

CHAPTER V STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

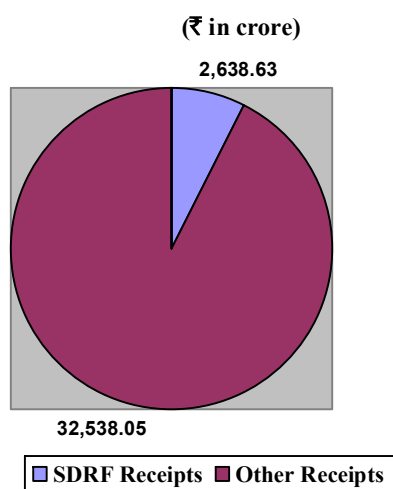
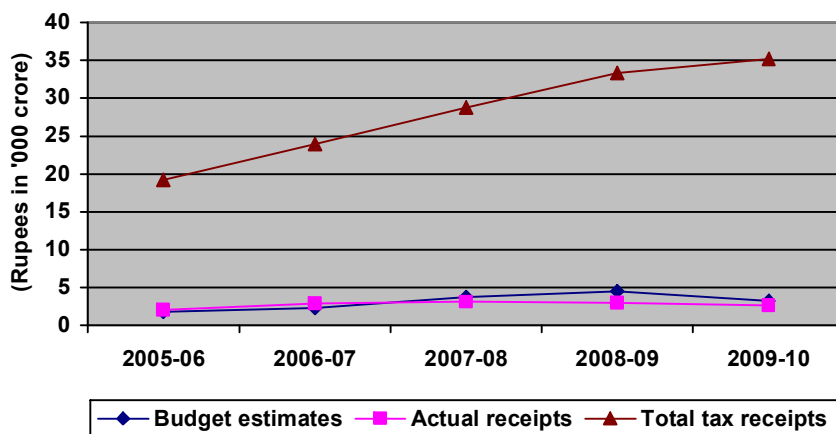
The Registration and Stamps Department is responsible for administration of the Indian Stamp (IS) Act, 1899 and the Indian Registration Act, 1908 as amended from time to time by the Union and State legislations. The Department is primarily entrusted with registration of documents and responsible for determining and collection of stamp duty and registration fees on registration of various documents/instruments of general public. The Inspector General (IG) of Registration exercises general superintendence over all the registration offices in the State. He is assisted by the region-wise Dy. IGs. The Registrar is incharge of the district and superintends and controls the sub-registrars in the district concerned. The IG of Registration and Stamps also acts as the Registrar of marriages and the Registrar of firms and societies.

5.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fees (SDRF) during the years 2005-06 to 2009-10 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2005-06	1,800.00	2,013.45	(+) 213.45	(+) 11.86	19,207.41	10.48
2006-07	2,250.00	2,865.38	(+) 615.38	(+) 27.35	23,926.20	11.98
2007-08	3,750.00	3,086.06	(-) 663.94	(-) 17.71	28,794.05	10.72
2008-09	4,537.50	2,930.99	(-) 1,606.51	(-) 35.41	33,358.29	8.79
2009-10	3,224.00	2,638.63	(-) 585.37	(-) 18.16	35,176.68	7.50



5.3 Cost of collection

The figures of gross collection in respect of the stamp duty and registration fees, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2007-08, 2008-09 and 2009-10 along with the relevant all India average percentage of expenditure on collection to gross collection for the previous year are mentioned below:

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	(₹ in crore)
					All India average percentage for the previous year
Stamp duty and registration fees	2007-08	3,086.06	62.54	2.03	2.33
	2008-09	2,930.99	73.58	2.51	2.09
	2009-10	2,638.63	87.75	3.33	2.77

The expenditure on collection of stamp duty and registration fees was more than the all India average during the years 2008-09 and 2009-10 and hence the Government needs to look into this aspect.

