

## CHAPTER-IV: STAMP DUTY AND REGISTRATION FEE

### EXECUTIVE SUMMARY

<b>Increase/decrease in tax collection</b>	During 2012-13 collection of Stamp Duty (SD) and Registration Fee (RF) increased by 9.38 <i>per cent</i> over the previous year. However, it decreased by 0.93 <i>per cent</i> as compared to the Budget Estimate (BE) for the year which was attributed by the Department to excess target fixed in comparison to previous year.
<b>Low recovery by the Department against the observations pointed out by audit in earlier years</b>	During the period 2007-08 to 2011-12, Audit pointed out non / short-levy, non / short-realisation of Stamp duty and Registration fee etc., with revenue implication of ₹ 594.98 crore. Of these, the Department accepted audit observations in 13,461 cases involving ₹ 15.57 crore; but recovered ₹ 5.92 crore in 2,618 cases. Average recovery was 38.02 <i>per cent</i> , as compared to accepted audit observations.
<b>Results of audit conducted in 2012-13</b>	<p>During 2012-13, Audit test checked records relating to assessment and collection of SD and RF and found short levy/realisation of SD and RF of ₹ 217.06 crore in 5,609 cases. Audit on levy of SD and RF on Development agreement was also conducted during the year.</p> <p>The Department accepted under assessment, non-realisation of revenue and other irregularities involving ₹ 50.33 crore in 1,984 cases pointed out in 2012-13 and recovered ₹ 0.20 crore in 170 cases pointed out during 2007-08 to 2010-11.</p>
<b>Highlights</b>	<p>In this Chapter a paragraph on Audit on “<b>Levy of Stamp Duty and Registration Fee on Development Agreements</b>” with money value of ₹ 133.69 crore and other observations of ₹ 1.25 crore selected from the audit observations during test check of records relating to Stamp Duty and Registration Fee in the offices of the District Sub-Registrars (DSRs) and Sub Registrars (SRs), where provisions of the Acts / Rules were not followed, are included.</p> <p>It is a matter of concern that similar omissions have also been pointed out in earlier Audit Reports but Department has not taken adequate corrective action.</p>
<b>Conclusions</b>	<p>The Department needs to improve internal control system including strengthening of internal audit wing so that weaknesses in the system are addressed and omissions of the nature detected by audit are avoided in future.</p> <p>It also needs to initiate action to realise Government dues as pointed out.</p>

#### 4.1.1 Tax administration

Levy and collection of Stamp Duty (SD) and Registration Fee (RF) is regulated under the Indian Stamp (IS) Act, 1899, the Registration Act, 1908 and Rules made thereunder. The Inspector General of Registration (IGR) under overall control of the Principal Secretary to the Government in Revenue and Disaster Management (R&DM) Department administers the above Acts and Rules being assisted by a Joint Inspector General (JIG), three Deputy Inspector General (DIGs), 30 District Registrars (DRs) and 30 District Sub Registrars (DSRs) at the district level and 151 Sub Registrars (SRs) at the unit level.

