

CHAPTER-V OTHER TAX RECEIPTS

5.1 Results of audit

Test check of records of concerned departmental offices conducted during the year 2005-06, disclosed non/short realisation or loss of revenue of Rs. 380.30 crore in 192 cases under the following broad categories:

(Rupees in crore)			
Sl.No	Categories	Number of cases	Amount
	Stamp Duty and Registration Fee		
1.	Short levy of stamp duty and registration fee due to under valuation of properties	112	1.63
2.	Short levy due to misclassification of documents	26	0.67
3.	Other irregularities	12	0.76
	Total:	150	3.06
	Land Revenue		
1.	Short realisation of collection charges	1	0.003
2.	Non recovery of fees for supplying <i>Kishan Bahis</i> ¹	3	0.06
3.	Non/short realisation of land revenue	17	0.12
4.	Non reversion of nazul land from the lease holder	1	376.56
5.	Other irregularities	6	0.08
	Total:	28	376.82
	Entertainment Tax		
1.	Non recovery of entertainment tax	8	0.08
2.	Other irregularities	6	0.34
	Total:	14	0.42
	Grand Total	192	380.30

A few illustrative cases involving Rs. 382.80 crore are given in the succeeding paragraphs.

Stamp Duty and Registration Fee

5.2 Short levy of stamp duty and registration fee due to incorrect computation of lease period

Under Indian Stamp Act, 1899 (IS Act), on an instrument where lease purports to be for a term exceeding 30 years or in perpetuity or does not purport to be for any definite term, stamp duty is chargeable as for conveyance for a consideration equal to market value of the property. The Inspector General of Registration (IGR) clarified on 22 April 2003 that if a lease, for a period less than 30 years, contained provision for further extension for a certain or indefinite period, stamp duty is to be charged on the consideration of market value of the property.

Test check of records of seven sub registrars² (SRs) revealed between October 2004 and October 2005 that eight lease deeds for a period ranging between 20 and 31 years were registered during December 2003 to July 2005 on which stamp duty of Rs. 1.67 lakh and registration fees of Rs. 0.27 lakh were levied. The recital of deeds, however, revealed that provision for further extension of lease was also made with transfer of ownership rights to the

¹ Books of ledger account on farmers maintained by Land Revenue Department

² S.R. Ballia Sadar, Bansdeeh, Haidergarh, Lucknow I, Mohamaddi, Sirathu and Tundla.

lessees on which stamp duty and registration fee of Rs. 39.27 lakh was leviable. Incorrect computation of lease period resulted in short levy of stamp duty and registration fees amounting to Rs. 37.33 lakh.

The matter was reported to the department/Government between March 2005 and February 2006; their replies have not been received (July 2006).

5.3 Short levy of stamp duty due to misclassification of document

Under the provisions of the IS Act, stamp duty on an instrument depends upon the substance of the transaction recorded in the instrument and not on any title, description or nomenclature given to the instrument by the executant. Under U.P. Zamindari and Land Reforms Act, 1950, (Land Reform Act), unrestricted transfer of *bhumidhari* (ownership of land) right by way of lease is not permissible. Further Article-23 of Schedule-I.B of the IS Act provides that stamp duty shall be charged on documents relating to transfer of property rights as "conveyance".

Test check of records of SRs, Meja and Phoolpur in Allahabad district revealed that land measuring 35,176 sq.m. was transferred on lease for 30 years and stamp duty and registration fee of Rs. 5,520 was charged. Transfer of land on lease was not permissible under Land Reform Act. As such, stamp duty and registration fee of Rs. 18.66 lakh treating the transaction as conveyance deed was leviable. This resulted in short levy of stamp duty and registration fee of Rs. 18.60 lakh.

The cases were reported to the department and Government in November 2005; their reply has not been received (July 2006).

5.4 Short levy of stamp duty due to undervaluation of property

Under the IS Act, (as amended in its application to Uttar Pradesh), stamp duty on a deed of conveyance is chargeable either on the market value of the property or on the value of consideration set forth therein, whichever is higher. As per Uttar Pradesh Stamp (Valuation of property Rules), 1997 market rates of various categories of land/property situated in a district are to be fixed biennially by the collector concerned for the guidance of the registering authorities. As per guideline contained in circle rates approved by the Distt. Collector, Faizabad on 16 June 2004, in case a land of one *khasra* is situated both within and outside the limit of municipal committee, the valuation of land would be made at the rates applicable to land situated in the area of municipal committee.

During test check of records of SR, Akbarpur (Ambedkar Nagar) it was noticed in June 2005 that a deed of conveyance showing sale of land measuring 2,630 sq.m. situated on Akbarpur Faizabad road (within the jurisdiction of Akbarpur municipal committee) was registered in July 2004. For levy of stamp duty and registration fee, valuation of part of land measuring 100 sq.m. was done at commercial rate and remaining land measuring 2,530 sq.m. was assessed at agricultural rate, whereas the whole property was required to be assessed at commercial rate as the market rate of any single *khasra* remains the same. Thus due to undervaluation of property, Government was deprived of stamp duty and registration fee of Rs. 9.84 lakh.

The matter was reported to the department/Government in October and December 2005; their reply has not been received (July 2006).

