

CHAPTER-IV EXECUTIVE SUMMARY

Revenue Impact of Audit Reports in respect of Stamp Duty and Registration Fees

During the last five years (excluding the current year's report), through the audit reports we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 531.98 crore in 47 cases. Of these, the Department/Government accepted audit observations in 26 cases involving ₹ 307.41 crore and had recovered ₹ 1.35 crore in 13 cases only.

The recovery in accepted cases was very low (0.44 *per cent* of the accepted money value).

Results of audit

Test check of records in the offices of the Additional Superintendent of Stamps and Sub-Registrars (SR) in the State during the year 2012-13 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 108.69 crore in 462 cases.

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 28.69 lakh in 15 cases, of which one cases involving ₹ 16,975 were pointed out in audit during the year 2012-13 and the rest in earlier years.

What we have highlighted in this Chapter

Incorrect determination of market value of properties in 225 cases resulted in short levy of stamp duty and registration fees of ₹ 8.15 crore in 34 offices.

In 20 offices incorrect classification of 80 documents resulted in short realisation of stamp duty and registration fee of ₹ 41.89 crore.

CHAPTER-IV

STAMP DUTY AND REGISTRATION FEES

4.1 Tax administration

The overall control on the levy and collection of stamp duty and registration fees rests with the Revenue Department. The Inspector General of Registration (IGR) and Superintendent of Stamps, Gandhinagar is the head of the Department. The IGR is assisted by the Sub-Registrar (at the district and *taluka* level) whereas the Superintendent of Stamps is assisted by the Deputy Collector (Stamp Duty Valuation Office) [DC (SDVO)] at the district level.

4.2 Analysis of budget preparation

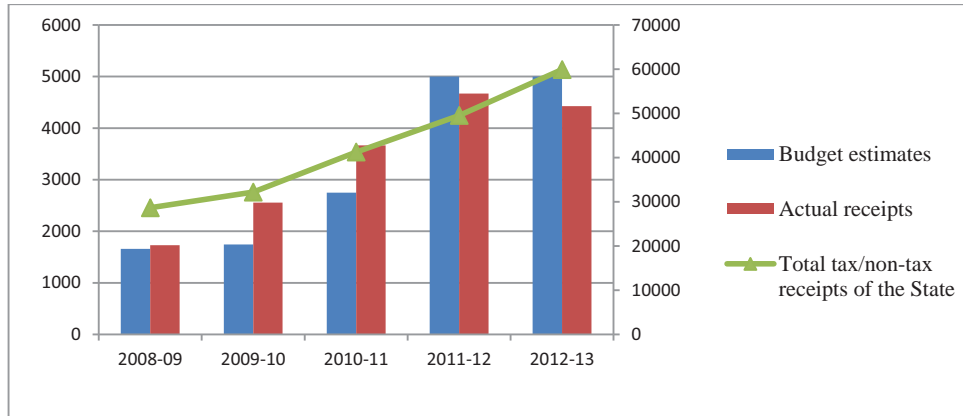
The budget estimates are furnished by the IGR and Superintendent of Stamps, Gandhinagar in the prescribed format to the Finance Department. While preparing the budget estimates, the Department considers normal growth of the State economy, revenue of the previous year, inflation/recession factor and number of documents likely to be registered.

4.3 Trend of Revenue

The budget estimates and actual realisation of stamp duty and registration fees during the last five years 2008-09 to 2012-13 were as under:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts <i>vis-a-vis</i> total tax and non-tax receipts
2008-09	1,658.00	1,728.50	(+) 70.50	(+) 4.25	28,656.35	6.03
2009-10	1,745.75	2,556.72	(+) 810.97	(+) 46.45	32,191.94	7.94
2010-11	2,750.00	3,666.24	(+) 916.24	(+) 33.32	41,253.65	8.89
2011-12	5,000.00	4,670.27	(-) 329.73	(-) 6.59	49,528.81	9.43
2012-13	5,000.00	4,426.93	(-) 573.07	(-) 11.46	59,913.68	7.39



Stamp Duty collections constituted 6.03 to 9.43 *per cent* during 2008-09 to 2012-13 of the total receipts of the State.

From the above, it is seen that there were huge variations between the budget estimates and the actual revenue collection during 2009-10, 2010-11 and 2012-13. The variation was moderate during 2008-09 and 2011-12. The Department stated that during the year 2012-13, number of documents registered declined by 14.78 *per cent* and therefore, there was variation between budget estimates and actuals.

4.4 Cost of collection

The gross collection in respect of receipt of stamp duty and registration fees, expenditure incurred on its collection and the percentage of such expenditure to gross collection during the years 2010-11 to 2012-13 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years are mentioned below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the preceding year
Stamp duty and registration fees	2010-11	3,666.24	62.73	1.71	2.47
	2011-12	4,670.27	70.68	1.51	1.60
	2012-13	4,426.93	70.13	1.58	1.89

The cost of collection in respect of stamp duty and registration fees during last three years was lower than the respective preceding year's all India average.

4.5 Impact of Audit Reports– Revenue impact

During the last five years (excluding the current year's Report), through the Audit Reports, we had pointed out cases of non/short levy, non/short realisation, underassessment/loss of revenue, application of incorrect rate of stamp duty, incorrect computation etc., with revenue implication of ₹ 531.98 crore in 47 cases. Of these, the Department/Government accepted

audit observations in 26 cases involving ₹ 307.41 crore and had recovered ₹ 1.35 crore in 13 cases only. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2007-08	15	148.91	7	9.63	3	0.83
2008-09	12	78.77	5	0.07	5	0.06
2009-10	8	6.64	2	0.05	1	0.04
2010-11	1	281.73	1	281.73	1	0.05
2011-12	11	15.93	11	15.93	3	0.37
Total	47	531.98	26	307.41	13	1.35

The above table has been prepared taking into consideration the replies of the Department wherein they accepted the audit observations. The above table indicates that recovery in accepted cases was very low (0.44 per cent of the accepted money value).

