

CHAPTER III

STAMP DUTY AND REGISTRATION FEE

3.1 Tax Administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Maharashtra and are administered at the Government level by the Principal Secretary, Revenue Department. The Inspector General of Registration (IGR) is the head of the Stamp duty & Registration Department who is empowered with the task of superintendence and administration of registration work. He is assisted by Additional Controller of Stamps, Mumbai (ACOS), eight Deputy Inspector General (DIGs), six Collector of Stamps (COS) at Mumbai and Mumbai Sub-urban District, 34 Joint District Registrar and 504 Sub-Registrar at District and Taluka levels.

3.2 Internal audit

The details of audit conducted by the internal audit wings of IGR are as detailed in **Table 3.2**.

Table 3.2

Year	No. Of units			Audit observations		
	Planned	Audited	Unaudited	Raised	Settled up to 31/03/2018	Pending as on 31/03/2017
2013-14	72	38	34	207	53	154
2014-15	72	14	58	55	12	43
2015-16	72	11	61	115	15	100
2016-17	72	57	15	415	30	385
2017-18	72	209	0	1,296	94	1,202
Total	360	329	31	2,088	204	1,884

Source: Information furnished by the Department

Thus, the facts indicate that:

- During the year 2013-14 to 2017-18, audit was carried out in 329 offices whereas it was planned for 360 units. Thus only 91 *per cent* of the units were covered against the units planned for internal audit.
- Only 10 *per cent* of the audit observations raised by the internal audit were settled.

3.3 Result of audit

There are 541 auditable units in the Registration and Stamps Department, out of these, audit selected 139 units for test check wherein 13,55,596 instruments were registered during 2017-18. Out of these, 59,597 instruments (approx. 4.40 *per cent*) were selected for test check. During scrutiny, audit noticed short/non-realization of SD and RF of ₹ 90.18 crore in 484 instruments (approx. 0.81 *per cent* of sampled cases). These were pointed out to the concerned assessing authorities through 403 audit observations. These cases are illustrative only as these are based on test check of records. Audit pointed out some of the similar omissions in earlier years. Not only do these irregularities persist, but they also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed broadly fall under the following categories.

(₹ in lakh)			
Sr. No.	Category	No. of observations	Amount
1	Short levy of SD and RF	24	468.24
2	Incorrect exemption of SD and RF	14	162.37
3	Misclassification of documents	10	126.26
4	Undervaluation of property	320	7,865.39
5	Other irregularities	35	396.00
Total		403	9,018.26

During the year 2017-18, the Department accepted and recovered underassessment and other deficiencies of ₹ 15.60 crore pertaining to 285 cases, of which 23 cases involving ₹ 0.55 crore were pointed out during the year 2017-18 and the rest in the earlier years.

In one case entire amount of ₹ 1.08 crore on account of stamp duty and registration fee was recovered after being pointed out to the Government in March 2019.

A few observations involving short realisation of revenue of ₹ 14.95 crore on account of stamp duty and registration fee are mentioned in the following paragraphs.

Audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Stamp Act (MS Act), 1958 and Government notifications and instructions and other cases such as short levy of stamp duty, undervaluation of property, incorrect application of section of MS Act, irregular grant of rebates which are mentioned in the succeeding paragraphs in this chapter. A few cases involving ₹ 14.95 crore are discussed in the succeeding paragraphs. These cases are illustrative only as these are based on a test check of records.

3.4 Short levy of stamp duty due to undervaluation of property

Cases of short levy of stamp duty due to not considering the sharing of revenue or constructed area specified in the document, not working out the market value as per Annual Statement of Rates (ASR) and incorrect consideration of market value are elaborated below:

3.4.1 Revenue sharing

As per para 684 of Maharashtra Registration Manual (MRM), Part-II, where the developer offers to allot residential/non-residential components to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of execution of the agreement and the duty and fees should be levied on the greater of the two values *viz.* the value of the consideration component or the market value of the property. On such instruments, stamp duty is leviable under provision contained in Article 5 (g-a) (i) of MS Act. Further, as per Article 5 (g-a) (i) of MS Act, if immovable property is given to a developer for development, construction, sale or transfer then stamp duty is leviable on conveyance¹ under Article 25 (b) of the said Act.