5.4 Revenue impact

During the last five years audit had pointed out non/short levy, non/short realisation, loss of revenue, incorrect exemption etc., with revenue implication of ₹ 192.74 crore in 1,999 cases. Of these, the Department/Government had accepted audit observations in 402 cases involving ₹ 12.04 crore and had since recovered ₹ 1.34 crore. The details are shown in the following table:

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2004-05	310	294	27.13	71	2.39	23	0.28
2005-06	323	419	68.85	76	0.67	40	0.11
2006-07	302	329	28.33	68	1.33	44	0.25
2007-08	303	449	20.45	61	0.76	29	0.13
2008-09	294	508	47.98	126	6.89	39	0.57
Total	1,532	1,999	192.74	402	12.04	175	1.34

Recovery of ₹ 1.34 crore only against the money value of ₹ 12.04 crore relating to accepted cases during the period 2004-05 to 2008-09 highlights the failure of the Government/Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

5.5 Results of audit

Test check of the records of 276 offices relating to District Registries and Sub Registries during the year 2009-10 revealed under assessment of duties and other irregularities involving ₹ 275.20 crore in 590 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1.	Misclassification of documents	464	263.23
2.	Short levy of stamp duty and registration fees	50	10.49
3.	Undervaluation of properties	18	0.34
4.	Incorrect exemption of duties	16	0.27
5.	Other irregularities	42	0.87
Total		590	275.20

During the course of the year 2009-10, the Department accepted underassessments and other deficiencies of ₹ 6.45 crore in 63 cases of which, nine cases involving ₹ 4.87 crore were pointed out during the year 2009-10 and the rest in the earlier years. An amount of ₹ 26.94 lakh was realised in 30 cases.

A few illustrative cases involving ₹ 6.24 crore are mentioned in the succeeding paragraphs.

5.6 Audit observations

During scrutiny of the records in the offices of the District Registries (DRs) and Sub-Registries (SRs) relating to revenue received from stamp duty, transfer duty and registration fees, we noticed several cases of non-observance of the provision of the Acts/Rules resulting in non/short levy of duties and fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We pointed out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to consider directing the Department to improve the internal control system including strengthening the internal audit to ensure that such omissions are detected and rectified.

5.7 Incorrect allowance of concessional rate of duties on Deposit of title deeds

As per G.O.Ms.No.316, Revenue (Registration-I) Dept., dated 14 March 2006, the agreements relating to deposit of title deeds by Small Scale Industries are chargeable with a duty at 0.5 per cent of the amount secured subject to a maximum of ₹ 1,000. The Commissioner and Inspector General of Registration and Stamps, Hyderabad also clarified vide Proc.No. S1/11744/2005 dated 27 February 2008 that the above concession in stamp duty is admissible only when the entrepreneur/loanees produce a certificate from the concerned District Industries Centre to the effect that his/her industry is a Small Scale Industry and that the loan is being availed for the purpose of smooth running of the industry itself and not otherwise.

We noticed in test check of the records of nine SRs¹ in respect of 71 documents registered during 2006-07 to 2008-09 that the registering authorities allowed concessional rate of duty amounting to ₹ 24.46 lakh without production of the prescribed certificates from the District Industries Centres.

We referred the matter to the Department between February and March 2010 and to the Government in July 2010; their reply has not

been received (January 2011).

¹ Bodhan, Farooqnagar, Huzurabad, Rajendranagar, S.R. Nagar, Suryapet, Tadepalligudem, Uppal and Warangal (Rural).

5.8 Short levy of stamp duty and registration fees on documents involving several distinct matters

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

We noticed (January and July 2009) in test check of the records of DR, Ranga Reddy and two SRs² that four documents involving several distinct matters were registered between October 2007 and July

2008. Failure on the part of registering officers to read through the recitals of documents resulted in short levy of stamp duty and registration fees of ₹ 4.21 crore.

(₹ in crore)

Sl. No.	Name of the registering authority	Nature of observation	Market value of document	Duty leviable/ duty levied	Short levy
1.	DR, Ranga Reddy	A document styled as 'sale deed' contained two distinct matters viz., sale of property and partition. Though duties and registration fees were levied on the matter of sale, but these were not levied on the partition of property.	132.92	<u>5.43</u> 1.44	3.99
2.	SR, Kukatpally	Two documents styled as 'development agreement-cum-General Power of Attorney (GPA)' contained two distinct matters viz., one relating to development agreement-cum-GPA between the land owners and developer and the other relating to settlement of terrace rights by the developers to the third party. Though stamp duty was correctly levied on the development agreement-cum-GPA, it was not levied on the settlement of terrace rights.	22.90	<u>0.38</u> 0.23	0.15

² Kukatpally and Tandur

(₹ in crore)

Sl. No.	Name of the registering authority	Nature of observation	Market value of document	Duty leviable/ duty levied	Short levy
3.	SR, Tandur	A document styled as 'agreement of sale-cum-Irrevocable GPA' contained two distinct matters viz., release of rights in the property by the consenting parties in favour of the vendors and the vendors entering into agreement of sale-cum-GPA. Stamp duty and registration fees were not levied on the matter of release of rights over the property though it was levied on Agreement of sale-cum-Irrevocable GPA.	5.05	0.08 0.01	0.07
Total					4.21