We recommend that the Government consider issuing suitable instructions to the Department for taking effective/speedy and timely action in recovering the amounts, especially in those cases which have been accepted by the Department.

4.6 Results of audit

Test check of records in the offices of the Additional Superintendent of Stamps and Sub-Registrars (SR) in the State during the year 2012-13 revealed short realisation of stamp duty and registration fees and other irregularities involving ₹ 108.69 crore in 462 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1	Misclassification of documents	96	24.99
2	Undervaluation of property	128	16.32
3	Incorrect grant of exemption	1	9.30
4	Underassessment of stamp duty on instruments of mortgage deeds	10	0.39
5	Short levy of Stamp Duty and Registration Fees	179	54.54
6	Other irregularities	48	3.15
	Total	462	108.69

During the course of the year, the Department accepted and recovered under-assessment and other irregularities of ₹ 28.69 lakh in 15 cases, of which one case involving ₹ 16,975 was pointed out in audit during the year 2012-13 and the rest in earlier years.

A few illustrative cases involving ₹ 59.77 crore are mentioned in the succeeding paragraphs:

4.7 Audit observation

During the scrutiny of the records of various registration offices, offices of the DC (SDVO) and Additional Superintendent of Stamps, we observed several cases of non-compliance of the provisions of the Registration Act, 1908, the Gujarat Stamp Act, 1958 (GS Act), the Gujarat Stamp (Determination of market value of property) Rules, 1984 etc., and the Government notifications and other rules as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the departmental officers are pointed out by us in each year; but not only does the irregularity persist; these remain undetected till an audit is conducted in the next year. There is need for Government to improve the internal control system and internal audit so that such omissions can be detected and prevented in future.

4.8 Non/short levy of stamp duty and registration fees due to undervaluation of properties

Section 32 A of the GS Act provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the DC (SDVO) for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984 and the orders issued there under.

During test check of documents adjudicated/ registered in the office of the Additional Superintendent of Stamps, Gujarat State, Gandhinagar, DC (SDVO), Gandhinagar and 32 SR offices, we noticed

(between September 2010 and January 2013) that the market value of the properties was determined incorrectly in 225 documents, which resulted in short levy of stamp duty and registration fee of ₹ 8.15 crore as mentioned in the following table:

Sl. No.	Name of office	Number of documents Period of Registration of documents	Short levy of stamp duty and registration fees
1	Additional Superintendent of Stamps, Gandhinagar	3 Between October 2010 and March 2011	₹ 105.16 lakh

As per Section 2 (g) of GS Act, conveyance on sale includes every instrument by which movable/ immovable property is transferred *inter vivos*. Further the explanation given under Section 2 (ja) of GS Act specifies that the transfer/sale of plant and machinery of factory with an intention to run the factory, such transaction shall be deemed to be a transaction of immovable property.

As per Article 20 (d) of Schedule-I to the Act, *ibid*, in case of conveyance, so far as it relates to reconstruction or amalgamation of companies by an order of the High Court under Section 394 of the Companies Act, 1956, the rate of stamp duty is: (i) one *per cent* of the aggregate amount comprising of the market value of share issued or allotted in exchange of or otherwise, or the face value of such shares, whichever is higher and the amount of consideration, if any, paid for such amalgamation, or (ii) an amount of one *per cent* of the true market value of the immovable property situated in the State of Gujarat of the transferor company, whichever is higher.

Nature of Observation: Recitals of documents revealed in two cases of amalgamation of companies by virtue of orders of High Courts, the Adjudicating Authorities did not consider (December 2010 and March 2011) the value of plant and machineries for levy of stamp duty. In one case, value of preference shares amounting to ₹ 1.48 crore was not included (October 2010) in the value of shares issued for levy of stamp duty. The properties valuing ₹ 131.59 crore were adjudicated for a market value of ₹ 26.43 crore resulting in short levy of stamp duty of ₹ 105.16 lakh.

We pointed out these cases to the Department in April 2013. The Department stated (August 2013) that they had referred these cases to Chief Controlling Revenue Authority (CCRA) for adjudication.

2	SR: Ahmedabad-VII, Gandhinagar, Kalol, Surat-II and Vadodara-III	8 Between May 2011 and October 2011	₹ 77.46 lakh
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Jantri rates were revised with effect from 1 April 2008 and again revised with effect from 1 April 2011. As per the guidelines issued for implementation of revised *Jantri* rates, developed land includes land which can be used for non-agriculture purpose, land wherein development can take place or which is capable of being developed e.g. land converted into non agriculture, land included in development scheme (*vikas yojana*)/Town Planning scheme, land purchased under Section 63 A and 63 AA of the Gujarat Tenancy and Agricultural Lands Act, 1948 and land included in Special Economic Zone and Information Technology Parks.

Nature of Observation: Our scrutiny of eight cases revealed that:

- In one case, Collector granted permission (September 2011) for change of use of land from agricultural purpose to non agricultural (NA) i.e. residential purpose. Department applied the *jantri* rate applicable to agricultural land instead of rate of ₹ 7,525 per sq. mtr. applicable for residential purpose resulting in short levy of stamp duty of ₹ 3.99 lakh.
- In remaining seven cases, land admeasuring 44,548 sq. mtr. was converted (between May 2010 and June 2011) from new and restricted tenure to old tenure for NA purposes. However, SRs adopted *jantri* rates of agricultural land for levy of stamp duty at the time of registration (between May and December 2011) of these documents resulting in short levy of stamp duty of ₹ 73.47 lakh.