Further, as per instruction 33 of Annual Statement of Rates (ASR) for the year 2015 where the developer offers to share revenue from sale of residential/ non-residential units to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the ASR and the consideration for the purpose of levy of stamp duty would be 85 *per cent* of owner's share. This ratio was effective from 01 January 2015 onwards. Thus, up to 2015, the consideration for the purpose of levy of stamp duty would be 100 *per cent* of owner's share and from 2015 onwards it was 85 *per cent* of owner's share. A few irregularities noticed during the course of audit are as follows-

3.4.1.1 In four² Sub Registrars Offices, in five cases, the development agreements were executed (2013-14) between 'owners' and 'developers' for development of land. The Department levied stamp duty of ₹ 1.15 crore on

¹ Conveyance means a conveyance on sale by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*, and which is not otherwise specifically provided for by Schedule-I.

² Joint Sub Registrar, Haveli-VI, Pune; Joint Sub Registrar, Haveli-VIII, Pune; Joint Sub Registrar, Haveli-XVII, Pune and Joint Sub Registrar, Lonavala, Pune.

market value/consideration of ₹ 19.31 crore. The basis on which consideration/market value was worked out by the Department was not found on record.

Audit observed (February 2016 and December 2016) that as per recital of these five agreements, the owners and developers had agreed to develop the properties on the basis of revenue sharing³ on percentage⁴ basis. The owner share as per revenue sharing agreement worked out to ₹ 62.54 crore. Thus, the consideration of the property in terms of revenue sharing was ₹ 62.54 crore on which stamp duty of ₹ 3.14 crore should have been levied against ₹ 1.15 crore levied by the Department. This resulted in short levy of stamp duty of ₹ 1.99 crore.

The department accepted the audit observations in all the five cases between September 2016 and October 2018 and in one case, the IGR, Pune intimated (October 2018) that an amount of ₹ 18.33 lakh including fine was recovered against ₹ 14.29 lakh pointed out by audit. Report on recovery in the remaining cases has not been received (October 2019).

3.4.1.2 Scrutiny of instruments in offices of four⁵ Sub Registrars, revealed (August 2016 and March 2017) that in four cases, the development agreements were executed (2015) between 'owners' and 'developers' for development of land. The Department levied stamp duty of ₹ 1.28 crore on market value/consideration of ₹ 25.21 crore. The basis on which consideration/market value was worked out by the Department was not found on record.

It was observed that as per recital of the agreement(s), the owners and developers had agreed to develop the properties on the basis of revenue sharing on certain percentage⁶. The consideration of the property in terms of revenue sharing worked out to ₹ 42.40 crore involving stamp duty of ₹ 1.92 crore. Thus, there was short levy of stamp duty of ₹ 64 lakh.

The IGR, Pune accepted the audit observations and stated (October 2018) that an amount of ₹ 31.93 lakh was recovered in two cases while in the two remaining cases, report on recovery has not been received.

3.4.1.3 Scrutiny of instruments in office of the Sub Registrar, Maval, Pune revealed (February 2017) that a development agreement was executed (April 2014) between land owners and developer for development of land admeasuring 13,266 sqm bearing *gat* number 138 and 150 situated at *mouza* Kanhe (influence area), taluka Maval, district Pune for a consideration of ₹ 66 lakh. The Department had worked out the market value of the land at ₹ 3.58 crore and levied a stamp duty of ₹ 16.31 lakh. The details of calculation of market value were not available on record.

Audit observed (February 2017) from the recital of the document that in lieu of development rights, the developer had agreed to provide the constructed area of 5,306.40 sqm (i.e. 40 *per cent* of total constructed area of 13,266 sqm)

³ Revenue realized from selling of constructed units in open market.

⁴ Ranged between 50:50 and 80:20.

⁵ Joint Sub Registrar, Parbhani; Joint Sub Registrar, Haveli-XXII, Pune; Joint Sub Registrar, Haveli-XXIII, Pune and Joint Sub Registrar, Haveli-XXVI, Pune.

