

CHAPTER-VI

***STAMP DUTY AND
REGISTRATION FEES***

CHAPTER VI STAMP DUTY AND REGISTRATION FEES

EXECUTIVE SUMMARY

Increase in tax collection	In 2012-13 the collection of stamp duty and registration fees increased by 16.65 <i>per cent</i> .
Low recovery by the Department against observations pointed out by audit	During 2007-08 to 2011-12, audit pointed out undervaluation of properties, misclassification of documents, incorrect exemption etc. with revenue impact of ₹ 578.76 crore in 2,241 cases. Of these, Department/Government accepted audit observations in 790 cases involving ₹ 187.64 crore and recovered ₹ 4.46 crore in 419 cases. The recovery position (2.38 <i>per cent</i>) was low when compared to acceptance of objections.
Results of audits conducted in 2012-13	<p>In 2012-13, audit test checked the records of 70 offices relating to District Registries (DRs) and Sub-Registries (SRs) and found irregularities like non/short levy of duties, misclassification of documents, undervaluation of properties, incorrect exemptions etc., of ₹ 150.98 crore in 29 cases.</p> <p>The Department accepted under assessments and other deficiencies of ₹ 2.38 crore in 31 cases of which six cases involving ₹ 2.27 crore were pointed out in audit during the year 2012-13 and the rest in earlier years. An amount of ₹ 86.20 lakh was realised in 29 cases during the year 2012-13.</p>
What audit has highlighted in this chapter	<p>In this Chapter results of Performance Audit on Functioning of Registration and Stamps Department including Information Technology (IT) Audit of Computerized Administration in Registration Department (CARD) with financial impact of ₹ 150.86 crore has been presented. The following points have been highlighted:</p> <p><u>Systemic Issues</u></p> <ul style="list-style-type: none">• Not conducting inspection of public offices resulted in the Department's inability to detect dutiable transactions occurring in other departments.• Lack of co-ordination between departments such as in case of Transport and Registration and Stamps resulted in non-levy of stamp duty on hypothecation of movable properties. <p><u>Compliance Issues</u></p> <ul style="list-style-type: none">• Exclusion of cost of improvements made by lessees resulted in short levy of duties of ₹ 16.37 crore.

- Cross verification of lease deed with value of annual rent revealed under-declaration of rent received resulting in short levy of stamp duty and registration fees of ₹ 23.64 crore.
- Exclusion of development premium, development fee, conveyance of cash etc. from recitals of documents on various distinct matters resulted in non-levy of stamp duty and registration fees of ₹ 33.21 crore.
- Misclassification of 'agreement of sale with possession' as 'agreement of sale without possession' led to short levy of duties to the tune of ₹ 59.78 crore.

IT Audit

- Department did not prepare any report on feasibility, System Requirement Specification (SRS), User Requirement Specification (URS) etc. while migrating to centralized architecture. This issue was also raised in the Audit Report of 2007-08.
- Changes in business rules with respect to provisions such as change in rate of stamp duty, exemptions etc., were not mapped into the system.
- Validation failures in the fields relating to dates of presentation, execution, and stamp purchase, etc.
- Inability to capture boundary details and lease period in the case of lease deeds.
- Value on which duty was to be levied did not match with maximum of consideration value/ market value/ 18 times annual rental value on which stamp duty is to be charged.

Conclusion

- A mechanism for exchange of data with other departments (Transport, Income tax etc.) is to be evolved for ensuring proper collection of stamp duty.
- Inspection of Public offices under Section 73 of the Act is to be conducted to detect leakage of revenue.

CARD

- Business rule changes should be incorporated into application.
- Department may co-ordinate with NIC to secure source code rights, data base and application support provision, documentation and knowledge transfer.

6.1 Tax administration

The Registration and Stamps Department is responsible for administration of the Indian Stamp (IS) Act, 1899 and the Registration Act, 1908, as amended from time to time by Union and State legislations. The Department is primarily entrusted with registration of documents and is responsible for determining and collecting stamp duty and registration fees on registration of various documents/instruments by the general public. The Commissioner and Inspector General (IG), Registration and Stamps exercises overall superintendence over all the registration offices in the State. He is assisted by the region-wise Deputy IGs. The District Registrar (DR) is in charge of the district. He superintends and controls the Sub-Registrars (SR) in the district concerned.

6.2 Trend of receipts

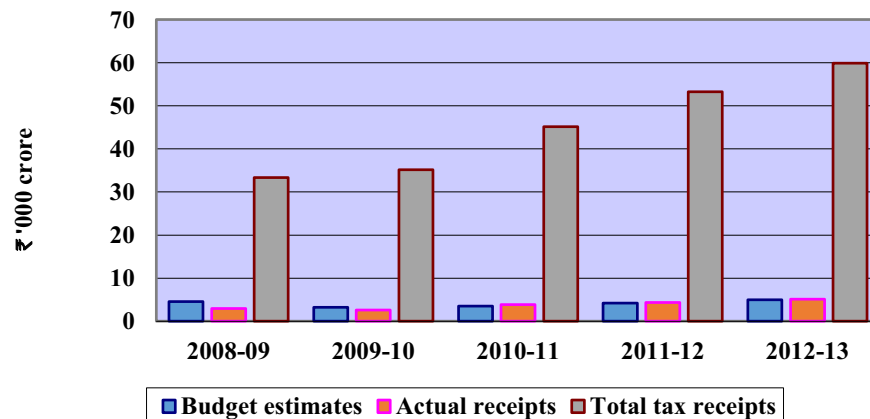
Actual receipts from Stamp Duty and Registration Fees (SDRF) during the years 2008-09 to 2012-13 along with the total tax receipts during the same period is exhibited in the Table 6.1 and Graph 6.1.

Table 6.1: Receipts from Stamp Duty and Registration Fees

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2008-09	4,537.50	2,930.99	(-) 1,606.51	(-) 35.41	33,358.29	8.79
2009-10	3,224.00	2,638.63	(-) 585.37	(-) 18.16	35,176.68	7.50
2010-11	3,546.00	3,833.57	(+) 287.57	(+) 8.11	45,139.55	8.49
2011-12	4,240.00	4,385.25	(+) 145.25	(+) 3.43	53,283.41	8.23
2012-13	4,968.00	5,115.24	(+) 147.24	(+) 2.96	59,875.05	8.54

Graph 6.1: Budget estimates, actual receipts and total tax receipts



It is evident from the above that revenue contribution from stamp duty and registration fees to the total own tax receipts of the State has been at the same

level during the last five years except 2009-10, and the proceeds have been growing at a CAGR of 15 percent.

6.3 Cost of collection

Figures of gross collection in respect of the stamp duty and registration fees, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13, along with the relevant all India averages are shown in Table 6.2:

Table 6.2: Cost of collection of Stamp Duty and Registration Fees

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Stamp duty and Registration Fees	2010-11	3,833.57	94.99	2.48	2.47
	2011-12	4,385.25	101.67	2.32	1.60
	2012-13	5,115.24	141.25	2.76	1.89

It can be seen that not only has the cost of collection increased in 2012-13 as compared 2011-12, it remained higher than the all India average in all three years.

6.4 Impact of Local Audit

During the last five years, audit had pointed out misclassification of documents, under valuation, short levy of stamp duty and registration fee etc., with revenue implication of ₹ 578.76 crore in 2,241 cases. Of these, the Department/Government accepted audit observations in 790 cases involving ₹187.64 crore and recovered ₹ 4.46 crore. The details are shown in Table 6.3:

Table 6.3: Impact of Local Audit of Stamp Duty and Registration Fees

(₹ in crore)							
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	303	449	20.45	61	0.76	36	0.15
2008-09	294	508	47.98	126	6.89	49	0.83
2009-10	276	590	275.20	63	6.45	48	0.41
2010-11	270	332	150.84	375	126.57	139	0.98
2011-12	334	362	84.29	165	46.97	147	2.09
Total	1477	2241	578.76	790	187.64	419	4.46

Recovery of only ₹ 4.46 crore (2.38 per cent) against the money value of ₹ 187.64 crore relating to accepted cases during the period 2007-08 to 2011-12 highlights the failure of the Government/Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

6.5 Results of audit

Test check of the records of 70 offices of the District Registrars and Sub-Registrars conducted during 2012-13, revealed preliminary audit findings involving non/short levy of stamp duty and registration fees of ₹ 150.98 crore in 29 cases, which broadly fall under the following categories:

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Performance audit on the “Functioning of Registration and Stamps Department including Information Technology audit of CARD”	1	150.86
2	Misclassification of documents	3	0.0087
3	Short levy of stamp duty and registration fees	15	0.075
4	Incorrect exemption of duties	8	0.036
5	Other irregularities	2	0.0026
Total		29	150.9823

During the year 2012-13, the Department accepted under-assessments and other deficiencies of ₹ 2.38 crore in 31 cases, of which six cases involving ₹ 2.27 crore were pointed out in audit during the year 2012-13 and the rest in the earlier years. An amount of ₹ 86.20 lakh was realised in 29 cases during the year 2012-13.

A few illustrative audit observations involving ₹ 150.86 crore are mentioned in the following paragraphs.

