CHAPTER-III

EXECUTIVE SUMMARY

Trend of receipts
The revenue collection of the State under Stamp duty and Registration Fee increased by 68.51 per cent in 2011-12 as compared to 2007-08, it reduced from 18 per cent in 2010-11 to 16.44 per cent in 2011-12 as compared to the total receipt of the State.

Revenue Impact of Audit Reports
During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 175.01 crore in 280 cases. Of these, the Department had accepted audit observations in 76 cases involving ₹ 15.62 crore and had recovered ₹ 0.31 crore in four cases.

Results of audit
We reported underassessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 147.19 crore in 387 cases on the basis of test check of records of stamp duty and registration fees conducted during the year 2011-12.

The Department accepted and recovered short levy and other deficiencies in 166 cases involving ₹ 7.20 crore, of which 10 cases involving ₹ 0.87 crore were pointed out during 2011-12 and rest during earlier years. In two cases, after the issue of draft paragraph in May 2012, Department recovered the entire stamp duty of ₹ 21.19 lakh in May 2012.

What we have highlighted in this Chapter
A performance audit report on "Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee" revealed the following:

- Registers were not maintained by the DDTP/ADTPs of the Valuation Cell for watching receipt of data required for preparation of Annual statement (ASR) from the Sub-Registrar offices. The data of only a few months and not of the entire year was considered for the preparation of the ASR.

  (Paragraph 3.2.7.1 and 3.2.7.2)

- No module was developed in the software “Stamp and Registration Information Technology Administration” (SARITA) for transmitting the data to the Valuation Cell on the transactions where the consideration was higher than the market value as per ASR. No database of such transactions was maintained by the Department to facilitate trend analysis in the ASR.

  (Paragraph 3.2.7.3)
In 2503 instruments the difference between the market value as per ASR and the consideration mentioned in the deeds was more than 50 per cent and in 1367 instruments the difference between the two values was more than 100 per cent indicating the ASRs did not reflect the true value of the property.

(Paragraph 3.2.7.4)

The market value of the flats/shop/offices was incorrectly determined by applying the rates of new construction instead of residential/commercial rates prescribed in ASR resulting in short levy of SD of ₹ 2.59 crore.

(Paragraph 3.2.9.2)

The area occupied by tenants were not mentioned in three instruments but the benefit of tenant property to the extent of ₹ 11.69 crore was allowed while determining market value of the property. This resulted in incorrect benefit of SD of ₹ 58.45 lakh.

(Paragraph 3.2.10)

Non-adherence of the instructions in ASR for valuation of land, incorrect application of market value and misclassification of the property resulted in short levy of stamp duty of ₹ 12.32 crore.

(Paragraph 3.2.11)

Unearned income of ₹ 5.52 crore was not considered for levy of stamp duty and registration fee resulting in short recovery of revenue of ₹ 24.16 lakh. Delay in circulation of notification resulted in short realisation of revenue of ₹ 98.21 lakh.

(Paragraphs 3.2.12 and 3.2.13.1)

Recommendations

The Department/Government may consider:

- developing a module in “SARITA” for transmitting the data in respect of the transactions wherein the consideration was higher than the market value as per ASR to the DDTP/ADTP to facilitate trend analysis in preparation of ASR of the next year;
- Set up a system to ensure that ASR rates are based on the rates for entire year by specifying 12 months data for preparation of ASR on uniform basis every year;
- analysing the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation; and
- prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to
bring uniformity in determining market value of properties in development agreement and those in MIDC areas so that the valuations made are transparent and correct.

All the above recommendations were accepted by the Government in the Exit conference.
CHAPTER-III : STAMP DUTY AND REGISTRATION FEES

3.1 Introduction

3.1.1 Tax administration

At the apex level, Principal Secretary, Relief and Rehabilitation (R&R) heads the Department. The responsibility for overall administration of stamp duty and registration fee is entrusted with the Inspector General of Registration (IGR), Pune. He is assisted by the Additional Controller of Stamps, Mumbai, ten\(^1\) Deputy Inspectors General of Registration (DIGs), nine\(^2\) Assistant IGRs, six Collector of Stamps (COS) at Mumbai and Mumbai Suburban District (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) and 465 Sub-Registrars (SRs) at district and taluka levels.

