

## **Chapter - IV**

# **Stamp Duty and Registration Fee**

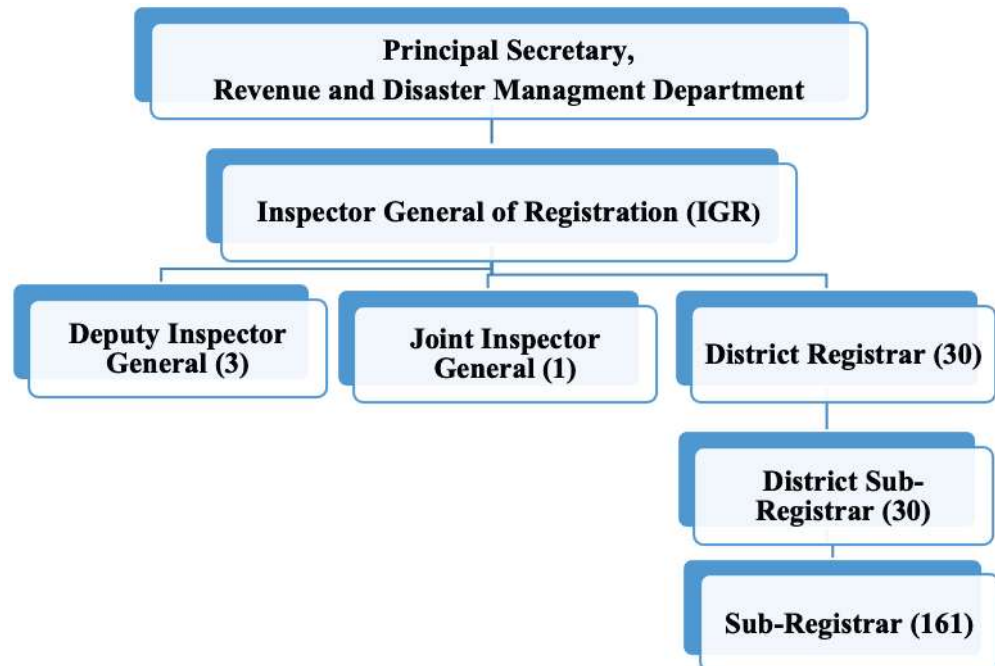


## CHAPTER IV

### STAMP DUTY AND REGISTRATION FEE

#### 4.1 Tax Administration

Receipts from Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp Act, 1899 (IS Act), the Registration Act, 1908 and the Rules framed thereunder. The organisational setup for administration of Stamp Duty and Registration fee is as under:



#### 4.2 Internal Audit

The Internal Audit Wing (IAW) of Revenue and Disaster Management (R&DM) Department was created in the year 1969. During 2019-20, out of 42 units planned for audit, the IAW of the Department covered only 29 units. Audit noticed that 9,430 paragraphs in Internal Audit Reports having money value of ₹3,077.84 crore issued up to 31 March 2020 were pending for disposal as on the date.

#### 4.3 Audit Methodology and Results of Audit

Audit was conducted in 41 out of 191 units (21.47 per cent) in Registration wing of Revenue and Disaster Management Department during 2019-20. Revenue receipts collected in the test checked 41 units was ₹834.37 crore, which is 67.43 per cent of total revenue receipts worth ₹1,237.46 crore collected in 191 units during the year 2018-19. Test check of assessment and other records showed incorrect determination of market value of land and building and non/ short levy of stamp duty and registration fee on lease, Agreement to sale, Power of Attorney etc., involving ₹9.35 crore in 14,507 cases which fall under the categories as given in **Table 4.1**:

**Table 4.1: Category wise details of Audit observations**

Sl. No.	Categories	No. of cases	(₹ in crore)
1.	Incorrect determination of market value of land and building	59	0.45
2	Non/short levy of stamp duty and registration fee on Lease, Agreement to Sale, Power of Attorney, etc. documents	138	8.83
3	Other irregularities <sup>67</sup>	14,310	0.07
<b>Total</b>		<b>14,507</b>	<b>9.35</b>

During 2019-20, the Department accepted underassessment and other deficiencies worth ₹6.18 crore in 14,324 cases that was pointed out in earlier years. However, an amount of ₹37 lakh in 137 cases, pointed out in 2019-20 was realised.