After we pointed out the cases, the Government accepted (December 2010) the audit observation in respect of SR, Kukatpally for ₹ 6.85 lakh as against ₹ 15.24 lakh. The Department accepted (May 2010) the audit observation in respect of DR, Ranga Reddy based on the report of a committee constituted for authoritative opinion regarding chargeability of the document. The Department also accepted (March 2010) the audit observation in respect of SR, Tandur. It was further stated that instructions were issued to collect the deficit amount. A report on recovery has not been received (January 2011).

5.9 Short levy of stamp duty

Stamp duty payable under Article 6 (B) of Schedule I A of the IS Act, is one *per cent* on the amount of sale consideration or market value of property or estimated market value for land and complete construction made or to be made in accordance with schedule of rates whichever is higher on documents of development agreement/ development agreement-cum-General power of attorney. However, the maximum stamp duty on development agreement is ₹ 20,000. The Government deleted the clause for maximum limit of ₹ 20,000 with effect from 1.4.2008 {G.O.Ms.No. 568 Revenue (Registration-I) Department dated 1 April 2008}.

5.9.1 We noticed (September and October 2009) in test check of the records of the DR, Ranga Reddy (East) that a document styled as 'development agreement' was registered in June 2008 by the landowners in favour of the developer for assignment of development rights. Stamp duty of ₹ 46.98 lakh at one *per cent* on the market value of the property (₹ 46.98 crore) was

leviable. However, the registering officer levied stamp duty of ₹ 20,000 at the pre-revised rates. This resulted in short levy of stamp duty of ₹ 46.78 lakh.

After we pointed out the case, the Department accepted (June 2010) the audit observation and stated that instructions were issued to the District Registrar, Ranga Reddy (East) to collect the deficit amount. A report on recovery has not been received.

We referred the matter to the Government in May 2010; their reply has not been received (January 2011).

5.9.2 We noticed (between September and October 2008) in test check of the records of SR, Vallabhnagar, Ranga Reddy district that two documents styled as “development agreements” were executed and registered in March 2008 by the land owners in favour of the developer for development i.e., for constructing residential apartments/flats. The landowners authorised the developer to enter into agreements of sale with prospective buyers of the flats. Hence, these documents were chargeable as development agreement-cum-GPA and were liable to stamp duty of one *per cent*³ on the market value of land and proposed cost of construction. However, the registering officer levied stamp duty of ₹ 20,000 applicable to development agreement. Misclassification of 'development agreements-cum-GPA' as 'development agreements' resulted in short levy of stamp duty of ₹ 31.79 lakh.

After we pointed out the case, the Government/Department accepted (June and December 2010) the audit observation and stated that instructions were issued to the District Registrar, Ranga Reddy to collect the deficit amount. A report on recovery has not been received (January 2011).

5.10 Misclassification of deeds

5.10.1 As per Article 41 (B) of the Schedule IA to the IS Act, where immovable property contributed as share by a partner or partners remains with the firm at the time of outgoing in whatever manner by such partner or partners on reconstitution of such partnership, stamp duty is chargeable at five *per cent* on the market value of the immovable property remaining with the firm.

5.10.1.1 We noticed (May 2009) in test check of records of SR, Ramachandrapuram, East Godavari district that a document styled “retirement -cum-release deed” was executed and registered in July 2008 by the retiring partners

releasing their rights, interest and claims in the firm’s properties. The registering officer levied stamp duty on the market value of ₹ 37.02 lakh being the share paid to the retiring partners instead of five *per cent* on the market value of immovable property of ₹ 3.33 crore remaining with the firm. This resulted in short levy of stamp duty and registration fees of ₹ 16.46 lakh.

After we pointed out the case, the Government accepted (December 2010) the audit observation and stated that instructions were issued to District Registrar, Kakinada to collect the deficit amount.

³ G.O.Ms.No.1481 Revenue (Registration-I) Department dated 30 November 2007 with effect from 3 December 2007.

