

CHAPTER V

***STAMP DUTY AND
REGISTRATION FEES***

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EXECUTIVE SUMMARY

Increase in tax collection	In 2011-12 the collection of stamp duty and registration fees increased by 14.39 <i>per cent</i> .
Very low recovery by the Department against the observations pointed out by us in earlier years	During the period 2006-07 to 2010-11, we had pointed out undervaluation of properties, misclassification of documents, incorrect exemption etc., with revenue implication of ₹ 522.80 crore in 2,208 cases. Of these, the Department/Government had accepted audit observations in 693 cases involving ₹ 142.00 crore and had since recovered ₹ 2.62 crore in 316 cases. The recovery position (1.85 <i>per cent</i>) as compared to acceptance of objections was very low.
Results of audits conducted by us in 2011-12	<p>In 2011-12, we test checked the records of 334 offices relating to District Registries and Sub-Registries and found preliminary audit observations involving non/short levy, misclassification of documents, under valuation of properties, incorrect exemption etc., of ₹ 84.29 crore in 362 cases.</p> <p>The Department accepted underassessments and other deficiencies of ₹ 46.97 crore in 165 cases, of which 42 cases involving ₹ 46.45 crore were pointed out during the year and the rest in the earlier years. An amount of ₹ 2.09 crore was realised in 147 cases.</p>
What we have highlighted in this Chapter	<p>In this Chapter, we present illustrative cases involving tax effect of ₹ 126.29 crore selected from observations noticed during our test check of records relating to assessment and collection of stamp duty and registration fees in the offices of District Registries and Sub- Registries, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department has not taken corrective action.</p>

Our conclusion

The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

It is also required to initiate immediate action to recover the stamp duty and registration fees etc., pointed out by us, especially in those cases where audit's contention is accepted.

In cases where the audit observations relating to unregistered leases emanated from cross verification of data with other departments/authorities, it is recommended that an effective mechanism be put in place to coordinate with all the Government/semi-Government Departments/organisations to get the details of leases /agreements executed on a periodic basis.

In respect of non registration of motor vehicle hypothecation documents, clearly the Transport Department is best placed to track hypothecation of vehicles, since it is responsible for making necessary entries regarding hypothecation in the vehicles Registration Certificate (RC). We, therefore, recommend that the Registration and Stamps Department and the Transport Department should jointly evolve a mechanism whereby the Transport Department collects the stamp duty as an agent of the Registration and Stamps Department.

It is also recommended that District Registrar may take up inspection of public offices periodically, so as to minimize the leakage of revenue.

5.1 Tax administration

The Registration and Stamps Department is responsible for administration of the Indian Stamp (IS) Act, 1899 and the 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 is responsible for determining and collecting stamp duty and registration fees on registration of various documents/instruments by the general public. The Commissioner and Inspector General (IG), Registration and Stamps exercises overall superintendence over all the registration offices in the State. He is assisted by the region-wise Deputy IGs. The District Registrar (DR) is incharge of the district and superintends and controls the Sub-Registrars (SR) in the district concerned.

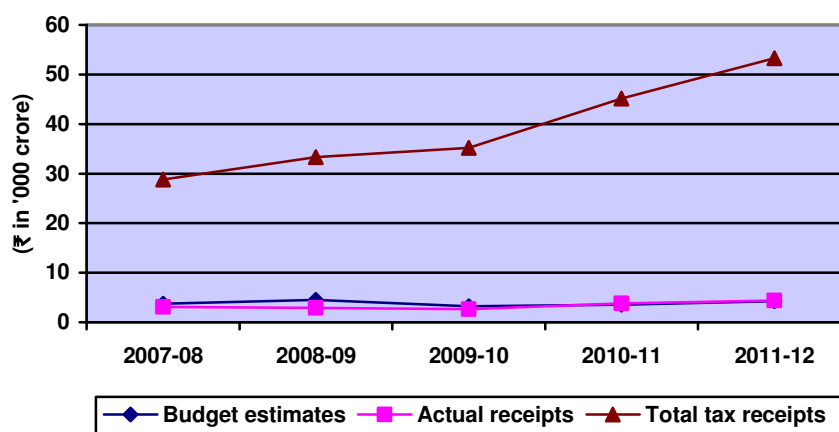
5.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fees (SDRF) during the years 2006-07 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graphs.

Table 5.1: Receipts from Stamp Duty and Registration Fees

(₹ 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
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
2010-11	3,546.00	3,833.57	(+) 287.57	(+) 8.11	45,139.55	8.49
2011-12	4,240.00	4,385.25	(+) 145.25	(+) 3.43	53,283.41	8.23

Graph 5.1: Budget estimates, actual receipts and total tax receipts



It is evident from the above table and graph that revenue contribution from Stamp Duty and Registration Fees to the total tax receipts of the State has been almost stable for the last four years. Variation in the Budget Estimates and Actual Receipts was minimum in the year 2011-12.

