

Chapter-III Stamp Duty and Registration Fee

3.1 Tax administration

Receipts from Stamp Duty and Registration Fee are regulated by the Indian Stamp Act (IS Act), 1899, the Karnataka Stamp Act (KS Act), 1957, the Registration Act, 1908 and the Rules made thereunder. In Karnataka, the levy and collection of Stamp Duty and Registration Fee is administered at the Government level by the Principal Secretary, Revenue Department. The Department of Stamps and Registration (DSR) under the administrative control of the Revenue Department regulates the levy and collection of Stamp Duty and Registration Fee.

3.2 Internal audit

The Department stated that though an Internal Audit Cell was constituted in December 2012, it was still not functional (December 2016) due to lack of manpower.

3.3 Results of Audit

In 2015-16, test check of records of 97 units of the DSR revealed non/short levy of Stamp Duty, Registration Fee and other irregularities amounting to ₹ 442.73 crore raised through 261 paragraphs, which fall under the following categories as given in **Table 3.1**.

**Table 3.1
Results of Audit**

(₹ in crore)			
Sl No	Category	No. of paragraphs	Amount
1	Performance Audit on 'Adequacy of controls to prevent loss of Stamp Duty and Registration Fee'	1	418.74
2	Short levy of Stamp Duty and Registration Fees due to incorrect application of market value	168	14.13
3	Short levy of Stamp Duty and Registration Fees due to misclassification of documents	19	1.27
4	Short levy of Stamp Duty and Registration Fees due to suppression of facts	24	2.09
5	Other irregularities	49	6.50
	TOTAL	261	442.73

During the course of the year, the Department accepted short/non levy of ₹ 6.00 crore in cases pointed out through 86 paragraphs. An amount of ₹ 2.15 crore was also recovered in cases pointed out through 149 paragraphs pertaining to earlier years.

A Performance Audit on 'Adequacy of controls to prevent loss of Stamp Duty and Registration Fee' involving ₹ 418.74 crore and a few illustrative cases involving ₹ 5.97 crore are discussed in the following paragraphs.

3.4 Performance Audit on “Adequacy of controls to prevent loss of Stamp Duty and Registration Fee”

Highlights

Department of Stamps and Registration had not analysed reduction of market value by District Registrars (DR) and had not specified any criteria for selection of DR orders for review by Inspector General of Registration and Commissioner for Stamps (IGRCS).

(Paragraph 3.4.10)

DSR had not instituted a mechanism for detection of suppression of facts by the parties which led to loss of Stamp Duty. Stamp Duty and Registration Fee of ₹ 24.34 crore was short levied due to suppression of facts and figures in the test checked cases.

(Paragraph 3.4.13)

DSR does not have a break-up of the revenue in terms of each article of levy and by whom paid in respect of the revenue from instruments not compulsorily registrable, deficiency of which affects enforcement activities to ensure due realisation of Stamp Duty on such instruments.

(Paragraph 3.4.14.1)

DSR had not collected Stamp Duty of ₹ 313.26 crore due on conveyance of Industrial Machinery and Certificate of Sale relating to auction of iron ore during the period 2011-16.

(Paragraphs 3.4.14.3 and 3.4.14.4)

DSR did not have details/confirmation of payment of Stamp Duty of ₹ 71.69 crore on Certificates of Shares and Bonds issued by Companies in Karnataka during 2011-16.

(Paragraphs 3.4.14.5 and 3.4.14.6)

3.4.1 Introduction

Stamp Duty is a tax levied (previously in the form of stamps and now by way of money) on the instruments recording transactions. Receipts from Stamp Duty and Registration Fee are regulated under the Indian Stamp Act, 1899, the Registration Act, 1908, the Karnataka Stamp (KS) Act, 1957, and the Rules made thereunder.

3.4.2 Organisational Setup

(a) The DSR is headed by the Inspector General of Registration and Commissioner of Stamps (IGRCS) and is assisted by four Deputy Inspectors General of Registration. At the functional level, there are 34 District Registrar (DRs) Offices and 248 Sub-Registrar Offices (SROs) in the State. The SRO is the primary unit where the instruments are presented for registration. The DR is the district-in-charge and the authority for determination of market value of properties. KAVERI (Karnataka Valuation and e-Registration) is the software used by the DSR for registration of documents.

The Government of Karnataka, during 2009 introduced payment of Stamp Duty by way of e-stamp certificates by formulating the Karnataka Stamp (Payment of Duty by means of e-stamping) Rules, 2009. Stock Holding Corporation of India (SHCIL) is the Central Record Keeping Agency and issues e-stamp certificates through its 'Authorised Collection Centre' or 'Authorised Stamping Centre'. E-stamp certificates are obtained by public through the authorised centres and amounts collected by SHCIL are remitted into Government Head of Account after deducting commission for issue of e-stamp certificates.

(b) **Staff Position:** IGRCS, in reply to the Audit Enquiry on staff position in DSR, stated that the men-in-position in the Department is not favourable. Status of vacancy of staff was stated to be about 32 *per cent* (536 out of 1,669 Posts) of the Sanctioned Strength with major shortages in the cadre of SROs (76 out of 172 Sanctioned Posts) and first/second Division Assistants (178 out of 744 Sanctioned Posts). Shortage of staff under Enforcement Wing and absence of Internal Audit Wing were also brought out in the reply.

3.4.3 Brief sketch of the controls established by DSR to prevent leakage of revenue

As per Section 17 of the KS Act, 1957, all instruments chargeable with duty and executed by any person in the State of Karnataka shall be stamped before or at the time of execution. At present, there are 55 entries in the Schedule to the KS Act on which Stamp Duty is leviable.

Instruments may be classified into two types, viz. those that are to be compulsorily registered as per the Registration Act, 1908, and the rest which are not compulsorily registrable in the normal course of their execution. Documents which purport to transfer or create a right, interest or title over property such as conveyance, exchange deed, settlement deed, release deed, etc. are compulsorily to be registered and hence are presented to the SRO for registration. Documents which are agreements for sale, agreements for works contract, labour or services, agreements for advertisements, licences issued by

an authority, policy of insurance, share certificate, transfer of shares, etc. attract Stamp Duty but are not compulsorily required to be registered. Hence, these documents are executed and presented to the relevant offices/parties but do not come to the DSR.

The different controls built into the system by DSR to ensure the correctness of the levy of Stamp Duty are as mentioned below:

- For not compulsorily registrable instruments, Section 33 of the KS Act empower officers in charge of public offices to impound an instrument not duly stamped and refer it to the DR for levy of proper duty. Section 67B empowers authorised officers to inspect any business premises and seize instruments which are not duly stamped, if any, and to levy proper duty on the instrument.
- For instruments such as conveyance deed, power of attorney, exchange deed, gift deeds, etc. which attract Stamp Duty at *ad valorem* rates on the market value¹ of the property, the guidance market value of properties in different areas of the State of Karnataka are estimated through the constitution of Central Valuation Committee (CVC) under Section 45 B of the KS Act. The SROs assess the market value of the property based on the consideration received and the guidance market value finalised by the CVC for each district, taluk, village, area, etc. The higher of the two is fixed as market value for the purpose of levy of Stamp Duty and Registration Fees.
- In case of disputes, while registering an instrument, with respect to the market value of the property in the document, SRO will refer the instrument to DR under Section 45A(1) of the KS Act, 1957, for determination of actual market value of the property.
- Under Section 45A(3) of the KS Act, DR may within two years from the date of registration, *suo moto* summon any instrument to examine the correctness of the market value of the property and Stamp Duty paid thereon.
- Under Section 53A of the KS Act, IGRCS is also provided with *suo moto* powers to review the orders of DR within a period of five years from the date of order of DR.

3.4.4 Audit Objectives

The aim of the Performance Audit was to assess the efficacy of the system and controls in the Department to detect and prevent loss of Stamp Duty. In this regard, the Objectives were:

- Whether the provisions of the KS Act, 1957, and allied Rules were adequate to ensure realisation of proper Stamp Duty on registered instruments?
- Whether control mechanism at the functional level was effective to ensure disclosure of all facts affecting chargeability of Stamp Duty and

¹ Market value of the property is the price, in the opinion of the DR, which the property would fetch in the open market on the date of execution of the instrument or consideration stated in the document, whichever is higher.

detect loss of Stamp Duty due to suppression of facts in the registered instruments?

- Whether adequate provisions and mechanism existed to collect Stamp Duty due on instruments not compulsorily registrable?

3.4.5 Audit Criteria

- The Indian Stamp Act, 1899
- The Karnataka Stamp Act, 1957
- The Karnataka Stamp Rules, 1958
- The Karnataka Stamp (Prevention of undervaluation of instruments) Rules, 1977
- Karnataka Stamp (Payment of Duty by means of e-stamping) Rules, 2009 and
- Notifications and circulars issued by the IGRCS.