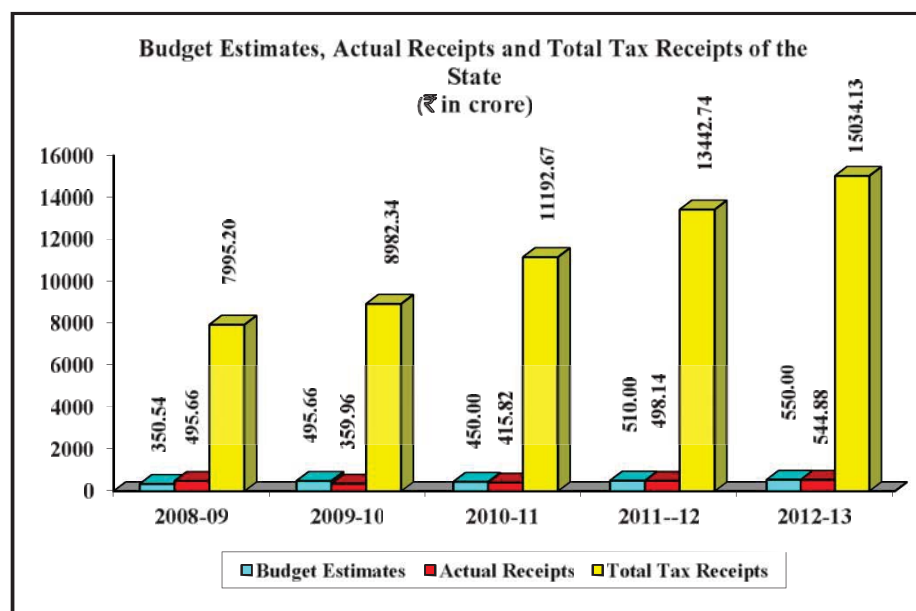
#### 4.1.2 Trend of receipts

Actual Receipts from SD and RF during 2008-09 to 2012-13 vis-à-vis budget estimate and total tax receipts are exhibited in the following table and bar graphs showing the percentage of variations and their contribution to total Tax Receipts of the State.

(₹ in crore)

Year	Budget estimate	Actual Receipts	Variation Excess (+) / Short fall (-)	Percentage of variation	Total Tax Receipts of the State	Percentage of Actual Receipts vis-à-vis Total Tax receipts
2008-09	350.54	495.66	(+)145.12	(+)41.40	7,995.20	6.20
2009-10	495.66	359.96	(-)135.70	(-)27.38	8,982.34	4.01
2010-11	450.00	415.82	(-)34.18	(-)7.60	11,192.67	3.72
2011-12	510.00	498.14	(-)11.86	(-)2.33	13,442.74	3.71
2012-13	550.00	544.88	(-) 5.12	(-) 0.93	15,034.13	3.62

Source: Finance Accounts



Reason for increase in collection during 2012-13 compared to 2011-12 was attributed by the Department to sincere efforts taken by IGR, Odisha as well as field functionaries, revision of BMV and disposal of pending under valuation cases by way of one time settlement scheme. Reason for decrease of actual receipt from Budget Estimate of 2012-13, was attributed to excess target fixed in comparison to previous year.

#### 4.1.3 Cost of collection

Gross collection under SD and RF, expenditure incurred on their collection and percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13 along with all India average percentage of expenditure for collection to gross collection in respect of the previous years are mentioned below.

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage
2010-11	415.82	17.09	4.11	2.47
2011-12	498.14	23.87	4.79	1.60
2012-13	544.88	29.62	5.44	1.89

Source : Information furnished by Department

Percentage of cost of collection exceeded all India average percentage during year 2010-11, 2011-12 and 2012-2013. Infact the cost of collection has been increasing every year. The Government may take appropriate steps to reduce cost.

#### 4.1.4 Impact of audit

##### Revenue Impact

During last five years (2007-08 to 2011-12), Audit pointed out non/short levy/realisation of SD and RF etc. with revenue implication of ₹ 594.98 crore in 1,25,905 cases. Of these, the Department/Government had accepted Audit observations in 13,461 cases involving ₹ 15.57 crore and recovered ₹ 5.92 crore in 2,618 cases.

Amount recovered as compared to acceptance of Audit observations was low. The Government may take appropriate steps for recovery of amount already accepted apart from early finalisation of cases under objection.

#### 4.1.5 Results of audit

During 2012-13, Audit test checked records relating to assessment and collection of Stamp Duty (SD) and Registration Fees (RF) and found short levy/realisation of SD and RF of ₹ 217.06 crore in 5,609 cases of which the department accepted under assessment and non-realisation of revenue and other irregularities of ₹ 50.33 crore in 1,984 cases and recovered ₹ 0.20 crore in 170 cases pointed out during 2004-05 to 2010-11.

## **4.2 Audit of “Levy of Stamp Duty and Registration Fee on Development Agreements”**

### **4.2.1 Introduction**

Development Agreement (DA) or Collaboration Agreement (CA) is a mechanism for marketing of Land/immovable property situated in urban/semi urban areas of the State by entering into an agreement creating mutual rights and obligations, where owner agrees to transfer ownership of land to developer for a consideration either in form of cash or a portion of the constructed property or both. Then Developer promotes and develops the land, without any interference from the owner and sells the same in smaller units to the intending buyers. Alternatively, where owner of land entrusts the land to the developer only for the purpose of managing the construction of structures/houses, ownership of the land remains with the owner of the land. In the State, DAs /CAs have been registered by paying nominal SD and RF and the developers develop the land and construct house for sale by executing documents termed as General Power of Attorney (GPA)/Agreement to Sell (ATS) evidencing *de facto* transfer of immovable property.