These properties were required to be registered for a market value of ₹ 32.59 crore, but these were registered for a market value of ₹ 14.95 crore resulting in total short levy of stamp duty of ₹ 77.46 lakh in eight cases.

We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.

3	SR: Anjar, Bharuch, Bhuj, Jamnagar-I, Morbi and Rajkot-III	<u>36</u> Between November 2008 and November 2011	₹ 31.91 lakh
<p>IGR in his circular dated 26 November 2007 instructed SRs to include area of common plot, internal road etc., in total area of land for arriving at the market value of property for the purpose of levy of stamp duty.</p> <p>Nature of Observation: Recitals of documents revealed that in the above cases, the land owners had divided the total area of land into various plots. Conveyance deeds were executed by the land owner for transfer of the said plots including common plot and internal road. We observed that in these cases of conveyances, for the purpose of levy of stamp duty, the SRs did not include areas of common plots, internal roads, etc. in the total area of land. These properties were required to be registered for a market value of ₹ 15.41 crore, but were registered for a market value of ₹ 7.84 crore resulting in short levy of stamp duty of ₹ 31.91 lakh.</p> <p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had referred one case to CCRA for adjudication. They had issued/ had been issuing demand notices in remaining 35 cases.</p>			
4	SR: Ahmedabad-II, Bhuj, Junagadh, Rajkot-III and Surat-IV	<u>19</u> Between May 2011 and November 2011	₹ 67.48 lakh
<p><i>Jantri</i> rates were revised with effect from 1 April 2008 and again revised with effect from 1 April 2011. Further, as per Explanation 1 below Article 20, where subsequently a conveyance deed is executed in pursuance of an agreement to sale, the stamp duty, if any already paid and recovered on the agreement of sale, which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.</p> <p>Nature of Observation: Recitals of documents in the above cases revealed that agreements to sale with possession were entered into by landowners with purchasers between September 2006 and March 2011, but consequent sale deeds were executed between May and November 2011, i.e. after introduction of new <i>jantri</i> rates effective from 01.04.2011, which were comparatively higher. These properties were required to be registered for a market value of ₹ 26.07 crore at the rates prescribed in new <i>jantri</i>, but RAs registered these for a market value of ₹ 9.99 crore at the pre-revised rates resulting in short levy of stamp duty of ₹ 67.48 lakh.</p> <p>We pointed out these cases to the Department between April 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.</p>			
5	SR: Gandhidham, Rajkot-III and Vadodara-I	<u>5</u> Between May 2011 and October 2011	₹ 7.84 lakh
<p>Nature of Observation: Recitals of documents revealed that in the five cases, the SRs adopted lower rates available in the <i>jantri</i> instead of the applicable rates. Out of these, in two cases, SRs adopted <i>jantri</i> rates of office instead of developed lands and in remaining three cases, SRs adopted <i>jantri</i> rates of industrial land instead of developed land for levy of stamp duty. These properties were required to be registered for a market value of ₹ 5.16 crore, but were registered for a market value of ₹ 3.50 crore resulting in short levy of stamp duty of ₹ 7.84 lakh.</p> <p>We pointed out these cases to the Department between April 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.</p>			

6	SR: Dhandhuka, Jamnagar-II and Surat-II	10 Between January 2009 and December 2011	₹ 37.80 lakh
<p>Nature of Observation: Recitals of documents revealed that in these 10 cases of gift deeds, in one case, though the land was used for residential purpose (as was evident from photograph attached) the SR adopted <i>jantri</i> rates of agricultural land for levy of stamp duty. In other five cases, agricultural lands were gifted to trusts for educational, dispensary and other charitable purposes, but SR adopted <i>jantri</i> rates of agricultural land for levy of stamp duty & registration fees. Though the lands in question were agricultural at the time of registration of documents, these lands were intended for NA use because the transferees were not agriculturists. In remaining four cases, SRs adopted incorrect <i>jantri</i> rates. These properties were required to be registered for a market value of ₹ 12.07 crore, but were registered for a market value of ₹ 5.63 crore resulting in short levy of stamp duty and registration fees.</p> <p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had issued order for recovery of deficit stamp duty in one case. They had issued/ had been issuing demand notices in remaining nine cases.</p>			
7	SR: Ankleshwar, Gandhinagar, Surat-II, Vadodara- IV	6 September 2009 and December 2011	₹ 58.34 lakh
<p>The Superintendent of Stamps had specifically instructed the SRs vide his circular of 2 April 2008 that wherever the rates in new <i>jantri</i> are lower than that of old <i>jantri</i>, it should be referred to the DC (SDVO) under Section 32A of the Gujarat Stamp Act, 1958.</p> <p>Under Article 20(a) of Schedule I to the Act, In case of conveyance deed, stamp duty is leviable at the rate of 4.9 <i>per cent</i> of the amount of consideration of such conveyance or the market value of the property, whichever is greater.</p> <p>Nature of Observation: We observed that in these six cases:</p> <ul style="list-style-type: none"> ➤ In one case, recitals of the document revealed that the SR did not consider market value of movable property (i.e. plant and machinery) valued at ₹ 2.12 crore shown to have been conveyed in the deed for levy of stamp duty. Stamp duty was levied only for the consideration of immovable property. ➤ In three cases, recitals of the documents revealed that new <i>jantri</i> rates were lower than old <i>jantri</i> rates, but the SR did not refer the document to DC (SDVO) for valuation contrary to Circular of 2 April 2008. ➤ In one case of permanent allotment of lease hold land valued at ₹ 4.21 crore as per <i>jantri</i> by Gujarat Industrial Development Corporation (GIDC) to a lessee, recitals of the document revealed that stamp duty was not levied on the market value of property as per <i>jantri</i> rate, but was levied on actual premium paid which was only equal to 30 <i>per cent</i> of market value. ➤ In one case, recitals of the document revealed that new tenure agricultural land was conveyed to the purchaser for a consideration of ₹ 4.02 crore along with liability of payment of premium price¹¹⁹ of ₹ 1.01 crore. As the land was conveyed to the purchaser for a total consideration of ₹ 5.03 crore, stamp duty was leviable on this amount. But, premium price was not included in consideration for levy of stamp duty. <p>These properties were required to be registered for a market value of ₹ 29.27 crore, but were registered for a market value of ₹ 16.54 crore resulting in short levy of stamp duty and registration fees of ₹ 58.34 lakh.</p>			

