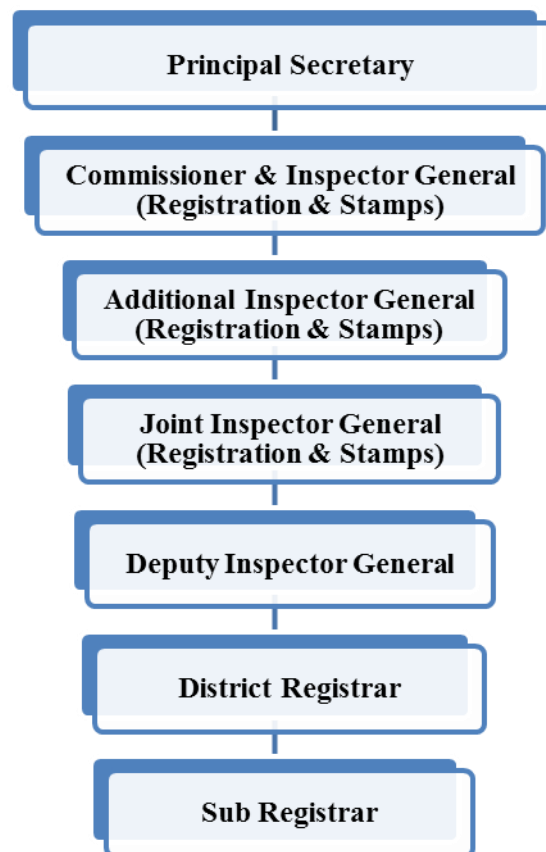


CHAPTER IV

STAMP DUTY AND REGISTRATION FEE

4.1 Tax Administration

Receipts from Stamp Duty and Registration Fee are regulated under the Indian Stamp Act 1899 (IS Act), Registration Act, 1908 and the rules framed there under as applicable in the State of Telangana. These are administered at the Government level by the Principal Secretary, Revenue (Registration & Stamps) Department. The important functionaries of the Department for Administration of tax is depicted in the below organogram. The total revenue from Registration & Stamps Department during 2017-18 was ₹4,202.46 crore⁹⁵.



⁹⁵ Source: figures obtained from office of Prl Accountant General (A&E), Telangana.

4.2 Internal Audit

Internal Audit provides a reasonable assurance of proper enforcement of laws, rules and departmental instructions and this is a vital component of the internal control frame work. There is a separate Internal Audit wing in the Department. The team headed by District Registrar (DR) (Market Value and Audit)/ Sub-Registrar (SR) (Market Value and Audit) conducts audit of SR offices as per audit programmes drawn up every month. The DIG concerned supervises the progress of audit. Audit reports are reviewed by the DIG, DR and SR zone-wise/ sub-zone wise. Internal audits of Sub-Registrar offices were pending for the period ranging from 3 months (51 units) to over 12 months (38 units) to the end of March, 2018.

4.3 Audit Methodology and Results of Audit

Audit Data Analytics

The core functions of the department comprise levy and collection of stamp duty, registration fee etc. Registration was being carried out through a computerised IT system called 'Computer Aided Administration in Registration Department' (CARD) in client server Architecture. The CARD system was migrated to Centralised CARD Architecture (CCA) in the year 2013 for providing online services to the public. Documents registered by the Sub-Registrars are scanned and uploaded to the central server located at Hyderabad where a centralised database is maintained. All the Sub-Registrars login as clients to the central server for retrieval of any data.

The central servers located in the State Data Centre are connected to the Sub Registrar Offices (SROs) through the State Headquarters via the Mandal Headquarters.

All the documents registered by SRO/ DROs are scanned and uploaded to centralized server chronologically and all these scanned images files of the documents are being stored in central server. As per Audit's request to enable audit teams to download these documents for exercising prescribed checks, the Commissioner and Inspector General (Registration & Stamps) (CIGRS) facilitated audit users with access to image files of the documents. Further, during local audit inspection, audit teams can download transactional data using credentials of the Departmental Users. After reviewing this list audit teams download required documents.

Transactional data is analysed with reference to data in the documents downloaded and gaps/ anomalies are identified to extract/ detect mis-classifications short levy of the duties/ fees and under valuation of properties as per applicable rules.