⁶ Ranged between 40:60 to 50:50.

along with a refundable deposit of ₹ 66 lakh. In addition to above, the developer also agreed to give a cash consideration of ₹ 3.10 crore to the owners. The market value of the property was ₹ 9.03 crore⁷ instead of ₹ 3.58 crore worked out by the department. Thus, stamp duty leviable at the rate of four *per cent* was ₹ 36.12 lakh instead of ₹ 16.31 lakh. This had resulted in short levy of stamp duty of ₹ 19.81 lakh⁸.

The IGR, Pune accepted the audit contention (September 2018) and ordered for recovery.

The above cases were reported to the Government and the department between April and June 2018. The department intimated the acceptance of all the ten cases and recovery of ₹ 50.26 lakh in three cases.

3.4.2 Sharing of constructed area

As per instruction 32 of ASR, in case of development agreement the market value shall be derived by calculating owner's share (cost of constructed area plus interest at the rate of ten *per cent* on security deposit) and developer's share and higher of these should be considered as market value. A few irregularities noticed during the course of audit are as follows-

3.4.2.1 Scrutiny of instruments in office of the Joint Sub Registrar, Lonavala, Pune revealed (June 2017) that a development agreement was executed (January 2016) between owners and developer for development of land admeasuring 57,900 sqm bearing Survey No.389 (old Survey No.646) situated at *mouza* Talegaon Dabhade, taluka Maval, Pune for a consideration of ₹ 10 crore. The Department calculated the market value of the land at ₹ 10.49 crore, which was higher than the consideration and levied stamp duty of ₹ 52.44 lakh.

Audit observed (June 2017) that, as per terms of the agreement, the developer had agreed to give constructed area of 32,527.88 sqm to the owners and security deposit of ₹ seven crore for a construction period of seven years.

The market value of the construction area measuring 32,527.88 sqm was ₹ 50.09 crore⁹ and the interest on security deposit of ₹ seven crore amounted to ₹ 4.90 crore. Thus, the owners' consideration worked out at ₹ 54.99 crore on which stamp duty at the rate of four *per cent* of ₹ 2.20 crore was leviable. This resulted in short levy of stamp duty of ₹ 1.68 crore¹⁰.

The Joint Sub Registrar, Lonavala had accepted (June 2017) the fact.

3.4.2.2 In another case in the office of the Joint Sub Registrar, Lonavala, Pune an agreement was executed (February 2016) between owners and developer through its partners for development of land admeasuring 16,000 sqm bearing *gat* No. 204 situated at village Gahunje, taluka Maval, Pune for a consideration of ₹ three crore. The Department had worked out the market

⁷ (Cost of construction - ₹ 5.73 crore) + (Interest on security deposit - ₹ 19.80 lakh) + (cash consideration - ₹ 3.10 crore).

⁸ (Stamp duty leviable - ₹ 36.12 lakh) – (Stamp duty levied - ₹ 16.31 lakh).

⁹ at the rates prescribed in ASR of 2015 which owners would get in lieu of land.

¹⁰ (Stamp duty leviable - ₹ 2.20 crore) – (Stamp duty levied - ₹ 52.44 lakh).

value of the land at ₹ 2.87 crore. As the consideration value was higher, the stamp duty of ₹ 15 lakh was levied on it.

Audit observed (June 2017) that, as per clause D-1 of the development agreement, the developer had agreed to give constructed area of 9,293.68 sqm to owners, in lieu of consideration for land. The market value of construction area was ₹ 14.31 crore on which stamp duty at the rate of four *per cent* amounting to ₹ 57.25 lakh was leviable. This resulted in short levy of stamp duty of ₹ 42.25 lakh¹¹.

The Joint Sub Registrar, Lonavala had accepted (June 2017) the fact.

3.4.2.3 Scrutiny of instruments in office of the Joint Sub Registrar-IV, Haveli, Pune revealed (February 2016) that a Re-development Agreement was executed (September 2014) between society owner, consentor (12 flat owners of the society called members) and Developer for redevelopment of plot admeasuring 1,011.71 sqm (construction of 937.91 sqm) with existing 12 residential flats bearing new plot no.464 (old survey no. 546/A) of *mouza* Gultekadi within the limits of Pune Municipal Corporation, Pune for a consideration of ₹ 2.39 crore.

