

CHAPTER-V: STAMP DUTY AND REGISTRATION FEE

5.1 Tax administration

Receipts from Stamp Duty (SD) and Registration Fee (RF) in the State are regulated under the Indian Stamp Act, 1899, Registration Act 1908, the Rajasthan Stamp (RS) Act, 1998 and rules made thereunder. The SD is leviable on execution of instruments and RF is payable on registration of instruments.

The Secretary, Finance (Revenue) is responsible for determination of policy, monitoring and control at the Government level. The Inspector General, Registration and Stamps (IGRS) is the head of the Registration and Stamps Department. He is assisted by two Additional Inspectors General in administrative and enforcement matters and by a Financial Adviser in financial matters. Besides this, one Additional Inspector General, Jaipur is entrusted with administration work. The entire State has been divided into 18 circles, headed by Deputy Inspector General (DIG) (Stamps). There are 33 District Registrars (DRs), 114 Sub-Registrars (SRs) and 409 *ex-officio* SRs¹.

5.2 Internal audit conducted by the Department

The Department has an Internal Audit Wing under the charge of the Financial Adviser. Planning for internal audit of units is made on the basis of importance and revenue realisation. The position of the internal audit conducted and units remaining unaudited during the years 2010-11 to 2014-15 was as under:

Year	Pending units*	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remaining unaudited	Shortfall in per cent
2010-11	-	369	369	132	237	64.22
2011-12	-	369	369	149	220	59.62
2012-13	-	369	369	183	186	50.40
2013-14	-	369	369	117	252	68.29
2014-15	-	523	523	16	507	96.94

Source: Information provided by the IG, Registration and Stamps, Ajmer.

* Audit has been conducted from the month of last audit to preceding month of current audit.

The short fall in coverage of units due for audit ranged between 50.40 *per cent* and 96.94 *per cent* during 2010-11 to 2014-15. The Department stated that the short fall in audit during 2014-15 was due to the fact that concerned audit parties were diverted for other departmental work.

It was noticed that 10,353 paragraphs of internal audit reports were outstanding at the end of 2014-15. Year-wise breakup of outstanding paragraphs of internal audit reports is as under:

¹ Tehsildars and Naib Tehsildars have been declared as *ex-officio* SRs.

Year	Upto 2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Paras	6,411	859	941	1,187	827	128	10,353

Source: Information provided by the IG, Registration and Stamps, Ajmer.

The number of outstanding paragraph is increasing year after year due to diversion of internal audit parties to other departmental functions. Action on these paragraphs would become increasingly difficult with passage of time. As such, these need immediate and focused attention of the Government.

The Government needs to strengthen the Internal Audit Wing so that timely detection and correction of errors in levy and collection of revenue are ensured. Further, efforts may be made for expeditious settlement of outstanding issues raised by the Internal Audit Wing.

5.3 Results of audit

During the year 2014-15, test check of records of 242 units of the Registration and Stamps Department disclosed short realisation of SD and RF amounting to ₹ 200.28 crore in 6,732 cases, which broadly fall under the following categories:

(₹ in crore)

Sl. no.	Categories	Number of Cases	Amount
1.	Incorrect determination of market value of property	1,464	23.55
2.	Non/short levy of Stamp Duty and Registration Fee	3,306	110.11
3.	Other irregularities	1,962	66.62
	Total	6,732	200.28

During the year 2014-15 the Department accepted underassessment and other deficiencies of ₹ 51.56 crore pertaining to 2,995 cases, of which 735 cases involving ₹ 23.72 crore were pointed out during the year 2014-15 and the rest in the earlier years. The Department recovered ₹ 4.75 crore in 2,273 cases during the year 2014-15, of which 90 cases involving ₹ 0.23 crore related to the year 2014-15 and rest to the earlier years.

A few illustrative cases involving ₹ 51.65 crore are discussed in the paragraphs from 5.4 to 5.13.

5.4 Non-levy/short levy of SD and surcharge on transfer of immovable property and change of land use

As per Article 21(i) of the Schedule to the RS Act, 1998, SD on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Section 17 of the Registration Act, 1908, provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above, to or in immovable property, are required to be compulsorily registered.