Test check of records of 122 out of 159 offices (76.73 per cent) of Registration and Stamps Department conducted during 2017-18 revealed non-levy/ short levy of duties/ fees etc. These irregularities involved monetary impact of ₹ 50.97 crore in 504 cases. The Results of Audit is detailed in **Table 4.1:**

Table 4.1
Category of Audit observations on revenue receipts

(₹ in crore)			
Sl. No.	Category	No. of observations	Amount
1.	Short levy of duties	189	3.10
2.	Undervaluation of properties	151	3.19
3.	Non-registration of Compulsory Registerable Documents	91	1.85
4.	Short levy of Registration fee	9	37.47
5.	Misclassification of documents	47	5.16
6.	Other irregularities	16	0.20
Total		504	50.97

Source: Documents furnished by the Department.

During the year 2017-18, the Department accepted under-assessments and other deficiencies of ₹ 51.65 lakh in 53 cases and the same was realised during the year. Of these, 15 cases involving ₹ 17.03 lakh were pointed out during the year 2017-18 and the rest in earlier years.

There are five broad categories of audit observations under Stamp Duty & Registration Fee. There may be similar irregularities, errors/omissions in other units under the department but not covered in the test audit. Department may, therefore, examine all the units with a view to ensure that the taxes are levied as per provisions of the Act and Rules. Non-observance of the provisions of the Acts/ Rules and Government instructions.

The Indian Stamp (IS) Act 1899 and the Registration Act 1908 prescribed that documents relating to Agreements of Sale of immovable property are to be compulsorily registered. Stamp duty in respect of Agreement of Sale of property without possession, shall be leviable on the amount of consideration or the Market Value of the property whichever is higher. Telangana Revision of Market Value Guidelines stipulate adoption of different market value rates for agriculture land, agricultural land fit for house sites and non-agriculture land. Acreage rate for agricultural land and square yard rate for non-agricultural land are prescribed for the purpose of stamp duty. Further Indian Stamp Act, 1899 provides that instruments of Sale are chargeable to stamp duty on the Market Value (MV) of the property or consideration, whichever is higher. The Act further provides that any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments would be chargeable under the Act.

Non-observance of the provisions of the above Acts by the Registering Authorities (RA) in the cases as mentioned in the following paragraphs resulted in short realisation of SD and RF of ₹ 29.88 crore.

4.4 Short collection of Registration fee on instruments creating *paripassu* charge

Treatment of ‘Mortgage Transactions creating *paripassu* charges’ as simple ‘Deposit of Title Deeds’ resulted in short collection of Registration Fee amounting to ₹ 26.30 crore.

Paripassu Agreements come into existence when an industrial firm/company obtains credit facilities from more than one financial institution by offering securities on *paripassu* basis in the form of ‘Simple Mortgage’, Mortgage by ‘Deposit of Title Deeds’ and Hypothecation of movable properties. Government⁹⁶ prescribed registration fee of 0.5 per cent on the amount of loans secured by instruments which create charge on *paripassu* basis⁹⁷.

Scrutiny of records of six⁹⁸ out of 159 Registration offices revealed that in nine documents⁹⁹ the companies secured credit facilities amounting to ₹ 5,262.32 crore from various financial institutions. These credit facilities were secured by creating *paripassu* charge on their properties. The registering authorities collected registration fee of ₹ 10,000 presuming them as Deposit of Title Deeds for each document instead of charging fee at 0.5 per cent on the amount of credit facilities secured. Non compliance to the orders of the Government resulted in short collection of registration fee of ₹ 26.30 crore as shown in **Table 4.2:**

Table 4.2
Short collection of Registration Fee on the deeds creating *paripassu* charge

Sl. No	Auditee	Document No	Term loan amount (₹ in crore)	Registration fee to be collected (₹ in crore)	Registration Fee paid (₹)	Short collection of Registration Fee (₹ in crore)
	A	B	C	D	E	F=(D-E)
1	District Registrar of Assurances, Khammam	10752/2016 10773/2016	4,210.00	21.05	10,000 10,000	21.05
2	Sub Registrar, Banswada	1116/2017	162.14	0.81	10,000	0.81
3	Sub Registrar, Chevella	7131/2015	14.68	0.07	10,000	0.07
4	Sub Registrar, Chevella	6824/2015	14.68	0.07	10,000	0.07
5	Sub Registrar, Kukkatpally	7990/2016	131.38	0.66	10,000	0.66
6	Sub Registrar, Shadnagar, Ranga Reddy	4114/2015	56.20	0.28	10,000	0.28
7	District Registrar, Hyderabad (South)	279/2017 6079/2015	673.25	3.37	10,000 10,000	3.36
	Total		5,262.33	26.31	90,000	26.30

Source: Documents furnished by the Department.

⁹⁶ G.O. Ms. No 463 (Rn-I) Department, dated 17 August 2013.