3.4.6 Scope of Audit and methodology

The Performance Audit covered the period 2011-16. The new Articles for levy of Stamp Duty introduced during the period 2011-16 were reviewed besides other selected Articles of levy. In order to assess the controls with respect to registered documents, eleven² out of 34 DRs in the State were selected and documents registered across the SROs in the selected DRs were test checked on random sampling basis. In respect of not compulsorily registrable documents, information was obtained from various agencies to verify proper realisation of Stamp Duty.

3.4.7 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Revenue Department and IGRCS in providing necessary information and records for audit. An Entry Conference was held with IGRCS in April 2016 wherein the scope of audit, methodology and audit objectives including sampling were explained to the Department. The draft review report was forwarded to the Government and the Department in September 2016 and was discussed in the Exit Conference held in October 2016 with the Principal Secretary to Government, Revenue Department and the IGRCS. The views of the Government and replies of the DSR received during the Exit Conference have been included in the respective paragraphs.

Audit Findings

3.4.8 Analysis of Revenue

The Budget Estimates (BEs), actuals of revenue, variation in receipts over BE, percentage of variation and percentage of growth over previous years in respect of Stamp Duty and Registration Fee for the years 2011-12 to 2015-16 were as given in **Table 3.2**.

² Since Bengaluru district accounted for 73 per cent of the revenue earned by DSR, all the six DRs in Bengaluru and five out of the balance 28 DRs were selected on random sampling basis.

Table :3.2
Analysis of Revenue

(₹ in crore)

Year	Budget Estimates	Actuals	Percentage of variation of actual over BE	Revenue realised from registered instruments	Percentage of revenue realised through registered instruments to actuals (col 5 to col 3)
1	2	3	4	5	6
2011-12	4,030.00	4,623.20	(+) 14.72	4,567.79	98.80
2012-13	5,200.00	5,225.02	(+) 0.48	4,796.58	91.80
2013-14	6,500.00	6,188.76	(-) 4.78	5,698.22	92.07
2014-15	7,450.00	7,025.85	(-) 5.69	6,399.94	91.09
2015-16	8,025.00	8,214.71	(+) 2.36	7,391.87	89.98

Col 5: Figures furnished by DSR

It can be seen from the table above that the revenue has steadily increased over the years and the DSR has been able to exceed the revenue targets set in the BEs except during the years 2013-14 and 2014-15. The revenue collected comprises Stamp Duty from both registrable and not compulsorily registrable documents. As per the figures furnished by the DSR, more than 90 per cent of the revenue realised was on account of instruments presented to the DSR for registration. In respect of revenue from not compulsorily registrable documents, the DSR did not have complete break-up of revenue under each Article of levy.

The DSR did not make available the budget proposal files/information regarding targets envisaged in the BEs separately for registrable and not compulsorily registrable documents. Hence, audit could not assess the efficacy of revenue collection separately for registrable and not compulsorily registrable documents. During the period from 2011-12 to 2015-16, the DSR had introduced new levies of Stamp Duty on not compulsorily registrable instruments relating to works, labour and service contract agreements, agreements for advertisement and broadcasting for promotion of business, chit agreements executed in the State, Limited Liability Partnerships, etc. which should have positively impacted the growth of revenue during the period. However, in the absence of specific information on revenue collected under each of the new levies introduced and the instruments which are not compulsorily registrable in general, the DSR was not in a position to review the impact of the these levies on the revenue realisation.

3.4.9 Levy of Stamp Duty on the market value of the property

Instruments which purport to create, assign or transfer right or title in immovable property (like conveyance, exchange deed, settlement, release, or gift deed) attract *ad valorem* rate of Stamp Duty on the market value of the property which is the subject matter of the instrument. The CVC, constituted under the KS (Constitution of CVC) Rules, 2003, is responsible for publication of estimated guidance values of properties in different areas of the State. Rule 9 of the Rules *ibid* provides for rectification of any anomaly in the estimation of market value. The guidance market value or consideration, whichever is higher, is the basis for the SRO to levy Stamp Duty. DSR has to ensure reasonable realisation of Stamp Duty by defining market value of the property

through published guidance values or consideration stated in the instrument, whichever is higher. Fixation of guidance market value was a significant step towards ensuring Stamp Duty on a reasonable value of the property to the State Exchequer.

Analysis of sale deeds executed during 2011-16 revealed that only about 32 *per cent* of the instruments presented had consideration higher than the guidance market value. In the remaining 68 *per cent* of the instruments, which had consideration less than the guidance market value, the DSR ensured levy of Stamp Duty on guidance market value of the property.

Audit test checked the published guidance values and found some discrepancies which were referred to the DSR for rectification. The omissions found included prescription of market value for certain apartments lower than the general rate specified for apartments in the same area/road, non-revision of guidance market values for specific apartments during revision in November 2014 for the properties in the jurisdiction of DR Shivajinagar and inclusion of two market values for the same road which was known by two names in the jurisdiction of DR Basavanagudi.

DSR replied in the Exit Conference (October, 2016) that rates of some apartments were fixed lower than the general rates owing to factors such as quality of construction, surroundings, absence of facilities, etc. However, DSR agreed that, as pointed out in audit, the process should involve recording of specified reasons which would be ensured in future. In respect of different rates for same road, it was stated that action would be initiated to collect the deficit duty of about ₹ 20 lakh in the test checked cases.

3.4.9.1 Absence of clarity in definitions for levy of Stamp Duty

As per the Karnataka Stamp (Constitution of CVC) Rules, 2003, the estimated guidance market values for lands and sites should be indicated separately. The estimated guidance values were expressed in units of acres for land and square feet for sites. However, it was noticed that 'land' and 'site' were not specifically defined in the Rules and hence properties to be measured on acre or square feet basis could not be distinguished. Lands converted for non-agricultural purposes were continued to be treated as lands.

As per Rule 2(a) of the KS (Constitution of CVC) Rules, 2003, the values for lands converted for non-agricultural use near or in the vicinity of a town or city may be estimated per square feet. However, the intent of this Rule was not incorporated in the published guidance values of all districts except Mangaluru and Udupi. In Mangaluru and Udupi districts, the prescribed guidance value per unit of converted land (cent³) is on par with the rate of sites on square feet basis. The converted land measuring up to 25 cents is measured at the specified rate *per cent* and thereafter at prescribed percentages of the specified rate.

³ Unit of measurement of land; 100 cents equal one acre; 1 cent equals about 435 square feet.

In Bengaluru, the CVC guidance specified valuing undeveloped converted lands/agricultural land measuring up to a certain extent⁴ at rates specified for sites in the area and beyond that extent as a multiple of agricultural land rate based on the purpose for which it was converted. This had resulted in land up to 10 guntas outside the municipal limits to be valued on square feet basis while a huge extent of converted undeveloped land well within the municipal limits was valued as undeveloped land. The DSR has not defined or set criteria for classifying land as 'developed' or 'undeveloped'.

As per prescribed CVC guidance, it was noticed that lands converted for non-agricultural purposes situated within the limits of Bruhath Bengaluru Mahanagara Palike (BBMP) were treated as undeveloped lands and their value estimated as a multiple of agricultural land. It was noticed in seven⁵ SROs that 24 instruments conveying converted land were registered during 2012-13 and 2015-16. These properties were located within the BBMP limits and had BBMP/village panchayat *khata*s⁶. The estimated guidance value was worked out as ₹ 72.31 crore based on agricultural land rate in the respective areas. The value of these properties, if computed at rates applicable to converted sites in square feet would work out to ₹ 127.56 crore. The absence of guidelines to compute market value on square feet basis had a potential Stamp Duty and Registration Fee of ₹ 3.68 crore.

It is pertinent to note here that the valuation of these converted lands for levy of property tax by BBMP is computed on rates prescribed per square feet of site in the area. Similar analogy of levying Stamp Duty and Registration Fee on rates prescribed per square feet seems logical and reasonable in the interest of revenue. The pro-revenue guidelines adopted in Mangaluru and Udupi districts have not been adopted uniformly in all the other Districts.

The Government stated in the Exit Conference (October 2016) that converted land up to 10 guntas are already being valued at rates applicable to sites but this cannot be applied for larger extent of land where the parties would have to relinquish almost 45 *per cent* of such lands for civic amenities in the course of development. However, the DSR stated that the refinement of market value was an ongoing process and agreed that the suggestion of Audit to improve valuation of converted lands would be evaluated during subsequent revision of guidance values.

Recommendation 1: The Government may prescribe specific criteria for classifying land as 'developed' or 'undeveloped' and specify the area/distance within/from municipal/corporation limits for properties to be valued on square feet basis.

