

CHAPTER-V
STAMP DUTY AND REGISTRATION FEE

5.1 Results of audit

Test check of the records of the Stamp and Registration Department conducted during the year 2007-08, disclosed non/short levy of stamp duty and registration fees amounting to Rs. 93.30 crore in 320 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Deficiencies in charging of stamp duty on valuation of property and different nature of documents (A review)	1	87.09
2.	Short levy of stamp duty due to misclassification of documents	58	2.00
3.	Short levy of stamp duty and registration fee due to under valuation of properties	115	1.15
4.	Short deposit of stamp duty on bonds	72	1.28
5.	Other irregularities	74	1.78
	Total	320	93.30

A review of "**Deficiencies in charging of stamp duty on valuation of property and different nature of documents**" involving Rs. 87.09 crore is mentioned in the succeeding paragraphs.

5.2 Deficiencies in charging of stamp duty on valuation of property and different nature of documents

Highlights

- Non-existence of provision for levy of additional stamp duty in the development areas resulted in non-realisation of revenue of Rs. 344.19 crore.

(Paragraph 5.2.6)

- Non-levy of stamp duty on sale of industrial property resulted in non-realisation of revenue of Rs. 36.72 crore.

(Paragraph 5.2.7)

- Undervaluation of residential and commercial land/building resulted in short levy of stamp duty of Rs. 34.30 crore.

(Paragraph 5.2.9)

- Short levy of stamp duty due to incorrect determination of circle rate resulted in loss of revenue of Rs. 2.93 crore.

(Paragraph 5.2.14)

5.2.1 Introduction

Receipts from stamp duty and registration fee in the State are regulated under the Indian Stamp Act (IS Act) 1899, Indian Registration Act (IR Act) 1908, the UP Stamp (valuation of property) (SVOP) Rules, 1997 and circulars and orders of the Government of Uttar Pradesh, issued from time to time. Stamp duty is leviable on the execution of instruments at the prescribed rates. Evasion of stamp duty is commonly effected through under valuation of properties, non-presentation of documents in the office of the registering authority and non/short payment of stamp duty by the executants on the documents submitted before the registering authorities.

A review of the deficiencies in charging of stamp duty on valuation of property and different nature of documents was conducted which revealed a number of system and compliance deficiencies as mentioned in the succeeding paragraphs.

5.2.2 Organisational set up

The determination of policy, monitoring and control at the Government level is done by the Principal Secretary, *Kar evam Nibandhan*. The Inspector General is the head of the Registration Department (IGR) and exercises overall superintendence and control over the working of the department. He is assisted by an Additional Inspector General (Addl. IG), 17 Deputy Inspector Generals (DIGs) at divisional level, 63 Assistant Inspector Generals (AIGs) at district level and 347 Sub-Registrars (SRs) at district and *tehsil* level.

5.2.3 Scope of audit and methodology

The review was conducted in the offices of 63 SRs of 24 districts out of 70 districts in the State. Besides, information from the office of IGR and Official Liquidator of UP were also collected. Selection of the units was based on the revenue collection and number of the documents registered. Cases detected during local audit and not included in the previous years' reports have also been included in the review.

5.2.4 Audit objectives

The review was conducted with a view to ascertain:

- whether the registering authorities were discharging their functions in levying and collection of stamp duty in accordance with the prescribed rules and procedures; and
- existence of a suitable internal control mechanism for levy and realisation of stamp duty and registration fee.

5.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Registration Department in providing necessary information and records for audit. An entry conference was held with the department and the scope and methodology for conducting the review were discussed. The draft review report was forwarded to the department and the Government in May 2008. Meeting of Audit Review Committee was held in July 2008. The Government was represented by the Principal Secretary, *Kar evam Nibandhan* and the department was represented by the Addl.IG. The views of the Government/department have been incorporated in the relevant paragraphs.