The State Government *vide* notification dated 25 February 2008 reduced SD chargeable on the instrument of immovable property executed by the State Government, Rajasthan Housing Board, Jaipur Development Authority (JDA), Urban Improvement Trust (UIT), RIICO, Municipality, Municipal Council or Nagar Nigam, after change of land use. The SD was to be charged on the difference of market value of land calculated on the basis of previous land use and changed land use. *Vide* notification dated 14 July 2014 a provision was made in supersession of above notification to the effect that SD chargeable on order of land use change issued under the Rajasthan Urban Areas (change of land use) Rules, 2010 or under any other relevant rules, shall be reduced and charged at the rate of 10 *per cent* of the amount of charges or fee for land use change, subject to a minimum of ₹ 500 in each case. Further, it was clarified that the provisions of notification would also be applicable to all conversion orders issued prior to the date of issue of this notification.

5.4.1 During test check of the records of SR, Jaipur-III and information collected from JDA, it was noticed (November 2014) that one commercial lease deed (document no. 6195 dated 6 June 2013) measuring 72,967 square metre (sqm) (total area 74,147 sqm *minus* surrendered land for road 1,180 sqm) land was registered in favour of M/s Jai Drinks Private Limited (JDPL). Scrutiny of the lease deed and *Jamabandi*², disclosed that initially 205.40 *bigha* land (5.19 lakh sqm including *Niji Khatedari*³ land) at village Jhalana Dungar was allotted to M/s Capstan Meter Company (India) Limited (CMC) on 99 years lease basis for industrial purpose on 23 April 1965 and 19 October 1965. The CMC had thereafter executed a sub-lease for 45 *acres* (1.82 lakh sqm) out of the said land in favour of JDPL for 98 years with effect from 1 April 1966 for the same purpose with the approval of the Government of Rajasthan.

JDPL on behalf of CMC applied for change of land use of 74,147 sqm land (69,431 sqm *Niji Khatedari* and 4,716 sqm Government land) from industrial to commercial purpose. Permission for conversion of 72,967 sqm land was accorded in favour of CMC. However, *patta* (lease deed) was issued in favour of JDPL on instruction of Government (UDH Department) and 1,180 sqm land was surrendered for public road. The SR, Jaipur-III charged SD at the rate of conveyance on 71.99 crore (₹ 41.66 crore conversion charges and ₹ 30.33 crore cost of Government land) deposited by the applicant for commercial *patta*. However, the SD at conveyance rate of five *per cent* should have been charged on the cost of the Government land *plus* other charges

² *Jamabandi* is a revenue record containing the names of tenants from whom land revenue is to be recovered.

³ *Niji Khatedari* land means agricultural land held by *Khatedar* as per *Jamabandi*.

(lease amount) paid in addition to 10 *per cent* SD on conversion charges. This worked out to ₹ 6.25 crore including surcharge whereas SD of ₹ 3.96 crore including surcharge was only paid. Thus, SD and surcharge of ₹ 2.29 crore were short levied.

It was also found that the land measuring 69,431 sqm belonged to CMC and application for change of land use was moved on behalf of CMC, though the *patta* was issued to JDPL. Audit could not ascertain from the records available whether the lease deed executed earlier with the CMC was cancelled, or the land was transferred by the CMC to JDPL on receipt of consideration prior to issue of *patta* to JDPL, which would have attracted SD at the rate of conveyance. The value of the land was ₹ 531.41 crore on which SD of ₹ 29.23 crore⁴ was leviable.

The matter was brought to the notice of the Department (December 2014) and reported to the Government (May 2015). The Government replied (November 2015) that the case had been registered with DIG (Stamps).

5.4.2 Section 37(4) of the RS Act, 1998, prescribes that when a person incharge of a public office, during the course of inspection or otherwise, detects an instrument or copy thereof or when it appears therefrom to a person referred to in Sub-section (1) that the instrument is not duly stamped, such person shall forthwith make a reference to the Collector in that matter. The IGRS also issued circular dated 2 November 2010 in this regard.