⁹⁷ When an immovable property of a borrower was made as security to multiple lenders, the rights, in the property, created in favour of the lenders would rank equal without any preference or priority for any lender over the others for all intents and purposes.

⁹⁸ DRs- Hyderabad (South) and Khammam.
SRs-Banswada, Chevella, Kukkatpally and Shadnagar.

⁹⁹ Titled as Memorandum of Deposit of Title deed.

After Audit pointed out, respective Sub-Registrars and District Registrars replied that the matter would be examined and detailed reply would be furnished.

The matter was referred to the Department in May 2018 and to the Government in September 2018; replies have not been received (February 2020).

4.5 Non-levy/ Short levy of duties on instruments of Gift

'Gifts in favour of others' were treated incorrectly as 'Gift in favour of relatives' resulting in short levy of duties amounting to ₹75.68 lakh.

As per Article 29 of Schedule I-A to Indian Stamp Act, 1899, instruments of Gifts are chargeable to Stamp Duty on the Market Value of the property which is the subject matter of Gift. As per G.O.Ms.No.585 Revenue (Regn.) Department, dated 30 November 2013, Stamp Duty on Gift instruments in favour of relatives as defined u/s 56(2) of IT Act, 1961, is chargeable at the rate of one *per cent*. Transfer Duty to be levied on such transactions is at the rate of 0.5 *per cent*. In respect of gifts in favour of others, the Stamp duty and Transfer duty to be levied are at the rate of four *per cent* and 1.5 *per cent* respectively besides Registration Fee.

Audit scrutinised (between June 2017 and November 2017) records in four¹⁰⁰ out of 159 Registration offices. In nine cases (₹19.82 crore) of Gift instruments executed (between June 2016 and December 2017) in favour of others, the registering authorities levied Stamp Duty and Transfer Duty at the rates prescribed for Gift Instruments executed in favour of relatives. This resulted in short levy of duties amounting to ₹75.68 lakh.

After Audit pointed out, the CIGRS (September 2018) replied that a remission has been obtained in G.O.Ms. No. 585 dated 30 November 2013 and accordingly the duties were correctly levied. It was however, noted that the said Government order pertained only to reduction in rates of duty.

The view of the department that remission was given in the said Government order is not reflected in the contents of the order as only rates were revised and there was no remission of rates. The matter was referred to the Government September 2018; reply has not been received (February 2020).

4.6 Loss of revenue due to non-registration of Compulsorily Registerable documents

Non-compliance to provisions of Section 17 (1) (g) of Registration Act resulted in loss of revenue of ₹72.80 lakh.

As per Section 17 (1) (g) of the Registration Act, 1908, documents relating to Agreements of Sale of immovable property are to be compulsorily registered. Under Section 3 of the Indian Stamp (IS) Act 1899 read with Article 6B of

¹⁰⁰ DR- Hyderabad; SRs- Balanagar, Kukatpally and Serilingampally.

Schedule I-A to IS Act, stamp duty in respect of Agreement of Sale of property without possession, shall be leviable at 0.5 per cent¹⁰¹ on the amount of consideration or the Market Value of the property whichever is higher. Registration fees shall be chargeable at 0.5 per cent¹⁰² subject to a minimum of ₹ 1,000 and maximum of ₹ 20,000.

Audit scrutinised¹⁰³ records in 20¹⁰⁴ out of 159 Registration offices. It was observed from the recitals¹⁰⁵ of 110 documents¹⁰⁶ that Agreements of Sale (without possession) had been executed between the vendors and vendees prior to registration of the respective sale deeds¹⁰⁷. These Agreements of Sale were not registered though they were compulsorily registerable. The registering authorities, did not ensure applicability of provision of Section 17 of Registration Act in respect of the above unregistered agreements of sale. This resulted in non-realisation of stamp duty and registration fee of ₹ 72.80 lakh.

After audit pointed out these cases, the District Registrar Mahabubnagar¹⁰⁸ in one case replied (May 2018) that in the absence of presentation of any instrument in original, the same cannot be impounded. Further, the CIGRS replied (July 2018) that the department has no powers to force the parties to present the documents for registration.

It is however stated that ensuring compliance to the provisions of Section 17 of Registration Act is the responsibility of registering officers. The fact of execution of Agreement of sale will come to the notice of the registering officer in performance of his duties. It was however observed that, no mechanism was evolved by the Department for insisting upon the executants of Agreement of sale for registration. This not only resulted in non-compliance of statutory provision but also resulted in loss of revenue to the Government. The registering authorities may, therefore invoke the provisions of Section 33¹⁰⁹ of Indian Stamp Act for levy of duties in order to enforce the provisions of Section 17 (1)(g) of Registration Act.