⁴ Up to five guntas at site rates and between five guntas and 10 guntas at 50 *per cent* of the site rates.

⁵ Banashankari, Banaswadi, Bidarahalli, Bommanahalli, Halasuru, Mahadevapura and Shivajinagar.

⁶ Record of the property in the property register of the Corporation assigning a municipal number to the property and specifying the title holder responsible for paying property tax.

3.4.10 Determination of market value by DRs

As per the provisions of the KS Act, when the parties dispute the payment of Stamp Duty on the guidance market value, the SRO shall refer the instrument to the DR for determination of market value of the property which is the subject matter of the instrument and the duty payable thereon. As per Section 45(A)(2) of the KS Act, the DR shall, after giving the parties reasonable opportunity of being heard and after holding inquiry in such manner as may be prescribed by Rules, determine by order, as far as may be within ninety days from the date of receipt of such reference, the market value of the property.

The KS (Prevention of Undervaluation of Instruments) Rules, 1977, prescribe the guidelines for determination of the market value of the property.

3.4.10.1 Analysis of DRs' orders determining market value

In order to analyse the determination of market value in such cases by DRs, Audit selected orders passed by DR, Bengaluru Rural during 2011-16 on a random basis. During the period 2011-12 to 2015-16, 815 cases were finalised by the DR wherein market value of ₹ 339.46 crore was determined as against ₹ 653.65 crore determined by the SROs as per market value guidance. The difference in market value was ₹ 314.19 crore with a potential Stamp Duty which amounted to ₹ 15.71 crore.

Audit compared the market value of properties as determined by the DR with that determined by the SRO and examined the variation. Audit noticed that, though principles were prescribed for determination of the market value of the property, the decisions and the consequent reductions in the market value in similar cases were not uniform. The reasons for which the properties were valued at less than the guidance value by the DR were summarised under four categories as shown below and examined separately as given in **Table 3.3**.

Table:3.3
Analysis of orders of DR

Sl. No.	Reason	No. of cases	Percentage variation in fixing market value by DRs				Reduction in market value	Stamp Duty involved
			Up to 25%	25 to 50%	50 to 75%	Above 75%		
a.	Land Locked property	345	34	235	59	17	113.06	5.65
b.	Lack of facilities like water, power, drainage, bus, etc.	217	61	124	22	10	55.42	2.77
c.	Not near National Highway / Roadside property	29	4	19	6	0	8.24	0.41
d.	Others (no proper approach road, uneven land, boulders within the properties etc.)	224	109	67	32	16	137.47	6.88
Total		815	208	445	119	43	314.19	15.71

(a) Land locked property

Audit acknowledges that the access to a property is decisive in arriving at the price of the property. As an example, it is evident from a village map that most of the agricultural lands do not have specific access to roads and ease of

access was only through neighbouring lands. Such aspects should normally be adopted as pointers for systematically deriving the average guidance market value of agricultural land by the CVC. The Audit analysis indicated that the percentage of reduction in land prices in respect of land locked properties by DRs varied from 7 to 86 per cent. The significant variation implied that such aspects were not factored into CVC guidance market value which indicates scope for improvement.

(b) Lack of facilities like water, power, drainage, bus, etc.

The properties involved are agricultural land and land converted for non-agricultural purposes and the reasons for reduction were lack of facilities like water, power, drainage, bus, etc. The percentage reduction ranged from 5 to 88 as given in **Table 3.4**.

Table: 3.4
Reduction in Market value due to Lack of facilities

(₹ in crore)			
Sl.No.	Type of land	No. of cases	Reduction in market value
1	Agricultural land	167	31.45
2	Converted land	08	17.78

Audit acknowledges the fact that the reasons mentioned above merit reduction in price. However, the CVC, in the guidance market value, prescribes different rates for dry, wet and plantation lands with lowest rate for dry land and highest for plantation land. Since, the difference of rates has already been factored into the CVC guidance values, further reduction on the basis of non-availability of water leaves scope for review.

(c) Property not situated on National Highway (NH)/Ring Road

Audit noticed that though CVC guidance values specified survey numbers abutting NH/Ring road, the spot inspection reports of the DR in 29 cases, point it out to be otherwise stating that the properties in question were about 800 meters to two kilometres from the NH or were situated on the service road or that *phodi* (partition due to part sale) transaction of the property in question rendered it away from the NH. The percentage reduction ranged from 21 to 72.

Such inconsistencies can be rectified through co-ordination with the Survey, Settlement and Land Records Directorate and National Highways Authority of India for determination of exact survey numbers abutting the NH. Institution of a standard for treatment of bifurcations in survey number after *phodi* in the CVC guidance values also would reduce the chances of error in this respect.

Audit also noticed that these reports of the survey number not being on NH/Ring Road were not being conveyed to the CVC to consider during subsequent revisions of the guidance market values. Hence, the survey numbers continued to be shown as on NH/Ring road even in subsequent revisions of CVC guidance values.

The Government (December 2016) replied that the DRs have been asked to report all cases where market value is reduced on the ground that the property is not situated on NH/Ring Road along with 11E⁷ sketches with a recommendation to exempt from application of rates specified for NH/Ring Road. The Department stated that the Commissioner, Survey, Settlement and Land Records would be requested to furnish the village wise maps of properties on NH/Ring Road.

(d) Other cases

There were 224 cases which were disposed of at lower rate quoting various other reasons such as properties without proper approach roads, uneven land, existence of pits and boulders within the properties and distance from town. The cases involved agricultural, converted land and sites. The percentage reduction ranged from 3 to 86 as given in **Table 3.5**.

Table: 3.5
Reduction in Market value due to other cases

(₹ in crore)			
Sl.No.	Type of land	No. of cases	Reduction in market value
1	Agricultural land	144	37.89
2	Converted land	33	40.36
3	Site	47	59.21

Though reasons were specified for reducing the prices, it is pertinent to mention that the extent of Kharab⁸, as prescribed in the Record of Rights, Tenancy and Crop Inspection (RTCs), was much lesser than that used for calculation by DR. Hence, audit is of the opinion that instead of classifying the whole land as uneven, the extent of Kharab land out of the total extent should be specifically stated in the order of DR so that fixation of market value is more realistic.

The Government (December 2016) replied that instructions had been issued to forward all orders of DRs for use during revision of guidance market values.

Recommendation 2: Government may prescribe a scale of reduction in guidance market value specific to the reasons, wherever possible, to make the proceedings under Review more uniform.

Recommendation 3: DR orders should be referred to the CVC so that the grounds on which such market value reduction is ordered by DRs can be factored into subsequent revisions of guidance market values.

3.4.10.2 Omissions noticed in respect of DR orders

Orders passed by the DR under Section 45(A)(1) of the KS Act, 1957, have to take into account the representations of the purchaser vis-à-vis the factual position on spot inspection and other determinants affecting the value of the property and arrive at a reasoned order determining the market value of the property on which Stamp Duty and Registration Fee are levied as against the guidance market value. On a test-check of orders passed by DRs under

⁷ 11E sketch is the sketch mandated to be produced at the time of registration of agricultural lands. The sketch is issued by the Department of Survey, Settlement and Land Records and exactly marks the portion of the land being sold with clear boundaries.

⁸ Kharab land is the extent of land unfit for agriculture.

Section 45(A)(1) of the KS Act, Audit noticed certain apparent omissions in the orders which affected the market value determination. The nature of the omissions was as under:

- Omission to determine market value for car parking slots;
- Omission to reckon the consideration passed on to the vendor in the sale agreement;
- Not considering the rate per square foot for the property agreed to between the parties in a sale agreement executed between them;
- Inadequate documentation of evidence for the reasons on which reduction in market value is ordered; and
- Determination of market value in contravention of CVC special guidelines and clarification circular issued by IGRCS in that regard;

A few illustrative cases with Stamp Duty and Registration Fee in this respect are detailed in **Annexure 'B'**.

Keeping in view the omissions noticed in the orders of the DRs, Audit concludes that such orders required a system of periodical review in the interest of revenue. Absence of such a mechanism prevents the detection and consequent rectification of the omissions and errors in the DR orders and hence proves detrimental to the realisation of revenue.

In the backdrop of issues discussed in paragraphs 3.4.10.1 and 3.4.10.2, Audit examined the review powers of the IGRCS as detailed in the following paragraphs.

3.4.11 Suo moto review of market value orders by the IGRCS

According to Section 53-A of the KS Act, 1957, IGRCS may *suo moto*, within a period of five years from the date of order passed under the Act by the DR, call for and examine the records relating to such order or proceedings taken under the Act.