¹¹⁹ Premium price was required to be paid by the seller for conversion of new and restricted tenure agricultural land to old tenure.

<p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they have referred three cases to Chief Controlling Revenue Authority (CCRA) for adjudication. They had issued/ had been issuing demand notices in remaining three cases.</p>			
8	SR : Vadodara-III	6 January 2010 and July 2010	₹ 15.50 lakh
<p>As per the guidelines of Annual Statements of Rates (ASR) 2006, the terrace of the flat/ offices should be valued at the rate of 40 <i>per cent</i> of the market value of the property covered in the respective zone.</p> <p>Nature of Observation: Recitals of documents revealed that in six cases, rights of terrace were passed on to the developers/confirming party by the land owners at the time of sale of flats to the purchasers, but SR did not consider FSI retained by developers valued at ₹ 3.16 crore for levy of stamp duty.</p> <p>We pointed out these cases to the Department in February 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.</p>			
9	SR: Ahmedabad-I, Bhavnagar-I, Surat-I and III, Vadodara-I	5 Between February 2011 and March 2011	₹ 23.08 lakh
<p>As per the guidelines of ASR 2006, in case of transfer of residential property along with tenants residing for a period of more than 15 years, rebate of 20 <i>per cent</i> may be allowed in <i>jantri</i> rates for valuation of property. In case of sale of mezzanine¹²⁰ floor, the value of the property has to be arrived at by considering only 70 <i>per cent</i> of the value specified in the value zone of the ASR 2006.</p> <p>Nature of Observation: Recitals of the documents revealed that in these five cases:</p> <ul style="list-style-type: none"> ➤ In one case, commercial property with tenants valued at ₹ 5.93 crore had been conveyed but SR incorrectly allowed 20 <i>per cent</i> reduction in actual market value for levy of stamp duty, though the reduction was applicable only to residential property with tenants. ➤ In one case, SR did not take into consideration area of land admeasuring 912 sq. mtr. on which construction had been made and valued the property at ₹ 3.19 crore for levy of stamp duty. Thus, stamp duty was levied only on the market value of area of construction admeasuring 1,825 sq. mtr. ➤ In two cases, SRs didn't consider area of construction¹²¹ admeasuring 16,869 sq. mtr. and valued the property at ₹ 5.86 crore for levy of stamp duty. Thus, stamp duty was levied only on the area of land admeasuring 26,338 sq. mtr. ➤ In one case, basement of a constructed property was conveyed, but SR considered it as conveyance of mezzanine of constructed property. <p>These properties were required to be registered for a market value of ₹ 26.93 crore, but were registered for a market value of ₹ 9.89 crore resulting in short levy of stamp duty and registration fees.</p> <p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.</p>			

¹²⁰ Mezzanine is an intermediate floor between main floors of a building.

¹²¹ Area of construction means the area of land on which property was constructed as against the area kept open.

10	SR: Ahmedabad-II, Anjar, Ankleshwar, Gandhinagar, Godhara, Jamnagar-I, Jamkhambhalia, Mehsana, Pardi, Sanand, Surat-III, Vadodara-II and IV, DC (SDVO): Gandhinagar	41 Between April 2009 and December 2011	₹ 206.15 lakh
<p>Nature of Observation: Recitals of documents revealed that in these 41 cases, agricultural land was conveyed to non-agriculturists (i.e. company, partnership firm, trust, <i>sahkarimandali</i>, etc), with or without permission of competent authorities under provisions of Gujarat Tenancy and Agricultural Lands Act, 1948 for various non-agricultural purposes. In these cases, SRs adopted <i>jantri</i> rates of agricultural lands instead of NA rates for levy of stamp duty. These properties were required to be registered for a market value of ₹ 68.92 crore, but were registered for a market value of ₹ 25.18 crore resulting in short levy of stamp duty and registration fees.</p> <p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had recovered ₹ 7.84 lakh in four cases. In two cases, DC (SDVO) had decided that the documents are properly stamped. In seven cases, orders have been issued for recovery of deficit stamp duty and one case was referred to CCRA for adjudication. They had issued/ had been issuing demand notices in remaining 29 cases.</p>			
11	SR: Ahmedabad-II, Anand, Anjar, Bhuj, Gandhinagar, Godhara, Jamnagar-II, Himatnagar, Mansa, Pardi, Surat-I and II, Vadodara-I, II and III	86 Between January 2010 and December 2011	₹ 184.04 lakh
<p>Nature of Observation: We observed that in these 86 cases, SRs adopted incorrect <i>jantri</i> rates like rates of another value zone, rates of revenue survey numbers instead of city survey number, rates of Town Planning Final Plot number instead of City Survey number, rates of non-irrigated agricultural land for the irrigated land, etc. These lapses occurred at the time of registration of sale deeds. No internal control system was put in place by the Department for detection of these irregularities. These properties were required to be registered for a market value of ₹ 128.98 crore, but were registered for a market value of ₹ 70.63 crore resulting in short levy of stamp duty and registration fees of ₹ 1.84 crore.</p> <p>We pointed out these cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had recovered ₹ 3.14 lakh in six cases. In one case, DC (SDVO) had decided that the document is properly stamped. They had issued/ had been issuing demand notices in remaining 79 cases.</p>			
Total		225	₹ 814.76 lakh i.e. ₹ 8.15 crore