Audit Findings

System deficiencies

5.2.6 Non-existence of provision for levy of additional stamp duty

U.P. Urban Planning and Development Act, 1973 (UPUPD Act), extends to the whole of the Uttar Pradesh excluding cantonment areas and lands owned, requisitioned or taken on lease by the Central Government for the purpose of defence. Under the provisions of the UPUPD Act, if the transferred property is situated in any development area, additional stamp duty at the rate of two *per cent* on the value of property is leviable in addition to stamp duty chargeable under the provisions of IS Act. Under the provisions of the UPUPD Act, if in the opinion of the State Government, any area within the State, requires to be developed according to plan, it may by notification in the gazette, declare the area to be a development area. The Government had developed certain areas like NOIDA, Greater NOIDA under the UP Industrial Development Act, 1976

(UPID Act). However, the Government did not declare/notify these areas as development areas under the UPUPD Act. In the absence of the enabling notification, the registering authorities could not levy additional stamp duty on the documents registered in these areas.

Test check of the records of the offices of SR I, II, III of NOIDA and SR of Greater NOIDA, revealed that in the absence of enabling notification, additional stamp duty was not levied on the deeds of transfer of the immovable property situated in the development areas of NOIDA and Greater NOIDA executed between April 2003 and March 2007, whereas additional stamp duty was being levied in four revenue villages¹ situated under the administrative jurisdiction of NOIDA. This resulted in non-levy of additional stamp duty of Rs. 344.19 crore as mentioned below:

(Rupees in crore)

Sl. No.	Name of the unit	Year/amount of non-levy				Total
		2003-04	2004-05	2005-06	2006-07	
1.	SR I NOIDA	10.76	14.44	18.69	34.00	77.89
2.	SR II NOIDA	11.22	22.41	17.49	52.45	103.57
3.	SR III NOIDA	8.97	10.14	10.41	30.53	60.05
4.	SR Greater NOIDA	11.50	12.45	23.75	54.98	102.68
Total		42.45	59.44	70.34	171.96	344.19

After this was pointed out, the Government stated in July 2008 that additional stamp duty is leviable in urban area only and NOIDA and Greater NOIDA are constituted under Industrial Development Authority.

Since the Government is foregoing a considerable amount in the shape of additional stamp duty, it may consider bringing out a notification declaring the areas developed under the UPID Act as development areas for the purpose of levy of additional stamp duty.

5.2.7 Non-levy of stamp duty on sale of industrial property

According to Article 18 of schedule I-B of the IS Act, the certificate of sale (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold through public auction by a Civil or Revenue Court or Collector or other Revenue Officer, stamp duty is leviable as a conveyance for a market value equal to the amount of the purchase money only. It was noticed in audit that the department has no system of obtaining information from the Department of Industries on the disposal of property of sick industrial units through public auction for levy of stamp duty.

Information collected from the office of Official Liquidator, revealed in March 2008 that three sick industrial units were disposed of during the year 2005-06 for a consideration of Rs. 459 crore through public auction, on which stamp duty of Rs. 36.72 crore was leviable. It was observed that the sale deed was not executed till March 2008. This resulted in non-realisation of stamp duty of Rs. 36.72 crore.

The Government may, therefore, consider prescribing a system of providing information regarding disposal of sick industrial units to the Stamp and Registration Department for levying stamp duty.

¹ Chhajarasi, Hasanpur-Bhavpur, Makanpur and Mohiuddinpur-Kanvasi.

5.2.8 Non-fixation of time limit for registration of documents relating to transfer of immovable properties

Under the provisions of the IR Act, registration of documents relating to transfer of immovable properties, except in case of transfer of property, after the death of the owner, is compulsory. Further, stamp duty at the rate of eight *per cent* with effect from August 1998 is chargeable on the amount of consideration or market value of the property, whichever is higher. No time limit has been prescribed for the registration of documents nor any provision exists for penal action for delay in registration of documents after their execution.