5.3 Cost of collection

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 2009-10, 2010-11 and 2011-12, along with the relevant all India average percentage of expenditure on collection to gross collection for the previous year, are mentioned below:

Table 5.2: Cost of collection of Stamp Duty and Registration Fees

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Stamp duty and registration fees	2009-10	2,638.63	87.75	3.33	2.77
	2010-11	3,833.57	94.99	2.48	2.47
	2011-12	4,385.25	101.67	2.32	1.60

Although the cost of collection has marginally reduced this year as compared to the previous year, it is much higher than the All India Average cost of collection of the previous year.

5.4 Impact of Local Audit

During the last five years, audit had pointed out misclassification of documents, under valuation, short levy of stamp duty and registration fee etc., with revenue implication of ₹ 522.80 crore in 2,208 cases. Of these, the Department/Government had accepted audit observations in 693 cases involving ₹ 142 crore and had since recovered ₹ 2.62 crore. The details are shown in the following table:

Table 5.3: Impact of Local Audit of Stamp Duty and Registration Fees

(₹ 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
2006-07	302	329	28.33	68	1.33	44	0.25
2007-08	303	449	20.45	61	0.76	36	0.15
2008-09	294	508	47.98	126	6.89	49	0.83
2009-10	276	590	275.20	63	6.45	48	0.41
2010-11	270	332	150.84	375	126.57	139	0.98
Total	1445	2208	522.80	693	142.00	316	2.62

Recovery of only ₹ 2.62 crore (1.85 per cent) against the money value of ₹ 142 crore relating to accepted cases during the period 2006-07 to 2010-11 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 Working of internal audit wing

A separate wing for internal audit team headed by Sub-Registrar (Market value (MV) and Audit)/District Registrar (MV and Audit) would draw up the audit programme very month and conduct audit of offices of sub-Registrars. DIG concerned would supervises the progress of audit and monitor the collection of deficit stamp duty in the finalised audit paras and disciplinary action against responsible registering officers, who caused the loss of revenue due to their deliberate lapses.

It was reported (October 2012) that the audit observations mainly relate to undervaluation of documents, due to wrong adoption of guideline values.

5.6 Results of Audit

Test check of the records of 334 offices of district registrars and sub-registrars conducted during the year 2011-12 revealed preliminary audit findings involving non/short levy of stamp duty and registration fees of ₹ 84.29 crore in 362 cases, which broadly fall under the following categories:

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Non/short levy of stamp duty and registration fees	232	64.76
2.	Non disclosure of facts/Misclassification of documents	67	18.17
3.	Undervaluation of properties	32	0.95
4.	Incorrect exemption	9	0.06
5.	Other irregularities	22	0.35
Total		362	84.29

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 46.97 crore in 165 cases, of which 42 cases involving ₹ 46.45 crore were pointed out during the year 2011-12 and the rest in earlier years. Out of this, an amount of ₹ 2.09 crore in 147 cases was realised during the year.

A few illustrative cases involving ₹ 126.29 crore are mentioned in the succeeding paragraphs. These include cases which came to notice during audit of records during the year 2011-12 as well as those which came to notice in earlier years, but which could not be included in the previous year's reports.

5.7 Audit observations

During scrutiny of the records in the offices of DRs and SRs, we observed several cases of non-observance of the provisions 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 point out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to consider directing the Departments to improve the internal control system, including strengthening internal audit so that such omissions can be avoided, detected and rectified.

5.8 Non levy/Short levy of stamp duty on lease deeds

5.8.1 Non-realisation of stamp duty and registration fees on un-registered lease deeds

As per Article 31 (c) of Schedule 1-A to the Indian Stamp (IS) Act 1899, where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, stamp duty is leviable at five *per cent* of the market value of the property or the amount or value of such fine or advance, as set forth in the lease 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. Further, under Article 31(d) of Schedule IA to the Act *ibid*, where the lessee undertakes to effect improvements in the leased property and agrees to make the same to the lessor at the time of termination of lease falling under clauses (a), (b) or (c), stamp duty is also leviable at 5 per cent on the value of the improvements contemplated to be made by the lessee as set forth in the deed in addition to the duty chargeable under clauses (a), (b) or (c).

