executed between 1999 and 2003. A comparison of the deeds with jamabandi<sup>#</sup> revealed that the deeds were executed in favour of the persons who had no pre existing right in the property. No cross verification was done by the registering officer at the time of registration though jamabandis were enclosed with the deeds. These were liable to be classified as gift deeds. This resulted in short levy of stamp duty and registration fee of Rs. 100.35 lakh. A few illustrative cases are given below:

(Rupees in lakh)

Name of unit	Year	Deed No.	Value of the property	Stamp Duty leviable	Registration Fee leviable	Total
Dalhousie	2003	38/03, 39/03, 82/03	51.42	6.17	0.30	6.47
Ghumarwin	1999	9/99, 30/99, 124/99, 44/99, 178/99, 316/99, 466/99, 410/99	79.38	9.52	0.43	9.95
Kullu	2003	999/03, 1086/03, 1211/03, 1250/03	10.47	1.26	0.21	1.47
Mandi	2003	308/03, 313/03, 1892/03	34.42	4.13	0.37	4.50
Nalagarh	2003	1866/03, 427/03, 138/03, 1783/03, 880/03	31.60	3.79	0.44	4.23

<sup>1</sup> Amb, Arki, Aut, Baijnath, Baldwara, Banjar, Barsar, Bijhari, Chamba, Dalhousie, Dehra, Dharmpur, Dheera, Ghumarwain, Hamirpur, Jaisinghpur, Kandaghat, Kangra, Kasuali, Keylong, Kotli, Kullu, Kumarsain, Ladbharol, Mandi, Manali, Nadaun, Nalagarh, Pachhad, Palampur, Paonta Sahib, Rajgarh, Sainj, Sarkaghat, Shimla (R), Shimla (U), Solan, Thural and Una

<sup>#</sup> Is a patwari record and contains khewat no., khatuni, name of the patti, name of the lambardar, owner of the land, cultivation, kind of irrigation, field numbers, area, rent paid by cultivator, measure of right and cesses

After this was pointed out in audit, an amount of Rs. 6.26 lakh in 31 cases had been recovered. Report of recovery in remaining cases had not been received (September 2005). The Department accepted audit observation in 118 cases. Reply in other cases had not been received.

**6.2.8** Test check of the records of SRs, Dallhousesie, Kumarsain and Paonta Sahib, revealed that in eight cases, widows (mothers) released their shares in favour of their sons during 2001 and 2003 through release deeds. These deeds were to be treated as gift deeds instead of release deeds. This resulted in loss of revenue of Rs. 14.85 lakh to the Government.

**6.2.9** Test check of the records of SR, Paonta Sahib, revealed that in two cases registered during 2001 and 2003, the executants had previously sold a small portion of their land to the intended purchasers with the intention to make them cosharers in the property proposed to be sold. Later on, when the names of vendees were incorporated in the revenue records, the owners of the land subsequently transferred their remaining portion of land to the concerned vendees through a deed of release. This was incorrect as the executants had no pre-existing right or interest in the transferred property. These deeds were liable to be charged stamp duty as sale/gift which resulted in loss of revenue of Rs. 8.67 lakh to the Government.

After this was pointed out in audit, the Department accepted the audit observations and stated that efforts were being made to recover the amount.

#### **Short/ non realisation of stamp duty and registration fee**

**6.2.10** Under the Indian Stamp (Himachal Pradesh Amendment) Act, 1976, on an instrument of lease, stamp duty is chargeable on the basis of period of lease and the amount of annual rent reserved. The Act further provides that where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, the duty is also charged on the value of such fine or premium or money advanced set forth in the lease deed. Besides, registration fee at the prescribed rates is also chargeable.

Test check of the records of 14<sup>2</sup> SRs revealed that in 131 cases, stamp duty and registration fee of Rs. 7.70 lakh on the lease deeds, executed during 1999 and 2003 was short realised.

After this was pointed out in audit, the Department accepted audit observation in all cases. An amount of Rs. 1.43 lakh in 23 cases had been recovered, while report of recovery in the remaining cases was not received (September 2005).

<sup>2</sup> Baldwara, Barasar, Bhoranj, Chamba, Dharampur, Hamirpur, Jaisinghpur, Kangra, Kullu, Manali, Mandi, Nahan, Sarkaghat and Shimla (R)

**Short levy of stamp duty and registration fee on the units sold by  
Himachal Pradesh State Financial Corporation**

**6.2.11** Under the Indian Stamp Act, 1899, “Conveyance” includes a conveyance on sale and every instrument by which property whether movable or immovable is transferred. Further, the Registration Act, 1908, provides that immovable property includes land, building and things attached to the earth.