Test check of the records of SR-III NOIDA and SR Greater NOIDA, revealed that possession of 2,494 flats involving consideration of Rs. 285.81 crore were handed over to the purchasers by 13 private builders during the year 2005-06. The owners of these flats did not present the documents for registration. Due to non-fixation of any time limit for registration of documents, the registering authority could not initiate any action to get these documents registered. This resulted in non-realisation of stamp duty of Rs. 22.86 crore.

After this was pointed out, the Government stated in July 2008 that in the absence of any provision in the IS Act, registration of documents of immovable property could not be enforced. The process of preparation of new Act is going on and it would be placed in next session of the Assembly.

The Government may, therefore, consider prescribing a time limit for registrations of documents after transfer/handing over of possession of the immovable property and provision of penal clause for failure to get the documents registered within the prescribed time limit.

5.2.9 Short levy of stamp duty in execution of sale deed

Under the IS Act, stamp duty on a deed of conveyance is chargeable either on the market value of property or on the value of consideration set forth therein, whichever is higher. As per the SVOP Rules, the collector of a district after following the prescribed procedure, as defined thereunder fixes the minimum market value of land/properties locality-wise and category-wise in the district for the purpose of levying stamp duty on instrument of transfer of any property. However, the Government did not prescribe any system/mechanism or submission of document to ensure correctness of levy of stamp duty on the property meant for agricultural, residential, industrial and commercial purposes. As per the Government notification of May 2003, the registered private builders shall be liable to pay full stamp duty chargeable on the instrument of transfer of land by mutual agreements with certain terms and conditions of rebate in stamp duty for further sale. This provision is applicable in the case of transfer of land only. In the absence of any prescribed

mechanism, the registering authorities applied incorrect rates on different nature of documents as mentioned below:

5.2.9.1 Residential and commercial land valued as agricultural land

Test check of the records of offices of 39 SRs revealed that 172 deeds of conveyance were registered between June 2002 and March 2007 on valuation of Rs. 44.04 crore at agricultural rates, on which stamp duty of Rs. 4.28 crore was levied. The boundary location, area and purpose of property, shown in deeds, revealed that the properties were of residential/ commercial nature and the rates prescribed for these kinds of properties should have been adopted. Stamp duty of Rs. 22.23 crore was leviable on market value of Rs. 361.57 crore at residential/commercial rates. Valuation of residential and commercial land as agricultural land resulted in short levy of stamp duty of Rs. 17.95 crore as shown in Appendix-III.

5.2.9.2 Incorrect valuation of the land and building

Test check of the records of offices of 32 SRs revealed that in cases of 158 deeds of conveyance registered between February 2003 and March 2007, stamp duty of Rs. 4.36 crore on account of sale of land and buildings, was levied on consideration of Rs. 45.54 crore as set forth in the instruments instead of Rs. 14.21 crore, being the value of land and buildings determinable on the basis of market value fixed by the respective collectors. This resulted in short levy of stamp duty of Rs. 9.85 crore as shown in Appendix-IV.

5.2.9.3 Valuation of land and building at residential rates instead of commercial rates

Test check of the records of offices of 24 SRs revealed that in cases of 57 deeds of conveyance, registered between February 2004 and March 2007, the properties were valued as Rs. 20.49 crore at residential rates and stamp duty of Rs. 1.88 crore was levied. It was observed from boundary location and purpose of property, shown in deeds, that the nature of the property was commercial and accordingly the rates applicable to such properties should have been applied. Incorrect valuation of commercial properties as residential properties resulted in short levy of stamp duty of Rs. 5.49 crore as shown in Appendix-V.

5.2.9.4 Undervaluation of building transferred by development authority

Test check of the records of office of SR IV, Ghaziabad, revealed that three deeds were registered between February 2005 and March 2005 relating to transfer of buildings on a land measuring 5,643.92 sq. mtr, constructed by the Ghaziabad Development Authority. The three buildings were sold to a private builder for a consideration of Rs. 7.99 crore on which stamp duty of Rs. 79.90 lakh was paid. Since the transaction was related to sale of building and not of land, stamp duty of Rs. 1.81 crore was leviable on valuation of Rs. 18.06 crore as per the circle rate fixed by the collector. This resulted in short levy of stamp duty of Rs. 1.01 crore.