5.8.1.1 We noticed (April 2012) from the information obtained from Andhra Pradesh State Road Transport Corporation (APSRTC), Hyderabad that APSRTC entered into a lease agreement and authorisation agreement with Soma Hyderabad City Centre Pvt. Limited and Soma SVEC Consortium for leasing out land to the extent of 9.14 acres on Build Operate and Transfer (BOT) basis for a period of 33 years on 21 August 2008. Subsequently, an amendatory agreement to the lease agreement was executed on 14 October 2009, revising

the term “lease” as “authorisation” and “lease rentals” as “premium”. However, this amendment did not make any change in the liabilities towards stamp duty and registration fee. As per the agreement conditions, the lessee had paid upfront authorisation premium of ₹ 95 crore and non refundable Development Fee of ₹ 6 crore. Further, the lessee had to pay annual premiums of a total amount of ₹ 2,055.59 crore for the entire authorisation period of 33 years on quarterly basis. The lessee was also to effect

improvements to an extent of 1,25,630 sq.mt. in the leased property and was to transfer the same to the lessor at the time of termination of lease.

All these agreements were not registered as per the provisions of the IS Act, and were executed on non-judicial stamp paper of ₹ 100 each. Audit cross verified the fact of non-registration with the Sub-registrar concerned and APSRTC.

Non registration of these documents resulted in non-realisation of Stamp Duty and Registration fee amounting to ₹ 45.14 crore.

After this was pointed out the case, the Government stated (January 2013) that they had taken up (June 2012) the matter of collection of stamp duty with the Managing Director, APSRTC to get the documents validated.

As per Section 2 (16) of the IS Act, 'lease' includes any writing on an application for a lease intended to signify that the application is granted.

Section 17 (1) (d) of the Registration Act, 1908, stipulates that all leases of immovable property are to be registered compulsorily with effect from 1 April 1999. Stamp duty on lease deed is chargeable at the rates prescribed for a consideration equal to the amount or value of fine, premium or advance in addition to the amount of the average annual rent reserved and on the basis of the term of lease.

5.8.1.2 We noticed (March 2012) from the information obtained from Andhra Pradesh Housing Board (seven cases), Andhra Pradesh Tourism Development Corporation Limited (five cases), and five other lessors¹ that 18 license agreements/ authorisation agreements /memorandum of understanding for transfer of immovable property were entered into (between April 2004 and April 2011) for a period ranging from three years to 35 years for

development and maintenance of scheduled properties on payment of licence fee/additional development premium periodically. It was noticed (March 2012) by audit that these agreements were executed on non-judicial stamp paper of ₹ 100 in each case and were not registered as per the provisions of IS Act. The fact of not registering these documents was also confirmed from the Sub Registrars concerned. Failure to insist upon registration of these lease deeds by the lessors resulted in non-realisation of stamp duty and registration fees of ₹ 8.30 crore.

¹ Osmania University, South Central Railway, AP State Finance Corporation, Hyderabad Metropolitan Development Authority (2 cases) and AP Industrial Infrastructure Corporation Ltd.

In response to the audit observation, the Government replied (January 2013) that the para pertains to the Tourism Department and they were being addressed in the matter; the unit offices reported (July & August 2012) recovery of ₹ 0.59 lakh².

5.8.1.3 Non levy of stamp duty and registration fees on distillery leases

As per Article 31 a (ii) of Schedule IA to IS Act, where the lease purports to be for a term of not less than one year but not more than five years, stamp duty is leviable at two *per cent* of the whole amount payable or value of the average annual rent reserved whichever is higher up to 13 May 2010 and at 0.4 percent of the total rent payable thereafter. Section 17 (1) (d) of the Registration Act, 1908 stipulates that all leases are to be registered compulsorily with effect from 1 April 1999.

As per Rule 11 of AP Distillery (Manufacture of IMFL other than beer and wine) Rules, 2006, the Commissioner of Prohibition and Excise may permit the license holder of a distillery to sub-lease the manufactory/distillery on payment of a sum equal to 10 *per cent* of the proportionate license fee. Sub rule 1 thereunder provides that sub lease deed between the licensee and the proposed sub lessee shall be registered on a non judicial stamp paper of requisite value as per provisions of Indian Stamp Act, within 15 days from the grant of permission for sub lease.

As per clause (vii) of Rule 11(1), both the licensee and sub-lessee undertake to furnish duly registered lease deed within 15 days from the date of grant of permission of sub-lease. An undertaking is to be furnished on a non judicial stamp paper of ₹ 100/- under rule 11(1) (vii)(d) that both the licensee and sublease holder agree to the condition that the license was liable to be cancelled for any lapse contravening the provisions of any rule or any conditions of license.

We noticed (February 2012) during test check of the records of Commissioner of Distilleries and Breweries, Hyderabad that two companies had sub leased (April 2010 and April 2011) their distilleries without registering the lease deeds as required under the above provisions. However the Excise Department had neither insisted upon registered documents of sublease nor were their licenses cancelled. The violation of the provisions resulted in non levy of stamp duty and registration fee of ₹ 7.22 lakh.