Performance Audit on “Functioning of Registration and Stamps Department including Information Technology (IT) Audit of CARD” in Andhra Pradesh

6.6 Introduction

Stamp duty and Registration fee are major sources of revenue of Government of Andhra Pradesh. Registration and Stamps Department of Andhra Pradesh is responsible for registration of immovable properties, marriages, firms, societies, chits etc. The core function of the department i.e., levy and collection of stamp duty and registration fee was computerized in February 1999, through implementation of an Information Technology (IT) system named Computer Aided Administration in Registration Department (CARD) in Client Server Architecture. The objectives of CARD, *inter alia*, were to introduce a transparent system of valuation of properties easily accessible to citizens, which would bring speed, efficiency, consistency and reliability, replace the manual system of calculation of duties, indexing, accounting, reporting and copying and filing of documents. The CARD system of the department migrated to Centralised architecture in the year 2013.

Highlights

Non-conducting of inspection of public offices resulted in non-detection of loss of revenue of ₹ 99.06 lakh.

(Paragraph 6.11.1)

Variation in consideration declared in IT returns and registered documents led to non-realisation of revenue of ₹ 70.15 lakh.

(Paragraph 6.12.2)

Under valuation of property due to non-adoption of 18 times the Annual Rental Value resulted in short levy of duties of ₹ 23.64 crore.

(Paragraph 6.17.1)

Short levy of duties on documents involving distinct matters amounted to ₹ 33.21 crore.

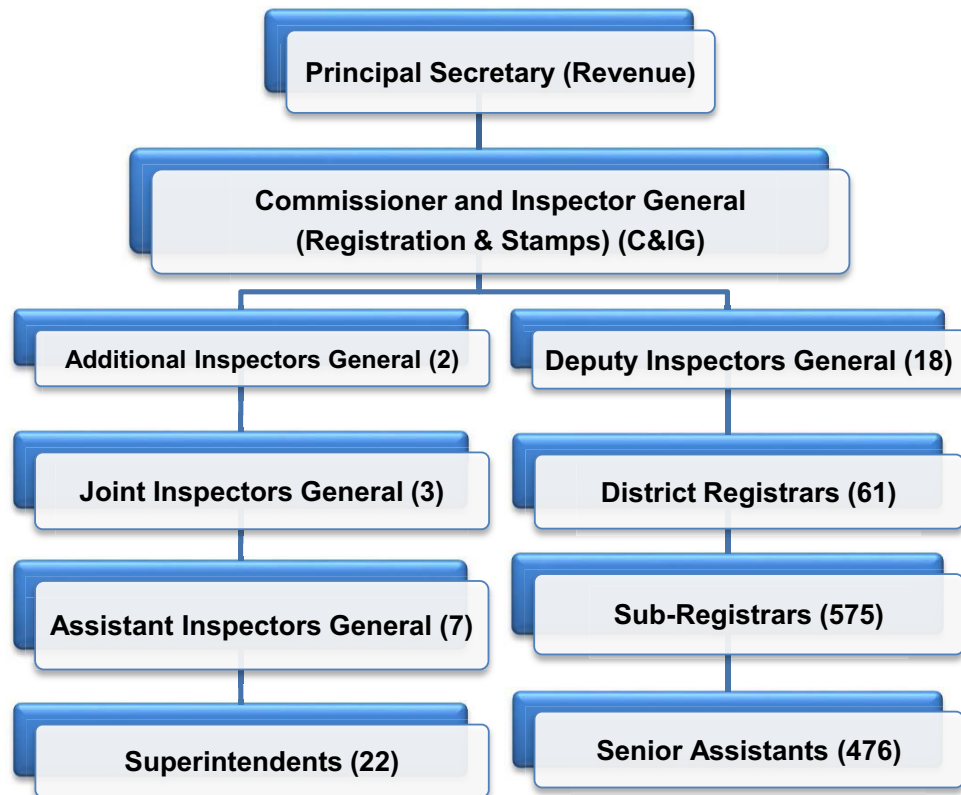
(Paragraph 6.20)

Sale deeds executed by banks misclassified as Certificate of sale led to short levy of duties of ₹ 37.13 lakh.

(Paragraph 6.21.1)

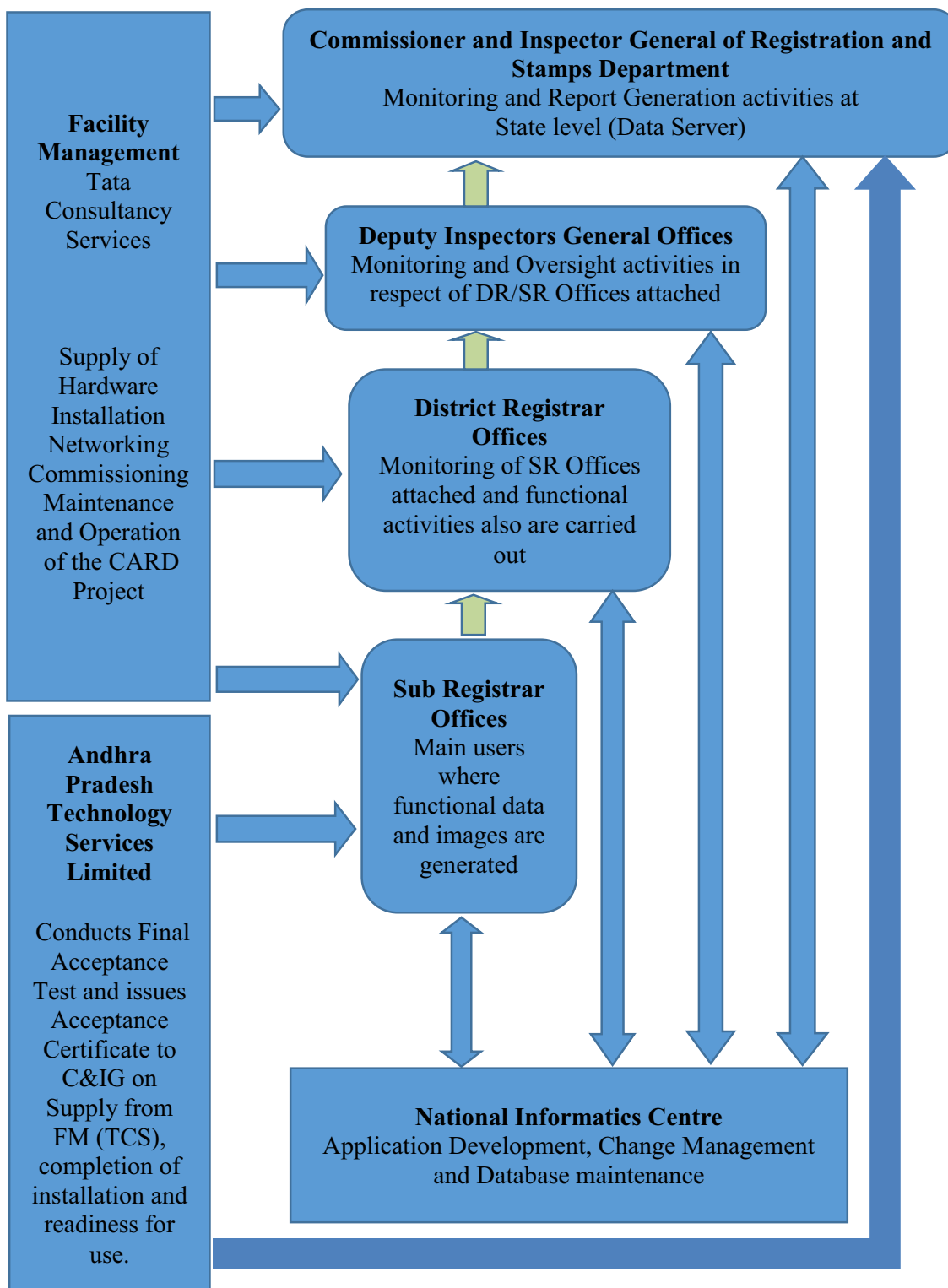
6.7 Organisational Setup

Principal Secretary, Revenue (Registration and Stamps) is in charge of the overall administration of the Registration and Stamps Department. Commissioner and Inspector General (Registration and Stamps) (C&IG) is the Head of department. He is assisted by two Additional Inspectors General and three Joint Inspectors General in the Headquarters. In the zonal office set-up C&IG functions through 18 Deputy Inspectors General, 61 District Registrars (DRs) and 575 Sub-Registrars (SRs). C&IG also functions as the Chief Controlling Revenue Authority (CCRA) under the Indian Stamp (IS) Act, 1899. The Organisational chart is given below.



The interactions among the various stakeholders in the new centralized architecture of CARD has been depicted in the following chart:

CARD Structure



6.8 Audit Objectives

The Performance Audit (PA) was conducted with a view to

- Verify the adequacy, efficiency and effectiveness of the procedures relating to collection of stamp duty;
- Check the leakage of revenue through cross check with different related user departments and within the registry with reference to the relevant documents
- Examine the extent of compliance with the rules and procedures and other Internal control mechanism in the department
- IT Audit of CARD was conducted with the objectives of:
 - assessing general and application controls;
 - evaluating network controls (technological direction/ implementation plan); and
 - test checking and evaluation of transaction processing.

6.9 Audit Criteria, Scope and Methodology

The Audit Criteria was derived from the following.

- Indian Stamp Act, 1899 (IS Act)
- The Registration Act, 1908 (Registration Act)
- AP Rules under the Registration Act, 1908
- The AP Revision of Market Value Guidelines Rules, 1998

Functioning of Registration and Stamps Department for the period from 2007-08 to 2011-12 covering 16 District Registries¹²⁶ (DRs) out of 38 and 34 Sub-Registries (SRs) out of 429 was reviewed during the period from July 2012 to July 2013. The selected districts are in major urban hubs where large number of documents were registered over the past years. As a part of the Performance Audit, cross verification with other departments such as local bodies, revenue, etc., was also carried out. In IT audit, the general controls and application controls were checked and data analysis of CARD application system was conducted. Out of the sample size of 50 offices, 40 offices¹²⁷ were selected for test check/ data analysis of CARD. The entire database of the offices selected for test check was analysed using Computer Aided Audit Techniques (CAATs) with MS Excel and IDEA. Relevant export backup of functional users (Logical dumps) for the period April 2007 to March 2012 was imported and ported to IDEA.