3.1.2 Trend of receipts

Actual receipts from Stamp Duty and Registration Fee etc., during the years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget estimate</th>
<th>Actual receipts*</th>
<th>Variation of receipt excess (+) / shortfall (-)</th>
<th>Percentage of variation of receipt from Budget</th>
<th>Total tax receipts of the State</th>
<th>Percentage of actual receipts vis-a-vis total tax receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>7,200.00</td>
<td>8,549.57</td>
<td>(+)1,349.57</td>
<td>(-)18.74</td>
<td>47,528.41</td>
<td>17.99</td>
</tr>
<tr>
<td>2008-09</td>
<td>9,600.00</td>
<td>8,287.63</td>
<td>(-)1,312.37</td>
<td>(-)13.67</td>
<td>52,029.94</td>
<td>15.93</td>
</tr>
<tr>
<td>2009-10</td>
<td>9,600.00</td>
<td>10,773.65</td>
<td>(+)1,173.65</td>
<td>(+)12.23</td>
<td>59,106.33</td>
<td>18.23</td>
</tr>
<tr>
<td>2010-11</td>
<td>10,478.86</td>
<td>13,515.99</td>
<td>(+)3,037.13</td>
<td>(+)28.98</td>
<td>75,027.10</td>
<td>18.01</td>
</tr>
<tr>
<td>2011-12</td>
<td>15,677.14</td>
<td>14,407.49</td>
<td>(-)1,269.65</td>
<td>(-)8.09</td>
<td>87608.46</td>
<td>16.44</td>
</tr>
</tbody>
</table>

*Source :- Finance Accounts

As can be seen from the above table, though the revenue collection of the State under Stamp duty and Registration Fee increased by 68.51 per cent in 2011-12 as compared to 2007-08, it reduced from 18 per cent in 2010-11 to 16.44 per cent in 2011-12 as compared to the total receipt of the State.

3.1.3 Cost of collection

The gross collection in respect of Stamp duty and Registration Fee, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the preceding years are mentioned in the following table:

---

\(^1\) Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation).
\(^2\) Including one Assistant IGR in Stamp Office, Mumbai.
As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2009-10 to 2011-12 is less as compared to the all India average for the corresponding preceding years.

### 3.1.4 Impact of audit reports

**Revenue impact**

During the last five years, 2006-07 to 2010-11, we had pointed out in our Audit Reports cases of under assessments/non/short levy/loss of revenue of stamp duty, etc., interest and other irregularities with revenue implication of ₹ 175.01 crore in 280 cases. Of these, the Department had accepted audit observations in 76 cases involving ₹ 15.62 crore and had recovered ₹ 0.31 crore in four cases. The details are shown in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total observations</th>
<th>Observations accepted</th>
<th>Amount</th>
<th>Amount</th>
<th>Number of cases</th>
<th>Amount</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Number of cases</td>
<td></td>
<td>Amount</td>
</tr>
<tr>
<td>2006-07</td>
<td>212</td>
<td>13,570.00</td>
<td>19</td>
<td>220.00</td>
<td>Nil</td>
<td>Nil</td>
<td>261.00</td>
</tr>
<tr>
<td>2007-08</td>
<td>9</td>
<td>2,582.00</td>
<td>3</td>
<td>56.00</td>
<td>1</td>
<td>11.00</td>
<td>51.00</td>
</tr>
<tr>
<td>2008-09</td>
<td>16</td>
<td>335.00</td>
<td>11</td>
<td>272.00</td>
<td>Nil</td>
<td>Nil</td>
<td>269.00</td>
</tr>
<tr>
<td>2009-10</td>
<td>28</td>
<td>496.84</td>
<td>28</td>
<td>496.84</td>
<td>2</td>
<td>2.70</td>
<td>3.40</td>
</tr>
<tr>
<td>2010-11</td>
<td>15</td>
<td>517.60</td>
<td>15</td>
<td>517.60</td>
<td>2</td>
<td>16.85</td>
<td>32.65</td>
</tr>
<tr>
<td>Total</td>
<td>280</td>
<td>17,501.44</td>
<td>76</td>
<td>1,562.44</td>
<td>4</td>
<td>30.55</td>
<td>124.05</td>
</tr>
</tbody>
</table>

As would be seen from the above the amount recovered is only two per cent of the amount of the accepted cases. The Department needs to take effective steps to recover the amount at least in those cases which have been accepted by the Department.