After the cases were pointed out, the Government stated in July 2008 that the documents under observation have been referred to the collectors concerned for proper valuation of the properties. It was further stated that internal audit wing has been established which will scrutinise the documents of under valuation.

The Government may consider prescribing submission of documents like *khasra* along with map of the land/property and ensuring submission of declaration in form appended to Rule 6² of SVOP Rules by the transferor, specifying the area covered under agricultural, residential, industrial and commercial in rate list circulated by the Collectors of the districts.

5.2.10 Non-fixation of standard lease rent

Under the provisions of IS Act, stamp duty on lease, for a term upto 20 and 30 years, is chargeable as conveyance for a consideration equal to five and six times respectively of the amount of the annual rent reserved. The provisions for fixation of minimum annual lease rent do not exist in Act/Rules.

Test check of the records of the offices of two SRs³ revealed that four out of 84 lease deeds, relating to commercial land worth Rs. 4.13 crore for the period 20 and 30 years were registered between July 2005 and March 2006 respectively for a consideration of Rs. 252 (annual rent of Rs. 12) on which stamp duty of Rs. 610 was paid. It was observed that the properties worth Rs. 4.13 crore, valued at circle rate, were leased on nominal lease rent of Re. 1 per month only. The lessor (owner of the land) could have earned Rs. 33.04 lakh annually if calculated at the rate of eight *per cent* normal bank interest. Even if the bank interest of Rs. 33.04 lakh per annum be assumed as benefit in the form of lease rent, stamp duty of Rs. 17.47 lakh could have been levied. Thus, in the absence of any provision to fix the standard lease rent by the authorities, the Government was deprived of revenue to that extent as shown in Appendix-VI.

After this was pointed out, the Government accepted the observations in July 2008 and stated that necessary amendment in the Act was being proposed on this issue.

The Government may consider making a provision for fixation of minimum annual rent for leased property in the interest of revenue of the State.

5.2.11 Internal audit

Internal audit is a vital component of control mechanism and is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well.

It was however, noticed that internal audit wing (IAW) was not in existence in the department, leaving it vulnerable to the risk of control failure.

After the matter was reported, the Government stated in July 2008 that IAW has been established in the department.

² Statement of market value, furnished by the transferor.

³ SR Etawah and SR Jaunpur.

Compliance deficiencies

5.2.12 Short levy of stamp duty on different kind of leases

Under the IS Act, on an instrument, where the 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 the market value of the property. The IGR clarified on 22 April 2003 that if a lease for a period upto 30 years, contained provision for further extension for a certain or indefinite period, stamp duty shall be charged on the consideration of market value of the property.

5.2.12.1 Test check of the records of offices of 39 SRs revealed that 71 lease deeds for a period upto 30 years were registered between January 2003 and February 2007, on which stamp duty of Rs 32.32 lakh was levied. Since the recital of the deeds contained the provision of indefinite extension, stamp duty of Rs. 6.87 crore, based on market value of the property of Rs. 72.08 crore was leviable. Incorrect computation of lease period resulted in short levy of stamp duty of Rs. 6.54 crore as shown in Appendix-VII.

5.2.12.2 Test check of the records of SR II, Varanasi revealed that nine deeds of transfer of property, by way of sub lease situated in the area of Uttar Pradesh State Industrial Development Corporation (UPSIDC) Varanasi executed by the lessees in favour of other persons, were registered between June 2002 and September 2006 for a consideration of Rs. 11.81 lakh on which stamp duty of Rs. 1.18 lakh was levied. Since sub leases purport for the period exceeding 30 years, these deeds were required to be registered as conveyance on the market value of Rs. 2.65 crore on which stamp duty of Rs. 26.47 lakh was chargeable. This resulted in short levy of stamp duty of Rs. 25.29 lakh.