¹²⁶ Guntur, Hyderabad, Hyderabad (South), Kakinada, Kurnool, Nellore, Ongole, Rajahmundry, Rangareddy (East, West) Sangareddy, Tirupati, Vijayawada (East, West), Visakhapatnam and YSR Kadapa.

¹²⁷ 15 District Registries and 25 Sub-Registries.

6.10 Acknowledgement

Audit acknowledges co-operation extended by Registration and Stamps Department in providing necessary information and records. The draft report on Performance Audit of Registration and Stamps Department was forwarded to Government and Department in October 2013. The exit conference was held with Government on December 2013. Views expressed in the exit conference have been taken into consideration while finalising the report.

Audit findings

6.11 Adequacy of provisions

6.11.1 Non-conducting of inspection of Public Offices

As per Section 73 of IS Act, every Public Officer having, in his custody, any registers, books, records, papers, documents or proceedings, the inspection of which may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall, at all reasonable times, permit any person, authorized in writing by the Collector, to inspect, for such purpose, the registers, books, papers, documents and proceedings, and to take such notes and extracts, as he may deem necessary, without fee or charge.

It was observed that inspection of public offices, as prescribed under Section 73 was not being conducted by the department. During the compliance audit of Commercial Taxes Department, Directorate of Mines and Geology, State Excise Department and Land Revenue Department, following cases of short levy/non-levy of stamp duty of ₹ 99.06 lakh in the test checked districts were noticed, which could have been detected, had the department conducted inspection under Section 73.

- In the office of the Commercial Tax Officer (CTO), Somajiguda, it was seen from the registration files that one assessee had entered into a Lease Agreement with the owner of the property which was executed on a ₹ 100 stamp paper but was not registered. On the total rent payable for 18 years amounting to ₹ 78.78 crore, stamp duty payable on this deed amounted to ₹ 47.27 lakh, out of which an amount of ₹ 1.2 lakh only was remitted, resulting in short payment of duty of ₹ 46.07 lakh.
- In the offices of the Assistant Director of Mines and Geology, Kothagudem and Srikakulam, the department granted sand leases and entered into agreements with the lessees. However, the stamp duty amounting to ₹ 19.22 lakh was short levied in eight leases at Kothagudem and 19 leases at Srikakulam on the bid amounts of ₹ 2.11 crore and ₹ 15.05 crore respectively as the agreements were neither sufficiently stamped nor registered.

- In two Prohibition and Excise Superintendent offices¹²⁸, it was noticed from the test check of the 2-B (Bar) license files for the year 2008-09 that in 12 cases, duties on lease deeds of bar premises were short levied to the tune of ₹ 19.54 lakh on the Average Annual Rent (AAR) amounting to ₹ 4.09 crore.
- Scrutiny of mutation orders file of Tahsildar, Uppal, (Land Revenue Department) revealed that instead of executing a release deed under Article 46 of Schedule 1-A of IS Act, two siblings released their rights over a property (market value of ₹ 4.74 crore) to their two other siblings through a signed affidavit. Based on that affidavit, Tahsildar issued mutation orders transferring the title of the property in favour of the latter. Audit verified with the SR, Uppal that no Release deed in respect of the said released property was executed or registered, which resulted in loss of revenue amounting to ₹ 14.23 lakh.

Government agreed (December 2013) with the contention of audit and agreed to conduct audit of public offices under Section 73.

6.11.2 Augmentation of Revenue

Levy and regulatory powers in respect of stamp duty is in the Concurrent List of Constitution of India and rate of stamp duty (except those that are covered under Entry 91 of the Union list) is in the exclusive domain of State Government. IS Act is being followed by the Government of Andhra Pradesh with need based amendments/modifications from time to time.

In this regard, it was noticed that the State Government is yet to notify the rate of stamp duty under Section 8-A of the Indian Stamp Act. According to the IS Act, the issuer of shares, debentures or other securities in electronic mode is liable to pay stamp duty on the total amount of securities. Issuer of shares in demat form does not pay duty in Andhra Pradesh due to non-notification.

On the same being pointed out Government replied (December 2013) that it is in the process of issuing notification on the rate of stamp duty under Section 8-A.

6.12 Non co-ordination with other departments

As per Section 33(1) of the IS Act, every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance in his functions shall, if it appears to him that such instrument is not duly stamped, impound the same. Though IS Act is implemented by the Registration and Stamps department, there is need for the department to co-ordinate with other departments where documents are executed on which stamp duty is leviable such as agreements entered into by the Public Works department, hypothecation agreements in respect of vehicles etc. During the course of

¹²⁸ Hyderabad and Secunderabad

compliance audit of various department following instances of non-payment of stamp duty and registration fee were noticed which could have been detected had the concerned authorities taken action under Section 33(1) of IS Act.

6.12.1 Non-levy of stamp duty on vehicles registered with hypothecation agreement

As per Article 7(b) of Schedule IA to the IS Act, the pawn, pledge, or hypothecation of movable property, where it has been made by way of security for the repayment of money advanced or to be advanced by way of loan, or an existing or future debt, is leviable with stamp duty at 0.5 *per cent* of the amount secured subject to a maximum of two lakh rupees. Further, every instrument shall be properly stamped as per the provisions of the IS Act.

Transport Department is responsible for making necessary entries regarding hypothecation in the Registration Certificate (RC) of the vehicles. Analysis of the data in respect of 'Form 20' relating to the registration of vehicles obtained from the office of the Transport Commissioner revealed, that 7,39,980 vehicles were hypothecated to private banks/institutions during the year 2011-12. There is no mechanism to ensure that these private banks/financial institutions paid the requisite stamp duty.

A Para on 'non-levy of stamp duty on vehicles registered with hypothecation agreement' was included in the CAG's Audit Report No.1 of 2013¹²⁹, Government of Andhra Pradesh.

Government stated (December 2013) that matter would be taken up with Transport Department to ensure collection of duties.

6.12.2 Variation in consideration declared in IT returns and registered documents

As per Section 27 of the IS Act, the consideration (if any) 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. As per Article 47-A of Schedule IA to IS Act, duties are leviable at 9.5 *per cent* (including Transfer Duty and Registration Fee) on the market value of the document.

With respect to 11 cases in DR Sangareddy and one case in SR Maredpally, it was noticed from the Income Tax (IT) Returns and scrutiny files of Income Tax offices of ITO Ward 4(4) and ITO Ward-1, Sangareddy that consideration shown for purchase of properties in the Income Tax returns accepted by the Income Tax Department was ₹ 7.67 crore whereas the consideration shown as received/paid for the properties in the registered documents was ₹ 63.12 lakh.

The suppression of actual consideration paid/received by the parties resulted in non-realisation of revenue amounting to ₹ 70.15 lakh. Due to non-coordination

¹²⁹ Audit Report (Revenue Sector)

with the Income Tax Department, these cases could not be detected till Audit pointed them out.

Government stated (December 2013) that efforts would be made to co-ordinate with Income Tax department to check such suppression of facts. However, no action was reported to be taken in the cases pointed out by Audit.

6.13 Non-compliance with instructions regarding adoption of higher value

As per C&IG's instructions¹³⁰, the Sub-Registrar should note the higher value, if any, adopted by the party in a separate register in the prescribed proforma. This higher value data will not only indicate the prevailing trend of market rates but is also helpful for periodical revision of market value. Such higher value adopted to a particular property would be applicable to any future transaction relating to that property.

6.13.1 Audit observed that these instructions were not complied with and higher value registers were not maintained in seven DRs¹³¹ and 16 SRs¹³². This defeated the purpose for which the Register was prescribed.

6.13.2 Further, the C&IG's instructions regarding adoption of higher value for future registration of same property were also not complied with in the DR, Hyderabad (South) and SR Gandipet. Audit noticed that the five vendors between May 2008 and April 2012 had conveyed their properties to the vendees for a sale consideration of ₹ 20.47 crore. Scrutiny of the link documents of these properties available in the Registries revealed that the scheduled properties were originally purchased by the vendors for a consideration amounting to ₹ 29.58 crore which was higher than the sale consideration or market value shown in the present documents. The Registries, while registering the documents did not adopt the higher values for the properties which resulted in non-realisation of revenue to the tune of ₹ 73.77 lakh.

On the same being pointed out, Government replied (December 2013) that High Value Register had become irrelevant in CARD. However, C&IG had not issued any instructions dispensing with High Value Register and 27 out of 50 offices test checked were maintaining the said Register.

6.14 Non/Short levy of duties on lease deeds

Duties leviable on lease deeds are specified in Article 31 of Schedule I-A of IS Act, read with Government Orders¹³³. Depending on the period of lease, the duties are levied under Article 31 (a) to (c) as applicable. Further, under

¹³⁰ Circular No.MV1/20363-A/90 dated 10 August 1990.

¹³¹ Guntur, Hyderabad (South), Kadapa, Nellore, Rangareddy (West), Sangareddy, Visakhapatnam.

¹³² Anandapuram, Balanagar, Gajuwaka, Gandipet, Golconda, Gopalapatnam, Kukatpally, Madhurawada, Maredpally, Pendurthi, Rajendranagar, Saroornagar, Sarpavaram, Serilingampally, SR Nagar, Vallabh Nagar.