² AP Housing Board (2 cases).

After we pointed out the case, Government replied (January 2013) that the para pertains to the Prohibition and State Excise Department and they were being addressed in the matter.

Since the non registration of lease deeds has the consequent effect of loss of revenue towards stamp duty and registration fee, it is suggested that coordinated efforts be made by the Registration and Stamps Department with the relevant lessors concerned to plug the revenue leakage. In addition the Registration and Stamps Department may consider setting up a mechanism to coordinate with all the Government/semi-Government Departments/organisations to get the details of leases executed on a periodic basis.

5.8.2 Short levy of stamp duty on ‘Build Operate and Transfer’ lease agreements

As per Article 31 a (vi) of Schedule I-A to the IS Act, where a lease purports to be for a period in excess of thirty years or in perpetuity or does not purport to be for a definite period, stamp duty is chargeable at five *per cent* on the market value of the property under lease as declared by the party or 0.8 *per cent* on the total rent payable on such lease, whichever is higher. C&IG in his memo (Registration and Stamps Memo No.S1/12097/2009 dated 28 October 2009) clarified that stamp duty as applicable on date of presentation of document is to be adopted.

We noticed (September 2011) during test check of the records of District Registry (DR), Visakhapatnam that a lease deed was executed and registered in November 2010 by the lessor³ in favour of the lessee⁴, leasing the property for a period of 32½ years effective from

2 June 2005. As the lease period exceeded 30 years, stamp duty is leviable at five *per cent* on the market value of property under lease as declared by the party or 0.8 *per cent* on the total rent payable on such lease, whichever is higher. However, the registering officer levied stamp duty at 0.8 *per cent* on total rent payable for 32½ years even though the market value of the property on the date of presentation was higher and hence duty chargeable was 5 *per cent* on the market value. This resulted in short levy of stamp duty of ₹ 1.70 crore.

³ APSRTC.

⁴ M/S Chandana Brothers, Visakhapatnam.

After we pointed the case, Government replied (January 2013) that

- adoption of rate by audit as on the date of presentation of lease deeds is not sustainable, since lease period had commenced and property was handed over to the lessee on 02 June 2005;
- the adoption of market value as on the date of execution of the deed as per market value guidelines is not sustainable, since the chargeability was only on value declared by the parties but not on market value as per Government notification.

The reply is not tenable as C&IG had clarified in his memo dated 28 October 2009, that stamp duty as applicable on the date of presentation of document was to be adopted. Further, the Department had themselves adopted the market value as on 2 June 2005 and not the value declared by the party (lessee) while computing the chargeability of the deed.

5.9 Non-levy of stamp duty on vehicles registered with hypothecation agreement

As per Article 7(b) of Schedule I-A to the IS Act, the pawn, pledge, or hypothecation of movable property, where such pawn, pledge, or hypothecation has been made by way of security for the repayment of money advanced, or to be advanced by way of loan or an existing or future debt, is leviable with stamp duty at 0.5 per cent of the amount secured subject to a maximum of two lakh rupees, if such loan or debt is repayable on demand or more than three months from the date of the instrument, evidencing the agreement. Further, every instrument has to be properly stamped as per the provisions of the IS Act.

We noticed (February 2012) during the test check of 'Form 20' relating to the registration of vehicles and the analysis of the data of the office of Transport Commissioner, that 6,54,615 vehicles were hypothecated to private banks and other financial institutions during the year 2010-11. Based on the information furnished by the private banks/financial institutions, it was found that in respect of 1,16,376 vehicles (18 per cent) the documents were executed

only on ₹ 20/₹ 100 stamp paper, and stamp duty at 0.5 per cent was not collected in terms of the provisions of IS Act. We found that other financial institutions/banks were not levying the requisite stamp duty, but we do not have assurance regarding the same. The loss to the State Government on stamp duty was ₹ 50.37 crore for one year alone, assuming that the amount hypothecated was 80 per cent of the vehicle cost.

A para on ‘non-levy of stamp duty on vehicles registered with hypothecation agreement’ was printed in the CAG’s Audit Report for the year ended 31 March 2011. In response, the Government had stated that the matter would be pursued by the Stamps and Registration Department by exploring different approaches. However, the same position continues to persist.

We also noted that there were differences among different banks/institutions with regard to levy of such stamp duty on hypothecation agreements;

- a) Nationalised banks like Canara Bank, State Bank of Hyderabad etc were levying the stipulated stamp duty.
- b) Private banks/Institutions such as Hinduja Leyland Finance and Indus Ind Bank were not levying requisite stamp duty.