Inspector General of Registration (IGR) working under the Board of Revenue (BOR) administers the Acts/Rules regulating levy and collection of SD & RF in the State under the overall control of the Secretary to Government in Revenue and Disaster Management Department. He is assisted by one joint IGR, 3 Deputy IGRs, 30 Additional District Magistrates (ADMs) designated as the District Registrars (DRs) at the District level. Besides the above 30 District Sub-Registrars (DSRs) and 151 Sub- Registrars (SRs) at unit levels are empowered to levy and collect the SD and RF in the State at the time of registration of the documents.

Audit of levy of SD and RF on DA was conducted by selecting 19<sup>1</sup> out of 181 field level units involving 17,722 DA, CA, ATS and POA registered during 2007-08 to 2011-12 based on risk perception. Audit revealed some cases of evasion/short levy of SD and RF which are discussed in the following paragraphs.

---

<sup>1</sup> **DSR:** Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Jharsuguda, Khurda(Bhubaneswar) Mayurbhanj, Puri, Sambalpur and  
**SR:** Balipatna, Berhampur (Rural), Berhampur (Town), Dolipur, Jatni, Khandagiri, Khurda, Panposh and Pipili.



### 4.2.2 Short collection of SD and RF

As per Section 2(10) of IS Act, 1899, “Conveyance” includes every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for in Schedule 1A of the Act. Further, as per Section 5 of the Transfer of Property (TP) Act, 1882, transfer of property means an act by which a living person conveys property, in present, or in future to one or more other living persons or to himself and Section 54 of the said Act defines “sale” as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Classification of an instrument depends upon the nature of transaction recited therein. In case possession of property is handed over after receipt of full amount of consideration or promise to pay consideration later on, the instrument becomes a conveyance deed warranting levy and collection of SD and RF at prescribed rates.

**4.2.2(a)** Audit noticed, in nine DSRs/SRs<sup>2</sup>, that 350 documents involving Ac. 211.483 of land with market value of ₹ 154.99 crore were registered during 2007-12 as Agreement for Development of land with refundable security deposit of ₹ 6.23 crore. As per recitals

of the documents the owners of land handed over or agreed to deliver peaceful and vacant physical possession of the said lands to developers/builders on the date of execution of such agreements and by executing registered irrevocable General Power of Attorney authorised to sell the developers’ shares of super built up area along with impartible undivided shares of land to intending buyers. On completion of housing complexes, the developers agreed to hand over the land owner’s share as consideration within stipulated period. Thus, the transaction evidenced transfer of property.

Hence, based on nature of transaction, the documents were required to be treated as Conveyance instead of Agreement for development and SD at the rate of five *per cent* and RF at the rate of two *per cent* were to be levied and collected for such conveyance on the consideration set forth therein or at the market value (BMV) of the property whichever is higher. Though BMV of the property amounted to ₹ 154.99 crore on the date of registration, SD (₹ 0.19 crore) and RF (₹ 0.08 crore) on these agreements were found to have been levied and collected on the nominal amount of ₹ 6.23 crore set forth in the documents as security deposits/advances received by the land owners. This resulted in short collection of SD of ₹ 7.73 crore and RF of ₹ 3.01 crore.

**4.2.2(b)** Similarly, Audit noticed that in three DSRs/SRs<sup>3</sup> 50 instruments involving land measuring Ac.24.257 with market value of ₹ 14.73 crore were registered between 2007-12 as Collaboration Agreement between the developers and land owners. As per recitals of such documents the owners handed over or agreed to hand over possession of the properties to developers with refundable advance/security deposit amounting to ₹ 95 lakh and agreed to execute irrevocable GPA for sale of builders share in favour of prospective

<sup>2</sup> **DSRs:** Khurda, Cuttack, Jharsuguda and **SRs:** Berhampur (Town), Balianata, Dolipur, Jatni, Khandagiri (at Bhubaneswar) and Pipili.