¹³³ G.O.Ms.No.408 Rev (Regn-I) Department, dated 11 May 2010

Article 31(d), where the lessee undertakes to effect improvements in the leased property and agrees to make the same to the lessor at the time of termination of lease, stamp duty is leviable at five *per cent* on the value of the improvements contemplated to be made by the lessee as set forth in the deed in addition to the duty chargeable under Article 31 (a), (b) or (c).

6.14.1 In DR Visakhapatnam, audit noticed¹³⁴ that the fact of ₹ 34.98 crore paid as development premium in respect of a BOT project was not disclosed in a document registered in July 2009. Non-disclosure of the fact of receiving development premium by the lessor resulted in non-levy of duties amounting to ₹ 1.75 crore by the Registering Authority.

Matter was referred to Department in September 2013; their reply has not been received (March 2014)

6.14.2 In DR Gunadala and two SRs¹³⁵, Audit noticed from the recitals of five lease deeds registered between 2007 and 2012 that the lessors leased out properties to lessees for construction of structures. After expiry of the lease periods, properties valuing ₹ 327.47 crore so constructed on the leasehold lands were handed over or were to be handed over to the lessors by the lessees without claiming any consideration for improvements. As the Registering Authorities did not consider the aspect of lease improvements in these cases there was short levy of duties to a tune of ₹ 16.37 crore.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.15 Short levy of stamp duty on Partition deeds

As per Article 40 of schedule IA to IS Act, stamp duty shall be leviable at one *per cent* on the amount or the market value of the separated share/shares of the property partitioned after exempting the major share in case of partition among family members. Further as per the Standing Orders¹³⁶ properties set apart for common enjoyment, whether the respective shares are specified or not and whether agreed to be divided in future or not, have to be treated as one distinct share.

6.15.1 Omission of joint share for calculation of duty

In six DRs¹³⁷ and SR Vanasthalipuram, it was noticed from the recitals of seven registered partition deeds that while partitioning the properties, properties worth ₹ 47.45 crore were retained jointly by the parties. These jointly held shares were not taken into consideration for arriving at the value of the properties partitioned whereas those were to be treated as distinct share and after exempting major share, duties were to be levied on ₹ 74.91 crore.

¹³⁴ Source of information was Visakhapatnam Urban Development Authority website

¹³⁵ Kukatpally and Uppal.

¹³⁶ SO 405(g) of Andhra Pradesh Registration Manual Part-II, read with Boards proceedings No.L.Dis.W3/3335/1960, dated 24 November 1960 & L.Dis.No.W/7761/61, dated 19 March 1962, L.Dis.No.7354/61, dated 12 February 1962

¹³⁷ Hyderabad (South), Kadapa, Kurnool, Nellore, Ongole and Vijayawada.

Omission of joint shares from transaction resulted in short levy of stamp duty amounting to ₹ 41.19 lakh.

On the same being pointed out, DR Nellore stated (November 2013) that there is no provision in IS Act which authorizes the levy of stamp duty on the items of properties which are not covered by the partition deed. All the properties mentioned in the partition deed were duly assessed for levying stamp duty. In respect of DR Kadapa, it was replied (December 2013) that the Registering Authority should not go beyond the recitals in assessing the stamp duty. However, provisions of the Standing Orders quoted above should have been followed.

Matter was referred to Department (September 2013); their reply has not been received (March 2014).

6.15.2 Incorrect allowing of cancellation of partition deeds

As per Article 15 of Schedule-I to the IS Act, on the instrument of cancellation if attested and not otherwise provided for, stamp duty is leviable at ₹ 30. As per Article 20 of Schedule 1A to the IS Act, for conveyance, stamp duty at five *per cent* on the market value has to be levied. C&IG issued instructions¹³⁸ that the registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deeds of conveyance on sale before him that such cancellation deeds were executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed was accompanied by a declaration showing mutual consent. The same condition was extended¹³⁹ to the instruments of AGPA, Development Agreement cum General Power of Attorney (DGPA), Partition, Release and Mortgage deeds also.

In DR, Kakinada and SR Patamata, two partition deeds were executed between members of two respective families in 2005 and 2009 respectively. Out of these, two individuals sold properties admeasuring 2,748.12 sq. yds (2009) and 142.43 sq. yds (2010) respectively from their shares. However, the parties suppressed the fact of selling these properties and executed cancellation instruments nullifying the earlier partition deeds.

These cancellation deeds effectively re-conveyed all the individual properties except the properties sold in favour of other members. However, instead of treating the documents as conveyance deeds, the Registering Authorities incorrectly treated the documents as cancellation deeds in contravention of the extant instructions and levied duties accordingly. Since parts of the properties were already sold on the basis of the partition deeds, those partition deeds could not be cancelled. This resulted in short levy of duties amounting to ₹ 19.57 lakh on properties valuing ₹ 3.56 crore.

¹³⁸ C&IG Endt No. G1/10866/06 dated 11 December 2006.

¹³⁹ C&IG Endt No. G1/10866/06 dated 14 March 2008.

On the same being pointed out, Government accepted (December 2013) the audit observation and stated that instructions would be issued to reopen these cases and for collection of the deficit amounts.

6.16 Short levy of stamp duty and registration fees due to incorrect classification of properties

Under Rule 7¹⁴⁰ of AP Revision of Market Value Guidelines Rules, different values have been fixed for agricultural lands fit for house sites/residential localities under the classification code 25. Further, square yard rate and rates for agricultural lands fit for house sites are mentioned in the market value registers.

As per Section 27 of IS Act, the consideration, if any, or the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

In two SRs¹⁴¹ and two DRs¹⁴², 12 documents styled as sale deed/AGPA/General Power of Attorney (GPA)/gifts deed were executed (between January 2008 and October 2011) by vendors/donors in favour of vendees/GPA holders/donees. Registering Authorities, while registering these documents, adopted the agricultural/acreage rate instead of square yard rate, even though lands had already been converted into non-agricultural lands by Land Revenue department resulting in undervaluation of properties. This resulted in short levy of stamp duty and registration fees of ₹ 1.24 crore as detailed in the following sub-paras:

6.16.1 In DR, Ongole acreage rate applicable to agricultural land was adopted in respect of two sale documents registered in 2010. However, Audit observed that in the immediate previous document registered on the same day, relating to the same venture, styled as gift to local bodies, square yard rate had been applied. This suppression of fact resulted in undervaluation of properties, leading to short levy of duties amounting to ₹ 4.16 lakh on a market value of ₹ 48.11 lakh.

DR Ongole replied (December 2012) that higher values adopted in one document need not be adopted for other documents. Reply is not tenable as the land was gifted to gram panchayat concerned on square yard basis and the same was not disclosed in the document.

6.16.2 In SR, Madhurawada acreage rate applicable to agricultural land was adopted in respect of four sale documents registered in 2008. However, audit observed that conversion orders converting the agricultural lands into non-agricultural land was issued by the land revenue authorities in July 2007. This suppression of fact resulted in undervaluation of properties, leading to short levy of duties amounting to ₹ 1.01 crore on a market value of ₹ 16.58 crore.

¹⁴⁰ Form II of Market Value (Agricultural lands).

¹⁴¹ Bheemunipatnam and Madhurawada.

¹⁴² Nellore and Ongole.

It was replied (February 2013) by SR, Madhurawada that rate adopted was as per market value guidelines existing as on the date of registration of document and hence there was no deficit. But the permission to convert the land for non-agricultural purposes was given by the revenue authorities and the same was not disclosed in the document.

6.16.3 In SR, Bheemunipatnam, acreage rate applicable to agricultural land was adopted in respect of two AGPA documents registered in 2009. However, audit observed that lands had already been converted into non-agricultural land in 2002 as mentioned in subsequent sale deeds registered in 2009. This suppression of fact resulted in undervaluation of properties, leading to short levy of duties amounting to ₹ 7.28 lakh on market value of ₹ 8.51 crore.

6.16.4 In DR, Nellore, acreage rate applicable to agricultural land was adopted in respect of four settlement documents registered on 15 October 2011 relating to property with market value of ₹ 3.49 crore. However, audit observed that it was mentioned in the documents that lands mentioned in all four settlement deeds had already been converted into non-agricultural lands by land revenue authorities prior to execution of settlement deeds (7 October 2011). This suppression of fact resulted in undervaluation of properties, leading to short levy of duties amounting to ₹ 11.77 lakh.

DR Nellore replied (November 2013) that, obtaining permission from the concerned authorities alone is not sufficient to change the exact nature of the land. However only revenue authorities are authorized to convert the land use from agricultural to non-agricultural purposes.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.17 Short levy of duties due to undervaluation of property

C&IG instructed¹⁴³ in June 1993 that any one of the following, whichever is higher, be adopted for levying stamp duty and registration fees.

- (i) Consideration set forth in the document;
- (ii) Market value as declared by the party;
- (iii) Market value arrived at by the Sub Registrar on the basis of the guidelines and the schedule of rates of construction;
- (iv) Eighteen times the annual rental value.

In following cases duties were short levied due to under valuation of the properties.

¹⁴³ C&IG's Memo No. MV1/8184/93 dated 9 June 1993.

6.17.1 Under valuation of property due to incorrect declaration of Annual Rental Value

In four DRs¹⁴⁴ and six SRs¹⁴⁵, 23 sale deeds and four gift deeds were executed and registered between 2007 and 2012 by the vendors who sold or gifted the scheduled properties to the vendees for consideration/market value of ₹ 235.37 crore.