In addition to loss of revenue, such difference also amounted to discrimination against nationalised banks and their customers, who were being charged the stipulated stamp duty, and undue favour in respect of other financial institutions, who were able to get away with non-compliance with statutory provisions.

Government (Revenue Department) replied (January 2013) that the para pertains to the Transport Department and that they were being addressed in the matter.

Clearly, the Transport Department is best placed to track hypothecation of vehicles, since it is responsible for making necessary entries regarding hypothecation in the vehicles Registration Certificate (RC).

We, therefore recommend that the Registration and Stamps Department and the Transport Department should jointly evolve a mechanism whereby the Transport Department collects the stamp duty as an agent of the Registration and Stamps Department for collection of stamp duty on vehicle hypothecation.

5.10 Short levy of duties and fees due to non-disclosure of facts/misrepresentation of facts

As per Section 27 of the IS Act, the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be truly and fully set forth therein. Section 41 A(1) provides for levy of penalty of three times of the deficit stamp duty along with the stamp duty short levied, for suppression of facts with an intent to evade duty.

5.10.1 We noticed (June 2011) during test check of the records of DR, Rangareddy that a sale deed was executed in June 2010 by the vendor⁵ in favour of the vendee⁶, conveying land of 26.97 acres for a consideration of ₹ 16.18 crore through bidding. It was observed from the recitals of a Development Agreement executed earlier in November 2006 by the same parties in respect of the same property that the vendor specified the total sale price of ₹ 4.27 crore

payable by the developer/vendee which included cost of land (₹ 60 lakh per acre) and development premium (₹ 3.67 crore per acre). However, the parties suppressed the aspect of payment of development premium in the sale deed. This resulted in short levy of duties and fees of ₹ 9.40 crore. Further, penalty of three times of the deficit stamp duty is also leviable for suppression of facts.

After we pointed out the case, Government replied (January 2013) that

- the vendor did not receive any extra sale consideration towards the said land and produced documentary evidence to this effect;
- the vendor being a concern wholly owned by the Government, sale consideration shown in the document was adopted as per the provisions of Section 47 A of IS Act.

The reply of the Government is not tenable for the following reasons:

- As per the provisions of transfer of Property Act, 1882, sale is in exchange for price paid or promised or part paid and part promised. In this case, the development agreement entered into between the two parties had been concluded through a sale deed and amount of development premium was paid through development agreement itself before conclusion of sale deed.
- The reply given by the Government that the premium was not paid is not correct as the fact of payment of ₹ 213.50 crore (between October 2005 and July 2006) towards 50 *per cent* of the cost of land including

⁵ Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC).

⁶ M/s Lanco Hills Technology Park Pvt. Ltd.

development premium is evident (at para 2.2.1 of article 2) from the development agreement executed by both the parties in November 2006.

- As per C&IG's circular Memo No. MV3/16180/ 2004 dated 20 March 2010, where the properties were acquired through public auction and the rate was fixed by the Government, the sale consideration fixed would prevail. As the fact of sale consideration fixed by the agency of the state has not been truly and fully set forth in the sale deed, the sale consideration specified in the development agreement fixed by the way of auction would prevail.

C&IG Registration and Stamps in his Memo (C&IG's memo No. MV1/8184/93) dated 9 June, 1993 instructed that any one of the following, whichever is higher, be adopted for levying stamp duty and registration fees.

- (i) consideration set forth in the document;
- (ii) market value as declared by the party;
- (iii) market value arrived at by the Sub Registrar on the basis of the guidelines and the schedule of rates of construction;
- (iv) eighteen times the annual rental value.

5.10.2 We noticed (June 2011) during test check of the records of DR, Rangareddy that a sale deed was executed and registered in March 2011 by the vendor⁷ in favour of a vendee⁸. The registering officer levied stamp duty and registration fees of ₹ 11.88 crore on the market value of ₹ 158.40 crore.

Cross verification of a lease deed executed earlier revealed that the same scheduled property had been leased out by the vendor to another lessee for a period of nine years for a monthly rent of ₹ 1.13 crore. The average annual rent of this property was declared as ₹ 1 crore in the sale deed. Based on monthly rent of ₹ 1.13 crore, the average annual rent worked out to ₹ 13.56 crore and 18 times the average annual rent worked to ₹ 243.81 crore. Since 18 times the average annual rent was higher than the market value of the property, stamp duty and registration fee were leviable on 18 times of the annual rental value. The misrepresentation of the average annual rent resulted in short levy of stamp duty and registration fee of ₹ 6.40 crore. Further, penalty of three times of the deficit stamp duty is also leviable for suppression of facts.

After we pointed out the case, the registering officer stated (June 2011) that the matter would be examined.