As per document, the construction cost including parking as worked out by the Department amounted to ₹ 1.56 crore on which stamp duty of ₹ 11.99 lakh was levied. Audit observed (February 2016) from the recital of the Re-development Agreement that the developer had agreed to give total constructed area of 1,484.15 sqm (existing area of 937.91 sqm valued at ₹ 1.14 crore and additional area¹² of 546.24 sqm valued at ₹ 2.76 crore) along with other amenities¹³ valued at ₹ 68.96 lakh to the society members. Thus, the consideration amount worked out to ₹ 4.59 crore on which stamp duty of ₹ 22.94 lakh was leviable. This had resulted in short levy of stamp duty of ₹ 10.95 lakh¹⁴.

The Joint District Registrar & Collector of Stamps, Pune (City) has accepted (October 2016) the contention of audit.

3.4.2.4 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-XXI, Pune revealed (April 2015) that a development agreement was executed (September 2013) between owners and developer and consenting party (Members of 18 flat owners) for redevelopment of land admeasuring 1,142 sqm. There were 18 flats (981.30 sqm flat area + 173.75 sqm terrace area) on this piece of land.

The Department valued the property at ₹ 2.24 crore on which stamp duty of ₹ 11.20 lakh was levied. The Department also mentioned the consideration for transaction at ₹ 1.94 crore for which no details were available and there was nothing on records to indicate whether stamp duty was levied on it.

¹¹ (Stamp leviable - ₹ 57.25 lakh) – (Stamp duty levied - ₹ 15 lakh).

¹² Additional carpet area - 306.24 sqm; terrace - 90 sqm and car parking - 150 sqm.

¹³ Rent for 21 months - ₹ 47.76 lakh, Shifting charges - ₹ 1.20 lakh and Corpus fund to society - ₹ 20 lakh.

¹⁴ (Stamp duty leviable - ₹ 22.94 lakh) - (Stamp duty actually levied - ₹ 11.99 lakh).

Audit observed (April 2015) that as per terms of agreement, the value of property amounted to ₹ 5.48 crore¹⁵ on which stamp duty of ₹ 27.41 lakh was leviable. This resulted in short levy of stamp duty of ₹ 16.21 lakh.

The IGR, Pune accepted (October 2018) for recovery of ₹ 15.13 lakh on the basis of revised calculation.

The above cases were reported to the Government and the Department between April and June 2018. The Department intimated the acceptance of all the four cases. A report on recovery has not been received (October 2019).

3.4.3 Incorrect consideration of market value of property

The consideration for the purpose of levy of stamp duty and registration fees on an instrument brought for registration shall be the amount mentioned in the instrument or the market value of the property determined in accordance with the instructions and rates contained in the ASR prescribed for that year whichever is higher. As per instruction 16 (b) of the ASR 2016, the market value of the open land shall be calculated slab wise¹⁶ for the purpose of levy of stamp duty and registration fee. A few irregularities noticed during the course of audit are as follows-

3.4.3.1 Scrutiny of instruments in office of the Joint Sub Registrar-VI, Vasai revealed (April 2017) that a sale deed was executed (December 2016) between owners and purchaser for a land admeasuring 50,600 sqm bearing Survey No.89 (*hissa* No.A) and 5,950 sqm bearing Survey No.60 (*hissa* No. 1) situated at *mouza* Bapane, taluka Vasai, District Palghar within the limits of Vasai Virar Municipal Corporation. The market value and consideration of the transaction was shown in the deed as ₹ 45 lakh. The Department levied stamp duty of ₹ 2.70 lakh accordingly. However, the details of valuation of property done by the Department were not available with the documents.

Audit observed (April 2017) that as per ASR for the year 2016, the rate of open land for Survey No. 60 (classified under the Zone No. 27.17) was ₹ 4,620 per sqm and for Survey No. 89 (classified under Zone No. 27.21) the rate of open land was ₹ 2,370 per sqm. Considering this rate and by applying instruction 16 (b) of the ASR 2016, the market value of the said property should have been calculated to ₹ 9.81 crore on which stamp duty of ₹ 58.87 lakh was leviable. Thus, incorrect consideration of market value of the property had resulted in short levy of stamp duty of ₹ 56.17 lakh¹⁷.