<sup>3</sup> DSR, Khurda, SR, Dolipur and SR, Khandagiri.

purchasers (third parties) where the owners of the land were in no way responsible for any sort of agreement between the developers and such third parties. Such documents evidencing transfer of properties to the developers were required to be treated as conveyances and based on the market value SD ₹ 73.67 lakh and RF ₹ 29.47 lakh was to be levied and collected thereon at the rates prescribed for conveyance deed. However, the DSR/SRs concerned levied SD of ₹ 2.19 lakh and RF of ₹ 1.01 lakh on the advance/ security deposit amount. Such incorrect classification of the documents resulted in short levy of SD of ₹ 71.47 lakh and RF of ₹ 28.46 lakh.

#### **4.2.3 Short levy of SD & RF on Power of Attorney /Agreement to Sale documents**

As per the provision of Article 48 (f) read with Article 23 of Schedule I-A of IS Act, 1899 as amended by the State in 2003 and Section 78 and 79 of the Registration Act, an agreement to sell any immovable property or a POA (Power of Attorney) shall in case of transfer of the possession of such property before or at the time or after the execution of such agreement or POA be deemed to be a conveyance and S.D thereon shall be chargeable accordingly. Further it was clarified (December 2011) by the Dy I.G.R. (Central Region) that as the 'Principal' permanently handed over the possession of the property to the 'Attorney Holder' for development of the land and relinquished his power to cancel the POA in future, the document should be classified as a deed of conveyance and SD and RF shall be charged as per BMV of the property. Under Section 33 of the IS Act 1899 the Registering authority may impound the case if it is not duly stamped.

**4.2.3(a)** Audit noticed that as per recitals of 2,472 POA documents registered in 14 DSRs/ SRs<sup>4</sup> 2,366.373 Acres of land with a market value of ₹ 1,585.25 crore was transferred with possession of the properties at the time of or after execution of such POAs to the developers for converting to residential plots/ apartments/ commercial complexes etc. with a nominal consideration of ₹ 1.43 crore as recorded in the instrument on payments of ₹ 8.77 lakh towards SD and ₹ 2.49 lakh towards RF. The POA holders (developers) were also authorised to sell the developed properties and execute sale deeds or any other deeds of conveyance in favour of the third parties without any reference to the owners of the lands and to receive the

consideration values thereof from the intending purchasers and deliver physical possession of the said properties. Considerations of scheduled land recited in documents were less than the market values or BMVs. As these documents were required to be treated as conveyance deeds SD and RF was to be levied as per BMV of land. The Registering Authority, while registering the documents did

---

<sup>4</sup> **DSRs:** Angul, Balasore, Bhadrak, Cuttack, Jharsuguda, Khurda, Mayurbhanj, Puri and Sambalpur.  
**SRs:** Berhampur (Rural), Berhampur (Town), Khandagiri (at Bhubaneswar), Panposh and Pipili.



not take recourse to Section 33, 38 and 41 of IS Act to impound the cases. This resulted in short levy of SD of ₹ 82.42 crore and RF of ₹ 31.68 crore.

**4.2.3(b)** Similarly, in three DSRs<sup>5</sup>, Audit noticed that in 89 ATS documents involving land measuring 158.708 Acres with a market value of ₹ 88.45 crore were registered by the land owners in favour of developers on payment of SDs (₹ 22.45 lakh) and RFs (₹ 9.30 lakh). As per recitals of the documents owners delivered the physical possession along with all original rights and titles of the scheduled properties to the second parties. However, SD and RF were collected on the advance amount set forth in the documents only instead of treating them as conveyances for collection of SD and RF. The Registering Authority did not impound the cases under Section 33, 38 and 41 of the IS Act and Rules framed thereunder. This resulted in short levy of SD of ₹ 5.61 crore and RF of ₹ 2.24 crore.

#### 4.2.4 Registration of documents outside jurisdictional area

As per Section 28 of the Registration Act, 1908 every document mentioned in sub-section (g) of Section 17 in so far as such document affects immovable property, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the property to which such document relates is situated.

Audit noticed that 19 POA documents with handing over possession of lands were executed and registered by Sub-Registrar (SR), Panposh against collection of ₹ 2,004 only towards SD. As per recitals in the documents, these lands were situated in West Bengal. Since,

registration, in Odisha of any document related to the property of another State, is not covered under laws, registering authority was not authorized to do so. In reply, SR, Panposh stated that compliance would be furnished after collection of copies of Agreements from the parties.