5.10.1.2 We noticed (January 2009) in test check of the records of SR, Nidadavolu, West Godavari district that a document styled 'partition deed' registered in June 2009 contained recitals that one of the three partners retired from the partnership firm and the firm was reconstituted with the remaining two partners. On the retirement, the retiring partner was allotted ₹ 2.27 crore of immovable property as his share. The registering officer levied stamp duty of three *per cent* on market value of property (₹ 2.27 crore) of retiring partner instead of five *per cent* on market value of property (₹ 2.86 crore) remaining with the firm. Misclassification of 'reconstitution of partnership' as 'partition' resulted in short levy of stamp duty and registration fee of ₹ 8.91 lakh.

After we pointed out the case, Department stated (March 2010) that the property was held by the three members of a joint family as joint family property which was incidentally utilised for conducting business and through the subject document only partition of the joint family property was recorded and through separate 'Retirement deed', retirement of one partner was reduced to writing. The reply is not acceptable as recitals of the document reveal that one of the partners retired and the firm was reconstituted with the remaining two partners. Hence, the document is chargeable at five *per cent* on market value of property remaining with the firm.

We referred the matter to the Government in March 2010; their reply has not been received (January 2011).

5.10.2 According to Article 47-A of Schedule I-A to the IS Act, instruments of sale are chargeable to stamp duty on the amount of value expressed in the instrument or the market value of property, whichever is higher. Besides, transfer duty under the provisions of various Acts of local bodies is also leviable. As per Explanation I under Section 2 (10) of the IS Act, an instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition, shall, for the purposes of this clause, be deemed to be an instrument by which property is transferred *inter vivos*.

We noticed (between April and May 2009) in test check of the records of DR, Visakhapatnam that a document styled as "Sale agreement" was registered in May 2007 by the vendor transferring and assigning his rights in the company's shares and his representative interest in the property in favour of the purchaser for a consideration of ₹ 1.75 crore. The document contained recitals that after

execution of the document, the vendor ceased to have any rights and interest in the property. Thus, the document was chargeable as "conveyance on sale" with stamp duty and transfer duty of seven *per cent* and two *per cent* respectively on the market value of the property of ₹ 1.77 crore. However, the document was registered with stamp duty of ₹ 20,000 applicable to sale agreement. Misclassification of "conveyance on sale" as "sale agreement" resulted in short levy of duties and registration fee of ₹ 16.64 lakh.

After we pointed out the case, the Government accepted (December 2010) the audit observation and stated that instructions were issued to the District Registrar, Visakhapatnam to collect the deficit amount. A report on recovery has not been received (January 2011).

5.10.3 As per the explanation below Article 49 (A) (a) Schedule 1-A to the IS Act, 'family' means father, mother, husband, wife, brother, sister, son, daughter and includes grandfather, grandmother, grandchild, adoptive father or mother, adopted son or daughter. Stamp duty is leviable at one *per cent* on the market value of the property on settlement deeds and ₹ 1000 when GPA is executed in favour of a member or members of a family. In any other case, stamp duty is leviable at six *per cent* and one *per cent* on the market value of the property on settlement deeds and GPA documents respectively.

5.10.3.1 We noticed (January 2009) in test check of the records of SR, Shamshabad, Ranga Reddy district that a settlement deed was executed in March 2007 settling a property in favour of nephew/cousin. The registering officer levied stamp duty of one *per cent* applicable to settlement in favour of family member instead of six *per cent* applicable to settlement deed

executed in favour of other than family members even though 'nephew/cousin' is not included in the term 'family' for the purpose of this article. This resulted in short levy of stamp duty of ₹ 9.69 lakh.

After we pointed out the case (September 2009), the Department accepted (November 2009) the audit observation and stated that the District Registrar, Ranga Reddy was directed to collect the deficit amount of stamp duty.

We referred the matter to the Government in May 2010; their reply has not been received (January 2011).

5.10.3.2 We noticed (January 2009) in test check of the records of SR, Shamshabad, Ranga Reddy district that a document styled as 'GPA' was registered in February 2008 wherein land owners appointed an individual other than a family member as attorney to deal with the property including sale of property. As the GPA was given to a person other than a family member, the deed is chargeable with stamp duty of one *per cent* on the market value of ₹ 6.23 crore of the property. However, the registering officer levied stamp duty of ₹ 1,000 resulting in short levy of stamp duty of ₹ 6.22 lakh.

After we pointed out the case, the Department accepted (March 2010) the audit observation and stated that instructions were issued to the District Registrar, Ranga Reddy to collect the deficit amount. A report on recovery has not been received (January 2011).

We referred the matter to the Government in March 2010; their reply has not been received (January 2011).