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.9 Undervaluation of property by DC (SDVO)

Section 31 of the GS Act provides that the Collector shall determine the duty with which any instrument is chargeable. Section 32 (A) of the GS Act provides that if the officer registering the instrument believes that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall refer the same to the DC for determination of the market value of the property. The market value of the property is to be determined as per the Gujarat Stamp (Determination of Market Value of the Property) Rules, 1984. Adjudication by the Collector is effective only if he certifies by an endorsement on the document the fact of payment of full duty. If no such certificate is recorded, the adjudication is rendered useless in law [CCRA Vs Dr. Manjunathrai, (1976), 2 MLJ 279: AIR 1977 M 10 (FB)].

In case market value determined by the Collector under Section 31 of the Act is less than the market value as per *jantri*, it must be again forwarded to the Collector under Section 32 (A) of the Act for determination of fair market value. After payment of full duty, the Collector shall certify the same by endorsement on such document. Where the party sought the Collector's opinion under Section 31 on an instrument which was not stamped and stamped it later in

accordance with Collector's opinion, but did not present it again after such stamping before the Collector and did not get it certified under Section 32, the Collector's opinion cannot be regarded as final and does not preclude other authorities from reopening it under Section 33¹²².

Test check of the records of 10 SR offices¹²³ for the year 2010 and 2011, between October 2011 and January 2013, revealed that in 111 cases, market value determined by the DC (SDVO) under section 31 was much lower than the market value as per *jantri*. We observed that the Sub-Registrars while registering the documents did not refer those cases to the DC (SDVO) under section 32 A for determination of true market value and certificate of endorsement on the instrument. This resulted in minimum short levy of stamp duty of ₹ 7.69 crore calculating with *jantri* rates.

We pointed out these cases to the Department between February to May 2013. The Department stated (August 2013) that they had referred 37 cases to CCRA for adjudication. They had issued/ had been issuing demand notices in remaining 74 cases.

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

¹²² CCRA Vs. Dr. ManjunathRai, supra

¹²³ Bhavnagar-I and II, Gondal, Morbi, Navsari, Surat- III (Navagam), IV (Katargam), Vadodara- I (City), II (Danteshwar) and IV (Gorva)

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

Under Section 3 of the GS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates. As per various court judgments, at the time of registration of document, regard should be to the substance of the document and not to the description at the head of the document.

During test check of the documents in the office of the Additional Superintendent of Stamps, Gandhinagar and 19 SR offices, we noticed that 80 documents registered between 2009 and 2011 were classified on the basis of their titles and the stamp duty and registration fees were levied accordingly. Scrutiny of the recitals of these

documents revealed that the documents were misclassified. This resulted in short levy of stamp duty and registration fees of ₹ 41.89 crore as mentioned in the following table:

(₹ in crore)

Sl. No.	Name of office	Number of documents/ Amount of loan or consideration	Stamp duty and registration fees leviable	Stamp duty and registration fees levied	Short levy of stamp duty and registration fees
1	SR - Ahmedabad-II and III, Anjar (Kutchh), Anand, Ankleshwar, Bhavnagar-II, Gandhidham, Surat-III and IV, Vadodara-IV	49 1,085.55	1.13	0.79	0.34

Nature of observation: As per the instructions issued by the IGR in July 1993, if documents styled as deposit of title deed contain recitals, such as, power of attorney, provision of payment of compound interest, any mention about execution of any writing or document etc. the documents are classifiable as mortgage deed. In these documents, recitals contained conditions such as payment of compound interest, penal interest in case of default, fixing of conditions by sanction letter etc. which clearly indicate creation of charge over properties. These documents were classified as equitable mortgage under Article 6 (1) (a) instead of mortgage under Article 36(b) of Schedule-I of GS Act. Though, basic rate¹²⁴ of stamp duty is same under both the Articles, Mortgage deeds under Article 36(b) attracts additional duty of 40 *per cent*. Thus, misclassification of mortgage deed as equitable mortgage resulted in short levy of stamp duty of ₹ 34 lakh.

We pointed out these 49 cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had recovered ₹ 3.06 lakh in six cases. In two cases, DC (SDVO) had decided that the documents are properly stamped. They had issued/ had been issuing demand notices in remaining 41 cases.

¹²⁴ When the amount of loan does not exceed ₹ 10 crore, 0.25 *per cent* of the loan amount subject to maximum of ₹ 1 lakh. When the amount of loan exceeds ₹ 10 crore, 0.50 *per cent* of the loan amount subject to maximum of ₹ 3 lakh.