The IGR, Pune accepted (October 2018) for recovery of ₹ 56.17 lakh.

3.4.3.2 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-IX, Pune revealed (July 2014) that a sale deed was executed (August 2013) between vendor and purchaser for a land admeasuring 3.26 acre (*i.e.* 13,192.63 sqm) together with structure standing thereon bearing

¹⁵ Market value of land = ₹ 1.41 crore; cost of additional area = ₹ 2.37 crore, cost of terrace = ₹ 55.75 lakh; rent compensation = ₹ 60.48 lakh; shifting expenses and cost of parking area = ₹ 54.21 lakh.

¹⁶ Upto 500 sqm – 100 *per cent* of rate of open land; 500 to 2,000 sqm – 90 *per cent* of rate of open land; 2,001 to 4,000 sqm – 80 *per cent* of rate of open land; 4,001 to 10,000 sqm – 70 *per cent* of rate of open land and above 10,000 sqm – 60 *per cent* of rate of open land.

¹⁷ (Stamp duty leviable - ₹ 58.87 lakh) – (Stamp duty levied - ₹ 2.70 lakh).

City Survey No.30, situated at *mouza* Mangalwar Peth within the limits of Pune Municipal Corporation, Pune for a consideration of ₹ six crore. The Department had worked out the market value of the property of ₹ 8.16 crore and levied stamp duty of ₹ 48.97 lakh. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (July 2014) that as per ASR 2013, the rate of open land for Survey No. 30 (classified under the Zone No. 8/146) was ₹ 17,550 per sqm. Considering this rate and by applying instruction 16 (b) of the ASR 2013, the market value of the said property should have been calculated to ₹ 16.78 crore on which stamp duty of ₹ one crore was leviable. Thus, there was under valuation of property which resulted in short levy of stamp duty by ₹ 51.76 lakh¹⁸.

The Joint District Registrar & Collector of Stamps, Pune (City) had accepted (September 2016) the fact.

3.4.3.3 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-II, Pune revealed (February 2016) that a sale deed was executed (December 2013) between vendors, purchaser and consenting parties for a land admeasuring 25,000 sqm situated at survey number 48, Village Hadapsar, Taluka Haveli within the limits of Pune Municipal Corporation, Pune for a consideration of ₹ 13.78 crore. The Department had worked out the market value of the property of ₹ 13.91 crore which was higher than consideration and stamp duty of ₹ 84 lakh was levied. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (February 2016) that the land of 2.50 hectare was under Zone No 30/466 of ASR 2013 and rate of ₹ 11,500 per sqm was prescribed for this land. Considering this rate and by applying instruction 16 (b) of the ASR 2013, the market value of the said property should have been calculated at ₹ 27.11 crore on which stamp duty of ₹ 1.63 crore was leviable. Thus, consideration of incorrect market value of the land has resulted in short levy of stamp duty of ₹ 78.70 lakh¹⁹.

The IGR, Pune accepted (October 2018) for recovery of ₹ 30.88 lakh out of ₹ 78.70 lakh. The reasons for accepting only ₹ 30.88 lakh out of ₹ 78.70 lakh were not intimated.

3.4.3.4 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-II, Pune revealed (January 2015) that a lease deed was executed (July 2013) between the lessor and lessee for renewal of lease of land admeasuring 4,088 sqm at Wanowrie Bazar, Poona Cantonment area within the limit of Pune Municipal Corporation, Pune for a lease period of 30 years. The Department had worked out the market value of ₹ 1.59 crore and levied stamp duty of ₹ 5.75 lakh. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (January 2015) that, as per ASR 2013 the property was classified under zone 36/535, wherein the rate for open land was

¹⁸ (Stamp duty leviable - ₹ 100.73 lakh) – (Stamp duty levied - ₹ 48.97 lakh).

¹⁹ (Stamp duty leviable - ₹ 1.63 crore) - (Stamp duty levied - ₹ 84 lakh).