There are three broad categories of audit observations under Stamp duty and Registration fees. Most of them are of a nature that may reflect similar errors/ omissions in other Registration wing under the department but not covered in the test audit.

Department may, therefore, like to internally examine all the other units with a view to ensure that the duty and fee are levied as per provisions of the Act and Rules.

#### **4.4 Audit observations**

Audit scrutinised records relating to assessment and collection of Stamp Duty and Registration Fee. Audit noticed short realisation of revenue on agreement to sale, certificate of sale and in valuation of land and building as mentioned in the succeeding paragraphs. These cases are illustrative and are based on test check carried out by Audit.

#### **4.5 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 agreement to sale involving delivery of possession of any immovable property to sell such property shall be deemed to be a conveyance and accordingly, the stamp duty shall be payable. Deeds of certificate of sale are to be charged to duty as conveyance on the legal process of transferring property from one owner to another. Conveyance deeds 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 benchmark value (BMV) of the Government of Odisha. The documents where properties were shown to be undervalued were to be impounded for correct valuation for realisation of differential SD and RF.*

<sup>67</sup> Loss of Government revenue in shape of SD & RF due to non-implementation of market value guidelines, Blockage of Government revenue due to non-disposal of pending 47-A cases, Non-furnishing of inquiry report etc.

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

#### 4.5.1 Short levy of Stamp Duty and Registration Fee

**Due to misclassification, the Registering Authorities failed to levy Stamp Duty and Registration Fee of ₹5.17 crore on ‘Agreements for Development and Agreements to sale’ deeds as Conveyance.**

As per Article 23 of Schedule-I A of the Indian Stamp Act, 1899, (as amended in Odisha Amendment Act, 2014), an agreement to sell involving delivery of possession of any immovable property or a power of attorney authorising the person to sell such immovable property, shall be deemed to be a conveyance and accordingly, the Stamp Duty (SD) shall be payable on the instrument on the basis of the market value of the property. Provided that the Stamp Duty already paid on such agreement to sell shall, at the time of execution of the sale deed by the same person in pursuance of such agreement, be adjusted towards the total amount of such duty chargeable on the conveyance. Further, as per Clause (b) of above Article, in respect of immovable property, five *per centum* of the amount or value of the consideration for such conveyance as set forth therein or the market value of the property whichever is higher and in case of sale or gift deed executed in favour of a woman in respect of land and house, SD shall be charged at four *per cent* instead of five *per cent*. Besides, Fees for Registration (RF) at the rate of two *per cent* of the value on consideration shall be payable for the purposes specified in Section 78 of the Registration Act, 1908.

Audit test checked 41 units out of 191 District Sub-Registrar (DSR)/ Sub-Registrar (SR) offices during the period from April 2019 to March 2020. The following observations were made during the course of audit.

(A) In the office of the DSR, Khordha, Audit noticed (February 2020) that land owners and builders registered (September and October 2019) two documents<sup>68</sup> titled as “Agreement for Development of Land” and “Deed of Agreement for Sale” for development of land measuring 0.671 acre. The DSR levied SD of ₹200 and RF of ₹90,200 on the value of ₹45.10 lakh as recited in the documents without determining the market value of the properties in contravention to the aforesaid provisions. As per the recitals of these agreements, the owners handed over the physical possession of the vacant scheduled land to the developers/ builders for the purpose of development and construction of residential complex/ buildings. In consideration, it was agreed that the land owners would be entitled to get six numbers of duplex (Having land area of 1,200 sq. ft. and built up area of 2,300 sq. ft. each) and a G + 3 storied building (4,400 sq. ft.) with flooring of vitrified tiles in lieu of the scheduled land given for development.

As per the order (May 2019) of Revenue and Disaster Management Department towards revision of the value of the building, the cost of six

<sup>68</sup> (1) Document ID No.1081910885 – K. M. Patra & others/ P. R Mohanty of M/s SHAB INFRACON (2) ID No.1081912331 – A. Das/ S. Pattnaik

duplexes and a G+3 storied building was arrived at ₹2.71 crore (at the rate of ₹45.13 lakh<sup>69</sup> each) and ₹91 lakh<sup>70</sup> respectively. Since, the land owners executed agreements authorising the developers to sell such immovable properties, the documents should have been classified as conveyance and the market value of the duplexes/ building should have been considered for levy of SD and RF. Misclassification of the documents and non-determination of market value of the properties resulted in short realisation of SD and RF worth ₹24.40 lakh (SD of ₹18.07 lakh + RF of ₹6.33 lakh).