The matter was referred to the Government in September 2018; reply has not been received (February 2020).

¹⁰¹ G O Ms.No.581 Rev. (Registration-I) Dept., dated 30 November 2013.

¹⁰² G O Ms No.463 Rev. (Registration-I) Dept., dated 17 August 2013.

¹⁰³ Between May 2017 and December 2017.

¹⁰⁴ DR-Mahabubnagar; SRs-Azampura, Balanagar, Bowenpally, Chikkadpally, Golconda, Hayathnagar, Kapra, Khammam (Rural), Korutla, Kukatpally, L B Nagar, Mancherial, Sanjeeva Reddy Nagar, Saroornagar, Shadnagar, Shankarpally, Uppal, Vanasthalipuram and Warangal (Rural).

¹⁰⁵ Narration of the transaction.

¹⁰⁶ 70 Deposit of Title Deeds and 40 sale deeds.

¹⁰⁷ Registered during 2015-17.

¹⁰⁸ In respect of Document no. 2300/2017.

¹⁰⁹ Every person having by law or consent of parties authority to receive evidence, 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.

4.7 Short levy of Duties and Registration fee on agricultural land after change of land use

Non adoption of prescribed rates after conversion of land from agriculture to non-agriculture purposes resulted in short levy of stamp duties amounting to ₹ 64.61 lakh.

As per Section 27 of the Indian Stamp Act (IS Act), the consideration, if any, for the market value of the property and all other facts and circumstances affecting the levy of duty on any instrument, has to be fully and truly set forth therein. Further as per the provision under the Section, the registering officer or any other officer appointed under the Registration Act, 1908 may inspect the related property, make necessary local enquiries, call for and examine all the connected records and satisfy that the provisions of Section 27 are complied with. Telangana Revision of Market Value Guidelines stipulate adoption of different market value rates for agriculture land, agricultural land fit for house sites and non-agriculture land. Acreage rate for agricultural land and square yard rate for non-agricultural land are prescribed for the purpose of stamp duty.

Audit scrutinised (between May and November 2017) records in eight¹¹⁰ out of 159 Registration offices. It was observed that in 18 documents¹¹¹, the registering officers, had adopted the rate applicable to agricultural land in respect of the land whose conversion for non-agricultural purposes had already been approved. The Conversion orders were issued by the Revenue Authorities for these Land. Further, all such orders are required¹¹² to be marked to the respective District Registrars/Sub-Registrars. Due to suppression of fact of conversion by the executants and non-verification of the same by registering authorities, the properties were valued at ₹ 2.68 crore instead of ₹ 15.44 crore, undervalued by ₹ 12.76 crore. This resulted in short levy of Stamp Duty and Registration Fees of ₹ 64.61 lakh.

After Audit pointed out, the SR, Zaheerabad in one case replied¹¹³ that the chargeable value was adopted based on the rates stipulated for Agricultural land in the Basic Value register.

It is, however, stated that upon conversion, the usage of land has changed from agriculture to non-agriculture purposes and therefore application of agricultural rates of basic value register to the land is not correct. The remaining SRs and DR replied that the matter would be examined.

The matter was referred to the Department in March 2018 and to the Government in September 2018; replies have not been received (February 2020).

¹¹⁰ DR- Medak; SRs-Bhongir, Devarakonda, Farooqnagar, Mahabubabad, Miryalaguda, Warangal (Rural) and Zaheerabad.

¹¹¹ 16 sale deeds, one Agreement of sale cum General Power of Attorney (AGPA) and one gift deed.

¹¹² CIG Circular Memo no. MV1/2365/2014 dt.17 February 2014.

¹¹³ July 2018.

4.8 Short levy of Duty and Registration fee due to undervaluation of properties

Incorrect adoption of market value in registered documents leading to undervaluation of properties resulted in short levy of duties amounting to ₹ 51.91 lakh.

As per Section 3 of Indian Stamp (IS) Act, 1899 read with Article 47A of Schedule I-A to IS Act, instruments of Sale are chargeable to stamp duty on the Market Value (MV) of the property or consideration, whichever is higher. Transfer duty is also to be levied on sale deeds (1.5 *per cent*), besides registration fee (0.5 *per cent*). Stamp duty was reduced to four *per cent* vide G.O.Ms.No. 162, dt. 30 March 2013. These rates are applicable to transactions of exchange also executed under Article 27 of IS Act. Further, Article 42(i)(b) of Schedule- IA, provides for stamp duty at the rate of one *per cent* of market value in respect of Power of Attorney executed for construction/development or sale or transfer in any manner, of immovable property besides registration fee of 0.5 *per cent* subject to a maximum of ₹ 20,000. Market value guidelines indicate the market value approved by the Market Value Revision Committee.