Scrutiny of records of public offices⁵ and departmental offices of six districts⁶ out of 33 districts covering the period between 2008-09 and 2013-14 and regular audit conducted during May 2014 and March 2015, disclosed that the orders for change of land use were issued in 212 cases. Audit observed that in 203 cases, the provisions of Section 37(4) were not followed by the person incharge of the concerned public offices, which resulted in non-levy of SD of ₹ 5.07 crore. Further, in nine cases, SD of ₹ 1.32 crore was short levied as

⁴ SD chargeable @ five *per cent* on market value of ₹ 5,31,41,09,878 @ DLC of ₹ 69,580 psqm (10 *per cent* extra for corner plot) and surcharge = ₹ 29,22,76,043 (₹ 26,57,05,494 SD + ₹ 2,65,70,549 SC).

⁵ The State Government *vide* notification dated 16 December 1997 declared Nagar Nigam, UIT, Development Authorities, Rajasthan Industrial Investment Corporation (RIICO) and other authorities as public offices.

⁶ Ajmer, Bikaner, Jaipur, Jodhpur, Kota and Udaipur.

detailed below:

(₹ in lakh)

Sl. no.	Name of public office	change of land use		No. of cases	Conversion charges paid	SD chargeable @ 10% of conversion charges (+) surcharge	SD/SC charged	No. of cases	Non-levy of SD/SC	No. of cases	Short levy of SD/SC	Total recoverable amount
		From	To									
1.	RIICO	Industrial	Commercial	27	4,457.70	486.03	138.63	20	222.75	7	124.65	347.40
2.	Nagar Nigam	Residential	Commercial/Mixed use	136	2,725.60	229.94	0	136	229.94	0	0	229.94
3.	Nagar Nigam	Residential	Institutional (Hospital)	1	32.60	3.59	0	1	3.59	0	0	3.59
4.	JDA/ADA ⁷	Residential	Commercial/Mixed use	9	108.41	11.92	0	7	4.21	2	7.71	11.92
5.	JDA/ADA	Industrial	Residential	2	178.89	19.68	11.96	2	7.72	0	0	7.72
6.	JDA/ADA	Institutional	Commercial	1	12.10	1.33	0	1	1.33	0	0	1.33
7.	UIT	Residential	Commercial	35	309.44	34.03	0	35	34.03	0	0	34.03
8.	UIT	Residential	Institutional	1	35.10	3.86	0	1	3.86	0	0	3.86
Total				212	7,859.84	790.38	150.59	203	507.43	9	132.36	639.79

The matter was pointed out to the Department and reported to the Government (June 2015). The Government replied (September 2015) that cases had been registered with DIGs (Stamps) in 44 cases; recovery was pending in two cases after decision of DIGs (Stamps); notices had been issued in 53 cases and reply was awaited from DIGs in 76 cases. In four cases, documents were stated to have already been registered and in 32 cases, recovery had been made. The Government did not furnish details of decision in one case.

5.5 Non-levy/Short levy of SD and RF on development agreements

As per Article 5(e) of the Schedule to the RS Act, 1998, SD on an agreement or memorandum of an agreement relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, or development of, or sale or transfer (in any manner whatsoever) of any immovable property, shall be charged as on a conveyance on the market value of the property. The State Government *vide* notification dated 6 March 2013 reduced SD from five *per cent* to one *per cent* of the market value of the property from the date of issue of notification.

Further, as per Article 21(i) of the Schedule to the RS Act, 1998, SD on the instrument of conveyance relating to immovable property shall be levied on the market value of the property.

⁷ Ajmer Development Authority.

5.5.1 Misclassification and Undervaluation

5.5.1.1 Misclassification

During test check of records of five SRs⁸, it was noticed (between July 2014 and December 2014) from the recitals of 19 documents that these documents were titled as development agreements and the SRs had registered the same according to their title despite the fact that the developers had either received consideration value from the owners or a certain percentage of share was transferred to the developers together with land, basement and open area. The developers could sell their share without intervention of owners. The details are as under:

(₹ in crore)

Sl. no.	Nature of irregularity	No. of documents (No. of SRs)	SD and surcharge leviable	SD and surcharge levied	Short levy of SD and surcharge
1.	Certain percentage of share in constructed area was transferred together with land, basement, open area	10 (2)	0.49	0.21	0.28
2.	Consideration amount received; villa and flats received as consideration; joint ownership from ground floor to other floors	9 (5)	5.28	0.63	4.65
Total		19 (7)	5.77	0.84	4.93

As such, these documents should have been treated as conveyance and SD should have been charged at the rate of five *per cent* of the market value as per Article 21 of the Schedule to the RS Act, 1998. Due to this misclassification, SD and surcharge of ₹ 4.93 crore was short levied.