(B) During test check of documents relating to Agreements to Sell, Audit noticed that offices of four DSRs<sup>71</sup> and four SRs<sup>72</sup> registered 18 documents between 2017 and 2019 as agreement to sell in respect of land measuring 18.44 acres. As per the recitals of the documents, respective land owners (first parties) had handed over the physical possession of properties to the purchasers for a consideration of ₹50.33 crore. The market value of the said land was ₹70.19 crore. Since the possession of the properties was handed over, the documents should have been classified as conveyance with levy and collection of SD and RF on consideration of ₹71.86 crore *i.e.* as set forth in the recitals<sup>73</sup> or market value. But, the Registering Authorities (RAs) had collected SD and RF only on the advance money/ consideration money mentioned in the recitals of the documents. This resulted in short realisation of SD and RF worth ₹4.92 crore as detailed in the *Appendix-V*. Thus, undervaluation of properties due to misclassification of documents led to short realisation of SD and RF worth ₹5.17 crore.

On this being pointed out in Audit, in reply, SR, Brahmagiri furnished compliance (May 2021) that two lakh rupees was realised as per the Audit observation. The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

A similar para had appeared in the C&AG's Audit Report (Revenue Sector) 2018-19 but action on the same was yet to be taken by the Government.

#### 4.5.2 Short-levy of Stamp duty and Registration fee due to undervaluation of partition deed

**Registering Authorities did not verify the Bench Mark Value (BMV) of land, prescribed rate of buildings/ superstructures and correct assessment of land area. This resulted in undervaluation of the properties and consequent short levy of Stamp Duty and Registration Fee amounting to ₹1.04 crore.**

As per Article 45 of Schedule-I A of Indian Stamp (IS) Act, 1899, Stamp Duty (SD) shall be leviable at the rate of two *per cent* on *partition deed*<sup>74</sup> for the

<sup>69</sup> GF 1,150 sft. at the rate of ₹1,427 per sft., First floor-1,150 sft. at the rate of ₹1,242 per sft., EI and PH-25 *per cent*, vitrified tiles at the rate of ₹84 per sft., and GST at the rate of 12 *per cent*

<sup>70</sup> GF 1,100 sft. at the rate of ₹1,527 per sft., First floor-1,100 sft. at the rate of ₹1,242 per sft., Third floor – 2,200 at the rate of ₹1,427 per sft., EI and PH - 25 *per cent*, vitrified tiles at the rate of ₹84 per sft., and GST at the rate of 12 *per cent*

<sup>71</sup> DSR Puri, Balasore, Khordha and Sambalpur

<sup>72</sup> SR, Kujanga, Jagatpur, Brahmagiri and Panposh

<sup>73</sup> Value as per recitals had been taken as consideration since it was more than the market value

<sup>74</sup> Instrument of partition means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition.



amount of the market value of separated share or shares of the property. Further, Registration Fee (RF) at the rate of two *per cent* of the value of the separated shares on which Stamp Duty is payable shall be taken as the value of consideration. As per instructions issued (May 2019) by the Government of Odisha, all Registering Officers (ROs) shall check the valuation of buildings and superstructures set forth in the instruments presented for registration.

(A) Audit scrutinised the Partition deed documents (April 2019 to March 2020) in 41 out of 191 Sub-Registrars (SRs)/ District Sub-Registrars (DSRs). Audit observed in SR, Panposh that one Partition deed was registered during July 2019 among six co-owners for distribution of shares of land and building. The total value of property was assessed at ₹2.88 crore in the document. Out of this, the largest share of property was stated as ₹1.44 crore which was also taken as deed value. The Registering Authority (RA) levied and collected SD worth ₹2.88 lakh and RF worth ₹2.88 lakh. But, it was observed that the value of land and buildings of all the shares were not evaluated as per the market value and prescribed guidelines. Instead, the RA had assessed the value simply as per the recital of the document resulting in under-valuation of the property. The value of these properties was worked out to be ₹23.36 crore taking into account the BMV and value of buildings/ superstructures as per the prescribed guidelines of the Government. Accordingly, SD & RF worked out to ₹46.71 lakh and ₹46.71 lakh respectively. This resulted in short levy of SD worth ₹43.84 lakh and RF worth ₹43.84 lakh totalling to ₹87.68 lakh as detailed in *Appendix -VI*.