After these cases (paragraphs 4.2.2 to 4.2.3) were pointed out in Audit, the Government in January 2014 replied that exclusion of the documents covered under audit from levy of SD and RF as conveyance were as per the Registration Laws in force and such documents could not be booked under 47-A (undervaluation). No reply was furnished for paragraph 4.2.4. However, Audit pointed out the shortcomings in the prevalent Acts and Rules which could not prevent evasion of SD and RF as stated above. Also, reply by the Government is silent about the action initiated so far to prevent such revenue leakages. As some other State Governments have provided for levy of SD on Development Agreements at the rate applicable to conveyance and some States have fixed percentage of the land value involved, the Government may consider similar steps in this direction.

<sup>5</sup> DSRs: Balasore, Khurda and Sambalpur.

#### **4.2.5 Conclusion**

Audit noticed that documents titled development agreements and power of attorney documents evidencing transfer of possession of land were not treated as conveyance for levy of SD and RF. Further, these documents could not be booked under Section 47A (under valuation) due to restriction under Article 23 of Schedule IA of IS Act. As a result there was escapement of SD and RF as discussed in the foregoing paragraphs. The Government may take necessary measures to prevent such revenue leakage.

#### **4.3 Audit observations**

Audit scrutinised records relating to assessment and collection of stamp duty and registration fees which revealed short realisation of revenue due to under valuation of land, omission of ground rent and cess from the consideration money and wrong calculation of cost of buildings as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by audit. There is need for the Government to improve the internal control system including strengthening of internal audit so that these omissions can be avoided, detected and corrected.

#### **4.4 Non-observance of the provisions of the Acts/Rules and Government instructions**

*The Indian Stamp (IS) Act, 1899 and the Registration Act, 1908 prescribe that deeds of agreements for sale, lease and conveyance etc. are to be registered on realisation of Stamp Duty (SD), and Registration Fee (RF) at the prescribed rates on the consideration truthfully and correctly mentioned therein keeping in view the Market Value Guidelines (MVG) or the rates prescribed in the Industrial Policy Resolutions (IPRs) of the Government. The documents registered with under valuation of properties are to be impounded for correct valuation and realisation of deficient SD and RF.*

*Non-observance of the provisions of the above Acts by the Assessing Authorities (AAs) in the cases as mentioned in paragraphs 4.4.1 to 4.4.4, resulted in under valuation of documents and short realisation of SD and RF.*



#### 4.4.1 Short Realisation of Stamp Duty and Registration fee due to omission of Land Development Cost

Section 27 of the IS Act, 1899\* read with Section 3 thereof require that the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth. Under Section 33 of IS Act, 1899, every person in charge of public office, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same and collect the deficient amount of SD. As per Section 47A of the IS Act, 1899, in case of under valuation of any property noticed before or after registration of a document, the RO shall refer the matter to the Collector for determination of the market value of such property and proper SD payable thereon. Section 64 of the IS Act, 1899 prescribes a fine upto ₹ 5,000 as a measure of penalty for omission to comply with provisions of Section 27.

During test check of a deed of agreement for sale<sup>6</sup> registered by the District Sub Registrar (DSR), Khurda, Bhubaneswar, Audit noticed (March 2012) that a General Power of Attorney (GPA) holder entered into an agreement (August 2011) with a Prospective Purchaser (PP) for sale of 0.27148 Acres of land in Unit 31 of Mauza Laxmisagar, Bhubaneswar at a price of ₹ 3.20 crore which included land development cost of ₹ 1.57 crore. However, the sale deed<sup>7</sup> later registered on 1 October

2011 stated the consideration money as ₹ 1.63 crore only without considering land development cost of ₹ 1.57 crore although it was recited in the deed of agreement for sale executed on 19 August 2011. The prescribed SD and RF was realised on ₹ 1.13 crore (after taking into account the advance amount of ₹ 50 lakh) instead of ₹ 3.20 crore. Thus, the sale deed was undervalued by ₹ 1.57 crore contravening the provision of Section 27 of IS Act, 1899 and resulted in short realisation of SD and RF of ₹ 11 lakh and penalty of ₹ 5,000 leviable under Section 64 of the said Act.