5.5.1.2 Undervaluation

During test check of records of four SRs⁹, it was noticed (between September 2014 and November 2014) that in eight development agreements, the market value of properties was considered on lower side due to incorrect application of DLC rate despite the fact that the agreements were made for construction of residential building/mixed purpose, resulting in short levy of SD, surcharge and RF of ₹ 31.77 lakh.

This resulted in short levy of SD, surcharge and RF aggregating to ₹ 5.25 crore.

The matter was brought to the notice of the Department (between August 2014 and January 2015) and reported to the Government (May 2015). The Government replied (July 2015) that cases had been registered with DIGs (Stamps) in 14 documents; notices had been issued in two cases; factual position had been called for in eight cases; recovery was pending in two decided cases and one case was under consideration.

⁸ Jaipur-II, Jaipur-VI, Kotkasim, Neemrana and Tapukara.

⁹ Udaipur-I, Tijara, Behror and Neemrana.

5.5.2 Non-levy/Short levy of SD

5.5.2.1 During test check of records of SRs Bhilwara, Jaipur II, Udaipur-I and Udaipur-II, it was noticed (between July 2014 and October 2014) from the recital of six sale deeds that development agreements were executed between the owners of the property and the developers to develop residential/commercial building on plots/agricultural land. There was no evidence of payment of SD on these development agreements. This resulted in non-levy of SD and surcharge amounting to ₹ 83.23 lakh.

5.5.2.2 As per Article 44(ee) of the Schedule to the RS Act, 1998, when power of attorney (PoA) is given, without consideration to sell immovable property to-

- (i) the father, mother, brother, sister, wife, husband, son, daughter, grand-son or grand-daughter of the executants, SD of ₹ 2,000 would be chargeable,
- (ii) any other person, SD at the rate of two *per cent* of the market value of the property, which is the subject matter of PoA, would be chargeable.

As per Article 44(eee) of the Schedule to the RS Act, 1998, when a PoA is given to promoter or developer by whatever name called, for construction, or development of, or sale or transfer (in any manner whatsoever) of, any immovable property, SD at the rate as on conveyance on the market value of the property would be chargeable.

During test check of records of SR Parbatsar, it was noticed (August 2014) that a PoA was registered on 16 April 2012 for development of integrated residential colony. The SR charged SD and RF of ₹ 0.49 lakh on the market value of ₹ 22.24 lakh by misclassifying the document as PoA given without consideration to sell the immovable property under Article 44 (ee) (ii). The document should have been classified under Article 44 (eee) on which SD of ₹ 1.12 lakh¹⁰ was chargeable. Besides this, it was found from the recital of the document that a development agreement was also executed between the parties for the above purpose. However, there was no evidence of payment of SD of ₹ 6.04 lakh¹¹ on the development agreement. This resulted in non-levy/short levy of SD and surcharge aggregating to ₹ 6.67 lakh¹².

The matter was pointed out to the Department (August 2014 and November 2014) and reported to the Government (February 2015). The Government replied (July 2015) that in six documents, cases had been registered with DIGs (Stamps) and in remaining one case, action for registering the case was being undertaken.

¹⁰ SD chargeable @ 5 *per cent* on market value of ₹ 22,23,971 = ₹ 1,12,318
SD charged @ 2 *per cent* on market value of ₹ 22,23,971 = ₹ 48,930
Difference of SD = ₹ 63,388 -----A

¹¹ SD chargeable @ 1 *per cent* on current market value of ₹ 5,48,64,591=
₹ 5,48,646 SD + ₹ 54,864 SC = ₹ 6,03,510 -----B

¹² Total A + B = ₹ 6,66,898

5.6 Non-levy of SD on transfer of immovable properties to partnership firms

As per Article 43(1)(c) of the Schedule to the RS Act, 1998, inserted on 26 March 2012, in case of instrument of partnership where share contribution is brought in by way of immovable property, SD should be chargeable as on conveyance on the market value of such property.