(B) Similarly, scrutiny of Partition deeds registered in DSR, Khordha revealed that, in one case, an area of 0.189 acre along with commercial multi-storied building was divided among land owner and his three legal heirs. The proportionate share of interest of each party of the scheduled property would be 0.04725 acre. The value of land was to be assessed for levy of SD and RF. However, the share portion of land was stated as Ac.0.00047.25 decimals instead of 0.04725 acre resulting in incorrect assessment of land area of each share which led to undervaluation of the consideration amount. The RA evaluated the land and building at ₹1.13 crore as set forth in the document and levied SD worth ₹2.26 lakh and RF worth ₹2.26 lakh. The value of the land and building worked out to ₹5.20 crore taking into account the BMV and value of buildings/ superstructures as per the prescribed guidelines by the Government. Accordingly, SD & RF chargeable worked out to ₹10.40 lakh and ₹10.40 lakh respectively. This resulted in short levy of SD worth ₹8.14 lakh and RF worth ₹8.14 lakh totalling to ₹16.28 lakh as detailed in *Appendix-VII*. This indicated lack of due diligence on the part of the RAs in evaluating the value of properties for the purpose of levy of SD and RF.

On this being pointed out in Audit, SR, Panposh stated that action would be taken after verification of document and rule position thereon. DSR, Khordha stated that necessary action would be taken for realisation of deficit SD and RF.

The matter was intimated to the Government of Odisha during May 2021. Their reply is awaited (September 2021).

A similar para had appeared in the C&AG's Audit Report (Revenue Sector) 2018-19 but action on the same was yet to be taken.

#### **4.5.3 Short-levy of Stamp Duty and Registration Fee on Lease Agreements executed to let or sub-let the property on rent for commercial use**

**Stamp Duty and Registration Fees worth ₹87.02 lakh was short levied on registration of lease agreements due to non-inclusion of Goods and Services Tax while computing the Average Annual Rent.**

As per explanation to Article 35 of Schedule-I A to the Indian Stamp (IS) Act, 1899, Odisha Amendment (OA), when a lessee undertakes to pay any recurring charge, such as Government revenue, the landlords share of cesses municipal rates or taxes which is by law recoverable from the lessor; that amount shall be deemed to be part of the rent. The levy of Stamp Duty (SD) for a consideration equal to the amount or value of Average Annual Rent (AAR) are prescribed as per term of leases in Article 35 *ibid*. As per the order issued (August 2008) by the Government of Odisha (GoO), the rate of SD shall be chargeable at the rate of five *per cent* of the amount or value of the consideration. Registration Fee (RF) shall be payable at the rate of two *per cent* of the value on consideration for the purposes specified in Section 78 of the Registration Act, 1908.

Audit scrutinised records in 41 (21 *per cent*) out of 191 District Sub-Registrars (DSRs)/ Sub-Registrars (SRs) offices and observed (April 2019 to March 2020) in 27 out of 1,428 lease deeds pertaining to six DSR/ SR offices that lease agreements were executed during August 2018 to December 2019 to let or sub-let the property for commercial purpose on monthly rental basis. The period of lease was ranged from five years to 30 years. The Lessees agreed to pay Goods and Services Tax (GST) on behalf of lessors. However, the GST amount was not taken into account while computing the AAR for assessment of SD though it was deemed to be part of rent. The Registering Authorities (RAs) ignored the GST component and levied SD on monthly rental only. This resulted in short levy of SD worth ₹62.46 lakh and RF worth ₹24.56 lakh totalling to ₹87.02 lakh as detailed in the *Appendix-VIII*.