After Audit pointed out this, DSR, Khurda stated (March 2012) that Section 47-A of Indian Stamp Act could not be imposed due to restriction in the provision. The reply of the DSR, Khurda, is not tenable because deficit SD and RF was to be realised at the time of registration of the sale deed by impounding it under Section 33 of the IS Act, 1899, as the GPA holder and the PP have executed prior agreement for sale and also in view of the fact that Section 47-A of IS Act was not applicable for such agreement to sale. However, it was assured that matter would be reviewed.

\* As amended in Odisha Amendment (OA) No.7 of 1987.

<sup>6</sup> Document dated 19 August 2011 and Registered Sale Deed (RSD) dated 20 August 2011.

<sup>7</sup> Registered Sale Deed (RSD) dated 1 October 2011.

Audit reported (March 2013) the matter to Inspector General of Registration(IGR), Odisha, Cuttack and Government (April 2013); the replies are awaited (April 2014).

#### **4.4.2 Short realisation of revenue due to under valuation**

As per clause 16.2 of the IPR, 2007, effective from 2 March 2007, Government Land earmarked for Land Bank scheme for industrial and infrastructure use may be allotted at a concessional industrial rate of ₹one lakh per acre in respect of the areas available outside Municipal/ NAC under the Revenue Sub-Division of Koraput, coming under Zone C.

Section 3 of the IS Act, 1899 read with Article 23 (b) of Schedule 1A of the above Act, and Section 78 of the Registration Act, 1908 prescribe that lease deeds are to be registered on realisation of SD at the rate of five *per cent* and RF at the rate of 2 *per cent* on the consideration value of the immovable property. Article 35 (c) read with Article 35 (a) (vi) of Schedule 1A of the IS Act, 1899 stipulates that where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, SD will be charged at the prescribed rate on the premium along with four times of annual ground rent and cess by treating it as a conveyance, in case the lease period exceeds 30 years; but does not exceed 100 years.

**4.4.2 (a)** During test check of a lease deed<sup>8</sup> registered by DSR, Koraput at Jeypore, Audit noticed (August 2012) that 113.61 Acres of land was leased out by Odisha Industrial and Infrastructure Development Corporation (IDCO) as lessor to a firm for a period of 90 years for establishment of an Alumina Refinery Project. The recitals of the document mentioned the Consideration as ₹ 194.45 lakh instead of the applicable value of ₹ 160.62<sup>9</sup> lakh. This led to undervaluation of land by ₹ 66.17 lakh and hence short realisation of SD of ₹ 3.16 lakh and RF of ₹ 1.27 lakh aggregating ₹ 4.43 lakh.

After Audit pointed this out, Government stated (August 2013) that C.G.M., IDCO had been requested to take immediate necessary follow up action to realise the short assessed premium, rent and cess and to execute the supplementary lease deed for realisation of deficit S.D and R.F. However, the facts remained that the registering authority did not book the documents under Section 47-A nor impound the case under section 33 of IS Act.

<sup>8</sup> No. 332 dt.13.2.2009.

<sup>9</sup> Land cost as per IPR 2007 @ ₹ 1 lakh/Acre for 113.61 acre	₹ 113.61 lakh
Four times Ground Rent and Cess	₹ 7.95 lakh
Tree cost	₹ 29.26 lakh
Asset	₹ 9.80 lakh

<b>Total</b>	<b>₹ 160.62 lakh</b>
--------------	----------------------

As per Section 3 of IS Act read with article 1A/23 (b) of OA of 5 December 2005, conveyance deed of an immovable property is leviable with SD at the rate of five *per cent* of the consideration set forth in the deed or the market value of the property whichever is higher. Article 35 (c) read with Article 35(a) (vi) of Government of Odisha, Revenue and Excise Department prescribed (May 1963) annual ground rent equal to one *per cent* of the market value of the Government/ private land leased out for specific purposes.

**4.4.2 (b)** During test check of lease records in DSR, Puri, Audit noticed (June 2012), that a lease deed for 88 years was executed (27 July 2011) for 35.00<sup>10</sup> Acres land by IDCO, the lessor with the lessee, for establishment of a Rural University in the Industrial Estate at Kurki, Nijigad under

Pipili Tahasil of Puri District at a consideration money of ₹ 123.89 lakh at the rate of ₹ 3.54 lakh per Acre. Audit noticed that in the same industrial estate, two other parcels of land were allotted (March 2011 and July 2011) at considerations of ₹ 244.20 lakh and ₹ 750 lakh respectively at the rate of ₹ 30 lakh per acre as per the revised rate of IDCO effective from 24 February 2010 to two other lessees. Due to non-application of the revised rate of ₹ 30 lakh per acre in the instant lease deed of July 2011 there was undervaluation of land by ₹ 10 crore and resultant short realisation of SD of ₹ 49.74 lakh and RF of ₹ 19.89 lakh, aggregating to ₹ 69.63 lakh.