₹ 26,950 per sqm. Accordingly, the market value as per ASR was worked out to ₹ 11.01 crore. As the lease period was exceeding 29 years the market value of property for levy of stamp duty should have been considered as ₹ 9.92 crore (90 per cent ₹ 11.02 crore) on which stamp duty of ₹ 49.57 lakh was leviable. Thus, incorrect consideration of market value has resulted in short levy of stamp duty of ₹ 43.82 lakh²⁰.

The IGR, Pune accepted (October 2018) for recovery of ₹ 43.84 lakh.

3.4.3.5 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-II, Pune revealed (February 2016) that a Transfer Deed was executed (December 2014) between Transferor No.1, Transferor No.2 and Transferee for a land admeasuring 7.01 hectare²¹ (i.e. 70,134 sqm) situated at *mouza* Charholi, taluka Haveli, District Pune within the limits of Pimpri Chinchwad Municipal Corporation for a consideration of ₹ 61.54 lakh. The Department had worked out the market value of the property of ₹ 17.50 crore which was higher than consideration and stamp duty at the rate of six per cent of ₹ 1.05 crore was levied on market value. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (February 2016) that the land of 7.01 hectare was under Zone No 23/1 of ASR 2014 and rate of ₹ 4,880 per sqm was prescribed for this land. Considering this rate and by applying instruction 16 (b) of the ASR 2014, the market value of the said property should have been calculated at ₹ 24.90 crore on which stamp duty of ₹ 1.49 crore was leviable. Thus, consideration of incorrect market value of the land has resulted in short levy of stamp duty of ₹ 44 lakh²².

The IGR, Pune stated (October 2018) that an amount of ₹ 44.40 lakh was recovered (October 2018).

3.4.3.6 Scrutiny of instruments in office of the Sub Registrar-II, Aurangabad revealed (May 2015) that an Agreement to Assign was executed (July 2014) for MIDC's Plot No. P-78 admeasuring 9,886.75 sqm along with shed/structure admeasuring 4,934 sqm situated at MIDC Chikalhana Industrial Area within the limit of Aurangabad Municipal Corporation, Aurangabad for a consideration of ₹ 8.60 crore. The Department had worked out the market value of the property at ₹ 10.60 crore which was higher than the consideration and levied stamp duty at the rate of five per cent of ₹ 53 lakh. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (May 2015) that the property was under Zone No. 10.166 C of ASR 2014 and rate of industrial area land ₹ 12,000 per sqm and construction rate as stated by IGR, Pune was ₹ 7,000 per sqm prescribed for this property. Considering these rates, the market value of property should have been calculated at ₹ 15.32 crore on which stamp duty at the rate of five per cent

²⁰ (Stamp duty leviable ₹ 49.57 lakh) – (Stamp duty levied ₹ 5.75 lakh).

²¹ 1.60 hectare (Survey No. 127/2), 5,550 sqm (Survey No.131/1), 5,950 sqm (Survey No.131/2), 8,934 sqm (Survey No.145/2), 1.75 hectare (Survey No.297/2) and 1.62 hectare (Survey No.298/1).

²² (Stamp duty leviable - ₹ 1.49 crore) - (Stamp duty levied - ₹ 1.05 crore).

₹ 76.58 lakh was leviable. Thus, incorrect consideration of market value of the property resulted in short levy of ₹ 23.58 lakh²³.

The IGR, Pune stated (September 2018) that an amount of ₹ 23.59 lakh was recovered (March 2017).

The above cases were reported to the Government and the Department between April and June 2018. The Department intimated the acceptance of all cases and recovery of ₹ 67.99 lakh in two cases. The status of recovery in the remaining cases was not intimated (October 2019).