Audit noticed that other than the IGRCS, no other authority in the DSR is empowered to verify the correctness of orders passed by DRs in the interest of revenue and pass orders independently. It was noticed that the DSR had not prescribed any criteria/parameters which would help detect orders of DRs prejudicial to the interest of revenue; as a result IGRCS would not be able to make an effective selection of the orders for his review under Section 53A.

Audit examined the exercise of these provisions as means to monitor the orders of the DRs and to prevent revenue leakage in cases of omission and errors.

The details of *suo moto* review taken and inspection conducted by IGRCS are as given in **Table.3.6**.

**Table :3.6
Details of suo moto review by DRs and IGRCS**

Year	Number of orders passed by the DRs	No of orders reviewed under Section 53A
2011-2012	5,817	09
2012-2013	2,969	01
2013-2014	1,969	06
2014-2015	2,659	06
2015-2016	2,316	04

Hence, it is evident that review powers are rarely exercised by IGRCS. Audit noticed that in respect of the orders of the DR which were set aside by review under Section 53A, the cases had been remanded back to the same DR for passing revisionary orders taking into account directions issued by the IGRCS. However, the DSR did not make available details of compliance on these orders and revenue mobilisation on account of such review. Audit concludes that monitoring in this respect is not effective in the Department.

To ensure an effective review mechanism in the interest of revenue, there is a need for introduction of a mechanism of review of orders passed by DRs on the basis of identified criteria such as where market value determined is less than a prescribed percentage of the guidance value. Availability of such criteria will enable IGRCS to identify and pick cases which may be potentially prejudicial to revenue.

DSR replied in the Exit Conference (October 2016) that the DRs had been directed to maintain details of orders passed by them in specified format and the Management Information System (MIS) will be modified which would enable to pick cases fit for review.

Recommendation 4: The mechanism for selective review under Section 53-A may be strengthened by introducing defined criteria to the extent possible and a mechanism to review the orders of DRs may be instituted, on the basis of which the IGRCS could select cases for further check in the interest of revenue.

3.4.12 *Suo moto* review by DRs

As per Section 45 (A)(3) of the KS Act, the DR may, *suo moto*, within two years from the date of registration of any instrument not already referred to him under Section 45(A)(1) of the KS Act, call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property and the duty payable thereon.

Details of cases disposed of under Section 45(A)(3) of the KS Act, and revenue realised there from for the State is as given in **Table 3.7**.

Table: 3.7
Details of *suo moto* cases disposed by DRs

Year	No. of cases disposed under <i>suo moto</i> review	(₹ in crore)
		Revenue realised thereon
2011-12	2,817	2.93
2012-13	828	7.25
2013-14	399	0.59
2014-15	644	1.87
2015-16	531	4.07

On a review of the mechanism of *suo moto* review by the DRs, Audit noticed the following deficiencies:

- DSR did not have any mechanism for data analysis relating to recurrent transactions in respect of a property and intelligence information which would help identify potential cases of undervaluation.

- DRs did not record specific reasons for selecting any case for *suo moto* review. Cases for selection of *suo moto* review were selected on a random basis without any analysis of the documents registered which resulted in poor value addition towards the revenue generated as shown in **Table 3.7**.
- Neither targets nor time line for disposal of cases had been prescribed for the DRs in respect of such *suo moto* review.

3.4.12.1 Use of Data Analysis to select cases for *suo moto* review

- Audit noticed that parties enter into sale agreements for a consideration higher than the guidance market value and subsequently either cancel the sale agreement or otherwise enter into a sale deed wherein consideration received is equal to the published guidance market value and Stamp Duty is paid thereon.

Audit adopted a parameter “difference of consideration in the sale agreement and sale deed executed by the same parties for the same property”, as selection criteria for *suo moto* review in the SROs.

During test check of records in 33⁹ SROs, Audit noticed that in respect of 135 sale deeds, the consideration agreed to in the sale agreements was higher. As against consideration of ₹ 246.35 crore agreed to in

the sale agreements, the sale deeds were registered for a consideration/market value of ₹ 151.17 crore. The difference in consideration between sale agreement and sale deed amounted to ₹ 95.18 crore. The potential revenue in these cases amounted to ₹ 6.30 crore. Data analysis on such criteria would have helped select potential cases for *suo moto* review of DRs.

- Audit suggests that in respect of a project, analysis of the consideration in different instruments relating to different units of the project could be a pointer to select cases fit for review. For example, Audit noticed in one project in the jurisdiction of DR, Ramanagaram, the guidance market value prescribed for the project ranged between ₹ 1,200 to ₹ 1,650 per square feet. Out of 192 instruments registered in that project, 143 documents were registered for the guidance market value and the consideration in the balance 49 instruments ranged from ₹ 1,700 to ₹ 4,500 per square feet. Such analysis would help DR to select the cases registered for exactly the guidance market value and detect undervaluation, if any.

⁹ Anekal, Attiibele, Banaswadi, Basavakalyan, Basavanagudi, Begur, Bidarhalli, Bomanahalli, Byatarayanapura, Chamarajpet, HAL, Halasuru, Hebbal, Hoovinahadagalli, Indranagar, Jayanagar, J.P. Nagar, Jigani, Kacharakanahalli, K. R. Puram, Mahadevpura, Mysuru (East), Mysuru (North), Mysuru (South), Mysuru (West), Nanjangud, Peenya, Periyapatna, Sarjapura, Shivajinagar, Somwarpete, Srinivasapura and Vijaynagar.

3.4.12.2 Detection of under-valuation cases

During test check of records in 42¹⁰ SROs, it was noticed that in 95 cases, the SROs had registered the instruments for a consideration/estimated market value of ₹ 504.40 crore as against the correct estimated guidance value of ₹ 718.68 crore. Audit noticed that non-adoption of special instructions attached to the guidance market value, omission to fix consideration as market value whenever it was higher than the guidance market value, etc. were the reasons for undervaluation of properties which resulted in incorrect estimation of guidance value by the SROs. This had resulted in short levy of Stamp Duty and Registration Fee of ₹ 8.75 crore.

Recommendation 5: The *suo moto* review of instruments by DRs may be strengthened with increased use of data analysis for selecting cases to identify potential revenue leakage.

3.4.13 Controls to detect suppression of facts resulting in short levy of Stamp Duty and Registration Fee

Section 28 of the KS Act, 1957, stipulates the consideration 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. Section 61 of the KS Act stipulates that any person with intent to defraud the Government executes any instrument in which all the facts and circumstances required under Section 28 are not fully and truly set forth in the instrument will be punishable with a fine which may extend to five times of the deficient duty.

The DSR had mandated submission of an affidavit at the time of registration by the parties to an instrument which among compliance to other Land laws also stated compliance to Section 28 of the KS Act. However, there was no mechanism to ascertain whether the actual consideration between the parties are depicted in the instruments so as to ensure that the Stamp Duty and Registration Fee are levied on amount of consideration in cases where the consideration is more than the guidance value.

Cross-verification undertaken by Audit of different transactions on the same property revealed suppression of facts and figures which resulted in loss of stamp duty as detailed in succeeding paragraphs.

¹⁰ Banaswadi, Basavakalyan, Begur, Belgavi, Bommanahalli, Byatarayanapura, Bhadravathi, Chickmagalur, Chintamani, Dasanapura, Devanahalli, Gandhinagar, Ganganagar, Halasur, Hebbal, Humnabad, Jala, Jayanagar, J.P. Nagar, Karatagi, Kengeri, K.R. Puram, Laggare, Madanayakanahalli, Malleshwaram, Mysuru (East), Mysuru (South), Nagarabhavi, Nanjanagud, Pavagada, Peenya, Rajajinagar, Rajarajeswarinagar, Sarjapura, Shivajinagar, Srirampuram, Shanthinagar, Shikaripura, Tavarekere, Tumkur, Vijaynagar and Yeshwanthpura.

3.4.13.1 Suppression of consideration in sale deeds as compared to information furnished to banks for sanction of loans

Stamp Duty is levied *ad valorem* on the market value of the property viz. on the published guidance market value or consideration stated in the document, whichever is higher.

Audit test checked loan sanction records in two banks¹¹ which revealed that the consideration as per the sale agreements furnished to the banks for sanction of loan was higher than the consideration set forth in the subsequent sale deeds executed. The banks had released the loan amount directly to the vendor along with the margin money of the purchaser which clearly indicated that consideration received was suppressed in the sale deed. In respect of 36 sale deeds registered in 14¹² SROs, the consideration stated in the instrument was ₹ 19.67 crore. However, as per the loan records of the banks, loan was sanctioned on the consideration of ₹ 31.96 crore agreed to in the unregistered sale agreements along with corresponding construction agreements. Suppression of consideration of ₹ 12.38 crore in these cases had resulted in loss of revenue of ₹ 82.35 lakh.