Cross verification of lease deeds executed earlier with respect to the above properties revealed that the 18 times of Annual Rental Value of these properties was ₹ 549.17 crore. However, the Annual Rental Value declared in the documents was much lower than the actual rent which was being received by the vendors as per the previous lease deeds. Since 18 times of Annual Rental Value was higher than the market value of the property, stamp duty and registration fee were leviable on 18 times of Annual Rental Value. The misrepresentation of the Annual Rental Value resulted in short levy of stamp duty and registration fee amounting to ₹ 23.64 crore.

On this being pointed out, DR Rangareddy (for SR Serilingampally and SR Kukatpally) and DR Hyderabad (for SR Secunderabad) replied (November/December 2013) that Government had withdrawn (2012) the clause regarding 18 times of Annual Rental Value for calculation of market value. However, cases mentioned in the observation pertained to period prior to withdrawal of the circular.

Matter was referred to the Department in August 2013; their reply has not been received (March 2014).

6.18 Short levy of stamp duty on DGPAs

As per Article 6(B) of Schedule I(A) of IS Act read with Government Orders¹⁴⁶ stamp duty is leviable at one *per cent* on the amount of sale consideration or market value of property or estimated market value for land and complete construction made or to be made in accordance with schedule of rates, whichever is higher, on documents of Development Agreement cum General Power of Attorney (DGPA). C&IG through his instructions¹⁴⁷ had clarified that Stamp duty at five *per cent* shall be leviable in respect of Construction Agreements/Development Agreements.

¹⁴⁴ Hyderabad, Hyderabad (South), Kakinada and Rangareddy (West).

¹⁴⁵ Kukatpally, Marredpally, Malkajigiri, Saroornagar, Secunderabad and Serilingampally.

¹⁴⁶ G.O.Ms.No.1481, Revenue (Registration-I) Department, dated 30 November 2007 effective from 3 December 2007.

¹⁴⁷ Circular Memo No.S1/11217/2010 dated 22 November 2010.

6.18.1 Short levy of duties due to omission of development value

In eight DRs¹⁴⁸ and 22 SRs¹⁴⁹ Audit observed that in 104 DGPA documents registered between 2007 and 2012 the Registering Authorities have not considered the entire value of development for the purpose of levy of stamp duty which resulted in short levy of stamp duty as detailed below:

Sl. No.	No. of cases	Issues	₹ in crore)	
			Value of Development omitted	Duty chargeable
1.	39	Parking/ stilt area was not considered by the Registering Authorities	12.08	0.12
2.	63	Structure or land was not fully disclosed or considered by the Registering Authorities	295.82	2.95
3.	02	Owner's share of land or structure was not considered by the Registering Authorities.	1.37	0.01
Total	104		309.27	3.08

On the same being pointed out, DR Rangareddy replied (November 2013) that the objection was accepted and part amount of ₹ 4.51 lakh in respect of SR, Serilingampally was already collected and promised to collect the balance amount.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.18.2 Short levy of stamp duty on additions through Supplementary Agreements

In DR Hyderabad (South) and SR Secunderabad, four Supplementary Deeds to DGPAs were executed on stamp paper of ₹ 100 and no stamp duty was paid. As per the recitals of these supplementary deeds, the approved area of construction/ built up area including parking area was increased by 7.30 lakh sq.ft. However, the same was not considered for levying stamp duty resulting in short levy of stamp duty to the tune of ₹ 38.01 lakh.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.19 Short levy of stamp duty on AGPAs

Government amended¹⁵⁰ the rate of stamp duty applicable to all the 'Agreements or Memorandum of agreements of sale coupled with GPA clause' to six *per cent* (five *per cent* adjustable against the stamp duty payable on subsequent sale deed) with effect from 20 September 2010 on consideration or market value of the property whichever is higher.

¹⁴⁸ Kakinada, Kurnool, Ongole, Rangareddy (West), Rangareddy (East), Tirupati, Vijayawada, Rajahmundry.

¹⁴⁹ Anandapuram, Azampura, Balanagar, Bujabujanellore, Chikkadpally, Gandipet, Gopalapatnam, Kallur, Kukatpally, Madhurawada, Malkajgiri, Maredpally, Nallapadu, Nunna, Pendurthi, Rajendranagar, Saroornagar, Secunderabad, Serilingampally, Stonehousepet, Uppal, Vallabh Nagar.

¹⁵⁰ G.O.Ms No.1178, Revenue (Regn.I) Dept., dated 16 September 2010.

In DR Guntur and four SRs¹⁵¹, Audit noticed that in 82 AGPA documents involving properties worth ₹ 10.57 crore registered after 20 September 2010, the registries levied five *per cent* stamp duty as against six *per cent* leviable which resulted in short levy of stamp duty of ₹ 10.57 lakh.

On being pointed out, the DR, Rangareddy in respect of SR Gandipet, accepted (November 2013) the objection and promised to collect the deficit stamp duty.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.20 Short levy of duties on documents involving distinct matters

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

In three DRs¹⁵² and six SRs¹⁵³, Audit noticed from the recitals of 15 documents that duties were not levied on various distinct matters which resulted in short levy of duties amounting to ₹ 33.21 crore as detailed in the following table.

(₹ in crore)

Sl. No.	Name of offices	No. of cases	Distinct matter	Short levy of duties	Remarks
1	Two SRs ¹⁵⁴	2	Development premium	27.36	It was mentioned in the recitals of two DGPA documents registered in October 2008 that the total quoted price included the cost of land and One time land Development Premium. However, duties were not levied on the distinct matter of One time land Development Premium of ₹ 527.38 crore and ₹ 100.16 crore respectively
2	Two SRs ¹⁵⁵	6	Development Fee	4.92	It was mentioned in the recitals of six DGPA documents registered between September 2007 and March 2008 that the developers paid Development fee to the owners. However, duties were not levied on the distinct matter i.e. payment of 'Development Fee'.
3	Two SRs ¹⁵⁶ and three DRs ¹⁵⁷	7	Conveyance of cash, Conveyance of property, Conveyance through Court decree and Sale	0.93	It was noticed from the recitals of these documents that duties were not levied on the distinct matters viz., Conveyance of cash, Conveyance of property, Conveyance through Court decree and Sale resulting in short levy of duties, the office-wise details of which are given in the Annexure-II.
Total				33.21	

¹⁵¹ Gandipet, Nunna, Rajendranagar and Vanasthalipuram.

¹⁵² Rangareddy (East, West) and Tirupati.

¹⁵³ Bheemunipatnam, Dwarakanagar, Gandipet, Kukatpally, Madhurawada and Serilingampally.

¹⁵⁴ Gandipet and Serilingampally.

¹⁵⁵ Kukatpally and Madhurawada.

¹⁵⁶ Bheemunipatnam and Dwarakanagar.

¹⁵⁷ Rangareddy (East, West) and Tirupati.

On the same being pointed out, the DR Rangareddy (West) replied (November 2013) in respect of one case in SR Serilingampally, (item 1 of the above list) that APIIC had declared that they had not received any extra sale consideration towards the cost of land from the allottee company. Therefore levy and payment of deficit duty did not arise. However, Audit observed that the fact of payment of ₹ 116.53 crore and interest of ₹ 20.89 crore paid in 2008 for 27.29 acres of land in Phase II was mentioned in the document. In respect of SR Gandipet included in item 1 in the above list, it was replied (November 2013) that APIIC is an AP State Government authority and as such is well protected under proviso to sub-section 6 of Section 47A of IS Act as applicable to state of AP. Hence there is no loss to Government. However Audit had adopted the value adopted by APIIC, and the observation was on non-levy of duty on one time land development premium paid by the developer.

No reply has been received in respect of the remaining cases (March 2014).

6.21 Misclassification of documents

6.21.1 Sale deeds executed by Banks misclassified as Certificate of Sale

As per Article 16 of Schedule 1-A of IS Act, on sale of any property through public auction by a Civil Court or Revenue Court or Collector or other revenue officer in respect of which a certificate of sale is issued to the purchasers, the stamp duty as applicable to a Conveyance deed under Article 20 is leviable. The Government vide its orders¹⁵⁸ dated 22 June 2012, clarified that Sale deeds executed by Banks under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) will be governed by Article 47-A of Schedule IA of the IS Act and not Article 16 of the said schedule.

According to Article 47-A of Schedule 1-A to the IS Act, instruments of sale are chargeable to stamp duty at five *per cent* on the amount set forth in the instrument or the market value of the property, whichever is higher. Further, transfer duty is leviable at two *per cent* on the above value as per the provisions of various Acts of Local Bodies.

In four DRs¹⁵⁹, Audit noticed in respect of six documents registered between 2008 and 2011 that the Registering Authorities misclassified sale deeds executed by financial institutions under SARFAESI Act as certificates of sale which resulted in short levy of duties amounting to ₹ 37.13 lakh as detailed below.

¹⁵⁸ Memo No.3358/Regn.I/A2/2012 dated 22 June 2012

¹⁵⁹ Kurnool, Nizamabad, Ongole and Rajahmundry.