Test check of the records of SRs, Nahan and Nalagarh revealed that in four instruments executed during 2003, land, building, plant & machinery were sold for Rs. 48.23 lakh through auction by the Himachal Pradesh State Financial Corporation. However, stamp duty and registration fee was realised only on the consideration of cost of land and building of Rs. 24.91 lakh. The reasons for exclusion of plant & machinery were not on record. Consequently, this resulted in short levy of stamp duty and registration fee of Rs. 3.06 lakh.

**B LAND REVENUE**

**6.3 Non fixation of lease money**

Government of Himachal Pradesh leased out in February 1986 land measuring 631 square yards in Shimla for a period of 30 years to Hindustan Petroleum Corporation, for establishing LPG retail depot/godown. According to the terms and conditions of the lease, lease money was renewable after every five years. Government decided in October 1993 that rate for renewals would be 18 *per cent* of the latest highest market value of the land leased.

During audit of records of Collector, Shimla, it was noticed in May 2004 that lease money for the above land was required to be renewed in February 2001. On the basis of annual market value of the land, lease money worked out to Rs. 92,355<sup>@</sup> per year. However, the lease money was not renewed resulting in non realisation of Rs. 2.77 lakh for the period February 2001 to January 2004.

After this was pointed out in audit, the Department renewed the lease money in June 2004 and further directed the lessee to pay lease money of Rs.3.68 lakh upto March 2005. Report of recovery had not been received (September 2005).

The matter was reported to the Government in June 2004; reply had not been received (September 2005).

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<sup>@</sup> 18 *percent* of the market value of Rs. 5,13,082



**C MULTIPURPOSE PROJECTS AND POWER DEPARTMENT**

**6.4 Non recovery of electricity duty**

According to the Himachal Pradesh Electricity (Duty) Act, 1975, and the Rules made thereunder, electricity duty was leviable on electrical energy supplied by the Himachal Pradesh State Electricity Board (HPSEB) to consumers. Under the rules *ibid*, the duty collected by the Board in monthly bills for the energy supplied shall be deposited into Government account half yearly i.e. in April and October every year.

Information collected from the office of Chief Electrical Inspector, Himachal Pradesh revealed that electricity duty amounting to Rs.12.80 crore during the period April 2004 to September 2004, required to be deposited in October 2004, was deposited by the HPSEB in January 2005.

Besides, information regarding electricity duty due to Government during subsequent period October 2004 to March 2005 was not available with the Chief Electrical Inspector as no return was submitted by HPSEB to Chief Electrical Inspector. Based on the figures for the previous half-yearly return, minimum revenue of Rs.12.80 crore remained unrealised.

The matter was reported to the Department/Government in June 2005; their replies have not been received.

**D PUBLIC WORKS DEPARTMENT**

**6.5 Non recovery of damages from unauthorised occupants**

The Himachal Pradesh Allotment of Government Residences (General Pool) Rules, 1994, provide that whereafter an allotment of residence has been cancelled or is deemed to be cancelled and if the residence remains in the occupation of the allottee or a person claiming through him, such allottee shall be liable to pay damages for use and occupation of the residence at the rate of Rs. 4 per sqft. upto 31 August 2001 and Rs. 12 per sqft. thereafter.

During test check of records of three Public Works Divisions (PWD)<sup>§</sup>, it was noticed between December 2002 and February 2005 that five allotments were retained by the allottees or their heirs even after these were deemed to have been cancelled. Neither action was taken to evict the occupants nor to recover the damages of Rs. 20.46<sup>§</sup> lakh which the occupants were liable to pay for unauthorised retention from April 2000 to January 2005.

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<sup>§</sup> Chamba, Kullu and Mandi

The matter was reported to the Department/Government between February 2003 and February 2005; their replies had not been received (September 2005).

#### **6.6 Short recovery of cost of tender documents**

As per Engineer in Chief, HPPWD, Shimla letter dated August 2001, the cost of tender documents to be charged from contractors for works costing up to Rs. 6 lakh was Rs. 150 per document.

During audit of the records of PWD Rohru, it was noticed in September 2004 that cost of 4,432<sup>@</sup> tender documents sold to various contractors between December 2001 to August 2004 was not correctly charged. Against the admissible rate of Rs. 150 per document, the division incorrectly charged Rs. 25 per document, which resulted in short recovery of revenue of Rs. 5.53 lakh.

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<sup>@</sup> Rohru: 1824, Tikkar: 1299 and Chirgaon: 1309

After this was pointed out in audit, the Divisional Officer stated in May 2005 that out of Rs. 5.53 lakh, Rs. 3.30 lakh had been recovered from the securities of contractors and balance amount would be recovered from remaining contractors. Further report of recovery had not been received (September 2005).

The matter was reported to the Government in October 2004; reply had not been received (September 2005).

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