3.4.13.2 Suppression of consideration received in sale agreement at the time of execution of sale deed

Audit noticed that one of the methods adopted by the executants is that certain amount of consideration is paid along with the sale agreements for the property and the fact of payment was evident from recitals of the sale agreement. However, in the subsequent sale deeds executed, the parties suppressed the receipts of the consideration already paid vide sale agreements. The DSR does not have a mechanism to detect such suppression.

There were 141 instruments of sale deed registered in 16¹³ SROs. Stamp Duty and Registration Fee were levied on the consideration/market value of ₹ 301.91 crore. Cross-verification of sale agreements executed in respect of the same property between the same parties revealed that consideration agreed to in the sale agreements amounted to ₹ 331.39 crore and the vendors had received consideration of ₹ 193.14 crore as per the recitals of the sale agreements. However, receipt of this consideration in the sale agreements had not been accounted for in the consideration stated to be received in the sale deeds. This suppression had resulted in loss of Stamp Duty and Registration Fee of ₹ 10.88 crore.

¹¹ Syndicate Bank and Vijaya Bank.

¹² Banaswadi, Bommanahalli, Byatarayanapura, Doddaballapura, Gandhinagar, Ganganagar, Hebbal, Indiranagar, Jayanagar, J.P. Nagar, Mahadevpura, Nagarbhavi, Peenya and Yeshwanthpura.

¹³ Ballari, Basavakalyan, Begur, BTM Layout, Davanagere, Devanahalli, Doddaballapura, Gandhinagar, Hebbal, Jala, Jayanagar, J.P.Nagar, Mysuru (North), Mysuru (South), Peenya and Rajarajeswarinagar.

3.4.13.3 Suppression of agreed market value in Power of Attorney and execution of Power of Attorney in sale agreement.

(a) As per Article 41 of the Schedule to the KS Act, Stamp Duty on a power of attorney is on the market value of the property which is the subject matter of power of attorney. It was noticed that the parties to a power of attorney (GPA) did not specify the market value of the property as agreed to by them in the instrument. Hence, Stamp Duty and Registration Fee were levied on the guidance market value of the property.

Test check of records by Audit revealed that 143 GPAs were registered in 27¹⁴ SROs during 2011-16. Stamp Duty and Registration Fee were levied on the guidance market value of ₹ 95.92 crore as GPAs to sell property. Cross-verification with other transactions (like mortgage deeds, sale agreements, sale deeds, etc.) on the properties revealed that the executants of the GPAs had also entered into sale agreement with the same party for the same property. The consideration agreed to in the sale agreements amounted to ₹ 252.84 crore and was higher than the guidance market value which was not mentioned in the GPAs executed. Suppression of the agreed value of the property in the GPA resulted in loss of Stamp Duty and Registration Fee of ₹ 9.38 crore on the differential market value.

(b) As per Article 5 (e)(i) of the Schedule to the KS Act, Stamp Duty is leviable on a sale agreement wherein possession of the property is given at the rate applicable to a conveyance. Further, as per explanation below this Article, when reference of a GPA granted separately to the purchaser by the seller in respect of a property, which is the subject matter of such agreement, is made in the agreement, the possession of the property is deemed to be given.

It was noticed in eight¹⁵ SROs, that 13 sale agreements involving sale consideration of ₹ 22.31 crore were registered. The instruments had been stamped as agreements without possession. It was noticed that in these cases, the parties had suppressed the fact of having executed a GPA¹⁶ in favour of the purchaser though the GPA had also been registered with the DSR. Suppression of fact of having executed a GPA in the sale agreement had resulted in classifying the instruments as agreements without possession of property and consequent short levy of Stamp Duty and Registration Fee of ₹ 1.15 crore¹⁷.

¹⁴ Anekal, Attibele, Banashankari, Banaswadi, Basavangudi, Bidarahall, Bommanahalli, BTM Layout, Byatarayanapura, Chamarajapete, Devanahalli, Doddaballapur, Halsuru, Ganganagar, HAL, Hebbal, Indiranagar, Jala, Jayanagar, Mahadevpura, Mysuru (North), Mysuru (East), Nanjangud, Peenya, Rajarajeswarinagar, Sarjapura and Somwarpet.

¹⁵ Attibele, Belluru, Basavanagudi, H.D. Kote, Kalaburgi, Kengeri, Rajarajeswarinagar and Sringeri.

¹⁶ Stamp Duty on these GPAs had been levied at ₹ 200/- as GPAs for carrying out specific functions on behalf of the owner. However, scrutiny of the recitals revealed that the GPAs either empowered the GPA holders to receive sale consideration or included a general clause empowering them to do anything with respect to the scheduled property.

¹⁷ Stamp Duty and Registration Fee are calculated at five *per cent* and one *per cent* respectively on the guidance value of the property.

The Government (December 2016) stated that changes will be made to KAVERI to generate MIS reports to detect the incidences of other transactions in the same property. DSR also intimated that action would be initiated in respect of the test checked cases.

Recommendation 6: MIS Reports can be generated through KAVERI to flag the occurrences of different instruments between the same parties in respect of the same property. This would enable selection of such cases for *suo moto* review by the DRs for detecting and preventing any possible evasion of Stamp Duty.

3.4.13.4 Suppression of details of property

The DSR had mandated production of RTC or municipal authority tax paid receipt at the time of registration of sale deed.

The KAVERI system was integrated with ‘Bhoomi’, the agricultural land records software and hence, details of property were verified online for agricultural property. However, in respect of sites and building thereon, the system was not integrated with BBMP khata information system or the *e-swathu*¹⁸ of the local municipal bodies.

Audit noticed that mandating production of last tax paid receipt of the municipal authority was a good control which deterred suppression of facts about extent of site, extent of construction on the site and usage of property for residential or non-residential purposes.

Audit noticed that in seven¹⁹ SROs in respect of nine instruments registered, the details of the property were suppressed resulting in undervaluation of property and short levy of Stamp Duty and Registration Fee of ₹ 2.11 crore. The suppression involved suppression about location of property, extent of building, usage of building, etc. which were detected by cross-verifying with the tax paid receipt or sale agreement executed earlier with regard to the property.

Penalty under Section 61 of the KS Act, 1957, is applicable in all the cases mentioned in the paragraphs from 3.4.13.1 to 3.4.13.4, subject to proving of wilful suppression.

3.4.14 Stamp Duty on instruments not compulsorily registrable

In respect of the various instruments which are liable to Stamp Duty but not presented to the DSR in the normal course of its execution, levy and collection of Stamp Duty requires ensuring compliance, establishment of channels of information through co-ordination with other departments/agencies concerned and enforcement activities.

Sections 33 and 67B of the KS Act enable the DSR to monitor realisation of Stamp Duty on instrument, which are not compulsorily registrable.

As per Section 33 of the KS Act, “every person having by law or consent of parties authority to receive evidence, and every person-in-charge of a public

¹⁸ Software used by Panchayat for tax receipts.

¹⁹ Bommanahalli, Dasanapura, Malleshwaram, Mysuru (South), Nagarabhavi, Ramanagara and Vijayanagar.

office, except an officer of police, before whom any instrument chargeable in his opinion with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same". Such impounded instruments shall be sent to the DRs for levy of proper duty.

Section 67-B of the KS Act empowers the officer²⁰ of the DSR, authorised in this regard to enter and search any premises²¹ where he has reason to believe that any register, book, record, paper, application, information in electronic storage and retrieval device or medium, instrument or proceedings are kept and to inspect them, if he has reason to believe that any of the instruments specified in the Schedule has not been charged at all or incorrectly charged with duty leviable. If upon such inspection, the officer is of the opinion that any instrument chargeable with duty is not duly stamped, he shall require the person liable to pay the proper duty or the deficit duty in respect of the instrument.

Further, the Performance Audit on "Levy and collection of Stamp Duty and Registration Fee", in the Audit Report for the year ended March 2009 (Recommendation No.1 under Paragraph No. 5.2.16) had recommended for establishment of a system in the DSR for coordination with various departments/agencies to monitor realisation of proper Stamp Duty and Registration Fee on instruments not compulsorily registrable which are presented before other public offices.

3.4.14.1 Absence of details for revenue from instruments not compulsorily registrable

As per the figures furnished by DSR, the revenue from instruments not compulsorily registrable had increased from ₹ 403.74 crore in 2011-12 to ₹ 856.91 crore in 2015-16. Audit analysis of the figures furnished by the DSR revealed that the revenue from instruments not compulsorily registrable was computed arithmetically as the difference between total revenue as per treasury figures and revenue from registered documents in KAVERI. DSR does not have a break-up of the revenue in terms of each article of levy and by whom paid in respect of the revenue from instruments not compulsorily registrable. The revenue of ₹ 856.91 crore in 2015-16 comprised of ₹ 214.18 crore from instruments identifiable by Article of levy, revenue from franking machines and endorsement for payment of Stamp Duty by DR under Section 10A of the KS Act. The Department did not have details for the balance ₹ 642.73 crore. This balance amount of ₹ 642.73 crore also included revenue remitted by SHCIL for e-stamp certificates. Non-identification of the Articles under which revenue is generated and the details of payments made by the payer affects enforcement activities to ensure due realisation of stamp duty on all instruments not compulsorily registrable.