2	Additional Superintendent of Stamps, Gujarat State, Gandhinagar	5 5,977.00	41.84	1.12	40.72
<p>As per Article 36 (b), in case of mortgage deed, when possession of the property or any part of the property comprised in such deed is not given or not agreed to be given, stamp duty is leviable at the rate of 0.35 <i>per cent</i> of the loan amount subject to maximum of ₹ 1.20 lakh (including additional duty), when the amount of loan does not exceed ₹ 10 crore. When the amount of loan exceeds ₹ 10 crore, stamp duty is leviable at the rate of 0.70 <i>per cent</i> of the loan amount subject to maximum of ₹ 4.20 lakh (including additional duty). As per Article 36 (c), when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose is given, where the principal or primary security is duly stamped, stamp duty is leviable at the rate of 0.70 <i>per cent</i>.</p> <p>Nature of observation: Recitals of documents indicated that deeds of additional security were executed in favour of financial institutions. Immovable properties were brought as additional securities to secure the loan already granted by financial institutions through mortgage deeds. Stamp duty at the rate of 0.70 <i>per cent</i> was required to be levied under Article 36 (c) of Schedule I to GS Act, 1958. But, adjudicating authority treated these documents as deeds of mortgage/ debenture trust deeds. Thus, deeds of additional security were misclassified as mortgage/ debenture trust deeds.</p> <p>We pointed out these five cases to the Department between February 2013 and April 2013. The Department stated (September 2013) in respect of one case that at the time of disbursement of loan of ₹ 5117 crore, the three companies viz. Ahmedabad Electricity Company, Surat Electricity Company and Torrent Power Generation Ltd. (SUGEN) had mortgaged/ hypothecated their properties. Later, these companies amalgamated with Torrent Power Ltd. After amalgamation, the properties owned by the three companies vested with Torrent Power Ltd. The Banks rights in the said mortgaged property were created at the time when these properties were owned by three companies. After amalgamation of these three companies with Torrent Power Ltd., the execution of a fresh mortgage deed became necessary to maintain the Banks rights over the mortgaged property, which now stood in the name of Torrent Power Ltd. As no additional property has been mortgaged, the deed cannot be treated as that of mortgage with additional security. The reply of the Department is not tenable in view of the fact that in the statements kept with the case files, it has been clearly mentioned that additional assets over and above the assets initially mortgaged were offered as security after date of amalgamation. In remaining four cases, they stated (August 2013) that they had referred these cases to CCRA for adjudication.</p>					
3	SR : Gandhidham, Pardi (Valsad) and Vadodara –I (City)	4 10.61	0.15	0.03	0.12
<p>In case of lease agreement, stamp duty is leviable under Article 30 of Schedule I of GS Act with reference to the period of lease and/or the value of average annual rent reserved. In case of leave and licence agreement, stamp duty is leviable under Article 30A of Schedule I of GS Act at the rate of 0.50 <i>per cent</i> on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced, irrespective of the period for which such leave and licence agreement is executed.</p> <p>Nature of observation: Recitals of documents revealed that in three cases, leave and licence agreements were treated as lease deeds for nine years. In one case, lease deed for 30 years was misclassified as leave and licence agreement.</p>					

<p>We pointed out these four cases to the Department between April 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.</p>					
4	SR : Mehsana, Tharad and Vadodara-III (Akota)	<u>3</u> 1.72	0.09	Negligible	0.09
<p>As defined under Section 2 (c) of the Act, “conveyance” includes a conveyance on sale or any instrument, by which property, whether movable or immovable or any estate or interest in any property is transferred or vested in any other person, <i>inter vivos</i>.</p> <p>Nature of observation: In these cases, there were conveyance/ release of rights by the executants and therefore, stamp duty were leviable under Article 20(a) of Schedule I of GS Act as in case of conveyance/ release. But, SRs treated these cases as that of consent deeds. Thus, conveyance/ release deeds were misclassified as consent deeds.</p> <p>We pointed out these three cases to the Department in May 2013. The Department stated (August 2013) that they had recovered ₹ 1.50 lakh in one case. They had issued/ had been issuing demand notices in remaining two cases.</p>					
5	SR : Ahmedabad-II (Wadaj), Ankleshwar, Godhra and Rajkot-I	<u>6</u> 7.96	0.40	0.02	0.38
<p>Under Article 20(a) of Schedule I of GS Act, in case of a conveyance, stamp duty is leviable at the rate of 4.90 <i>per cent</i> on the amount of the consideration for such conveyance or the market value of the property, whichever is higher. Under Article 44 (1), in case of partnership deed, stamp duty is leviable at the rate of one per cent of the amount of the capital of partnership, subject to maximum of ₹ 10,000.</p> <p>Nature of observation: In one case, leasehold rights were transferred by the executants and stamp duty and registration fees were required to be levied at the rates applicable to conveyance, but this assignment of lease was treated as lease deed. In three cases, properties of individual partners were transferred to the firms and therefore, stamp duty and registration fees were leviable as a conveyance. But, SRs treated these cases as partnership deed and levied stamp duty accordingly. In one case, cancellation of gift deed was treated as declaration deed and the SR did not levy stamp duty at the rates applicable to conveyance.</p> <p>We pointed out these six cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in all the six cases.</p>					
6	SR : Ahmedabad-V (Narol), Bhuj, Surat-IV (Katargam) and Vadodara-I (City)	<u>6</u> 3.07	0.13	Negligible	0.13
<p>As per IGR’s circular dated 14.07.1982, in case change is made in more than one or two of the four boundaries or area of land is increased by way of execution of a correction deed, then the instrument would be classifiable as conveyance deed and stamp duty would be leviable as per Article 20 of Schedule of the GS Act.</p>					