Scrutiny of records (between May 2017 and December 2017) in 15¹¹⁴ out of 159 Registration offices revealed that in 21 documents, properties valuing ₹ 21.19 crore were undervalued by ₹ 9.92 crore for various reasons¹¹⁵. This was in contravention to Market Value guidelines and instructions issued by the CIGRS¹¹⁶. Under-valuation of these properties resulted in short levy of duty and fee amounting to ₹ 51.91 lakh.

After audit pointed out these cases, the CIGRS replied (July 2018) that a comprehensive report would be submitted on receipt of replies from the District Registrars concerned.

SR-Farooqnagar, replied¹¹⁷ that the rate adopted was correct. It is, however, stated that the rates of “House sites” would be adopted if the site is sold as a whole in acres. In the instant case, plots were made and sold in square yards and hence the minimum square yard rate prevailing in the locality shall be adopted.

The matter was referred to the Government in September 2018; reply has not been received (February 2020).

¹¹⁴ DRs - Medak, Medchal-Malkajgiri; SRs-Abdullapur, Bhongir, Bibinagar, Champapet, Chandur, Devarakonda, Farooqnagar, Gandipet, Ibrahimpatnam, L B Nagar, Saroornagar, S R Nagar and Warangal.

¹¹⁵ Non adoption of market value rates *viz.*, rates assigned to specific survey nos./rates assigned in view of SH/NH roads situated on the boundaries of the scheduled properties; incorrect valuation of urban properties, non-inclusion of Plant and Machinery value etc.

¹¹⁶ Commissioner and Inspector General of Registration and Stamps.

¹¹⁷ November 2018.

4.9 Short levy of duties in Registered Documents

Incorrect determination of chargeable value resulted in short levy of duties and fees amounting to ₹ 28.77 lakh.

As per Section 3 of Indian Stamp (IS) Act read with Article 47A of Schedule I-A to IS Act, instruments of Sale are chargeable to Stamp Duty¹¹⁸ on the market value of the property or consideration, whichever is higher. Transfer duty is also to be levied on sale deeds (1.5 *per cent*), besides registration fee (0.5 *per cent*). These rates are applicable to transactions of exchange also executed under Article 27 of IS Act. Further, Article 6(B) of Schedule I-A to Indian Stamp Act, provides for stamp duty at the rate of one *per cent* of market value in respect of power of Attorney executed for construction/development or sale or transfer in any manner, of immovable property. Registration fee¹¹⁹ at the rate of 0.5 *per cent* (subject to a minimum of ₹ 1,000 and maximum of ₹ 20,000) is to be levied on the market value of the property.

Audit scrutinised¹²⁰ records of 12¹²¹ out of 159 Registration offices. It was observed in respect of 19 documents¹²² that duties and fees were short levied for various reasons such as incorrect exemption of duties; adoption of lesser market value; affording incorrect treatment to the transactions; adoption of lesser plinth area (DGPA's, non-levy of transfer duty (gifts)). This resulted in short realisation of duties amounting to ₹ 28.77 lakh.

After Audit pointed out, all Sub-Registrars and District Registrars replied that the matter would be examined and detailed reply would be furnished.

The matter was referred to the Department in June 2018 and to the Government in September 2018; replies have not been received (February 2020).

4.10 Non/Short levy of duties due to misclassification of transactions in Mortgage Deeds

Misclassification of transactions in Mortgage deeds resulted in short levy of duties and fees amounting to ₹ 22.52 lakh.

As per Article 35(b) of Schedule IA to Indian Stamp Act, 1899 Stamp Duty¹²³ shall be levied at the rate of 0.5 *per cent* on the amount of loan secured on documents registered as "Mortgage without possession"¹²⁴. As per

¹¹⁸ Reduced from 5 *per cent* to 4 *per cent* vide G.O. Ms. No. 162 dated 30 March 2013.

¹¹⁹ G.O. Ms.No.463 Rev. (Regn.) Dept. dated 17 August 2013.

¹²⁰ Between June 2017 and October 2017.

¹²¹ DRs-Hyderabad (South) and Medchal-Malkajgiri; SRs-Balanagar, Bibinagar, Doodbowli, Golconda, Kapra, Kukatpally, Saroornagar, Serilingampally, Shadnagar and Uppal.

¹²² Registered between April 2016 and October 2017.

¹²³ G.O. Ms. No. 583 (Rev.) Reg. Dept. dated 30 November 2013.