In this regard, a reference is drawn to the good practice followed by the State of Maharashtra, that is, to generate online challan for payment of Stamp Duty

²⁰ DR or officer not below the rank of Sub-Registrar authorised by the DR or IGRCS.

²¹ Provided that no residential accommodation (not being a place of business-cum-residence) shall be so entered into and searched except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area.

on not compulsorily registrable instruments through the Departmental website which will capture all the relevant information.

Recommendation 7: The DSR may initiate generation of online challan, therein capturing all necessary information, such as Article of Levy, by whom paid, etc. through its website. This can be later integrated in the Khajane II software of the Treasury.

3.4.14.2 Revenue from selected instruments which are not compulsorily registrable

Audit verified the efficacy of the mechanism for collection of Stamp Duty on instruments not compulsorily registrable and the implementation of its Recommendations in the previous Performance Audit²². The non-realisation of Stamp Duty on certain not compulsorily registrable instruments along with deficiency in mechanism for collection of Stamp Duty is given in following paragraphs.

3.4.14.3 Conveyance of Industrial Machinery

As per Article 20(5) of the Schedule to the KS Act, Stamp Duty is leviable on conveyance of industrial machinery. The rate of duty was five *per cent* (two *per cent* if the machinery is treated as movable property with effect from 1 April 2015) of consideration or market value of the property, whichever is higher.

As per the information collected by Audit from the Central Excise Commissionerates, Bengaluru and Mysuru, there were 864 units manufacturing industrial machinery. As per the turnover reported to the Central Excise authorities, the total turnover of industrial machinery for the period from 2011-12 to 2015-16 was ₹ 2,485.11 crore²³. Stamp Duty has to be levied on the sale of industrial machinery out of this turnover reported to Central Excise authorities. To assess the Stamp Duty due, Audit collected information on sale of machinery from Commercial Taxes Department. As per the *e-sugam*²⁴ data of the Commercial Taxes Department, the consideration involved in the invoices for sale of machinery was ₹ 3,407.03 crore for the period 2011-16. The Stamp Duty due on this conveyance of industrial machinery²⁵ was ₹ 68.96 crore²⁶.

The non-realisation of Stamp Duty on conveyance of industrial machinery was also pointed out in Audit Report for the year ended 31 March 2009; however,

²² Paragraph 5.2 of Audit Report (Revenue Receipts) for the year ended 31 March 2009.

²³ Turnover mentioned is turnover reported to Central Excise Department for Excise Duty and may include non-sale turnover such as stock transfer. Hence, department has to ascertain the actual sales turnover.

²⁴ *e-Sugam* – Online request and download of delivery note in Form VAT 505 for goods movement of invoice value greater than ₹ 25,000.

²⁵ The *e-sugam* uploaded by the dealers does not have exact classification of the industrial machinery and the DSR needs to obtain/verify the same.

²⁶ Stamp Duty at five *per cent* for the years 2011-12 to 2014-15. The rate of Stamp Duty for the year 2015-16 was five *per cent* and two *per cent* for immovable and moveable machinery respectively. Stamp Duty was calculated at two *per cent* on the total turnover as bifurcation of turnover relating to immovable and movable machinery was not available for the year 2015-16.

the DSR had not initiated action in this respect. The continued inaction of the DSR resulted in forgoing revenue of at least ₹ 68.96 crore.

The Government (December 2016) stated that action will be initiated to collect Stamp Duty on conveyance of industrial machinery.

3.4.14.4 Certificate of Sale

As per Article 15 of the Schedule to the KS Act, Stamp Duty at Conveyance rate on the purchase money was leviable on the Certificate of Sale granted to the purchaser of any property sold by public auction by a Court or Tribunal or officer of Government or by any other authority under any enactment.

Audit noticed that the Monitoring Committee set up under the directions of the Hon'ble Supreme Court was entrusted with the disposal of illegally mined iron ore seized by the Government, through public auction. Monitoring Committee after completion of auction, issued acceptance cum tax invoice, which inter-alia, stipulated the payments due and confirmed the sale in favour of the successful bidder.

These instruments, construed as Certificates of Sale, attracted stamp duty. The purchase money realised on auction of seized iron ore of 'C' category mining leases was forfeited to Government. The revenue so realised during 2011-16 amounted to ₹ 4,886.08 crore. Stamp Duty due on this amounted to ₹ 244.30 crore.

DSR did not identify the auction of seized ore by Monitoring Committee as a potential source of revenue and did not initiate action to verify the process of auction and identify instruments, if any, liable to Stamp Duty. Non-identifying acceptance cum tax invoice letters issued as certificate of sale resulted in foregoing of aforesaid revenue of ₹ 244.30 crore.

The Monitoring Committee opined that the Acceptance-cum-Sale invoices issued by them did not attract Stamp Duty. However, DSR in the Exit Conference (October 2016) accepted that the auction by Monitoring Committee had not been identified as a potential source and replied that concerned DRs would be suitably instructed to process the original copy of the Acceptance-cum-Tax invoice and book the cases under relevant provisions of the KS Act.

3.4.14.5 Certificates of Shares

As per Article 16 of the Schedule to the KS Act, for any certificate or other document evidencing the right or title of the holder thereof, or any other person, either in any share, scrip or stock in or of any incorporated company or body corporate, Stamp Duty at the rate of one rupee for every one thousand rupees or part thereof of the value of the share was leviable.

The absence of any mechanism to periodically obtain details of issue of shares by companies registered in Karnataka from the Securities and Exchange Board (SEBI) and Registrar of Companies (RoC) had been pointed out in a previous Performance Audit.²⁷

²⁷ Paragraph No. 5.2.9.2 of Audit Report (Revenue Receipts) for the year ended 31 March 2009.

a) As per information obtained from National Stock Exchange (NSE), 50 companies/banks with registered offices in Karnataka had issued shares for ₹ 21,546.89 crore during the period 2011-16. Stamp Duty realisable on this was ₹ 21.55 crore. It was noticed that the amount of Stamp Duty collected by DSR on shares during the period was ₹ 6.98 crore. Therefore, due to lack of proper co-ordination and information gathering mechanism, the DSR had not followed up on the Stamp Duty due in all cases. The loss of Stamp Duty amounted to ₹ 14.57 crore.

b) As per Article 62 of the Schedule to the Indian Stamp Act, 1899, Stamp Duty at 0.25 *per cent* of the value of the share was payable on transfer of share. As per the Companies Act 1957, companies filed the transfer share certificate with the RoC, who used to monitor due stamping of the transfer deed (Form SH 4). However, as per the amended Companies Act, 2013, the companies are not required to file the Form SH 4 with the RoC. The transfer deed, after being duly stamped, is retained with the company records. The transfer of shares is reported in the annual returns e-filed to the RoC.

It was noticed that the DRs were collecting Stamp Duty on the transfer of share certificates (Form SH 4) furnished to their offices for payment of duty. Consequent to amended Companies Act, 2013, the SH-4 form is now filed in the records of the company and transfer of shares reported in the Annual Return to the Ministry of Corporate Affairs. The SH-4 forms are not being submitted to the DRs for endorsing payment of Stamp Duty. Hence, the DSR needs to have a mechanism in place to verify the actual transfer of shares vis-a-vis SH-4 forms stamped at DR offices to ensure realisation of Stamp Duty due on all transfers of shares. To assess the potential Stamp Duty involved, Audit had requested for information on transfer of shares as reported in the annual returns from the RoC. Response is still awaited (December 2016).

In the Exit Conference (October 2016), the Government accepted the Audit observation and stated that the Department had initiated correspondence with the Ministry of Corporate Affairs for a login access for collection of real time information.

3.4.14.6 Stamp Duty on Debentures

As per Article 27 of the Schedule to the Indian Stamp Act, 1899, Stamp Duty on debentures was 0.05 *per cent* on the face value of the debentures for every year of the debenture period, subject to a maximum of 0.25 *per cent* of the value of debentures or rupees twenty-five lakh, whichever is lower.