During test check of records of 11 SRs¹³, it was noticed (between July 2014 and January 2015) that 20 sale deeds were executed between partnership firms/companies and the purchaser wherein individuals had made capital contribution or contributed total land to partnership firm in consideration of their share. Thus, the SD and surcharge was chargeable but the SRs had not taken into account this fact at the time of registering the sale deeds by the partnership firms and the SD was not recovered as per extant provision on market value of ₹ 54.59 crore. This resulted in non-levy of SD and surcharge of ₹ 3.00 crore.

The matter was brought to the notice of the Department (between August 2014 and February 2015) and reported to the Government (February 2015 and June 2015). The Government replied (September 2015) that in 14 documents, cases had been registered with DIGs (Stamps); in one document, notice for recovery had been issued and action in accordance with decision of DIGs (Stamps) was awaited in remaining five cases.

5.7 Non-recovery of exempted SD on breach of conditions

As per Clause 5 of Rajasthan Investment Promotion Scheme (RIPS) 2010, an enterprise to which Entitlement Certificate has been issued shall be eligible to claim 50 *per cent* exemption on the SD payable on the instruments executed for the purchase or lease of land. Clause 3 of the scheme stipulates that the scheme shall be applicable to a new enterprise, sick industrial enterprise for its revival and existing enterprise making investment for modernisation/expansion/diversification subject to the condition that the enterprise shall commence commercial production or operation during the operative period of the scheme.

Annexure-1 of the scheme includes a list of enterprises not eligible for benefits of subsidies and/or exemptions under the scheme. This includes enterprise established at the site of an existing enterprise excluding sick industrial enterprise. As per Clause 8(D), where on scrutiny or inspection by the officers of Commercial Taxes/Industries Department, it is found that the enterprise which has availed the benefits under the scheme is not eligible for such benefits, a reference shall be made to the appropriate Screening Committees. On being satisfied with the genuineness of the reference, the Committee may take appropriate decisions including withdrawal of benefits and recovery of the benefits already availed with interest at the rate of 18 *per cent* per annum.

During test check of records of SRs Behror, Sambher and Jaipur-III, it was noticed (August 2014 and November 2014) that in three cases, benefits of 50 *per cent* exemption on SD were availed by the purchasers but they either

¹³ Jaipur-II, Sawaimadhopur, Bhiwadi, Badgaon, Srimadhapur, Udaipur-I, Udaipur-II, Jhunjhunu, Jodhpur-III, Sikar and Jaipur-I.

failed to fulfill conditions/requirement or were not eligible for availing such benefits, as detailed below:

(₹ in lakh)

Sl. no.	Name of SR	Name of Party (Document no.)	Amount of SD and surcharge	Remarks
1.	Behror	M/s Sidhi Multi Trade Pvt. Ltd. (4308/26.7.2013)	103.99	Purchaser purchased sick industrial unit for revival but sold a part of land and executed a development agreement on remaining land without revival of sick unit.
2.	Jaipur-III	M/s Varity Craft Export (7750/19.7.2013)	6.32	Purchaser purchased existing enterprise (not sick industrial enterprise) for new investment and hence not eligible to claim exemption in SD under Clause 3 and Annexure-1 of the scheme.
3.	Sambher	M/s Oshiya Steel Pvt. Ltd. (2561/4.1.2012)	12.03	Purchaser sold the land on 19 June 2013 without establishing the unit.
Total			122.34	

Thus, due to breach of conditions mentioned in the scheme or lack of eligibility, the beneficiaries were liable to refund the SD and surcharge of ₹ 1.22 crore.

The matter was pointed out to the Department (September 2014 and December 2014) and reported to the Government (February 2015). The Government replied (October 2015) that cases had been registered with DIG (Stamps) in all documents.

5.8 Short levy of SD and RF due to undervaluation of properties

As per Article 21(i) of the Schedule to the RS Act, 1998, SD on the instrument of conveyance relating to immovable property shall be levied on the market value of the property. Rule 58 of the Rajasthan Stamp Rules, 2004, provides that the market value of the land shall be assessed on the basis of the rates recommended by the District Level Committee (DLC) or the rates approved by the IGRS, whichever is higher.