3.5 Short levy of stamp duty due to non-consideration of the renewal clause as part of 'lease deed' for calculation of market value

As per Article 36 (iii) and (iv) of the MS Act, 1958, in case of lease where period of lease is up to 10 years with a renewal clause contingent or otherwise, stamp duty is leviable on 25 per cent of market value of the property, if lease is for exceeding ten years and up to 29 years then stamp duty is leviable on 50 per cent of market value of the property and in case where lease period exceeds 29 years the stamp duty is leviable on 90 per cent of market value of the property. Further, as per Explanation-II, the renewal period, if specifically mentioned, shall be treated as part of the present lease. Instruction number 16(b) of ASR, the valuation of open land should be calculated as per the slabs prescribed in the instruction. A few irregularities noticed during the course of audit are as follows-

3.5.1 Scrutiny of instruments in two²⁴ Joint Sub Registrar offices of Tahsil Haveli, District Pune revealed (January and March 2017) that lease deeds three cases were executed (June, August and December 2015) between the lessor and lessee for lease of property for an initial period ranging from 9 years 6 month and 11 days to 10 years along with an option of renewal of lease for additional period ranging from one year to nine years. The Department had worked out market value of ₹ 415.91 crore and levied stamp duty at the rate of five per cent amounting to ₹ 5.20 crore²⁵.

Audit observed (January and March 2017) that in these three cases the recitals of the lease deeds indicated that the initial period of lease was extendable for further period ranging from one to nine years. The extended period was as part of the lease deed and was required to be considered for the purpose of levy of stamp duty. Accordingly, the stamp duty payable was ₹ 10.40 crore being 50 per cent of the consideration of ₹ 415.91 crore against ₹ 5.20 crore levied by the department. This has resulted in short levy of stamp duty of ₹ 5.20 crore²⁶.

²³ (Stamp duty leviable - ₹ 76.58 lakh) – (Stamp duty levied - ₹ 53 lakh).

²⁴ Joint Sub Registrar Haveli –VIII and Haveli – XXIII.

²⁵ 25 per cent of ₹ 415.91 crore = ₹ 103.98 crore considering the period of lease for 10 years.

²⁶ (₹ Five per cent of (50 per cent of ₹ 415.91 crore ₹ 207.96 crore) = ₹ 10.40 crore) – (₹ 5.20 crore stamp duty already paid) considering the period of lease for more than 10 years.

The IGR, Pune accepted the audit observation and recovered (September 2018) the amount of ₹ 2.18 crore in one case. Action taken in recovery of the amounts in the remaining cases has not been received.

3.5.2 Scrutiny of instruments in office of the Joint Sub Registrar, Haveli- VI, Pune revealed (December 2016) that a lease deed was executed (August 2014) between lessor and lessee for leasing a property²⁷ situated at village Undri (Influence area), Taluka Haveli, Pune for the period of 15 years. The Department had worked out market value of property at ₹ 6.99 crore and levied stamp duty of ₹ 27.97 lakh. The details of calculation of market value of the property determined by the Department were not found on record.

Audit observed (December 2016) that, as per clause 2 of document the initial period of lease was 15 years with an option of renewal of lease for additional period of 15 years. As such the Department should have considered the option for renewal of lease as part of present lease, which came to a cumulative total of more than 29 years; therefore the stamp duty at the rate of four *per cent* ₹ 63.02 lakh was leviable on 90 *per cent* of market value of the property *i.e.* ₹ 15.76 crore (90 *per cent* of ₹ 17.51 crore). Thus, undervaluation of market value of the property has resulted in short levy of stamp duty of ₹ 35.05 lakh²⁸.

The IGR, Pune recovered (August 2019) an amount of ₹ 35.05 lakh.

The above cases were reported to the Government and the department between April and June 2018. The department intimated the acceptance of all the four cases and recovery of ₹ 2.53 crore in two cases.

3.6 Short levy of stamp duty due to misclassification

Scrutiny of instruments in office of the Joint Sub Registrar-II, Haveli, Pune revealed (February 2016) that a supplementary development agreement was executed (September 2014) between Developer and Owner for development of land admeasuring areas 9,460.44 sqm bearing final plot no.2/B under Survey No.134 situated at Parvati within the jurisdiction of Pune Municipal Corporation for a consideration of ₹ 8.59 crore. The Department had worked out market value of ₹ 6.58 crore and levied stamp duty of ₹ 51.52 lakh. The details of calculation of market value of the land determined by the Department were not found on record.