<p>Nature of observation: In one case of correction deed, area of land was enhanced. In five cases of correction deeds, all the four boundaries of the property were changed. Stamp duty and registration fees were required to be levied at the rates applicable to conveyance. But, SRs treated these cases as correction deeds and levied stamp duty and registration fees accordingly.</p> <p>We pointed out these six cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that in one case, DC (SDVO) had decided that the document is properly stamped. They had issued/ had been issuing demand notices in three cases. In the remaining two cases, the reply is awaited (December 2013).</p>					
7	SR : Gondal and Tharad	7 1.80	0.11	Negligible	0.11
<p>Explanation I under Article 20 of Schedule I of GS Act stipulates that an irrevocable power of attorney shall, in case of transfer of possession of such property before, at the time of, or after the execution of such power of attorney be deemed to be a conveyance and stamp duty thereon shall be chargeable accordingly. As per Section 45 (f), in case of PoA given for consideration and authorising the attorney to sale any immovable property, stamp duty is leviable as in the case of a conveyance under Article 20.</p> <p>Nature of observation: In seven cases of irrevocable powers of attorney/power of attorney, power to execute sale deeds, handing over of possession of the properties, etc. were given to the power of attorney holders and therefore, stamp duty and registration fees were leviable at the rates applicable to conveyance. But, SRs treated these documents as general powers of attorney and levied stamp duty and registration fees accordingly.</p> <p>We pointed out these seven cases to the Department between February 2013 and May 2013. The Department stated (August 2013) that they have recovered ₹ 10,260 in one case, three cases were referred to CCRA for adjudication and in the remaining three cases, issuance of notice is in progress.</p>					
Total		80 7087.71	43.85	1.96	41.89

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.11 Non/short levy of stamp duty and registration fees on instruments comprising several distinct matters

As per section 5 of the GS Act any instrument comprising of distinct transactions shall be chargeable with aggregate amount of duties with which separate instruments would be chargeable under the Act.

During test check of the documents of seven SR Offices for the period 2010 and 2011, between April 2012 and January 2013, we noticed from recitals of ten

documents that there were more than one distinct transaction, however, the SRs did not take cognizance of the recitals of the documents and verify the nature of transactions through the document. Stamp duty and registration fees forgone in these cases were ₹ 75.51 lakh as detailed in the following table:

Sl. No.	Name of office	Number of documents	Short levy of stamp duty and registration fees
1	SR: Jamnagar-I, Sanand, Surat-III (Navagam) and Vadodara-III	7	₹ 65.37 lakh
<p>As per Article 44 (3) (a) of Schedule I of GS Act, in case of dissolution of partnership, where any immovable property is taken as his share by a partner other than a partner who brought that property as his share or contribution to partnership, stamp duty is leviable as in case of a conveyance under Article 20 for the market value of property. As per Article 44 (3) (b), stamp duty payable on dissolution of partnership is ₹ 100.</p> <p>Nature of Observation: We observed that out of these seven cases:</p> <ul style="list-style-type: none"> ➤ In three cases, recitals of the conveyance deeds were executed between purchasers and sellers, wherein the sellers being partners of a partnership firm have acquired the property on dissolution of the partnership firm. The recitals of the document further revealed that the sellers were not the owner of the land and no separate deed of dissolution of partnership was executed and stamp duty as applicable for conveyance deed was paid for transfer of the said properties in favour of the sellers. The original land owners who were also partners of the dissolved partnership firm joined in the conveyance deed as third party to confirm the present transaction of conveyance between the sellers and purchasers. Through the conveyance deeds, the sellers had sold their respective shares in the constructed property valued at ₹ 38.30 lakh received after dissolution of partnership. Thus, the documents comprised two distinct matters of dissolution of partnership and conveyance. However, the SR levied duty only on the conveyance deed and no stamp duty was levied as is chargeable for dissolution of partnership under Article 44 (3) (a) of Schedule I of the GS Act. ➤ The recitals of four documents indicated that at the time of dissolution of partnerships, the partners of firms distributed among themselves immovable property purchased by their respective firms. The Department did not levy stamp duty on the transfer of property by treating these as conveyance deeds. In these cases, stamp duty was levied on dissolution of partnership under Article 44 (3) (b), but stamp duty was leviable under Article 44 (3) (a) of Schedule I to the GS Act. 			
2	SR: Ahmedabad-VI	1	₹ 2.25 lakh
<p>As per Explanation I under Section 2(g) of the GS 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 be deemed to be an instrument by which the property is transferred <i>inter-vivos</i> and is chargeable to duty as conveyance.</p> <p>Nature of Observation: We noticed that two daughters of a land owner had released their shares in non agricultural land in favour of the remaining co-owners. To confirm this fact, they have signed this document as confirming parties. The document comprises two distinct matters of release and conveyance. But, SR did not levy stamp duty on this aspect of release.</p>			

3	SR: Anjar (Kutchh)	1	₹ 1.24 lakh
<p>As per Article 43 of Schedule I to the GS Act, in case of instrument of partition, the same stamp duty is leviable as on a bond for the amount of the market value of the separated share or shares of the property.</p> <p>Nature of Observation: We noticed that as per the recitals of a sale deed, a piece of land purchased jointly by two persons was partitioned between them with the help of an affidavit, which was not registered with the SR. As partition is compulsorily registrable and the sale deed contained two distinct matters (1) Partition and (2) conveyance, the SR should have levied duty on both partition and conveyance. However, it was noticed that stamp duty and registration fee was levied only on the present transaction of conveyance.</p>			
4	SR: Rajkot-IV	1	₹ 6.65 lakh
<p>Nature of Observation: Previously an agreement was executed between land owners and builder. The land owners had allotted ownership rights of all the shops of ground floor to builder in lieu of payment for cost of construction. In the present document, the builder as seller along with land owners as confirming party had sold the shops to purchasers. The consideration had also been received by the builder. Thus the document comprises two distinct matters: a. conveyance between land owners and builder and b. conveyance between builder and purchaser. But stamp duty and registration fees were levied only on the second transaction. We observed that ownership rights of shops of ground floor were given to the builder in lieu of payment of cost of construction, but stamp duty and registration fees were not levied on this transaction of conveyance.</p>			
Total		10	₹ 75.51 lakh

The Department stated (August 2013) that in one case; DC (SDVO) had decided that the document is properly stamped. They had issued/ had been issuing demand notices in remaining nine cases.