⁷ M/s L&T Infocity Limited.

⁸ M/s ENN ENN Corp Limited.

We referred the matter to the Department in November 2011 and to the Government in June 2012; their reply has not been received (January 2013).

As per Article 31 (c) of Schedule-I A to the IS Act, where a lease is granted for a fine or premium or for money advanced in addition to 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, set forth in the lease, whichever is higher, in addition to the stamp duty which would have been payable on such lease, if no fine or premium or advance has been paid or delivered.

5.10.3 We noticed (August 2011) from the information collected from Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) that a lease deed was executed and registered in November 2009 by the lessor (APIIC) in favour of a lessee⁹ for

a period of 21 years with an annual lease rent of ₹ 1,000 per annum per acre and stamp duty of ₹ 1.74 lakh was paid. Correlation of the registered documents with related records available with APIIC revealed that the lessee had paid an upfront amount of ₹ 61.24 crore (at ₹ 9.00 lakh per acre on 680.55 acres of land), which was not disclosed in the document and on which stamp duty at the rate of five *per cent* was also leviable. This resulted in short levy of stamp duty of ₹ 3.06 crore due to non-disclosure of facts affecting chargeability of lease deed.

After we pointed out the case, Government replied (January 2013) that as per terms and conditions of the lease, only the rent of ₹ 1000 per acre was fixed and payment of upfront fee was outside the purview of the registered lease deed. It was also added that as per C&IG's memo¹⁰ dated 29 May 2009, the amount paid in addition to rent reserved was chargeable only in respect of instruments of lease for a period exceeding 30 years. The reply is not tenable as in terms of Article 31(c), duty is chargeable on premium or money advanced in addition to rent reserved irrespective of the period of lease.

⁹ M/s Thermal Powertech Corporation India Limited.

¹⁰ C&IG memo No. S2/2198/2009.

5.11 Short levy of stamp duty and registration fees due to misclassification of documents

According to Article 41 C of Schedule 1-A to the IS Act, where the property which belonged to one partner or partners when the partnership commenced is distributed or allotted or given to another partner or partners in case of dissolution of partnership, stamp duty is leviable at five *per cent* on the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution in addition to the duty which would have been chargeable on such dissolution if such property had not been distributed or allotted or given.

5.11.1 We noticed (July 2011) during test check of the records of DR, Hyderabad that a document styled as “partition deed” was executed and registered in May 2010 between the partners of a partnership firm. It was recited in the document that all

the partners accepted and agreed to divide the property. As the property was distributed and the partnership ceased to exist, the document is to be treated as ‘dissolution of partnership’ and stamp duty is leviable at five *per cent* on the market value. However, the registering officer levied stamp duty at three *per cent* treating the document as ‘partition’ and levied stamp duty and registration fee of ₹ 32.95 lakh instead of ₹ 1.02 crore. Misclassification of ‘dissolution of partnership’ as ‘partition deed’ thus resulted in short levy of stamp duty and registration fees of ₹ 69.22 lakh.

After we pointed out the case, the registering officer stated (July 2011) that an instrument between partners dividing the outstanding partnership without dissolving the partnership is a partition and not dissolution of partnership. The reply is not tenable as in terms of Section 2 (15) of the IS Act, “instrument of partition” means “any instrument whereby co-owners of any property divide or agree to divide any such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition”. This clearly applies to a partition of a property amongst family members and other “co-owners”. In the extant case, the partners of a purchasing firm cannot be equated with the co-owners of the property as per Section 2(15) of the IS Act.

Further, in terms of Section 40 of the Indian Partnership Act, 1932, a firm may be dissolved with the consent of all the partners. It had been judicially held¹¹ that it was not necessary in every case that the fact of dissolution should be evidenced by a document; dissolution may be inferred from circumstances of the case and conduct of the parties. In the present case, the partners were earlier registered as a firm and due to financial disputes/differences, they have accepted and agreed to divide the property. It is thus clear that the extant case

¹¹ Rambharusa singh vs Government state of Bihar AIR 1953 (pat 271).

is a dissolution of partnership and not a partition of a property amongst its co-owners.

We referred the matter to the Department in November 2011 and to the Government in June 2012; their reply has not been received (January 2013).

As per Article 49 A of Schedule I-A to the IS Act, "Settlement in favour of family members" is chargeable to stamp duty at one *per cent* on the market value of property and "Settlement in favour of others" is chargeable at six *per cent*. For this purpose "family" means father, mother, husband, wife, brother, sister, son, daughter and includes grandfather, grandmother, grandchild, adoptive father or mother, adopted son or daughter.