### 3.1.5 Results of audit

We reported under-assessment, short levy, non-levy of stamp duty, loss of revenue etc., amounting to ₹ 147.19 crore in 387 cases as shown below, on the basis of test check of records of stamp duty and registration fees conducted during the year 2011-12:

---

3. Figures as per Finance Accounts.
<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Categories</th>
<th>No. of cases</th>
<th>Amount (₹ in crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee (A Performance Audit)</td>
<td>1</td>
<td>16.14</td>
</tr>
<tr>
<td>2</td>
<td>Short levy due to under valuation of property</td>
<td>261</td>
<td>19.78</td>
</tr>
<tr>
<td>3</td>
<td>Short levy due to misclassification of documents</td>
<td>41</td>
<td>95.39</td>
</tr>
<tr>
<td>4</td>
<td>Incorrect grant of exemption of stamp duty and registration fees</td>
<td>16</td>
<td>5.90</td>
</tr>
<tr>
<td>5</td>
<td>Non-levy of stamp duty and registration fee</td>
<td>21</td>
<td>2.34</td>
</tr>
<tr>
<td>6</td>
<td>Other irregularities</td>
<td>47</td>
<td>7.64</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>387</td>
<td>147.19</td>
</tr>
</tbody>
</table>

The Department accepted and recovered short levy and other deficiencies in 166 cases involving ₹ 7.20 crore, of which 10 cases involving ₹ 0.87 crore were pointed out during 2011-12 and rest during earlier years.

In two cases, after the issue of draft paragraphs in May 2012, Department recovered the entire stamp duty of ₹ 21.19 lakh in May 2012.

A Performance Audit on “Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee” with a total financial effect of ₹ 16.14 crore and few audit observations involving ₹ 14.58 crore are included in the succeeding paragraphs.
3.2 Performance Audit on “Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee”

Highlights

- Registers were not maintained by the DDTP/ADTPs of the Valuation Cell for watching receipt of data required for preparation of Annual Statement of Rates (ASR) from the Sub-Registrar offices. The data of only a few months and not of the entire year was considered for the preparation of the ASR.  
  (Paragraph 3.2.7.1 and 3.2.7.2)

- No module was developed in the software “Stamp and Registration Information Technology Administration” (SARITA) for transmitting the data to the Valuation Cell on the transactions where the consideration was higher than the market value as per ASR. No database of such transactions was maintained by the Department to facilitate trend analysis in the ASR.  
  (Paragraph 3.2.7.3)

- In 2,503 instruments the difference between the market value as per ASR and the consideration mentioned in the deeds was more than 50 per cent and in 1,367 instruments the difference between the two values was more than 100 per cent indicating the ASRs did not reflect the true market value of the property.  
  (Paragraph 3.2.7.4)

- The market value of the flats/shop/offices was incorrectly determined by applying the rates of new construction instead of residential/commercial rates prescribed in ASR resulting in short levy of SD of ₹ 2.59 crore.  
  (Paragraph 3.2.9.2)

- The area occupied by tenants were not mentioned in three instruments but the benefit of tenant property to the extent of ₹ 11.69 crore was allowed while determining market value of the property. This resulted in incorrect benefit of SD of ₹ 58.45 lakh.  
  (Paragraph 3.2.10)

- Non-adherence of the instructions in ASR for valuation of land, incorrect application of market value and misclassification of the property resulted in short levy of stamp duty of ₹ 12.32 crore.  
  (Paragraph 3.2.11)

- Unearned income of ₹ 5.52 crore was not considered for levy of stamp duty and registration fee resulting in short recovery of revenue of ₹ 24.16 lakh. Delay in circulation of notification resulted in short realisation of revenue of ₹ 98.21 lakh.  
  (Paragraphs 3.2.12 and 3.2.13.1)