5.11 Undervaluation of properties

According to Article 47-A of Schedule 1-A to the IS Act, instruments of sale are chargeable to stamp duty on the amount or value expressed in the instrument or the market value of property, whichever is higher. Besides, transfer duty under the provisions of various Acts of local bodies is also leviable.

Under Article 49-A (a) of Schedule 1-A to IS Act, Gift settlements in favour of family members are chargeable to stamp duty at one *per cent* on the market value of properties.

We noticed (between November 2008 and January 2009) in test check of the records of two⁴ SRs that six sale deeds and two gift settlement deeds were registered between May 2007 and January 2008 by adopting agricultural (also called acreage) rate. Our cross verification with the recitals of other sale

deeds of the same survey numbers executed earlier by the same vendors indicated that the property mentioned in the survey numbers was already converted for non-agricultural purposes between September 1999 and 11 January 2008 as indicated in the sale deeds registered between 2002 and 2008 (11.1.2008) and divided into house plots and were sold at house site rates. Therefore house site rate had to be adopted for the purpose of levy of duties. Incorrect adoption of market value resulted in undervaluation of properties and consequential short levy of duties and registration fees of ₹ 24.22 lakh.

After we pointed out the cases, the Government stated (December 2010) in respect of SR, Shamshabad that the survey number in which the property located was huge and even though some of the properties in survey number with small extent were registered at ₹ 1,700 per sq. yard, the other lands are remaining as mere lands without development. And in respect of SR, Champapet that sale deeds are entirely different transactions done under different circumstances and they cannot be linked to sale deeds registered earlier, adopting square yard rate. Market value is to be assessed for the properties in each document separately basing on the recitals of the particular document separately. The replies are not acceptable as the vendors had already divided the land owned by them into plots which was evident from the documents executed earlier by them between 2002 and 2008 (11.1.2008) whereas the transactions in question pertains to the documents registered between May 2007 and January 2008 (17.1.2008/25.1.2008) and thus the properties had already lost their 'agricultural status'. The fact that as some of the plots in the same survey number had been registered as "residential" the SR on registration should have referred the cases to the Collector for valuation.

⁴ Champapet and Shamshabad.

5.12 Short levy of stamp duty on the document of GPA

Under Article 42(g) of Schedule I-A to the IS Act, ‘power of attorney’ when given for construction on, development of, or sale or transfer (in any manner whatsoever) of, any immovable property is chargeable to stamp duty at one *per cent* on the market value of the property when the GPA is given in favour of other than family members.

We noticed (January 2009) in test check of the records of SR, Maheshwaram, Ranga Reddy that a document styled as “General Power of Attorney” registered in February 2008 contained recitals to the effect that the

attorney was given power for sale of properties. The document was chargeable with stamp duty of one *per cent* on market value of property. However, stamp duty was levied at lesser rate resulting in short levy of stamp duty and registration fees of ₹11.40 lakh.

After we pointed out the case, Department accepted (February 2010) the audit observation and stated that an amount of ₹ 8 lakh had been collected.

We referred the matter to the Government in May 2010; their reply has not been received (January 2011).

5.13 Short levy of stamp duty on lease deeds

As per Article 31(a)(vi)(a) of Schedule I-A to IS Act, where the lease is granted for a period exceeding 30 years, stamp duty at five *per cent* is leviable on the market value of the property or 10 times of the average annual rent whichever is higher. Further, under Article 31 (vi) (c) where the lease is granted for a fine or premium or for money advanced in addition to the rent reserved, stamp duty is leviable at five *per cent* on the market value of the property or the amount or value of such fine or premium or advance whichever is higher in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.

We noticed (November and December 2008) in test check of the records of SR, Shamirpet, Ranga Reddy district that two lease deeds were registered between June and July 2007 by the lessor in favour of two lessees for 33 years with automatic renewal after 18 years. The lessees had paid a non-refundable premium of ₹ 1.91 crore. As the leases were granted for a term of 33 years for a premium in addition to rent reserved, stamp

duty is leviable at five *per cent* on the amount of such premium and market value of the property. However, registering officer levied stamp duty of five *per cent* on the amount of premium and 10 times average annual rent. This resulted in short levy of stamp duty of ₹ 5.76 lakh.

After we pointed out the case, the Government accepted (December 2010) the audit observation and stated that instructions were issued to the District Registrar, Ranga Reddy (East) to collect the deficit amount. A report on recovery has not been received (January 2011).