After the matter was pointed out, the Government stated in July 2008 that cases will be referred to the Collectors concerned for investigation. Further report has not been received (November 2008).

5.2.13 Short levy of stamp duty due to misclassification of documents

Under the provision of the IS Act, every instrument mentioned in the schedule shall be chargeable to stamp duty at the rates prescribed therein. An instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

Test check of the records of 31 SRs revealed that 90 instruments registered between May 2002 and February 2007 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the recitals of these documents, however, revealed that these documents were misclassified and

resulted in short levy of stamp duty of Rs. 4.51 crore as mentioned below:

(Rupees in lakh)

Sl. No.	No. and value of documents	SD leviable levied	Short levy of SD	Nature of irregularity
1.	$\frac{45}{2,992.84}$	$\frac{288.35}{0.02}$	286.29	Conveyance deeds were misclassified as correction deeds.
2.	$\frac{39}{1,667.62}$	$\frac{157.79}{0.28}$	157.79	Conveyance deeds were misclassified as power of attorney.
3.	$\frac{3}{64.50}$	$\frac{4.52}{0.28}$	4.24	Mortgage deeds were misclassified as deposit of title deeds.
4.	$\frac{1}{15.12}$	$\frac{1.51}{0}$	1.51	Conveyance deed was misclassified as lease deed.
5.	$\frac{1}{15.00}$	$\frac{1.35}{0.10}$	1.25	Mortgage deed was misclassified as bank <i>guarantee</i> .
6.	$\frac{1}{7.02}$	$\frac{0.49}{0.07}$	0.42	Settlement deed was misclassified as trust deed.
Total	$\frac{90}{4,762.10}$	$\frac{454.01}{2.54}$	451.47	

After the matter was reported, the Government stated in July 2008 that the cases will be referred to the Collectors concerned for investigation. Further report has not been received (November 2008).

5.2.14 Short levy of stamp duty due to incorrect determination of market value

Under the provisions of the SVOP Rules, the Collector of the district shall biennially fix the minimum rate of valuation of land and building. He may revise it within a period of two years from the date of fixation of value or rent if any discrepancy/incorrectness of rates is noticed.

Scrutiny of the biennial rate list of Varanasi *Sadar*, for the year 2002-03, revealed that rates of lands and buildings were fixed by the Collector concerned in April 2002 with average rise of 16 *per cent* on previous fixation in November 1999. Further, these rates were again revised in August 2002 after four months to rectify the incorrectness of rates with enhancement of average 30 *per cent*. This rise works out to be 50.8 *per cent* on biennial rate list of November 1999. Had the biennial rates been fixed genuinely in April 2002 i.e. with 50.8 *per cent* average rise on rates of November 1999, the rectification of rates in August 2002 could have been avoided and also the enhanced stamp duty, based on enhanced valuation from April 2002 to July 2002 could have been levied. This resulted in loss of revenue of Rs. 2.93 crore due to incorrect determination of biennial rates in April 2002. The details are mentioned below:

(Rupees in lakh)

Sl. No.	Name of the Unit	Amount of stamp duty levied during four months from April 2002 to July 2002	Loss of revenue (30 <i>per cent</i>)
1.	SR I Varanasi	234.15	70.25
2.	SR II Varanasi	222.52	66.76
3.	SR III Varanasi	260.20	78.06
4.	SR IV Varanasi	260.43	78.13
Total		977.30	293.20

After this was pointed out, the Government and department stated that the process for making rules for logical annual fixation of rate is being taken up. At present rates are fixed at the discretion of the collectors.

5.2.15 Irregular adjustment of stamp duty

Under the provisions of IS Act, if an agreement of sale of property is entered into, where the possession of property is not delivered nor agreed to be delivered without execution of conveyance, stamp duty on one half of the consideration set forth will be leviable on such agreement. The duty thus paid, is required to be adjusted towards total duty payable at the time of execution of conveyance deed in pursuance of such agreement.