5.11.2 We noticed (May 2011) during test check of the records of SR, Bhongir that a 'gift settlement deed' was executed in June 2010, settling the property by the Managing Directors of two companies in favour of the Managing Director of another company. The registering officer levied stamp duty of one *per cent* applicable to 'settlement

deed in favour of family members' instead of at six *per cent* applicable to 'settlement deed in favour of other than family' members, even though the gift deed was registered in the capacity of Managing Director of the company and falls outside the ambit of the definition of the term 'family' for the purpose of this Article. This resulted in short levy of stamp duty of ₹ 5.69 lakh.

After we pointed out the case, the Government accepted (January 2013) the audit observation and stated that instructions were issued to the District Registrar, Nalgonda to collect the deficit amount of stamp duty.

5.12 Short levy of stamp duty and registration fee due to undervaluation of property

As per 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 the property, whichever is higher.

We noticed (June 2010 and October 2011) during test check of the sale documents of two Sub Registries (SRs)¹² that two documents styled as sale deed/ agreement of sale-cum-General Power of Attorney (GPA) were executed in June 2009 and January

2010 respectively by the vendors in favour of the vendee/GPA holder. The registering officer, while registering the document, adopted the agricultural/acreage rate instead of square yard rate even though the land was already converted into non-agricultural land. Thus, undervaluation of properties resulted in short levy of stamp duty and registration fees of ₹ 46.11 lakh.

¹² Bheemunipatnam and Gopalapatnam.

After we pointed out the cases, Government replied (January 2013) in respect of SR, Gopalapatnam that the issue of applying for permission to construct the houses cannot alter the nature of the land to non-agriculture unless the land is actually developed and developed as sites or the said property was sold and registered adopting sq.yard rate previously. It was also clarified that in the memo¹³ dated 5 March 2009, that sq.yard rate applicable for developed house sites could not be fixed merely because the party was planning to build houses in the land at a later date. The reply is not acceptable, since notice was already issued by the Revenue Department in 2009 and conversion fee was paid by the developer in July 2010. Further, as per Section 6 of AP Agricultural Land (Conversion for non-agricultural purpose) Act, 2006 where lands already have been converted without obtaining the permission, the land shall be deemed to have been converted into non-agricultural purpose and upon such deemed conversion, fine is leviable. Therefore, the date of effect of conversion is the date on which the notice had been issued by the Revenue Department, after detecting the same.

The Sub Registrar, Bheemunipatnam stated (June 2010) that only the tentative layout was approved and the land was not developed. The reply is not tenable as the layout of the schedule property was approved by Visakhapatnam Urban Development Authority (VUDA) as far back as in 2007 and the same was not disclosed in the document. Further, since the land was converted from agricultural to non-agricultural purposes, square yard rate was applicable.

Government's reply in respect of SR, Bheemunipatnam has not been received.

5.13 Short levy of stamp duty and registration fees on sale deed

As per the Commissioner and Inspector General (R&S) Circular Memo (No. MV3/16180/2004 dated 20 March 2010) in the light of the judgment of the Honourable High Court of AP (W.A. 1455/2004), where the properties are acquired in public auction and the rate is fixed by the Government/Tribunals/Courts, such rate should be taken for the purpose of chargeability of the document.

We noticed (May 2011) during test check of the records of the SR, Bodhan, that a sale deed was presented by the Official Liquidator, High Court of AP, for registration on behalf of the vendor in favour of the vendee conveying land together with buildings and plant and

machinery for ₹ 8.24 crore. While registering the document the registering officer levied stamp duty and registration fee of ₹ 3.93 lakh only on land value (₹ 41.32 lakh), leaving out the value of buildings, plant and machinery mentioned in the sale deed. This resulted in short levy of stamp duty and registration fees of ₹ 29.89 lakh.

¹³ Memo No.MV3/15056/2008.

After we pointed out the case, Government accepted (January 2013) the audit observation and directed DR, Nizamabad to collect the deficit amount.

5.14 Short levy of stamp duty on Development Agreement/Development Agreement-cum-GPA

As per Article 6(B) of Schedule I-A to the IS Act, read with Government Order (G.O.Ms.No.1481 Revenue (Registration I) Department) dated 30 November 2007 effective from 03 December 2007, in respect of documents relating to agreement for construction/development or sale of immovable properties combined with GPA, stamp duty is chargeable at one *per cent* on the sale consideration shown in the document or the market value of the property as per the market value guidelines or the estimated market value for land and complete construction made or to be made in accordance with the schedule of rates approved by Commissioner and Inspector General of Stamps, whichever is higher.