During test check of records of eight SRs¹⁴, it was noticed (between May 2014 and February 2015) that the market value of properties was considered on lower side despite the fact that such properties were purchased for commercial/institutional/residential purposes or located at the site where higher rates of DLC were applicable. The SRs valued the properties transferred through these documents at the rates lower than the rates which were most appropriately applicable based on description or location of properties. This resulted in short levy of SD and RF amounting to ₹ 1.59 crore in 15 cases.

¹⁴ Kurawad, Udaipur-II, Chomu, Tapukara, Luni, Newai, Jaipur-I and Phalodi.

The matter was pointed out to the Department (between June 2014 and January 2015) and reported to the Government (May 2015). The Government replied (October 2015) that cases had been registered with DIGs (Stamps) in five documents; notices for recovery had been issued in nine documents and in remaining one case, recovery of ₹ 0.59 lakh had been made.

5.9 Short levy of SD and RF due to incorrect application of rates in valuation of properties

5.9.1 Industrial purposes

The Department *vide* Circular No. 1/2009 made a provision that in case of land used or converted for industrial purpose at the time of execution of document, the valuation should be done at industrial rate and in case the land was situated out of RIICO area, valuation should be done at industrial rate prescribed by the DLC and if DLC rates had not been prescribed then the valuation should be done at prevalent reserve price of nearest RIICO area or the rates prescribed by the DLC, whichever was higher.

During test check of records of SRs Sanchore, Asnawar, Chaksu and Kolayat, it was noticed (October 2014 and December 2014) that 21 documents were registered between May 2012 and March 2014 for purchase of land converted for industrial purpose and agricultural land for industrial purposes. It was found that the lands were situated beyond five Km from RIICO area and hence SD was chargeable at industrial rate as per provision of Circular No. 1/2009 but the SRs valued the lands at agricultural and residential rate. The SRs charged SD and RF of ₹ 71.34 lakh instead of ₹ 116 lakh resulting in short recovery of SD and RF of ₹ 44.66 lakh.

Further, it was noticed (November 2014) that SR Srimadhapur, had applied lower rates in valuation of land converted for industrial purpose in three documents. Application of incorrect rates in valuation resulted in short recovery of SD and RF of ₹ 5.42 lakh.

This resulted in short levy of SD and RF aggregating to ₹ 50.08 lakh.

The matter was pointed out to the Department (between November 2014 and March 2015) and reported to the Government (May 2015). The Government replied (September 2015) that notices for recovery had been issued in 18 documents and cases had been registered with DIGs (Stamps) in six documents.

5.9.2 Properties purchased by companies and educational institutions

The State Government *vide* notification dated 9 March 2011 specified that SD on instrument of transfer of land for institutional purposes for which rates are not recommended by the DLC shall be charged on consideration amount mentioned in the document or 1.5 times of the rates of residential land, whichever is higher. As per substituted Rule 58 of the Rajasthan Stamp Rules, 2004, inserted *vide* notification dated 8 May 2012, the rates of land for institutional purposes shall be equal to 1.5 times of rate of residential land.

The State Government issued a notification on 8 May 2012 superseding the notification dated 9 March 2011 prescribing that the rates of agricultural land

purchased by companies or partnership firms for the purposes other than industrial, tourism, residential or commercial shall be 1.5 times of the rate of residential land of that area with the condition that these rates shall be applicable where the rates for such land have either not been recommended by the DLC or rates recommended by the DLC in respect of the same are less than the aforementioned prescribed rates.