¹²⁴ It is an instrument whereby, for the purpose of securing loan, the Mortgagor transfers, or creates in favour of the Mortgagee, a right over specified property. Possession of the property or any part thereof is not however given by the mortgagor- Section 2(17) of IS Act.

article 35(a) in respect of “Mortgages with possession”¹²⁵, the duty was to be paid at two *per cent*. Further, Registration Fee¹²⁶ at the rate of 0.1 *per cent* on the loan amount also is to be levied on these documents. As per Article 7(a), the deposit of title deed being evidence of the title of any property whatever (other than a marketable security), where such deposit 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.

Audit scrutinised¹²⁷ records in the offices of four¹²⁸ out of 159 Registration offices. It was observed that in four documents¹²⁹, duties and fees were short levied by the Registering Authorities due to misclassification of transactions in mortgage deeds. This resulted in short levy of duties and fees amounting to ₹ 22.52 lakh as detailed in **Table 4.3**:

Table 4.3
Misclassification of transactions in Mortgage deeds

(₹ in lakh)

Name of the Office	Document No/Year	Nature of the document	Irregularity	Duty leviable ¹³⁰	Stamp duty levied ¹³¹	Short levy
SR, Balanagar	2036/17	Mortgage without possession	The Mortgage deed without possession was classified as DOTD ¹³² and duties levied at a lesser rate	18.00	0.60	17.40
SR, Bowenpally	1318/16			3.62	0.60	3.02
SR, SR Nagar, Hyderabad	2427/16	Mortgage with possession	The Mortgage deed with possession was classified as Mortgage deed without possession and duties levied at a lesser rate.	1.80 ¹³³	0.33	1.47
SR, Siddipet	11133/16			0.76	0.13	0.63
Total				24.18	1.66	22.52

Source: Documents furnished by the Department

¹²⁵ A mortgage deed when possession of the property or any part thereof is transferred by the mortgagor in favour of Mortgagee, the mortgagee can lease/rent the property.

¹²⁶ G.O.Ms. No.463 (Rev) Regn. Dept. dated 17 August 2013.

¹²⁷ Between June 2017 and October 2017.

¹²⁸ Balanagar, Bowenpally, Siddipet (Rural) and S R Nagar.

¹²⁹ Registered between November 2016 and March 2017.

¹³⁰ SD at the rate of 0.5 *per cent*, RF at the rate of 0.1 *per cent*.

¹³¹ SD at the rate of 0.5 *per cent* (subject to a maximum of ₹ 50,000) + RF at the rate of 0.1 *per cent* (subject to a maximum of ₹ 10,000).

¹³² Deposit of Title Deeds - Article 7 of Schedule I-A to IS Act.

A Mortgagor delivers documents of title of immovable property to the Creditor (Mortgagee) with an intent to create a *security* thereon (58f of Transfer of Property Act). In this case, *there is no transfer/creation of right in respect of specified property in favour of the Mortgagee.*

¹³³ SD at the rate of 2 *per cent*, TD at the rate of 1.5 *per cent*, RF at the rate of 0.1 *per cent*.

After Audit pointed out these cases, the CIGRS replied (July 2018) that the Registering authorities had correctly classified the documents.

It is however stated that in respect of the first two cases, the Mortgagor relinquished his rights u/s 61¹³⁴ and 65¹³⁵ of Transfer of Property Act. Thus, it is evident that there was transfer of interest of property mortgaged in favour of the Mortgagee. Hence, the transactions should have been classified as Mortgage without possession and not as Deposit of Title Deeds (DOTD). In respect of the latter two transactions, the recitals in the documents clearly indicated transfer of Mortgaged premises to the Mortgagee. Therefore, these were to be treated as Mortgage deeds with possession and duties levied accordingly.

The matter was referred to the Government in September 2018; reply has not been received (February 2020).

4.11 Short levy of duties on documents involving distinct matters

Non consideration of distinct matters involved in the execution of documents resulted in short levy of duties amounting to ₹ 19.27 lakh.

According to Section 5 of the Indian Stamp Act 1899, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments would be chargeable under the Act.

Audit scrutinized¹³⁶ the records in six¹³⁷ out of 159 Registration offices. It was observed from the recitals of 10 registered documents¹³⁸ that duties were not levied on various distinct matters involved in these documents. This resulted in short levy of duties amounting to ₹ 19.27 lakh as shown in **Table 4.4:**

Table 4.4
Documents involving distinct matters

Sl. No.	Name of the Office	No. of cases	Distinct matter	Short levy of duties (₹ in lakh)	Remarks
1	DR, Hyderabad DR, Mahabubnagar SR-Warangal	03	Release with partition	1.96	After executing the partition deeds to the extent of equal shares, the excess share has to be considered as release and charged @ 3 per cent.
2	SR-Kukatpally	01	Conveyance with sale	0.88	In this sale deed, an amount of ₹ 22.00 lakh was refunded to the consenting parties (vendors 2,3,4) which was given as advance in view of an

¹³⁴ Power to redeem the mortgaged property.