5.2.15.1 Test check of the records of office of SR I, Ghaziabad revealed that an agreement of sale of industrial property for consideration of Rs. 23 crore was executed on 21 June 2004 on which 50 *per cent* stamp duty of Rs. 1.15 crore was charged. As per the terms and condition of the agreement, the conveyance deed was to be executed latest by 15 October 2004 but it was not executed within the stipulated time. After expiry of stipulated period of the agreement, two conveyance deeds were again executed for the same property in pursuance of another two agreements. However, stamp duty of Rs. 1.15 crore paid at the time of original agreement was incorrectly adjusted towards duty payable on the deed of conveyance. This resulted in short levy of stamp duty of Rs. 1.15 crore.

5.2.15.2 Test check of the records of the office of SR I, Hapur in December 2007 revealed that during 2006-07, an agreement for sale of land for consideration of Rs. 2.87 crore was executed, on which stamp duty of Rs. 11.46 lakh was charged. However, sale deed was not executed as per the terms and conditions of the agreement within the stipulated time and the property was sold to the third party having different title. Stamp duty of Rs. 28.65 lakh was chargeable on deed of conveyance⁴ against which stamp duty of Rs. 17.19 lakh was charged after making the adjustment of Rs. 11.46 lakh, paid at the time of original agreement. This resulted in short levy of stamp duty of Rs. 11.46 lakh.

After the matter was pointed out, the Government stated in July 2008 that the case will be referred to the Collector for scrutiny. Further report has not been received (November 2008).

5.2.16 Short levy of stamp duty in execution of developer's agreement.

Under the provisions of IS Act, if a building is constructed on a land by a person other than the owners of the land having a stipulation that after construction, such building or part thereof shall be held or sold jointly or severally by that other person and the owner of the land, stamp duty on such agreement shall be charged as a conveyance for a consideration equal to the amount or value of land.

⁴ Deed No. 10871/07, Registered on 9.8.07.

Test check of the records of offices of five⁵ SRs revealed that nine agreements were registered between March 2003 and November 2006 between the builder and the owner of the land. Stamp duty of Rs. 20.33 lakh was levied on value of land of Rs. 2.03 crore, against the stamp duty of Rs. 77.20 lakh leviable on the value of owner's share in the building of Rs. 7.72 crore at circle rate being higher than the value of land. This resulted in short levy of stamp duty of Rs. 56.87 lakh.

After the matter was reported, the Government stated in July 2008 that the department has been directed to examine the case. Further report has not been received (November 2008).

5.2.17 Conclusion

Stamp duty and registration fee is important tax revenue of the State. Lack of monitoring mechanism or submission of documents like *khasra* along with map of the land/property and declaration in form VI by the executants, specifying the area covered under agricultural, residential, industrial and commercial, in rate list circulated by the Collectors of the districts in cases of undervaluation of properties which were settled at level of SRs resulted in short levy of stamp duty. Revenue from the registration of the instruments of purchase of the sick industrial units through public auction was also not tapped adequately in the absence of a system for collection of relevant details from the department of the industries. The internal control mechanism of the department was weak as is evidenced by the absence of internal audit wing.

5.2.18 Summary of recommendations

The Government may consider:

- bringing out a notification declaring the areas developed under the UPID Act as development areas for the purpose of levy of additional stamp duty;
- prescribing a system of providing information regarding disposal of sick industrial units to the stamp and registration department for levying stamp duty;
- prescribing a time limit for registrations of documents after transfer/handing over possession of the immovable property and providing penal clause for failure to get the documents registered within the prescribed time limit;
- prescribing submission of documents like *khasra* along with map of the land/property and ensuring submission of declaration in form VI by the executants, besides, specifying the area covered under agricultural, residential, industrial and commercial in rate list circulated by the Collectors of the districts; and
- inserting provision for fixation of minimum annual rent for leased property in the interest of revenue of the State.

⁵ SR 1 Lucknow, SR I, II, III and IV Varanasi.