During test check of records of SRs Nasirabad, Wair and Kanod, it was noticed (July 2014 and August 2014) that six sale deeds were executed between September 2011 and July 2013, wherein lands were purchased by companies and educational institutions. The SRs had determined the market value of properties as shown in documents/at agricultural rate instead of considering 1.5 times of Residential Rate (RR) as per extant provision as detailed below:

(₹ in lakh)

Name of SRs	Notification, the provision of which was violated	No. of cases involved	Money value adopted	Money value to be adopted i.e. 1.5 times of RR or rate prescribed by DLC	SD/RF levied	SD/RF leviable	Short recovery	Reasons
Nasirabad and Wair	9 March 2011	3	13.05	190.61	0.81	11.57	10.76	1. SD calculated at consideration amount mentioned in document instead of valuation at 1.5 times of RR. 2. SD calculated on market value at agricultural rate instead of valuation at 1.5 times of RR.
Kanod	8 May 2012	3	9.34	650.15	0.61	37.19	36.58	SD calculated on market value at agricultural rate instead of valuation at 1.5 times of RR.
Total		6	22.39	840.76	1.42	48.76	47.34	

This resulted in short levy of SD, surcharge and RF amounting to ₹ 47.34 lakh.

The matter was pointed out to the Department (between July 2014 and September 2014) and reported to the Government (February 2015). The Government replied (October 2015) that cases had been registered with DIG (Stamps) in three documents; notices for recovery had been issued in two documents and in remaining one document, the amount had been recovered.

5.10 Short levy of SD and RF on agreement to sell with transfer of possession

Section 2(xi) of the RS Act, 1998 defines conveyance as a conveyance on sale by which property or any estate or interest or any property is transferred to or vested in, any other person, *intervivos*. As per Article 21 of the Schedule to the RS Act, 1998, SD on conveyance of immovable property would be charged at the rate of five *per cent* of the market value. As per Article 5(c) of the Schedule to the RS Act, 1998, SD of three *per cent* of the total consideration of the property would be chargeable on agreement to purchase or sell an immovable property when possession is neither given nor agreed to be given.

During test check of records of SR Nathdwara, it was noticed (January 2015) that a document (No. 1349 dated 24 April 2013) was registered as an agreement to sell without possession for a land converted for the purpose of agricultural trade unit on which SR charged SD and RF of ₹ 1.27 lakh on face value of ₹ 29.50 lakh. On recital of the document, it was noticed that the entire amount of consideration had been received at the time of handing over physical possession of the land. As such, the document was squarely covered under the category of conveyance. It was not made clear in the document whether the land was initially converted for agricultural processing or for marketing of crop. Audit therefore, worked out the valuation of the property at a rate applicable for agricultural plot, on which SD and RF of ₹ 26.29 lakh was payable. This resulted in short levy of SD and RF of ₹ 25.02 lakh.

The matter was pointed out to the Department (February 2015) and reported to the Government (April 2015). The Government replied (August 2015) that the case had been registered with DIG (Stamps).

5.11 Short levy of SD due to misclassification of mortgage deed as agreement of loan

The State Government *vide* notification dated 7 March, 1994 specified that the SD chargeable on mortgage deed executed in favour of any bank or co-operative society for obtaining loan for non-agricultural purposes shall be reduced to one *per cent* of the loan amount or ₹ 100, whichever is higher.

During test check of records of SRs Jodhpur-I, Udaipur-II and Kishangarh (Ajmer), it was noticed (between September 2014 and December 2014) that in four cases, the documents were titled as mortgage deeds wherein the borrowers had mortgaged their properties in favour of banks/loan provider company as security of the loan taken by them with the condition that in case of default in payment of the amount of loan, the loan providers shall be free to sell out the properties so mortgaged. In these cases, SD and surcharge of ₹ 20.18 lakh at the rate of one *per cent* on the market value should have been charged but the SR levied SD and surcharge of ₹ 2.02 lakh at the rate of 0.1 *per cent* of market value treating the documents as agreement of loan. In another case in which the document was titled as deposit of title deed, the SR levied SD and surcharge of ₹ 0.37 lakh at the rate of 0.1 *per cent* considering the document as agreement of loan instead of mortgage deed on which SD and surcharge of ₹ 3.74 lakh at the rate of one *per cent* of the market value should have been charged as the recital of the document stated that the borrower had

mortgaged his property in favour of banks/loan provider company as security of the loan taken by him with the condition that in case of default in payment of the amount of loan, the loan providers shall be free to sell out the property so mortgaged. This resulted in short levy of SD and surcharge of ₹ 21.53 lakh.

The matter was pointed out to the Department (between October 2014 and January 2015) and reported to the Government (April 2015). The Government replied (October 2015) that cases had been registered with DIGs (Stamps) in all the five cases.