5.14.1 Short levy due to suppression of facts

We noticed (December 2011) during test check of records of SR, Marredpally that a document styled as 'Development Agreement-cum-GPA' was registered in September 2010 by the landowners in favour of the developers for development of land into residential flats. The property was agreed to be shared in the ratio of 40 *per cent* to the land owners and 60 *per cent* to the builders and developers. The proposed built up area as stated in the document was approximately 20,000 sq. ft.

Cross verification with the partition deed executed by the landowners in October 2010 revealed that 40 *per cent* of the share of the property allotted to the landowners constituted 84,208 sq. feet. However, the proposed area of construction was suppressed in the 'Development Agreement cum GPA'. Stamp duty leviable at one *per cent* on the estimated market value of land and complete construction to be made worked out to ₹ 26.88 lakh, as against ₹ 15.71 lakh levied. This resulted in short levy of stamp duty of ₹ 11.17 lakh. Further, penalty under Section 41(A) is also leviable as the proposed area of construction was suppressed in the document, despite the fact that the plan was approved by the municipal authorities in June 2010 itself.

After we pointed out the case, Government reported (January 2013) remittance (November 2012) of ₹ 6 lakh.

5.14.2 Short levy due to non inclusion of land/structure cost

5.14.2.1 We noticed (September 2011) during test check of the records of DR, Anantapur that a document styled as ‘Development Agreement-cum-GPA’ was executed and registered in February/March 2011 by the land owner in favour of the developer for development of 18.15 acres of land into a project comprising residential buildings. The proposed area of construction was declared by the parties as 99,201 sq.ft. in the document for the purpose of chargeability of stamp duty. As per the terms of the agreement, the owners were entitled to 50.8 *per cent* in the area and remaining 49.2 *per cent* would be the entitlement of the developer. The owner’s share of the area had been worked out to 1,26,964.27 sq.ft and proportionate share of the developer was estimated at 1,22,964.27 sq.ft. Accordingly, the total proposed structure worked out to 2,49,929.66 sq.ft valuing ₹ 13.75 crore as per the market value guidelines. Stamp duty was to be levied at one *per cent* on the value of land and complete construction to be made. However, the registering officer levied stamp duty of ₹ 9.64 lakh instead of ₹ 20.77 lakh, resulting in short levy of stamp duty of ₹ 11.13 lakh.

After we pointed out the case, Government accepted (January 2013) the audit observation in so far as extent of land computed by the registering authority is concerned. As regards the structure, it was stated that the developer and owners mutually agreed to construct the buildings in the land share earmarked to owners only. But in the share earmarked to the developer, no constructions would be immediately undertaken. The reply of the Government is not correct as stamp duty is leviable on the entire area proposed to be developed/constructed, irrespective of the fact whether construction in developer’s share is immediately under taken or not. Further, it is also evidenced by the documents that the developers had sold out their share of land and permission to construct villas had been obtained.

5.14.2.2 We noticed (between July 2009 and May 2011) during test check of records of the three DRs¹⁴ and SR, Kukatpally that four documents styled as ‘Development Agreement/Development Agreement-cum-GPA’ were registered between April 2008 and August 2010 by the land owners in favour of the developers for development of land into residential plots/flats. Stamp duty of ₹ 13.33 lakh at one *per cent* on the estimated market value of land and complete construction to be made was leviable. However, the registering officers levied stamp duty of ₹ 7.34 lakh only by ignoring cost of the land/part of structure in three documents, and in the other document, stamp duty of ₹ 20,000 only was levied. This resulted in short levy of stamp duty of ₹ 5.99 lakh.

¹⁴ Rangareddy (East), Medak and Nalgonda.

After we pointed out the cases, the Government replied (January 2013) that an amount of ₹ 1.62 lakh was collected and remitted (January and April 2011) into Government account in respect of DR Nalgonda. The Government's replies in respect of the remaining registering officers have not been received (January 2013).

5.15 Short levy of stamp duty due to incorrect exemption

As per Article 47-A (d) of Schedule 1-A to the IS Act, stamp duty of five *per cent* is payable on the sale deeds in respect of residential flats/apartments. The Government of AP by an order (G.O.Ms. No.1 Revenue (regn. II) Department) dated 01 January 2009, exempted stamp duty on the registration of flats/apartments including semi finished structures admeasuring plinth area of less than 1,200 square feet. The exemption was applicable from 01 January 2009 to 31 December 2010.

We noticed (April 2011) during test check of the sale deeds of SR, Kamareddy that the registering officer did not levy stamp duty of five *per cent* on eight sale deeds registered after December 2010 in cases of flats measuring less than 1,200 sq.ft. Thus, incorrect exemption of stamp duty resulted in short levy of stamp duty of ₹ 5.13 lakh.

After we pointed out the cases, Government accepted (January 2013) the audit observation and directed District Registrar, Nizamabad to collect the deficit amount.