**4.4.2 (c)** During test check of a sale deed of the DSR, Sambalpur, Audit further noticed (September 2012), that Ac.0.17 of land was sold by a person and two others through their attorney (vendor) to another person and three others (Vendees) for a consideration of ₹ 10.08 lakh at the rate of ₹ 59,290 per decimal which was below the Bench Mark Value (BMV) of ₹ 22.22 lakh at the rate ₹ 1.31 lakh per decimal applicable for commercial land. Thus, there was under valuation of land by ₹ 12.14 lakh and resultant short realisation of SD of ₹ 0.61 lakh and RF of ₹ 0.24 lakh aggregating to ₹ 0.85 lakh.

After Audit pointed out the above cases, DSR, Puri stated (June 2012) that IDCO (the lessor) would be intimated about observations of audit and DSR, Sambalpur stated (September 2012) that the party concerned would be intimated to deposit the deficit dues.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Replies are awaited (April 2014).

As per Article 35 (a)(vi) and (c) of Schedule IA of IS Act 1899, where the lease is for a term, exceeding 30 years but not exceeding 100 years, the SD and RF should be the same under Article 23(b) for a consideration/premium as deemed fit, in addition to four times the amount of the average annual rent reserved.

**4.4.2 (d)** During test check of a tripartite lease deed executed (9 September 2010) by DSR, Keonjhar, Audit noticed (September 2012) that

<sup>10</sup> Industrial type of land bearing plot no. 12 and 12A.



18.466 Acres of Government land at Mouza, Matkambeda under Barbil Tahasil of Keonjhar District was leased out to a lessee for 62 years (by cancellation of original lease of 17.75 Acres of land earlier leased out to other party by the lessor on 26 December 1980) for a consideration of ₹ 19.23 lakh<sup>11</sup>, on which SD and RF of ₹ 1.80 lakh was levied. Audit observed that the value of 18.466 Acres of land leased out was ₹ 2.18 crore at the rate of ₹ 11.81 lakh per acre and accepted by all the parties to the deed, while adopting the valuation of ₹ 8.45 lakh for 0.716 Acres of additional land leased out. The total consideration value inclusive of four times of average annual rent reserved (₹ 0.15 crore) worked out to ₹ 2.33 crore, on which SD and RF of ₹ 16.33 lakh was leviable and collectable at the time of registration of the deed. However, this was not taken into account by the DSR Keonjhar. This resulted in short levy of SD of ₹ 10.38 lakh and RF of ₹ 4.15 lakh both aggregating to ₹ 14.53 lakh.

After Audit pointed this out, DSR, Keonjhar stated (September 2012) that Land Officer, IDCO, Bhubaneswar would be intimated to take necessary action to recover the deficit amount.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

#### **4.4.3 Short realisation of Stamp Duty and Registration Fee due to omission of ground rent and cess from the consideration money**

Article 35 (c) read with Article 35(a) (vi) of schedule 1A of the IS Act, 1899 stipulates that where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, SD and RF will be charged at the prescribed rates on the premium along with four times the annual rent and cess reserved for such property by treating it as a conveyance, in case the lease period exceeds 30 years, but does not exceed 100 years. Government of Odisha, Revenue and Excise Department prescribed (May 1963) annual ground rent equal to one *per cent* of the market value of the Government/ private land leased out for specific purposes.

**4.4.3 (a)** During test check of records of DSR, Sambalpur, Audit noticed (September 2012) that two lease deeds<sup>12</sup> were executed on 1 November 2011 by IDCO, Jharsuguda Division with a lessee for leasing out 533.13 Acres of private land for a period of 90 years for establishment of an Alumina Smelter and

Power project for a total consideration value of ₹ 30.41 crore, which included dutiable consideration of ₹ 23.03 crore. However, Audit noticed that against levy of ₹ 1.61 crore towards SD and RF of ₹ 1.55 crore only was levied and realised and it led to short realisation of Government revenue of ₹ 6.12 lakh. This was due to omission of SD and RF on ₹ 87.50 lakh being four times the annual rentals (Ground rent and Cess).