After audit pointed this out, three<sup>75</sup> RAs accepted the observation and stated to take necessary action for realisation of deficit amount. DSR, Puri and SR, Khandagiri stated that action would be taken after verification of documents. However, DSR, Khordha did not accept the observation and stated that the RA had no scope to calculate SD/ RF as the percentage of GST was not mentioned in the documents. The reply of DSR, Khordha is not acceptable as the rate of GST is readily available with the appropriate authority.

The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

---

<sup>75</sup> DSR Balasore, SR Nandapur, SR Panposh



#### 4.5.4 Short realisation of Stamp Duty and Registration Fee on Power of Attorney instruments in lieu of conveyance

**The Registering Authorities did not levy Stamp Duty and Registration Fee on 'Power of Attorney instruments' as Conveyance. Due to misclassification, Stamp Duty and Registration Fee of ₹44.83 lakh was short levied.**

As per the explanation under Article 23 of Schedule-I A of Indian Stamp (IS) Act, 1899 (as amended in Odisha Amendment Act, 2014), a Power of Attorney (PoA) to sell immovable property, shall be deemed to be a conveyance. Accordingly, the Stamp Duty (SD) shall be payable on the instrument on the basis of the market value of the property which is the subject matter of such instrument. The SD shall be chargeable at the rate of five *per cent* of the amount or value of the consideration for such conveyance as set forth in the deeds or market value of the property, whichever is higher. The Registration Fee (RF) at the rate of two *per cent* of the value of documents shall also be payable.

Audit scrutinised PoAs in 41 out of 191 Registering Offices (April 2019 to March 2020) and observed in one District Sub-Registrar (DSR) and five Sub-Registrar (SR) offices that 18 PoAs had been registered on realisation of SD and RF amounting to ₹38.30 lakh and ₹15.23 lakh respectively. The attorney holders were authorised to sell immovable properties on behalf of the executants. As the executants and the attorney holders were not coming under the ambit of clause 48 (g) of the IS Act, the documents should have been classified as conveyance and SD and RF on the market value of the properties worth ₹14.06 crore should have been levied and realised. Lack of due diligence on the part of the DSR and SRs led to short realisation of SD worth ₹31.96 lakh and RF worth ₹12.87 lakh (*Appendix-IX*).

After being pointed out in Audit, in three cases, the DSR Khordha stated that steps would be taken to realise the amount from the parties and in other cases, it was stated that percentage of land area was handed over instead of full area and valuation of the property was taken for that share. SR, Brahmagiri, Rajgangpur, Kamakhyanagar and Mansada stated that steps would be taken for realisation of SD and RF after verification of documents. SR, Balipatna stated that no possession was handed over by the executants to attorney holders.

The reply of DSR, Khordha is not tenable as it was clearly stated in schedules of land that full area of lands was handed over to the second parties. Further, the reply of SR, Balipatna is not tenable as the possession of land had already been handed over to the attorney holder.

The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

#### **4.5.5 Short/ non-levy of Stamp Duty and Registration Fee from lease deeds due to non-adherence to provision of Indian Stamp Act**

**The Registering Authorities did not determine the consideration appropriately as per the provisions of IS Act. Due to lower consideration, Stamp Duty and Registration Fee of ₹47.27 lakh short/ non-levied.**

Article 35 of Schedule-I A of Indian Stamp (IS) Act, 1899 states that the Stamp Duty (SD) shall be levied on the basis of tenure of lease and Average Annual Rent (AAR). The division (c) of above article defines that the SD is also levied where leases are granted for fine, or premium or money advanced in addition to rent reserved. The SD shall be chargeable at the rate of five *per cent* for a consideration equal to the amount or value of AAR as per division (b) and (c) (iii) of article 23 of above Schedule. Registration Fee (RF) shall also be payable at the rate of two *per cent* of the value on consideration for the purposes specified in Section 78 of the Registration Act, 1908.

Audit scrutinised the records of 41 out of 191 District Sub-Registrars (DSRs)/ Sub-Registrars (SRs) offices (April 2019 and March 2020) and observed in seven cases pertaining to three DSR/ SR offices<sup>76</sup> that the provisions of IS Act as stated above were not adhered to during realisation of SD and RF. In one case<sup>77</sup>, security deposit set forth in the document was not taken into account for computation of consideration and in four cases<sup>78</sup>, the AAR was assessed at a lower rate for levy of SD and RF. Moreover, in two cases<sup>79</sup>, though SD was exempted as per Tourism Policy, 2016, the RF was leviable on the consideration. Hence, the Registering Authorities (RAs) did not follow the provisions of IS Act and assessed the documents inappropriately. This resulted in short/ non levy of SD and RF worth ₹47.27 lakh as detailed in the *Appendix-X*.