5.12 Short levy of SD and RF due to undervaluation of properties registered as farm houses

The sub-rule 1 of Rule 58 of the Rajasthan Stamp Rules, 2004, provides that the market value of the land shall be assessed on the basis of the rates recommended by the DLC or the rates approved by the IGRS of Stamps from time to time, whichever is higher. As per point 7 of circular 5/2011 issued by the IGRS on 31 March 2011, it would be appropriate to make valuation at residential rate in case of re-transfer of lease for farm house due to its non-agricultural purpose.

During test check of records of SRs Udaipur-I, Udaipur-II and Badgaon, it was noticed (September 2014) that in 13 cases, lands were sold after getting the agricultural land converted into farm houses. On scrutiny, it was noticed that the SRs valued the land in eight cases at 35 *per cent* of residential rate of that area and in five cases at face value. However, the valuation should have been done at residential rate as per the above provisions because the rates prescribed by the IG *vide* Circular 5/2011 was higher than the rates prescribed by the DLC. This resulted in short levy of SD and RF amounting to ₹ 23.30 lakh¹⁵.

The matter was pointed out to the Department (October 2014) and reported to the Government (April 2015). The Government replied (June 2015) that in 10 documents, cases had been registered with DIG (Stamps) and in case of three documents, recovery of ₹ 2.74 lakh had been made.

5.13 Short levy of SD and RF due to undervaluation of gift deed and by extending benefit of concessional SD

As per Article 31 of the Schedule to the RS Act, 1998, the SD on instrument of gift is chargeable as conveyance on market value of the property, which is the subject matter of gift. The State Government *vide* notification dated 9 March 2011 prescribed that the SD chargeable on gift deeds of immovable property executed in favour of relatives specified in the notification, shall be reduced to 2.5 *per cent*.

The State Government *vide* another notification dated 9 March 2011 amended the Rajasthan Stamp Rules, 2004 and specified that stamp duty on instrument of transfer of land for institutional purposes for which rates are not recommended by the DLC shall be charged on consideration amount

¹⁵ SD/RF chargeable on valuation of ₹ 630.40 lakh = ₹ 37.77 lakh
SD/RF charged on valuation of ₹ 230.61 lakh = ₹ 14.47 lakh
SD/RF short levied = ₹ 23.30 lakh

mentioned in the document or 1.5 times of the rates of residential land, whichever is higher.

During test check of records of SR Atru (Baran), it was noticed (November 2014) that two *bigha* land was given through a gift deed to Indian Education Society, *Chardana* to facilitate education at college level.

Audit observed that valuation was done at aggregate value of ₹ 5.75 lakh for levying of SD/RF though the transferred land was to be used for running a college. The SR worked out the value of land applying the agricultural rate of ₹ 2.87 lakh per *bigha* instead of 1.5 times of residential rate of that area. The valuation of the land should have been ₹ 196.26 lakh, on which SD and RF of ₹ 11.29 lakh was leviable.

It was also found that the SR charged SD of only ₹ 0.21 lakh on the valuation of ₹ 5.75 lakh after allowing rebate of ₹ 0.15 lakh erroneously by treating the land given as gift in favour of specified person as per notification dated 9 March 2011. The land was neither gifted to a specified person nor given for agriculture purpose. Thus, SD of ₹ 11.08 lakh¹⁶ was short levied due to incorrect valuation of land and by extending benefit of concessional SD.

The matter was pointed out to the Department (December 2014) and reported to Government (February 2015). The State Government replied (July 2015) that notice for recovery had been issued by the SR.

¹⁶ SD chargeable @ five *per cent* on market value of ₹ 1,96,26,240 @ DLC of ₹ 570 psft (1.5 x 380 psft) for 34,432 sft, surcharge and RF = ₹ 11,29,443 (9,81,312 SD + 98,131 SC + 50,000 RF)
SD charged @ 2.5 *per cent* on market value of ₹ 5,74,600 @ DLC of ₹ 2,87,300 per *bigha* for two *bigha* land, surcharge and RF = ₹ 21,560 (14,370 SD + 1,440 SC + 5,750 RF)
Short levy = ₹ 11,07,883