¹³⁵ Mortgagor's power to lease.

¹³⁶ Between August 2017 and November 2017.

¹³⁷ DRs - Hyderabad (South) and Mahabubnagar; SRs - Gandipet, Kukatpally, Rajendranagar and Warangal.

¹³⁸ Between April 2016 and November 2017.

Sl. No.	Name of the Office	No. of cases	Distinct matter	Short levy of duties (₹ in lakh)	Remarks
					Agreement of sale executed earlier. This has to be treated as Conveyance and chargeable @ 4 per cent as per article 20 of Sch. IA of IS Act.
3	SR-Rajendranagar	01	Agreement of sale and agreement of development with sale.	2.51	The original document was a sale deed (1200 sq. yds.). It was however seen from the recitals that, there was an Agreement of sale to an extent of 8,350 sq. yds. alongwith an agreement to develop. Hence to be charged at 0.5 per cent on the value of the property.
4	SR-Rajendranagar	01	Conveyance with exchange	0.52	Two properties (worth of ₹ 40.00 and ₹ 27 lakh respectively) were exchanged. The first party has conveyed an amount of ₹ 13.00 lakh to the second. This is a distinct matter of conveyance and charged @ 4 per cent.
5	SR, Gandipet	01	Sale with DGPA	0.99	In the development agreement, there were two distinct matters of sale to an extent of 900 sq.ft. and 300 sq.ft. Hence to be charged @ 5.5 per cent.
6	SR-Gandipet	01	Conveyance with DGPA	0.80	In the DGPA agreement, ₹ 20.00 lakh was paid by the developer as Non refundable security deposit. This is a distinct matter of conveyance and charged @ 4 per cent.
7	DR(S), Hyderabad	01	Mortgage without possession with DGPA	4.00	In the DGPA, there was an amount of ₹ 8.00 crore towards additional security deposit paid by the developer. The owner was liable to repay this amount by way of adjustment of constructed area of his allotment @ 18 per cent interest per annum treating as loan. This is a distinct matter of Mortgage and charged @ 0.5 per cent.
8	DR(S), Hyderabad	01	Settlement with conveyance.	7.61	The settler – Mother settled the property in favour of her son, daughter-in-law and grandson. In turn, the settler received an amount of ₹ 25.00 lakh from her son. This is a distinct matter of conveyance involved in settlement.
		10	--	19.27	

Source: Documents furnished by the Department.

After being pointing out in audit, the registering authorities replied¹³⁹ that the matter would be examined and a suitable reply would be furnished.

The matter was referred to the Department and the Government in September 2018; replies have not been received (February 2020).

4.12 Short levy of Stamp Duty and Registration Fee due to incorrect classification of documents

Incorrect classification of registered documents resulted in short levy of duties and fees amounting to ₹ 14.96 lakh.

Schedule I-A of Indian Stamp (IS) Act, provides for the rates of stamp duty to be adopted based on classification of documents. Further, the CIGRS¹⁴⁰ had issued instructions that the SR should thoroughly scrutinise the recitals of the document presented for registration so as to arrive at the correct classification of the documents.

Audit scrutinised (between August 2017 and October 2017) records in four¹⁴¹ out of 159 Registration offices. It was observed that the incorrect classification of documents¹⁴² by the Registering Authorities resulted in short levy of duties and fees amounting to ₹ 14.96 lakh as given in **Table 4.5:**

Table 4.5
Classification of Documents

Registering Authority	No. of cases	Details of transactions	Document registered as	Document's actual classification	Short levy (₹ in lakh)
SR, Azampura, Hyderabad	01	The Settler (mother) and Settles (children) are the absolute joint owners and equally share the property. The Settler has relinquished her 1/4 th share of the property in favour of the Settles. Therefore, the transaction is to be treated as "Release" and not "settlement" and should be charged for duties @ 3 per cent on the Market value.	Settlement in favour of children	Release	6.55
SR, Ibrahimpatnam	01	The properties which were self-acquired by the father were partitioned in favour of his two sons. Further, the sons have	Partition	Settlement	1.04

¹³⁹ Between August 2017 and November 2017.

¹⁴⁰ Memo No.FR1/1A/4946/94, dated 16 October 2000.