3.2.1 Introduction

Levy and collection of stamp duty (SD) is governed by the Bombay Stamp Act, 1958 (the Act) and registration fees (RF) by the Registration Act, 1908.
The stamp duty and registration fee is leviable on the consideration mentioned in the instrument or on the market value of the property whichever is higher. Market value means the price which such property would have fetched if sold in open market on the date of execution of such instrument. The market values of the properties are determined by the Government in accordance with the rules framed under Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 (DMVR). These rates are published yearly and are known as Annual Statement of Rates (ASR). The rates are arranged in the ASR in ward wise/zone wise manner for urban properties and taluka wise, village wise manner for rural properties. ASR also provides guidelines to work out the market value of the property.

The Joint Director of Town Planning and Valuation, Pune (JDTP) under Rule 4 of the DMVR is responsible for preparing the ASR for the properties situated in a tahsil, municipal corporation or local body in the state. He is required to submit the same to the Chief Controlling Revenue Authority (CCRA) i.e. Inspector General of Registration (IGR) for approval latest by 31st October of each year.

### 3.2.2 Organisational set-up

At the apex level, the Principal Secretary, Relief and Rehabilitation (R&R) Department is responsible for overall administration of Registration and Stamps Duty in Maharashtra. The responsibility for levy and collection of stamp duty and registration fee is entrusted to the Inspector General of Registration (IGR), Pune. He is assisted by the Additional Controller of Stamps, Mumbai, ten4 Deputy Inspectors General of Registration (DIGs), nine5 Assistant IGRs, six Collector of Stamps (COS) at Mumbai and Mumbai Suburban District (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) and 465 Sub-Registrars (SRs) at district and taluka levels.

#### Preparation of ASR

A separate cell headed by the JDTP has been formed for preparation of ASR. The state has been divided into seven divisions for preparation of ASR. Mumbai Division is headed by the Deputy Director of Town Planning and valuation (DDTP) and other divisions are headed by Assistant Director of Town Planning (ADTP). The staff/officers in the ‘Valuation Cell’ are appointed by the Government in Urban Development Department, however, they are under the administrative control of IGR, Pune.

### 3.2.3 Audit objectives

We conducted the Performance Audit with a view to ascertain whether:

- Data collection, compilation, analysis, validation and inputs from the concerned Departments, local bodies were obtained and were adequate and correctly adopted in the preparation of ASR.

---

4 Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation).

5 Including one Assistant IGR in Stamp Office, Mumbai.
The rates and instructions in ASR were adequate and complete for determination of market value of all type of properties in all areas of the State.

The Adjudicating, Registration and Town Planning and Valuation authorities had correctly applied the rates and instructions of ASR were followed for determination of market value of property.

Effective internal control mechanism existed in the Department for prevention of loss or evasion of the duties and fee.

### 3.2.4 Audit criteria

The audit criteria for the Performance Audit are derived from the provisions of the following central and state laws:—

**Central laws:**

- The Indian Stamp Act, 1908
- The Registration Act, 1908

**State laws**

- The Bombay Stamp Act, 1958
- The Bombay Stamp (Determination of True market value of property) Rules, 1995
- The Maharashtra Registration Manual Part-II
- Annual Statement of Rates of the selected districts for the period 2007-11
- Development Control Regulation for Greater Mumbai, 1991
- Notifications/Resolutions/Circulars issued by the Department/Government.

### 3.2.5 Scope, methodology and reasons for selection of the Performance Audit

The Performance Audit was conducted between January 2012 and August 2012 for the period from January 2007 to December 2011. We selected two districts from Mumbai division and one district from each of the remaining seven divisions of the State. Thus nine out of 35 districts were selected. The selected districts consisted of 150 SRs and we selected 37 SRs by using the random sampling technique. Besides, IGR Pune and JDTP Pune, we selected DDTP, six ADTP offices, six COS at Mumbai and MSD, ten JDR and COS.