As per the information obtained from the NSE, 18 companies/banks²⁸ had raised capital of ₹ 68,022 crore by issue of bonds in the nature of debentures which were listed on the NSE. Stamp Duty payable on this amounted to ₹ 61.87 crore. As per information available with the DSR, four companies/

²⁸ Atria Convergence Technologies Private Limited, Bengaluru Metro Rail Corporation Limited, BMM Cements Limited, Can Fin Homes Limited, Canara Bank, Embassy Property Development Private Limited, GMR Infrastructure Limited, ING Vysya Bank Limited, Karnataka Bank Limited, Karnataka Neeravari Nigama Limited, Karnataka State Financial Corporation Limited, Krishna Bhagya Jala Nigama Limited, Mysore Paper Mills Limited, Prestige Estates Projects Limited, Pune Dynasty Projects Private Limited, Syndicate Bank, Toyota Financial Services India Limited and Vijaya Bank.

banks had paid the Stamp Duty of ₹ 4.75 crore on the bonds of ₹ 14,413 crore raised. The Department did not have information about remittance of Stamp Duty payment directly into the Treasury, if any, by other companies/banks. Audit could not verify the realisation of Stamp Duty in the remaining cases due to absence of Article-wise/payer-wise details²⁹ of revenue realised. The DSR, also, could not confirm realisation or otherwise of Stamp Duty of ₹ 57.12 crore in these cases which resulted in non-accountal of revenue due (December 2016).

As regards Stamp Duty on Certificates of Shares, Transfer of Shares and Debentures, the Government (December 2016) replied that action will be initiated to obtain the required information from the SEBI website and to recover the Stamp Duty from the companies concerned. Further, efforts have also been initiated to get access to MCA21³⁰ Portal for getting relevant information.

3.4.14.7 Agreement relating to advertisement for promotion of business

As per Article 5(i-b) of the Schedule to the KS Act, introduced with effect from 1 April 2012, agreements relating to advertisement or telecasting or broadcasting of programs for promotion and development of business attracts Stamp Duty at one rupee for every one thousand rupees or part thereof on the amount or consideration in the agreement.

There are many regional Kannada TV channels and FM radio channels which earn revenue from sale of advertisement slots and sponsorship of programs. Even though the levy was introduced from 1 April 2012, the DSR had not levied and collected Stamp Duty due on agreements executed, if any, by these channels. The advertisements aired in Television, Radio and print media can be booked through e-platforms with online payment facilities. The e-platforms have a checkbox for accepting the Terms and Conditions for the account of the user. In such cases, e-instruments are being created without consideration being part of the agreement. The DSR has not formulated a mechanism to identify such e-instruments and realize stamp duty due thereon.

The Government (December 2016) replied that the DRs would be instructed to visit TV/Radio channels, Advertisement Agencies, Consultants, Newspaper offices, Other Publications, etc. to obtain copies of agreements and recover the Stamp Duty due.

3.4.14.8 Stamp Duty on agreements relating to building works, labour or services

As per Article 5(i-d) of the Schedule to the KS Act, introduced with effect from 1 April 2012, Stamp Duty is leviable on agreements relating to building works or labour or services (works contracts). The rate of duty leviable was ₹ 100/- if the consideration does not exceed rupees ten lakh and in case consideration exceeds rupees ten lakh, the duty leviable is ₹ 100/- for every Rupees ten lakh subject to a maximum of ₹ 5.00 lakh.

²⁹ As discussed in Paragraph No. 3.4.14.1.

³⁰ MCA21 is the portal of Ministry of Corporate Affairs digitising all information and returns relating to Companies.

Audit test checked works contract agreements executed during the period from 2012-13 to 2015-16 by work executing agencies of the Government of Karnataka like Karnataka Industrial Areas Development Board, National Highways Authority of India, Krishna Bhagya Jala Nigam Limited, Karnataka Neeravari Nigam Limited, Karnataka Power Corporation Limited, BBMP, etc. Audit test checked 345 works contract agreements with turnover aggregating ₹ 5,682.64 crore entered into by these organisations. It was noticed that Stamp Duty on 207 agreements had been short realised. These 207 works contract agreements aggregating consideration of ₹ 4,440.96 crore were entered into by these works executing agencies on which Stamp Duty of ₹ 50.26 lakh³¹ was to be realised. Against this, the agreements were executed on e-stamp certificates obtained for ₹ 47,650 resulting in short-realisation of Stamp Duty of ₹ 49.78 lakh. In the balance cases, the turnover involved was less than ₹ 10 lakh and hence the stamp duty of ₹ 100 on which they were executed was correct. Audit noticed that the agencies were executing works contract agreements on e-stamp papers ranging from ₹ 100 to ₹ 1,000 without computing the correct Stamp Duty.

DSR had neither initiated correspondence with these agencies nor inspected the instruments executed by these agencies to ensure realisation of proper Stamp Duty on works contract agreements.

The Government (December 2016) replied that the Karnataka Stamp (Second Amendment) Bill, 2015, includes amendments to make the authorities concerned responsible for collecting Stamp Duty and pay the same to Government. The amendments have been sent to the Government of India for the assent of Hon'ble President.

3.4.14.9 Reasons noticed by Audit for non/short realisation of Stamp Duty

As detailed above in paragraphs 3.4.14.3 to 3.4.14.8, Audit found that though there were several not compulsorily registrable instruments which attracted Stamp Duty, DSR was not geared up to ensure collection of revenue from such documents. Audit attributes these following reasons:

(a) Lack of awareness programmes

DSR had not undertaken any educative initiatives like media advertisements, awareness workshops for deed writers, business forums, etc. to actively publicise the liability of Stamp Duty on various types of instruments. The Departmental website too does not prominently display the Stamp Duty liability in respect of not compulsorily registrable instruments. During the course of collecting information in the audit, works executing agencies such as Karnataka Housing Board, Krishna Bhagya Jala Nigama Limited, Karnataka Neeravari Nigama Limited, BBMP, etc. reported not being aware of the due Stamp Duty for works contract agreements. Neither had the agencies received any communication regarding the same from the DSR.

³¹ At the rate of rupees one hundred for amount or consideration of rupees ten lakh in the agreement.

In this regard, reference is drawn to a good practice followed by the Commercial Taxes Department in Karnataka viz. conducting of various workshops, TV programmes etc. regarding Taxes on Sale, Trade etc.

DSR assured that the suggestion of Audit will be examined and necessary action would be taken.

Recommendation 8: The liability of Stamp Duty and payment mode in respect of such instruments (which are not compulsorily registrable) may be prominently publicised on the departmental website and in all such public offices where such instruments are executed/presented.

(b) Failure to notify ‘Public Offices’ and absence of a reporting mechanism in Public Offices

As per Section 33 of the KS Act, Government may determine which offices shall be deemed to be public offices and who shall be deemed to be persons-in-charge of public offices.

It was noticed that the DSR had not notified such ‘public offices’. The KS Act does not provide for reporting of all Stamp Duty liable instruments executed/submitted in ‘public offices’. Consequently, the DSR had not instituted a reporting mechanism regarding instruments received in public offices or produced before them and the Stamp Duty realisation on such instruments. This had resulted in the absence of information with the DSR for ensuring compliance.

The DSR replied that the Karnataka Stamp (Second Amendment) Bill, 2015, includes amendments to make the authorities concerned responsible for collecting Stamp Duty and pay to Government. The amendment had been sent to the Government of India for the assent of Hon’ble President. However, in the Exit Conference (October 2016), DSR agreed to consider notifying public offices even if the assent of Hon’ble President was not immediately forthcoming.

Recommendation 9: DSR may notify public offices for the awareness and benefit of all concerned. Government may consider amending provisions of the KS Act to provide for reporting by the public offices to DSR.

(c) Inadequacy of co-ordination with other Agencies/Department and inspection of offices

Audit had in a previous Performance Audit ³² pointed out certain major sources of revenue not tapped by the Department viz. on Acknowledgements, conveyance of industrial machinery, Certificates of Shares, Bonds, Clearance Lists, etc. In that connection, Audit had recommended;

1. For installing a system in the Department for co-ordination with various departments/agencies to monitor realisation of proper Stamp Duty on instruments presented before them, and
2. Framing rules prescribing the procedures for conducting inspections to prevent any leakage of revenue due to evasion of Stamp Duty on instruments not required to be presented for registration.

³² Paragraph No. 5.9 of Audit Report for the year ended 31 March 2009.

It was noticed that DSR had appointed two Consultants for follow-up and revenue realisation on instruments which are not compulsorily registrable. Besides, the DRs were also collecting revenue from not compulsorily registrable instruments through inspections under Section 67B of offices/premises where possibility of such documents was doubted. The revenue realised by these efforts steadily rose from ₹ 3.09 crore in 2011-12 to ₹ 51.36 crore in 2015-16.