After Audit pointed this out, the observation was accepted by SR, Panposh and stated to realise the deficit amount by issuing demand notice. The DSR, Puri and SR, Kujanga stated that necessary steps would be taken for realisation of deficit SD & RF after verification of documents and seeking clarification from higher authority.

The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

---

<sup>76</sup> DSR Puri, SR Kujang and SR Panposh

<sup>77</sup> SR, Kujang

<sup>78</sup> SR, Panposh

<sup>79</sup> DSR, Puri

#### 4.5.6 Short realisation of Stamp Duty and Registration Fee due to undervaluation of buildings and superstructures

**Registering Authorities did not verify the prescribed rate of buildings and superstructures while registering documents of sale of landed properties which resulted in undervaluation of such landed properties and consequent short levy of Stamp Duty and Registration Fee amounting to ₹28.41 lakh.**

As per Section 27 of the Indian Stamp (IS) Act, 1899, (Odisha Amendment, 1987) read with Section 3 of the Act, *ibid*, the consideration if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in the document. As per Section 47-A of the Act, in case of undervaluation of a property/ document during registration, the case shall be referred to the collector who would determine the value and the deficit amount shall be paid by the person liable to pay the duty. Revenue & Disaster Management Department, Government of Odisha issued (December 2003 to May 2019) guidelines for valuation of buildings and superstructures for the purpose of levy of Stamp Duty (SD) and Registration Fee (RF). Rates for the SD and RF applicable to conveyance deed were five and two *per cent* respectively.

Audit test checked (April 2019 to March 2020) documents registered in 41 out of 191 Registration Offices (ROs). It was observed that 14 ROs<sup>80</sup> registered 33 conveyance deeds during June 2011 to September 2019, for selling of properties having buildings thereon, for consideration of ₹21.89 crore as set forth in the documents. The Registering Authorities (RAs) realised SD of ₹1.07 crore and RF of ₹43.78 lakh. Audit observed that the RAs while evaluating the value of the properties registered, did not verify the prescribed rate of buildings (floor-wise), number of years for which depreciation was to be worked out, value of land as per BMV *etc.*, as per the prescribed guidelines nor were the matters referred to the concerned Collectors for determination of correct value. As per the prescribed guidelines for valuation of buildings and superstructures and the prevalent BMV, the value of those properties should have been ₹26.01 crore as detailed in the *Appendix-XI*. Accordingly, the RAs should have raised demand and recover the SD & RF to the extent of ₹1.27 crore and ₹52.03 lakh respectively from the parties. This resulted in short realisation of SD of ₹20.16 lakh and RF of ₹8.25 lakh.

On this being pointed out, Sub-Registrars (SRs), Jagatpur, Betnoti, Biramaharajpur, Kotpad, Khordha and District Sub-Registrar (DSR), Balasore stated that notices would be issued to the concerned parties for realisation of deficit SD & RF and SR, Kujanga stated that documents would be examined with the Revenue Inspector (RI) report and case would be instituted under Section 47(2-a) for realisation of deficit SD and RF. DSR, Sambalpur furnished compliance (July 2021) that in one case the SD & RF of ₹0.07 lakh

<sup>80</sup> SR Barbil (1), SR Barpali (4), SR Betnoti (3), SR Biramaharajpur (2), SR Hatadihi (3), SR Jagatpur (2), SR Khordha (1), SR Kotpad (1), SR Kujanga (2), SR Loisingha (3), SR Panposh (4), DSR Balasore (1), DSR Bargarh (4) and DSR Sambalpur (2)

was realised. All other SRs and DSRs stated that necessary action would be taken for realisation of deficit SD & RF after verification of relevant documents.

The matter was intimated to Government of Odisha during June 2021. Their reply is awaited (September 2021).

A similar para had appeared in the C&AG's Audit Report (Revenue Sector) 2018-19 but action on the same was yet to be taken by the Government.