After Audit pointed this out (April 2013), Government stated (August 2013) that both the documents were impounded and lessees were directed to deposit the deficit amount, failing which action under Odisha Public Demand

<sup>11</sup> ₹ 10.77 lakh towards transfer fee and ₹ 8.45 lakh towards additional land cost of Ac 0.716.

<sup>12</sup> Lease deeds dated 01.11.2011.



Recovery(OPDR) Act would be initiated for realisation of the same. Further reply on realisation is awaited (April 2014).

**4.4.3 (b)** During test check of three<sup>13</sup> lease deeds of two DSRs Audit noticed (July 2012 and August 2012), that IDCO, the lessor leased out land, acquired from private owners, measuring 1,224.22 Acres in favor of a Mumbai based industry (the lessee) for a period of 90 years for establishment of an Alumina Refinery Project at Kansariguda site in Koraput and Rayagada Districts. The total consideration money for the above lands was ₹ 57.80 crore<sup>14</sup> including land cost of ₹ 30.91 crore. While registering the documents, the DSR did not include four times of the annual average rent (ground rent and cess) for arriving at the prescribed valuation in each case; although the terms of the lease deeds specifically provided that the lessee should pay ground rent at the rate of one *per cent* of the land value and cess at the rate of 75 *per cent* of the ground rent. As a result, SD and RF of ₹ 2.95 crore only was realised instead of ₹ 3.09 crore at the time of registration. This led to short realisation of SD ₹ 10.48 lakh and RF of ₹ 4.19 lakh.

After audit pointed this out, DSR, Rayagada stated (August 2012) that the fact would be intimated to IDCO (lessor) and lessee and action would be taken after examination of the documents. The DSR, Koraput at Jeypore stated (July 2012) that the document shall be examined and classified as lease under Article 35 (c) and if it was found that the document was deficiently stamped, it would be impounded and compliance would be reported at the earliest.

Audit reported (April 2013) that matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

---

<sup>13</sup> DSR, Rayagada (Lease Deed dated 13.02.2009 for Ac. 404.52 and Lease Deed dated 09.06.2009 for Ac.499.59) and of DSR, Koraput at Jeypore (Lease Deed dated 13.02.2009 for Ac.320.11).

<sup>14</sup> ₹ 17.36 crore+₹ 27.54 crore+₹ 12.90 crore =Total ₹ 57.80 crore.

#### **4.4.4 Short realisation of Stamp Duty and Registration Fee due to wrong calculation/omission of cost of building**

Under Section 27 of the IS Act, 1899 Section 3, the consideration (if any), and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Further, Government of Odisha issued (24 March 2011) latest guidelines for valuation of building/superstructure which should be followed by all registering offices for checking the valuation of building/superstructure set forth in the instruments presented for registration.

During test check records in three<sup>15</sup> DSRs Audit noticed (between March 2012 and September 2012) that through five<sup>16</sup> sale/conveyance deeds five parcels of land having area 0.326 Acre, with a total built up area of 15,945 sq.ft, were sold by the respective Vendors to

the Vendees for total consideration value of ₹ 154.54 lakh. Audit observed that the consideration value of the above buildings should have been recited at ₹ 202.59 lakh by taking into account the Government's latest guidelines dated 24 March 2011. This resulted in undervaluation of buildings by ₹ 48.05 lakh and resultant short realisation of SD of ₹ 3.21 lakh and RF of ₹ 0.96 lakh, both aggregating to ₹ 4.17 lakh.

After Audit pointed this out between March 2012 and September 2012, DSR, Khurda stated (March 2012) that action would be taken as per the observation of Audit, DSR, Puri stated (June 2012) that cases were instituted under Section 47-A as per observation of Audit in 2012 and DSR, Baragarh stated (September 2012) that the case would be studied and action would be taken for realisation of Government dues.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

---

<sup>15</sup> DSR, Khurda (one conveyance deed); DSR, Puri (two sale deed) and DSR, Baragarh (two sale deed).

<sup>16</sup> Three documents dated 26.03.2011; One document dated 6.6.2011 and one document 09.12.2011.