(₹ in lakh)

Sl. No.	Registering Authority	Sale price/ market value	Duties leviable/ Duties levied	Short levy of duties	Remarks
1.	Kurnool	10.70	<u>0.91</u> 0.59	0.32	Stamp duty was levied at five <i>per cent</i> instead of at eight <i>per cent</i> including Transfer Duty (TD)
2.	Nizamabad	627.72	<u>47.08</u> 14.31	32.77	Stamp duty and Registration Fee was levied on auction price instead of on market value and TD was also not levied
3.	Ongole	14.85	<u>1.41</u> 0.82	0.59	Stamp duty was levied at five <i>per cent</i> instead of at nine <i>per cent</i> including TD
4.	Ongole	5.52	<u>0.52</u> 0.30	0.22	Stamp duty was levied at five <i>per cent</i> instead of at nine <i>per cent</i> including TD
5.	Ongole	50.75	<u>4.82</u> 2.79	2.03	Stamp duty was levied at five <i>per cent</i> instead of at nine <i>per cent</i> including TD
6.	Rajahmundry	30.10	<u>2.86</u> 1.66	1.20	Stamp duty was levied at five <i>per cent</i> instead of at nine <i>per cent</i> including TD
		739.64	<u>57.60</u> 20.47	37.13	

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.2 Misclassification of mortgage with possession

As per Article 35 (a) of Schedule IA to IS Act, a mortgagor who gives or has given to the mortgagee a power of attorney to collect rents, or has given to the mortgagee a lease of the property mortgaged or part thereof, is deemed to have given possession thereof within the meaning of the Article and stamp duty at five *per cent*, registration fee at 0.5 *per cent* and transfer duty at two *per cent* on the loan secured shall be levied.

In two DRs¹⁶⁰, Audit observed that in one case, a Mortgage Deed was executed in 2007 and a loan amount of ₹ 1.71 crore was raised against mortgage of property. In another case a Tripartite Agreement was executed for raising a loan of ₹ 1.20 crore and a property leased to third party was mortgaged. From the recitals of these documents it was noticed that the mortgagees were authorized to collect rents from the tenants and lessee. As such, these documents had to be treated as Mortgage with possession and duties under Article 35(a) were leviable. Misclassification of these documents as Mortgage without possession had resulted in short levy of duties of ₹ 15.83 lakh.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

¹⁶⁰ Kakinada and Tirupati

6.21.3 GPA for Consideration

As per Article 42(g) when the instrument of Power of Attorney is given for construction or development of, or sale or transfer (in any manner whatsoever) of, any immovable property, stamp duty is leviable at one *per cent* on the market value of the property. As per Article 42(e), when the instrument of Power of Attorney is given for consideration and authorizing the Attorney to sell any immovable property, Stamp duty at five *per cent* is leviable for a consideration or market value equal to the amount of the consideration.

6.21.3.1 In two SRs¹⁶¹, Audit noticed from the recitals of two GPA documents executed by Housing Board in 2007 and 2008 that the developers were given GPA to enter into agreements, sale deeds and to receive consideration. Audit noticed from the subsequent Agreements of sale document registered in SR, Kukatpally in 2011 that the said GPA was given against the bid amount paid by the developers for development of land in an extent of 6.31 acres. As the GPAs were given for consideration in the form of ‘bid amount’, stamp duty at five *per cent* amounting to ₹ 97.38 lakh on the consideration value of ₹ 19.48 crore adopted by the Registering Authorities was leviable. However, the Registering authorities misclassified these documents as GPAs without consideration and levied duties amounting to ₹ 19.48 lakh. This misclassification of document and application of incorrect rate of duty by the Registering Authorities resulted in short levy of duties amounting to ₹ 77.90 lakh.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.21.3.2 In SR Secunderabad, a GPA document was executed in April 2010 in favour of two persons. Audit noticed from the scrutiny of recitals of GPA document that the present GPA was based on a GPA executed in favour of the father of the GPA holders who had paid the value of the property but expired before execution of sale deed. As the entire sale consideration was stated to have been received, this document was to be treated as a GPA for consideration. However, the Registering Authority levied stamp duty under Article 42(g) amounting to ₹ 6.75 lakh at one *per cent* on consideration amount of ₹ 6.75 crore treating the document as GPA without consideration whereas duties at five *per cent* amounting to ₹ 33.75 lakh were to be levied. This misclassification of document resulted in short levy of stamp duty amounting to ₹ 30.37 lakh on the consideration amount of ₹ 6.75 crore as adopted by the Registering Authority.

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.4 DGPA with non-refundable advances treated as AGPA

As per Article 6(B) of Schedule IA of IS Act, 1899 read with Government Orders¹⁶² stamp duty shall be levied at one *per cent* on the amount of sale

¹⁶¹ Kukatpally and Sanjeevreddy Nagar

¹⁶² G.O.Ms.No.1481, Revenue (Registration-I) Department, dated 30 November 2007

consideration or market value of property or estimated market value for land and complete construction made or to be made in accordance with schedule of rates whichever is higher, on documents of DGPA. In October 2003, the Government had decided that stamp duty at five *per cent* of the market value should be levied on the amount of cash conveyed/non-refundable advances paid in respect of a DGPA.

In DR, Hyderabad (South) and SR, Dwarakanagar in three documents styled as AGPA registered in 2007, the vendors who were land owners were paid ₹ 2.55 crore as advance by the developers and the developers agreed to give 43 flats to the owners after construction of flats in those lands with the funds of the developers. As such, these deeds were to be treated as DGPAs with non-refundable advances and duties were chargeable on the cash conveyed. This misclassification resulted in non-levy of stamp duties on the amounts paid by the purchasers to the vendors amounting to ₹ 12.75 lakh as detailed below.

Sl. No.	Registry	Non-refundable advance (₹ in lakh)	No. of flats proposed to be handed over to the land owners	Stamp duty leviable at 5 <i>per cent</i> on the non-refundable advance (₹ in lakh)
1.	DR, Hyderabad (South)	215	35	10.75
2.	SR, Dwarakanagar	20	4	1.00
3.	SR, Dwarakanagar	20	4	1.00
	Total	255	43	12.75

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.5 Misclassification of DGPA as Development Agreement

As per Article 6(B) read with Government order¹⁶³ dated 30 July 2005, stamp duty payable on DGPA documents was reduced to one *per cent* subject to a maximum of ₹ 20,000. The maximum limit clause was deleted through Government order¹⁶⁴ dated 01 April 2008.

In DR, Hyderabad (South) and four SRs¹⁶⁵ six documents styled as Development Agreements were registered before April 2008 on which the Registering Authorities levied stamp duty amounting to ₹ 2.31 lakh on a market value of ₹ 416.03 crore. Audit noticed from the scrutiny of these documents that there were recitals in the documents authorising the developer to get permissions for construction from the competent authorities, marketing and lease the properties out, enter into sale agreements with the prospective buyers etc. Thus, these documents had all the covenants of a DGPA. However, to evade stamp duty, the documents were styled as Development Agreements, resulting in short levy of stamp duty amounting to ₹ 4.14 crore on a market value ₹ 416.03 crore.

effective from 3 December 2007.

¹⁶³ G.O.Ms.No.1475, Revenue (Registration-I) Department dated 30 July 2005.

¹⁶⁴ G.O.Ms.No.568, Revenue (Registration-I) Department, dated 01 April 2008.

¹⁶⁵ Champapet, Dwarakanagar, Stonehousepet and Vallabh Nagar.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

6.21.6 Misclassification of Dissolution of Partnership as Partition

According to Article 40 of Schedule IA to IS Act read with Government Orders¹⁶⁶, duties amounting to one *per cent* on the market value is leviable on the value of separated share or shares in a partition document. According to Article 41 (C) of Schedule IA to the IS Act where the property belonged to one partner or partners when the partnership commenced, is distributed or allotted or given to another partner or partners in case of dissolution of partnership, stamp duty is leviable at five *per cent* on the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution in addition to the duty which would have been chargeable on such dissolution if such property had not been distributed or allotted or given.

In three DRs¹⁶⁷ and three SRs¹⁶⁸, in six documents styled as Partition deeds, Audit noticed from the recitals that the properties being partitioned were originally purchased during the currency of partnership in the name of the firm. The Registering Authorities treated these documents as partition deeds and levied duties amounting to ₹ 16.36 lakh. As the properties did not belong to any of the partners at the time of commencement of partnership, these documents were to be treated as dissolution of partnership deeds and duties amounting to ₹ 59.03 lakh on a market value of ₹ 10.73 crore under Article 41(c) were to be levied. Because of this misclassification and application of incorrect rate resulted in short levy of duties to a tune of ₹ 42.67 lakh.

On the same being pointed out, DR Nellore in respect of one document replied (November 2013) that the properties belonged to an erstwhile firm which was discontinued long ago and were also being enjoyed as the property of the joint family by the members. But it was not mentioned in the document that the partnership firm had been dissolved nor was a copy of the dissolution of partnership firm furnished to audit. The SR, Secunderabad replied (December 2013) that all the members of the firm were family members and hence duties were levied as applicable to a Partition deed. Reply is not acceptable as the property was in the name of the firm and partners of the firm were getting their respective shares from the firm. Hence the instrument should have been treated as dissolution of the firm under Article 41-C.

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.7 Misclassification of Gift/settlement deeds

As per Article 49 (A)(a) of Schedule IA to IS Act, read with Government Order¹⁶⁹, stamp duty in respect of gift settlement in favor of family members

¹⁶⁶ G.O.Ms.No.1129, Revenue (Registration-I) Department, dated 13 June 2005.

¹⁶⁷ Nellore, Rajahmundry and Tirupati.

¹⁶⁸ Koritepadu, Patamata and Secunderabad.

¹⁶⁹ G.O.Ms.No.1129 Revenue (Regn-I) Dept dated 13 June 2005 w.e.f. 01 July 2005.

was reduced to one *per cent* of the market value of the property settled. In any other case, settlements are chargeable with stamp duty at six *per cent* under Article 49 (A) (b) of Schedule IA to the Act.