Audit noticed that while the Consultants and DRs continued their inspections and reporting of revenue realised separately to the IGRCS, the Enforcement Wing had not maintained a database of potential tax sources for periodical follow-up. Further, during the audit period, the Consultants and DRs had concentrated on realisation of Stamp Duty on Policy of Insurance, pawn/pledge documents, Clearance Lists, Certificates of Shares, Transfer of Shares, Licences, Certificates of Sale, etc. The DSR is yet to streamline co-ordination with different agencies to ensure optimum revenue realisation on other Articles of levy such as Acknowledgements, industrial machinery, etc.

Further, audit noticed that DSR had entered into agreement with M/s BOI Shareholding Ltd in June 2016, an undertaking wholly owned by Bank of India, which is collecting revenue due on commodities and securities trading for Governments of Maharashtra, Gujarat, Andhra, Telangana and West Bengal at present. This initiative will ensure realisation of due Stamp Duty on Clearance Lists.

The Government (December 2016) replied that necessary action will be taken to create consolidated database of all potential sources.

Recommendation 10: For instruments not compulsorily registrable, the DSR may create a database of potential tax sources identified during inspections for follow-up on future revenue realisation from these sources.

(d) Non-computation of Stamp Duty due at the time of purchase of e-stamps for non-registrable documents

After introduction of payment of Stamp Duty by way of e-stamp certificates in 2009, SHCIL has been entrusted with the issue of e-stamp certificates through its 'Authorised Collection Centre' or 'Authorised Stamping Centre'. Stamp Duty was payable by obtaining e-stamp certificates to execute the document.

Audit noticed that the e-stamping application prescribed under the KS (Payment of Duty by means of e-stamping) Rules required the purchaser to fill the required Stamp Duty amount, type of payment, bank name, etc. but the prescribed form does not prescribe fields for details of Article of Levy for which stamp is being obtained and the consideration involved in the instrument. In practice, the form being used by the Authorised Centers of SHCIL has fields for type of document and consideration involved. The Authorised Centres are also mandatorily capturing the details of Article of Levy in respect of the document; however the filling up of the information on consideration involved in the instrument is optional. Since the software used by the SHCIL currently does not calculate the proper Stamp Duty due, e-Stamp certificates are issued for the amount sought by the purchaser without ensuring the proper Stamp Duty due for the instrument for which it would be used. If the Department can ensure mandatory calculation of Stamp Duty due

at the time of purchase of e-stamp certificates by collecting information on classification of instrument and consideration, it can ensure realisation of due Stamp Duty.

The DSR replied that feasibility of the suggestion of Audit would be considered after discussion with SHCIL.

Recommendation 11: A mechanism may be instituted to compute the appropriate Stamp Duty due by capturing relevant details required for such computation, like classification of the instrument, consideration involved in the instrument, etc. at the time of purchase of e-stamp certificates.

3.4.15 Conclusion

There are many Articles of levy of Stamp Duty on which the DSR has been not been successful in realising optimum Stamp Duty revenue. The DSR has not implemented procedures and channels for information gathering and collection of Stamp Duty due on all such instruments which were not presented to it. In respect of instruments on which Stamp Duty was leviable on the market value of the property, the published guidance market value served as a benchmark for collection of optimum revenue. However, the review by DRs to detect cases of undervaluation was not effective as the selection of cases was not based on any data analysis/criteria to choose potential cases and had not resulted in significant additional revenue. There was no mechanism in the DSR to identify cases of evasion of Stamp Duty and verify transactions between parties for suppression of facts and figures in the instrument affecting chargeability of Stamp Duty. DSR did not have a mechanism to ascertain the correctness of the consideration between the parties. Orders of DR determining market value of a property under Section 45(A)(1) of the KS Act, were not being referred to the CVC for taking into account the specific issues raised by DR and revising CVC guidance value. Though Section 53(A) of the KS Act, provided for *suo moto* review of the orders passed by DRs, no criteria had been set for mandatory scrutiny of the DR orders in the interest of revenue.

Monetary impact in terms of non/short realisation of Stamp Duty pointed out in the Report works out to ₹ 418.74 crore. This is indicative as Audit scrutiny was based on the sample selected and the actual impact of additional revenue generation would be much higher.

3.5 Short levy of Stamp Duty and Registration Fee due to undervaluation

According to Section 3 of the KS Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the schedule of the Act *ibid*. Under Article 20 of the Schedule to the KS Act, for instruments of conveyance, Stamp Duty is charged as a percentage of the consideration or of the market value of the property, whichever is higher. Market value guidelines are prescribed for properties situated in the State by the CVC under Section 45-B of the Act. This forms the basis for estimation of market value by the registering officer while registering documents chargeable with Stamp Duty.

During test check of records of five³³ SROs between April and July 2015, Audit noticed five cases of undervaluation of properties resulting in short levy of Stamp Duty and Registration Fee amounting to ₹ 2.55 crore and ₹ 0.45 crore respectively as shown in *Annexure 'C'*. The reasons for undervaluation were; adoption of incorrect rates of market value guidelines or due to non-adherence to the special instructions attached to the guidance market value, which should have been verified and rectified by the SROs before registration of documents.

When Audit brought these cases to the notice of the IGRCS and Government during February and May 2016, it was replied (August 2016) that an amount of ₹ 5.68 lakh was recovered in one case, orders have been passed by the DRs in two cases and in remaining cases the IGRCS has directed the DRs concerned to initiate action for recovery of dues under Section 45 (A) (3) of the Act.

3.6 Non-levy of Stamp Duty and Penalty

According to Section 3 of the KS Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the schedule of the Act *ibid*.

Under Section 34 of the KS Act, 1957, 'No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped'. Further, it is also provided that such instruments shall be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of ten times the amount of the proper stamp duty or deficient portion, when ten times the deficit exceeds five rupees.

Under Article 5(e)(i) of the Schedule to the KS Act, in respect of an agreement relating to sale of immovable property wherein possession of the property is delivered or is agreed to be delivered without executing the conveyance, stamp duty at the rate applicable to conveyance on the market value of the property is leviable.

³³ Bommanahalli, Hubballi (South), J.P. Nagar, Malleshwaram and Shivajinagar.

During test check of records in the office of the SRO, Devanahalli in August 2015, Audit noticed that a Joint Development Agreement³⁴ (JDA) was registered on 18 December 2013 between five land owners and three confirming parties in favour of M/s. Nitesh Estates Limited. Two Assignment Agreements, executed on 3 September 2012, were produced as evidence at the time of registration of the JDA, in which one of the land owners, M/s. Alpha Devanahalli Properties Pvt. Ltd (ADPPL) had acquired rights over a land³⁵, which was part of the scheduled property of the JDA. The land acquired through Assignment Agreements originally belonged to Smt. Shivamma and Smt. Basamma. They had entered into the Assignment Agreements with M/s ADPPL and had received consideration amounting to ₹ 5.39 crore from M/s ADPPL through the Agreements.

Audit noticed that though the Assignment Agreements conveyed only agreemental rights, recital of JDA states that the title of the lands mentioned was passed to M/s.ADDPL vide the Assignment Agreements. Since no conveyance deed was executed after the Assignment Agreements and the possession of property was stated in the JDA to be transferred to M/s.ADDPL, these agreements should be treated as Sale Agreements of immovable property which were chargeable under Article 5 (e)(i) of the Schedule to the KS Act, 1957. Consequently, the stamp duty leviable at the rate of conveyance (i.e. five³⁶ per cent on ₹ 5.39 crore) works out to ₹ 26.95 lakh against which only ₹ 400/- was paid. This resulted in non-levy of stamp duty of ₹ 26.95 lakh. Further, as per the provisions of the KS Act, 1957, these agreements were not to be admitted by the SR for execution of JDA till such time the deficit stamp duty was paid by the Agreement holder together with penalty of ₹ 269.5 lakh, at 10 times of the deficit stamp duty.

Incorrect admission of agreements and allowing execution of JDA by the SRO has resulted in non levy of Stamp Duty and penalty of ₹ 2.96 crore.

SRO at the time of registration of JDA failed to verify these Assignment Agreements and collect proper stamp duty and penalty before admitting registration of JDA. This resulted in loss of stamp duty on these Assignment Agreements.

Audit brought this to the notice of the IGRCS and Government during March and April 2016, it was replied (September 2016) that notice was issued to M/s. ADPPL for payment of Stamp Duty of ₹ 26.95 lakh.

³⁴ Joint Development Agreement No. 07358/2013-14.

³⁵ Sy.Nos.51, 54/2, 56/6 and 52/1 of Guttahalli Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru Rural District.

³⁶ As per section 3-B of the KS Act, 1957, additional duty on Stamp Duty is applicable only on certain instruments like conveyance, exchange, settlement, gift or lease in perpetuity of immovable property. Since, Agreements are not chargeable with additional duty as per the section, additional duty is not included in the calculation.