As per the recital of the development agreement (September 2014) (henceforth called as supplementary agreement) the developer had executed a development agreement in August 2005 (henceforth called the Original agreement) for the development of same piece of land. As per the original agreement the developer had agreed for development of the piece of land on consideration of ₹ seven crore consisting of cash payment of ₹ 6.20 crore and in form of construction area of 929.02 sqm for ₹ 80 lakh.

The recital of the Supplementary Agreement indicated that the owner had agreed to transfer the property to the developer in lieu of constructed areas of

²⁷ admeasuring about 11,600 sqm and building constructed thereon admeasuring about 72,208 sqft bearing Survey No. 60.

²⁸ (stamp duty leviable - ₹ 63.02 lakh) – (stamp duty actually levied - ₹ 27.97 lakh).

1,871.36 sqm valued at ₹ 12.53 crore and ₹ 13.64 crore in cash including ₹ 6.20 crore agreed in the original agreement. Thus, the total consideration of the property amounted to ₹ 26.17 crore consisting of cash ₹ 13.64²⁹ and constructed areas valued at ₹ 12.53 crore. Since the entire property was transferred to the developer for consideration in the form of cash and in the form of construction, the document should have been classified as conveyance deed on which a stamp duty of ₹ 1.57 crore³⁰ was leviable instead of ₹ 58.52 lakh³¹ levied by the Department. Thus, misclassification of document by Department had resulted in short levy of stamp duty of ₹ 98.51 lakh³².

The Joint District Registrar & Collector of Stamps, Pune (City) accepted (October 2016) the fact.

The above observation was brought to the notice of Government (May 2018). Reply thereto was awaited (October 2019).

3.7 Incorrect grant of benefit under Section 4 of the Maharashtra Stamp Act (MS Act)

As per Section 4 of the MS Act, 1958, where in the case of any development agreement, sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principle instrument only shall be chargeable with the duty prescribed in Schedule-I for the conveyance, development agreement, lease, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule. Provided that, the duty chargeable on the instrument, so determined shall be the highest duty, which would be chargeable in respect of any of the said instruments employed.

Scrutiny of instruments in office of the Joint Sub Registrar, Haveli-XIV, Pune revealed (September 2016) that a development agreement was executed (September 2014) between owner and developer to develop a land admeasuring 3,000 sqm bearing survey no. 188, *hissa* No 1/3, *mouza* Ravet, Taluka Haveli, District Pune within the limits of Pune Municipal Corporation, Pune for a consideration of ₹ 3.25 crore on which stamp duty of ₹ 16.25 lakh was levied. Thereafter, the owners decided to sell out the property to the developer. A sale deed was executed (June 2015) between owner and developer for the same consideration amount of ₹ 3.25 crore on which stamp duty of ₹ 500 and registration fee of ₹ 100 was levied by grant of benefit under section 4 of MS Act.

The development agreement and sale deed were two different documents covered under different articles namely Article 5 and 25 of the schedule I of the MS Act 1958. The recitals of the deeds indicated that these were executed for two different purposes at two different dates, one was for development purposes and another was for transfer of property, as such development agreement was not principal document of sale deed. Therefore, the executant

²⁹ ₹ 6.20 crore in earlier document + ₹ 7.44 crore in this document.

³⁰ Six *per cent* of ₹ 26.17 crore (₹ 157.03 lakh).

³¹ ₹ seven lakh levied on original agreement and ₹ 51.52 lakh on the supplementary agreement.

³² (stamp duty leviable - ₹ 157.03 lakh) – (stamp duty actually levied - ₹ 58.52 lakh).

was not entitled to the benefit of the exemption. This resulted in short levy of stamp duty ₹ 23.37 lakh³³ and registration fee ₹ 29,900³⁴.

The IGR, Pune accepted (September 2018) the audit observation for recovery. The above observation was brought to the notice of Government (June 2018). Reply thereto was awaited (October 2019).

³³ six per cent x ₹ 3,89,55,000 (Market value)= ₹ 23.37 lakh (Stamp duty leviable – ₹ 23,37,300) - (Stamp duty levied - ₹ 500)

³⁴ (Registration fee leviable - ₹ 30,000) – (Registration fee levied - ₹ 100)