In three DRs¹⁷⁰ and four SRs¹⁷¹ it was noticed from the recitals of 16 gift/settlement documents registered between 2007 and 2011 that in seven cases, either properties belonging to trusts/ partnership firms were settled in favour of individuals/ firms/trusts etc., or individuals settled properties in favour of trusts/ educational institutions etc. Further, in one case, there was no relationship between the donor and the donee and in another case, the liabilities on the properties settled were passed on to the donees. As these settlements fall outside the ambit of the definition of family the documents were to be treated as settlement in favour of others. However, the Registering Authorities treated them as settlements in favour of family members and levied duties amounting to ₹ 6.45 lakh on a market value of properties valuing ₹ 23.06 crore. This resulted in short levy of duties amounting to ₹ 99.56 lakh as detailed in the following table.

(₹ in lakh)

Sl. No.	Name of the office	No. of cases	Issues	Market value of the property	Duties leviable	Duties levied	Short levy of duties
1	SR, Kukatpally	2	Individual settled properties in favour of family trusts.	32.73	1.96	0.33	1.63
2	SR, Uppal	6	Properties of Partnership firms settled in favour of individuals.	681.40	37.48	6.87	30.61
3	SR, Uppal	1	Firm's property settled in favour of family members	45.53	2.50	0.45	2.05
4	SR, Maredpally	2	Property of a Society settled in favour of a pharmacy college	820	61.50	24.60	36.90
5	SR, Maredpally	1	Trust settled property in favour of individual.	180.72	10.84	5.43	5.41
6	DR, Hyderabad (South)	1	Donor and donee are not related and are not members of a family	176.53	10.59	1.78	8.81
7	DR, Hyderabad	1	Settled the property in favour of a Trade Union	163.67	9.82	4.91	4.91
8	SR, Secunderabad	1	Donees passed on the liability to repay the loans and security deposit. Hence it is a conveyance for consideration.	164.28	9.04	1.66	7.38
9	DR, Rangareddy East	1	Firm's property settled in favour of son.	41.40	2.28	0.42	1.86
Total				2,306.26	146.01	46.45	99.56

¹⁷⁰ Hyderabad, Hyderabad (South) and Rangareddy (East).

¹⁷¹ Kukatpally, Maredpally, Secunderabad and Uppal.

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.8 Misclassification of release as partition and incorrect valuation of property

As per Article 46 of Schedule IA to IS Act read with Government Orders¹⁷², stamp duty was leviable at one *per cent* in respect of Release deeds relating to family members on the consideration of such release as set forth therein or the market value of the property whichever was higher, over which claim was relinquished. Further, as per the Market Value Guidelines, acreage rate in respect of agricultural lands and square yard rate in respect of non-agricultural lands was to be adopted.

In SR, Uppal it was noticed from the recitals of a document registered as a partition deed in November 2008 that two members of a family paid a consideration of ₹ seven lakh each to other seven family members towards release of their share in their favour. The Registering Authority treated the document as a partition deed and by allowing exemption of duties on one share of property, levied duties amounting to ₹ 5.30 lakh. Audit observed that as seven members of the family joined in the execution of this document releasing their rights over the property for a consideration of ₹ seven lakh each in favour of two members, this document was to be treated as a release deed instead of a partition deed.

Audit further noticed from the recitals of the link documents registered in August and October 2008 i.e. prior to the registration of the present document that the property had already been converted into non-agricultural land and that some of the portions of the said property were sold as plots on which square yard rate was adopted by the Registering Authority. Hence, non-agricultural rate was to be applied for the purpose of valuation in respect of this property and duties amounting to ₹ 30.18 lakh on the market value of ₹ 30.18 crore at non-agricultural rate was leviable. Misclassification of document and undervaluation of property resulted in short levy of stamp duty amounting to ₹ 25.48 lakh.

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.21.9 Misclassification of Agreements of sale with possession as Agreement of sale without possession

As per the explanation given under Article 47-A of Schedule IA to IS Act, an agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold was chargeable as ‘Sale’ under this article. As per Article 47-A, stamp duty at seven *per cent* and six *per cent* respectively of market value was to be levied on sale of properties situated in any area

¹⁷² G.O.Ms.No.1129 Revenue (Regn-I) Department dated 13 June 2005 effective from 01 July 2005.

comprised in a municipal corporation and other than a municipal corporation respectively.

In two DRs¹⁷³ and nine SRs¹⁷⁴, APIIC in 72 cases and individuals in three cases, had executed Agreements to sell in favour of intending purchasers for a consideration of ₹ 859.72 crore and the possession of the property was delivered to the purchasers on the date of agreement itself. Therefore the documents were to be treated as Agreement to Sell for consideration followed by the delivery of possession of the property and duties were to be levied at seven *per cent*/six *per cent* if the property is situated in any area in a municipal corporation/in any area in other than a municipal corporation respectively. This misclassification of Agreements of Sale with possession as Agreements of Sale without possession resulted in short levy of duties to the tune of ₹ 59.78 crore.

Matter was referred to Department in September, 2013; their reply has not been received (March 2014).

6.22 Incorrect refund of stamp duty

As per Government orders¹⁷⁵, refund of stamp duty is allowed upto three months from the date of remittance. Refund after allowing 10 *per cent* deduction shall be permitted for one more month i.e. fourth month as grace period with a deduction of 20 *per cent* of the total stamp duty paid through challan. The validity period of the challan is restricted to four months only from the date of payment.

It was noticed from the refund of stamp duty records in three offices¹⁷⁶ of Tahsildars that stamp duty was incorrectly refunded to 57 individuals after four months with 10 *per cent* deduction. The incorrect refund of stamp duty resulted in loss of revenue amounting to ₹ 15.50 lakh.

Matter was referred to Department in September 2013; their reply has not been received (March 2014).

IT Audit

6.23 Introduction

The Government of Andhra Pradesh as part of its vision to provide good governance to its citizens, initiated steps to harness the potential of Information Technology to enhance quality, transparency, convenience, certainty and accountability in providing public services. Computerisation of Stamps and Registration Department was envisaged (1998) and implemented through application software called Computer aided Administration of Registration Department (CARD). Main objectives of CARD include:

¹⁷³ Rangareddy (West) and Visakhapatnam.

¹⁷⁴ Anandapuram, Bujabujanellore, Gajuwaka, Kallur, Sarpavaram, Golconda, Serilingampally, Sanjeevareddy Nagar and Vallabh Nagar.

¹⁷⁵ G.O.Ms.No.222 Revenue (Registration-I) Department dated 19 February 2005.

¹⁷⁶ Hayathnagar, Medchal and Quthbullahpur.

- (a) Introduction of transparent system of valuation of properties easily accessible to citizens, which would bring speed, efficiency, consistency and reliability; and
- (b) Replacement of the manual system of indexing, accounting, reporting and copying and filing of documents.

CARD was developed by National Informatics Centre (NIC), Hyderabad. This project (two tier architecture) was initially operated (February 1999) in 214 registries and was extended to 387 registries in the State by March 2008 and later on to all 432 Registries under 38 D R Offices by June 2013 including 12 DIG Offices and the Office of C&IG of Registration and Stamps.

Department envisaged to migrate from client-server architecture to centralized architecture (where in data and scanned images of the documents from all the functional units would be stored and retrieved from central server) of application and database by July 2013. Transition to centralized architecture was completed in June 2013.

Tata Consultancy Services (TCS) was awarded (June 2010) the Facility Management (FM) contract, which included hardware and network maintenance, asset management, preventive maintenance etc.

6.24 Follow up of previous Audit Reports

An IT audit of the CARD was conducted in 2008 and the comments made on the following aspects in the Report of the Comptroller and Auditor General for the year ended 31 March 2008¹⁷⁷ still remain unaddressed:

- Non-preparation of feasibility report, user requirement specifications and system requirement specifications.
- Not planning or documenting of disaster recovery and business continuity plan.
- Non replacement of complete process of registration to prevent manual intervention in arriving at chargeable duties.
- Non utilisation of CARD services (e.g. manual register of Account-A).
- Acknowledgement/checking/scanning delays.
- Non-integration of CARD with other departments.
- Violation of business rule to arrive at Final Taxable Value (FTV) (which is equal to the maximum of consideration value (CV), market value (MV), or 18 times of Annual rental value) by CARD.
- Non implementation of Change Management controls such as uniform implementation of changes in business rules and non-maintenance of related documentation.

¹⁷⁷ Audit Report (Revenue Receipts), Government of Andhra Pradesh for the year ended 31 March 2008

During the present Performance Audit, these issues were revisited to check the improvements made. Department did not provide any information on follow up of Audit Report.

Audit findings

6.25 Supervision and Performance Monitoring issues

The Citizen's Charter of the Department issued through Centre for Good Governance¹⁷⁸ stipulated timelines as mentioned in service standards for completion of processing, scanning and making the documents available to the users. Analysis of data pertaining to 40 offices (Annexure-III) revealed that Department could not adhere to the timeframe and there were delays in acknowledgement, checking and registration phases of registration activity.

- For completion of the whole process of registration of a document, three days' time has been set in the Citizen's Charter. However, analysis revealed that in respect of 11,716 transactions, even issue of acknowledgement slips took more than three days.
- In respect of 14,176 records, it took more than three days after issue of acknowledgement slip for completion of checking activity, which is also a part of registration process.
- Scanning and issue of documents after registration could not be completed even after three days from date of registration in respect of 3,68,926 documents.