Land Revenue

5.5 Non reversion of nazul land from the lease holder

*Nazul land*¹ is land held by Government in public trust, in perpetuity, the possession of which can be transferred in the form of lease or by sale. The district magistrate of the respective district is the overall incharge of the management and administration of *nazul land*. In Lucknow, the work of management is entrusted to the Lucknow Development Authority (LDA) and in other places to the *nagar nigams/nagar palika parishads*. Rule 67 of *Nazul Manual*, read with Rule 22, prohibits granting of lease in perpetuity of *nazul land*. In such cases, where lease was granted in perpetuity or period of lease was not mentioned, a maximum period of 90 years can be considered for lease. If any sale deed is executed, cost of land is to be recovered on the basis of market rate² and stamp duty as a conveyance is chargeable.

Test check of revenue records of offices of LDA and five³ *nagar nigams* with reference to *nazul land* in possession of educational institutions revealed between August 2005 and February 2006 that in 17 cases, leases had expired but action to reverse the title of land was not taken by Government. As a result, the land remained in the possession of lessees unauthorisedly after expiry of leases. The cost of land on current market value worked out to Rs. 342.26 crore. Besides this, stamp duty and registration fee of Rs. 34.30 crore is also leviable.

The matter was reported to the department and Government (October 2005 to March 2006); their replies have not been received (July 2006).

Entertainment Tax

5.6 Non realisation of unutilised maintenance charges

Under the provisions of U.P. Entertainment and Betting Tax Act, 1979, a cinema owner (not in receipt of grants in aid) is authorised to realise Rs. 1.50 in addition to rate of admission from each person, seeking admission for a seat in a cinema hall. This amount is to be spent for the maintenance of the cinema premises.

The Hon'ble High Court, Allahabad in judicial pronouncement has held that unspent amount of maintenance charges should be deposited in Government account as entertainment tax. The details of receipt and item wise expenditure, on maintenance duly certified by a chartered accountant (CA) is required to be submitted in the office on or before 31 July of the succeeding financial year.

¹ *Nazul land*: It is the land confiscated from the *Jamindars, Nawabs, Rajas* etc. It was neither acquired nor the cost thereof was paid.

² On the basis of circles rate list issued by the district magistrate.

³ Agra, Allahabad, Bareilly, Jhansi and Moradabad

5.6.1 Test check of records of seven offices¹ of the Entertainment Tax Department, revealed between August 2005 and March 2006 that during the years from 2000-01 to 2004-05 in 146 cases a sum of Rs. 4 crore was realised as maintenance charges by cinema owners. Out of which, in 76 cases certificates of expenditure duly certified by CA involving an amount of Rs. 1.70 crore were not submitted whereas in remaining 70 cases involving an amount of Rs. 2.30 crore, though the certificates of CA were submitted but item wise details of expenditure as required were not indicated. Thus the entire amount of Rs. 4 crore was recoverable as entertainment tax.

5.6.2 Commissioner of Entertainment UP specified certain items such as maintenance of building, urinals, boundary wall, sound system, door, seating system etc. on which expenditure from maintenance charges is to be incurred.

Test check of records of 14 offices² between August 2005 and March 2006 revealed that during 2000-01 to 2004-05 in 200 cases expenditure amounting to Rs. 1 crore was incurred by cinema owners on cabin expenses, electricity bills, uniforms and inverters, etc. which were not specified in above orders; as such the expenditure was inadmissible. Hence, Rs. 1 crore was recoverable from the cinema owners.

5.6.3 During test check of records of seven offices³ between August 2005 and March 2006, it was noticed that in 144 cases the cinema owners spent Rs. 3.92 crore on maintenance of cinema halls as per the certificates of CA against collection of Rs. 4.43 crore during the period from April 2000 to March 2005. As such, balance amount of Rs. 51 lakh was required to be deposited as entertainment tax.

The above matters were reported to the department/Government in May 2006; their replies have not been received (July 2006).

5.7 Non levy of interest on belated payment

Under UP Entertainment and Betting Tax Act 1979, entertainment tax is to be deposited within three days from the close of week by cinema owners and within one week after close of month by cable TV operators. In case of default interest at the rate of one and a half *per cent* for first three months and at the rate of two *per cent* thereafter is recoverable from cinema owner and at the rate of two *per cent* from cable operator.

During scrutiny of records of four offices⁴, it was seen that, entertainment tax amounting to Rs. 16.25 lakh, due from April 1998 to April 2004 from one cinema owner and 11 cable operators was deposited between May 2000 and August 2005. The delay ranged from 60 to 2,640 days. Belated payment earned interest amounting to Rs. 6.93 lakh which was not recovered by the department.

The matter was reported to Government/department in May 2006; their replies have not been received (July 2006).

¹ Agra, Aligarh, Kanpur City, Lucknow, Meerut, Saharanpur and Varanasi

² Agra, Allahabad, Aligarh, Bareilly, Gautam Budh Nagar, Ghaziabad, Jhansi, Kanpur City, Kanpur Dehat, Lucknow, Meerut, Moradabad, Saharanpur and Varanasi

³ Agra, Bareilly, Gautam Budh Nagar, Jhansi, Meerut, Saharanpur and Varanasi

⁴ Aligarh, Gautam Budh Nagar, Kanpur City and Varanasi