¹⁴¹ DR-Hyderabad (South); SRs-Azampura, Ghatkesar and Ibrahimpatnam.

¹⁴² Between May 2016 and January 2017.

Registering Authority	No. of cases	Details of transactions	Document registered as	Document's actual classification	Short levy (₹ in lakh)
		conveyed ₹ 10.00 lakh each in cash for maintenance of their father. Therefore, this transaction is a <i>distinct matter</i> and shall be charged @ 4 per cent.			
SR, Ibrahimpatnam	01	- do- Conveyance amount is ₹ 2.5 lakh.	Partition	Settlement	0.36
SR, Ghatkesar	01	The Original absolute owner of the gifted property expired intestate rendering equal share on the property to all the members in the family as per Hindu Succession Act-Section 6. Therefore, the property can only be relinquished but not gifted.	Gift deed	Release	0.77
DR, Hyderabad (South)	01	The joint owners of the property were holding unequal shares after partition. According to C&IG instructions dated 26 April 2013, the document shall be treated as partition to the extent of equal shares. Excess portion shall be treated as release and charged accordingly.	Partition	Release	6.24
Total--					14.96

Source: Documents furnished by the Department

After Audit pointed out these cases, CIGRS (July 2018) has accepted audit remarks in two cases of SR-Ibrahimpatam. In respect of SR-Azampura, SR-Ghatkesar and DR-Hyderabad, it was replied that the documents were correctly classified.

It is however stated that Settlement deed and Gift deed executed in SR-Azampura and SR-Ghatkesar pertain to joint properties whereby all the executants enjoyed common rights. Therefore, these have to be treated as Release Deeds¹⁴³. In one case of DR-Hyderabad¹⁴⁴, the execution is in contravention of CIGRS instructions¹⁴⁵.

¹⁴³ As per article 46A of IS Act, 1899- A deed is considered a "Release deed" where by a person renounces a claim upon another person or against any specified property.

¹⁴⁴ Document no. 61/2017.

¹⁴⁵ Proceedings no. CCRA1/16634/2010 dated 26 April 2013.

The matter was referred to the Government in September 2018; reply has not been received (February 2020).

4.13 Short levy of Stamp Duty and Registration Fee on Lease deeds

Non-inclusion of Service Tax component in the Average annual rent for computing chargeable value resulted in short levy of duties amounting to ₹ 7.22 lakh.

As per Article 31 of Schedule IA to Indian Stamp Act, 1899 read with Government Order¹⁴⁶ the rates of stamp duty on lease deeds are to be decided on the basis of lease periods and lease rentals. Further, as per the explanation to the Article *ibid*, if the lessee undertakes to pay any recurring charge on behalf of the lessor including taxes/fees due to the Government, it shall be part of the rent and duties levied accordingly. Besides Stamp Duty, Registration Fee also is to be levied at the rates prescribed by the Government¹⁴⁷, on the value of Average Annual Rent according to the provisions of Registration Act 1908.

Audit scrutinized (August 2017 to October 2017) records in six¹⁴⁸ out of 159 Registration offices. It was observed that 6 lease deeds¹⁴⁹, contained specific clauses stipulating payment of service tax by the lessees on behalf of lessors. The Registering authorities did not take into account the service tax component of ₹ 60.39 lakh agreed to be paid by the lessees for arriving at the total lease rent. In another case¹⁵⁰, the registering authority levied less duty. This resulted in short levy of stamp duty and registration fee amounting to ₹ 7.22 lakh.

After audit pointed out these cases, the CIGRS (August 2018) replied that the Service tax being an indirect tax is to be borne by the ultimate user i.e., the lessee and therefore there was no short levy.

It is however stated that as per sections 66E and 68 of Finance Act 2005, renting of immovable property is a taxable service to be borne by the Service Provider *i.e.*, the lessor. The explanation under Article 31 of Schedule I-A to IS Act clearly stipulates that any Government revenue paid by the lessee which is by law recoverable from lessor is deemed to be part of the rent.

The matter was referred to the Government in September 2018; reply has not been received (February 2020).

¹⁴⁶ G.O.Ms. No. 588 of Revenue Dept. (Regn) dated 04 December 2013.

¹⁴⁷ G.O.Ms. No. 463 Revenue Regn (I) dated 17 August 2013.

¹⁴⁸ DRs - Adilabad and Karimnagar; SRs - Kapra, Saroornagar, Shadnagar and Shamirpet.

¹⁴⁹ Registered between June 2016 and February 2017.

¹⁵⁰ Document no. 506/2017 registered in January 2017.