Department stated (December 2013) that delays are due to power failures in remote areas and other problems. However, users cannot be denied service on such grounds.

- Department is not in a position to generate reports or logs of various performance indicators and is dependent on information /reports generated by NIC.

Department accepted (December 2013) that it was not in a position to generate reports on its own and was dependent on NIC because Department lacks technical resources. Absence of specific report generation facilities in CARD pertaining to performance and changes in business rules limited the Departmental control over the system.

¹⁷⁸ The Centre for Good Governance (CGG) was established in October, 2001 by the Government of Andhra Pradesh in collaboration with the Department for International Development (DFID) of the United Kingdom and the World Bank to help it achieve the State's goal of Transforming Governance.

6.26 Application controls and Logical access controls including Password Management

6.26.1 Non mapping of business rules into application

Whenever there are changes in the provisions in respect of the processes of the Department, they are to be mapped into business rules of the application in order to prevent manual intervention. Following changes were not mapped into the business rules of application.

- Change of stamp duty from five *per cent* to six *per cent* in respect of AGPAs with effect from 20 September 2010¹⁷⁹ was not mapped into CARD application system till the date of audit (June 2013), which necessitated manual intervention in order to arrive at correct stamp duty resulting in non-exploitation of the full potential of the automation.

Department accepted (December 2013) that change of stamp duty rate was not carried out in the CARD Application but no reasons were provided.

- Exemption from stamp duty was given¹⁸⁰ on sale of flats (with area up to 1200 sq. ft.) in respect of sales made from 1 January 2009 to 31 December 2010. Since no provision was made in the application for capturing the required information (area), manual intervention was required to ascertain the eligibility for granting exemption. Audit could not verify the correctness of the exemptions granted as CARD application does not provide exemption status.

Department accepted (December 2013) that no specific provision was made in CARD application to generate reports that indicate exemption status.

- Stamp Duty exemption to the extent of one *per cent* in respect of sale deeds in favour of women was made applicable¹⁸¹ for the period of one year from 27 October 2008. However, no provision was available in CARD to indicate the gender of the buyer, leading to manual intervention to arrive at applicable stamp duty. Total exemption given under this could not be arrived at from the data available with Department.
- Audit observed that owing to non-mapping of business rules as well as for other reasons, 1,70,000 documents (i.e., nearly 13 *per cent* of 13,21,255 sample documents) were entered using ‘post manual’ mode during the period from April 2007 to March 2012 as shown in Annexure-III. Leases, mortgage, AGPA and all types of transactions dealing with flats were entered in post manual mode, depriving the Department from capitalising the benefits of automation.

Department did not furnish any relevant reply.

¹⁷⁹ G.O.Ms No. 1178, Revenue (Registration-I) Department, dated 16 September 2010.

¹⁸⁰ G.O.Ms.No.1, Revenue (Registration-I) Department, dated 01 January 2009.

¹⁸¹ G.O.Ms.No.1231, Revenue (Registration-I) Department, dated 24 October 2008.

6.26.2 Failure of application validations

Application validations are designed in the application system to ensure completeness, relevance, consistency and integrity of the data captured. Such validation mechanism ensures that the MIS reports generated using the data project a true picture.

Data analysis of the sampled units (13,21,254 records) revealed (Annexure-III) following validation failures:

- In 880 records, date of stamp purchase was later than execution or presentation date.
- There were 5,430 records for which presentation date of document was prior to execution date.
- In 701 records the registration date was prior to presentation or execution date.
- In case of 1,917 records boundary details of the scheduled properties (all sides) were not captured.
- In case of 1,015 lease transactions, lease period was not captured.

6.26.3 Logical access controls and Password management controls

Audit was informed that the Department is yet to draft security policy which includes password management policy. However for the purpose of disseminating necessary guidance on data security and integrity, user manuals were made available with all Registering Authorities.

Against this, Audit observed in 40 sample offices that no user manuals were available with functional units. Default user names and passwords of database were not changed, exposing the application to the threat of unauthorized data manipulation.

Department did not furnish any relevant reply.

6.27 Technological Direction Implementation

6.27.1 Delays in training programme

Risks associated with functional delay (in execution of day to day activities) and using web based application directly accessing centralized servers and critical functional data can only be addressed by adequate training to staff. The test checked DRs/SRs did not provide any information regarding training programmes conducted for the Departmental staff (who capture data and attach scanned images) to use CARD in Centralised Architecture.

In reply Department stated (December 2013) that training programme has been delayed due to strikes in the state and the same would be initiated soon. However, the Department had started the migration to Centralised Architecture in phased manner from November 2012.

Department had not entered into agreements with NIC regarding source code rights, database and application support provisions, documentation (SRS/URS/SDD etc.) and knowledge transfer.

In response, Department stated (December 2013) that no agreement was entered into with NIC regarding ownership and source code; measures were being taken for the same in consultation with NIC.

6.27.2 Network controls

Though it was provided in the facility management agreement with TCS, the Department failed to ensure generation of network/security incident/operational/system logs.

Department stated that Facility Management vendor had failed to generate reports but amounts payable have been withheld. Withholding amounts to be paid does not resolve system security events. Controls to prevent recurrence of such events only can ensure continuity of project as per the intended objective of keeping system available from 9:00 AM to 9:00 PM on working days (RFP 3.2 Key performance indicator).

6.27.3 Non-levy of penalty for violation of agreement clause

The department entered into an agreement for Facility Management (FM) with Tata Consultancy Services (TCS) through Andhra Pradesh Technology Services Limited (APTS) which is the nodal agency for all the Government departments for creating Information Technology infrastructure in Andhra Pradesh. APTS is responsible to conduct final acceptance tests of the installed system and issue acceptance certificate. FM includes supply of hardware, installation, networking, commissioning, maintenance and operation of the CARD project.

Audit noticed from Testing and Acceptance Certificate issued (August 2011) by APTS that supply and commissioning of system/equipment was not completed by Facility Management Vendor on the dates scheduled in 212 locations. However, department did not levy penalty for lapses in supply and commissioning of equipment as provided in the agreement.

Department stated (December 2013) that an amount of ₹ 16.59 crore was withheld from the payments to be made to Facility Management Vendor (TCS) subject to finalisation. However, the agreement provides for levy of penalty for non-supply or commissioning of equipment.

6.27.4 Test check and Processing Controls

Processing controls ensure correct processing of input data as per relevant business rules captured through application logic to produce the output. It was observed that in CARD Application inputs were not correctly processed as is seen in the following cases (Annexure-III).

- In case of 2,820 sale records (out of 8,34,115 total sample records), Final Taxable Value (FTV) on which stamp duty levied did not match

with the maximum of Consideration Value, Market value or 18 times Annual rent/value, indicating application did not implement the relevant business rule in arriving at Stamp duty to be charged. Department accepted that in some cases FTV did not match the business rule.

- The value of cash paid generated from application was not matching with the entries in the manual register. Department stated that this was due to non-incorporation of exemptions and reductions in rates of Stamp duty/Registration Fee and it cannot be construed that there is loss of revenue in such cases. However, it does not ensure data integrity and reports generated basing on the data captured by the application cannot be relied upon.
- Under section 23 of provisions of the Registration Act, no document (other than a will) shall be accepted for registration after four months from date of execution without collecting applicable fine. It was noticed that this provision was not built into CARD necessitating manual intervention in arriving at and collecting such fines. It was noticed that in respect of 179 documents, fine amounting to ₹ 56.08 lakh was not levied resulting in forgoing of revenue.

Department stated (December 2013) that there are some exceptions to relaxation of four months i.e., as per Rule 38 of Andhra Pradesh Rules under Registration Act, fine is leviable on such delays. The department's reply is irrelevant as the contention of audit itself is that such fine had not been levied on documents registered after four months from the date of execution. Further, three SRs promised to collect the fines as pointed out by Audit.

6.27.5 Internal control mechanism

Internal Audit is an important part of internal control mechanism for ensuring proper and effective functioning of a system for detection and prevention of control weakness. It also provides a reasonable assurance on enforcement of law, rules and departmental instructions. When the internal audit particulars were called for, the C&IG stated (August 2013) that a separate wing for internal audit team headed by SR (Market Value (MV) and Audit)/DR (MV and Audit) would draw up the audit programme every month and conduct audit of offices of DR/SR offices. DIG concerned would supervise the progress of audit and monitor the collection of deficit stamp duty in the finalised audit paras and disciplinary action against responsible registering officers, who caused the loss of revenue due to their deliberate lapses.

However, it is evident from the above observations that the internal audit being conducted by Department has not been effective. It is desirable that internal audit be made more effective.

6.28 Conclusion

Non co-ordination with other departments (Transport and Income tax), frequent changes/amendments to Act/Rules increases the risk of leakage of revenue. Lack of strict monitoring of compliance with Acts/Rules resulted in revenue loss on account of misclassifications and undervaluation of documents. Department did not insist upon documentation from service provider. The continued dependence on the service provider poses risk to the Department. Hence it should develop its own expertise to generate reports independently and for making the data reliable.

6.29 Recommendations

Government may consider taking steps to

- ensure inspection of public offices under Section 73 immediately so as to detect the leakage of revenue;
- evolve a mechanism with departments (Transport, Income Tax, Revenue, etc.) to ensure proper collection of stamp duty;
- strengthen internal audit and make it more effective;
- incorporate business rule changes into the application in a timely manner;
- get into the role of data owner with ability to utilise on the information resources; and
- co-ordinate with NIC regarding source code rights, database and application support provisions, documentation (SRS/URS/SDD etc.) and knowledge transfer.