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.12 Short levy of stamp duty and registration fees on lease deeds due to incorrect computation

Article 30 of Schedule I to the GS Act provides for levy of stamp duty on lease at the rate applicable to conveyance deed. For calculation of consideration for levy of stamp duty on lease deeds, average annual rent reserved depending on the period of lease, premium paid or money advanced, are considered.

During test check of the documents of five¹²⁵ SR offices for the period 2011, we noticed that out of total nine cases, in seven cases, SRs did not include security deposit

paid in total consideration for levy of stamp duty and registration fees. In the remaining two cases, the average annual rent was erroneously calculated due to adoption of incorrect period of lease. Recitals of the documents revealed

¹²⁵ Deesa, Pardi (Valsad), Sanand, Surat-I (Athwa) and Vadodara-I (City)

that the leases were for a period of 12/15 years, but SR levied stamp duty and registration fee considering the periods of leases to be 10 years. This resulted in short levy of stamp duty and registration fees of ₹ 20.09 lakh in nine cases.

We pointed out these cases to the Department in April and May 2013. The Department stated (August 2013) that in one case, DC (SDVO) had decided that the document was properly stamped. They had issued/ had been issuing demand notices in the remaining eight cases.

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.13 Short levy of registration fees due to undervaluation of properties on partnership deeds

As per revised registration fee table, registration fee on partnership deed is leviable on *ad valorem* scale at the rate of one rupee for every one hundred rupees or part thereof on the amount or value of the consideration of the property.

During test check of the documents registered with four SR offices¹²⁶ for the period 2010 and 2011, between March 2012 and January 2013, we noticed that in 11 documents registered as partnership deed, registration fees of ₹ 15.35 lakh was short levied due to adoption of

incorrect market value of the property as follows:

Sl. No.	Name of unit Period of audit No. of cases Short levy of registration fees	Nature of observation
1	Navsari 2011 4 ₹ 4.06 lakh	Registration fees were not levied on the market value of the properties as per <i>jantri</i> rate, but it was levied on the credit given to the partners in book of accounts.
2	Ahmedabad-III (Memnagar) 2010 3 ₹ 5.00 lakh	Registration fees were levied on declared value of land in the documents and not on the market value of land as per <i>jantri</i> rates.
3	Ahmedabad-II (Wadaj) 2011 3 ₹ 4.60 lakh	In one case, SR adopted incorrect <i>jantri</i> rates for levy of registration fee. In two cases, amount contributed by partners to capital account was higher than the value of property as per <i>jantri</i> rates, which was not taken into account by SR for levy of registration fee.
4	Bhavnagar-II 2011 1 ₹ 1.69 lakh	SR did not include area of internal road into total area for calculation of market value and levy of registration fee.

We pointed out these cases to the Department in April and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.

¹²⁶ Ahmedabad-II (Wadaj), III (Memnagar), Bhavnagar-II and Navsari

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.14 Short levy of registration fees

As per the Registration Manual of Revenue Department, full registration fees on the amount agreed to be conveyed in the agreement to sale is to be levied, if the agreement to sale is cancelled and signed by both the parties to the agreement i.e. the vendor and purchaser. The ad valorem rate of registration fees is one *per cent* of the amount or value of the consideration of the property.

During test check of the documents registered with two SR offices¹²⁷ for the period 2007 and 2011, between July and October 2012, we noticed in 24 deeds of cancellation of agreement to sell that though the deeds were signed by both the parties i.e. vendors and purchasers, the SR had only levied registration fees of

₹ 30 for each document instead of full registration fees on the amount for which the properties were agreed to be sold. In another case of partition deed where property was partitioned among several co-owners, registration fees was levied short. Thus, there was total short levy of registration fees of ₹ 6.80 lakh in 25 cases.

We pointed out these cases to the Department in April and May 2013. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

4.15 Instruments not duly stamped

Section 17 of the GS Act prescribes that all instruments chargeable with duty and executed by any person in the State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the date of execution.

During test check of the documents of seven¹²⁸ SR offices for the year 2010 and 2011, between June 2011 and January 2013, we noticed in 23 documents that the stamps of ₹ 87.02 lakh were used after one day from the date of

execution of the documents. As such, the documents were not stamped according to the provisions of the GS Act and therefore, cannot be held as duly stamped. The registering authorities instead of referring the documents under Section 33 of GS Act to DC (SDVO) for the validation of stamps used after one day from the date of execution, had allowed the registration of such documents in contravention to the provisions of the Act.

¹²⁷ Anjar (Kutchh) and Dhandhuka

¹²⁸ Anjar (Kutchh), Bhuj, Gandhinagar, Jamnagar-I, Mehsana, Surat-III (Navagam) and IV (Katargam)

We pointed out these cases to the Department in March 2012. The Department stated (August 2013) that they had issued/ had been issuing demand notices in these cases.

We pointed out these cases to the Government in June 2013; we are awaiting their replies (December 2013).

Ahmedabad
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