An Entry conference with the Principal Secretary, Relief and Rehabilitation (R&R), IGR, JDTP was held at Mantralaya, Mumbai on 24 February 2012. The draft Review Report was forwarded to the Government in September 2012 and the audit observations and recommendations were discussed in the

---

6 Amravati, Aurangabad, Latur, Nagpur, Nasik, Pune and Konkan.
7 Amravati, Aurangabad, Latur, Mumbai, Mumbai Suburban District, Nagpur, Nasik, Pune and Thane.
exit conference held in November 2012. The Principal Secretary, Relief and Rehabilitation Department, IGR, Pune and other senior officials from the Department attended the meeting. The replies given during the exit conference and at other point of time have been appropriately included in the relevant paragraphs.

**Reasons for selection of the performance audit:** We had found during our local inspections of the Department of Registration and Stamps that the difference between the market value of the property determined as per ASR and the consideration mentioned in the instruments was large. Besides, undervaluation of property due to incorrect application of rates and instructions in ASR was noticed in a number of cases. We had not conducted any Performance Audit on the subject till date. As such we felt it was appropriate to conduct a Performance Audit on “Preparation of Annual statement of rates and its application for determination of market value for levy of stamp duty and registration fee”.

The Performance Audit revealed a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

### 3.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Stamp and Registration Department in providing the necessary information and records to audit.

### Audit Findings

#### 3.2.7 Preparation of Annual Statement of Rates (ASR)

##### 3.2.7.1 Delay in submission of returns relating to preparation of ASR

During the test check of selected 37 SR offices, we noticed that no register was maintained by the DDTP/ADTPs of the Valuation Cell to watch the receipt of data required for preparation of ASR from the Sub-Registrar offices. For preparation of ASR, timely receipt of the data is essential to facilitate trend analysis. Non-receipt or late receipt of the returns has a direct impact on the correctness of the preparation of ASR.

We called for the information regarding submission of returns to

As per Rule 4(7) of DMVR, all the SRs were required to furnish an extract of the register in respect of the instruments in which the consideration for the subject property was more than the ASR, by 30th of the following month to the ADTP (Valuation Cell) for the preparation of ASR. Further, as per Rule 4(1), JDTP shall prepare ASR showing average rates of land and building situated in every Tahsil, Municipal Corporation or local body area and submit the same for approval to the CCRA latest by 31st October every year. In ASR, separate rates for agriculture land, non-agriculture land and probable non-agriculture land is given for influence area and village area. These returns are used for preparation of ASRs.
the DDTP/ADTP from 37 selected SRs. The information received from 36\textsuperscript{8} SRs revealed the following:

- 15 SRs had sent the returns of all the months for the period 2007-11 to the ADTP, out of which, only ten SRs had sent the returns within the stipulated date. The delay in submission of returns ranged from one day to 318 days.

- In four SRs information regarding the returns sent to the Valuation Cell was not available with them.

- In 17 SRs, the returns were not sent for all the months to the Valuation Cell.

We cross checked the returns submitted by the concerned SRs to the concerned three\textsuperscript{9} ADTP of the Valuation Cell for the year 2011 which revealed the following:

- The number of returns and the information submitted to ADTP Aurangabad tallied with the information furnished by the concerned SRs.

- In ADTP Nagpur, 30 returns were received against 41 returns sent by the SRs.

- In ADTP Pune, 37 returns were received against 78 returns sent by the SRs.

Since no register was maintained by the concerned DDTP/ADTPs of the Valuation Cell to monitor the receipt of the returns required to be submitted by SRs, their timely/non-submission got unnoticed.

In ASR, separate rates are prescribed for agriculture, non-agriculture and probable non-agriculture land, but the three offices informed that the information was not being received correctly as discussed under:

- Two ADTP offices\textsuperscript{10} stated that information is not being received on the conversion of agriculture land to non-agriculture and probable non-agriculture to non-agriculture from the revenue authorities for revising the classification of survey numbers and their rates for preparation of ASR.

- ADTP Aurangabad stated that survey number in non-agriculture zone is included on the basis of information received from Talathi. DDTP and three ADTP offices\textsuperscript{11} did not furnish information.

In the exit conference, Government stated that instructions have been issued to SRs to maintain register for ensuring timely submission of data by the Sub Registrars. Government further stated that instructions have been issued to Collectors to endorse copy of orders granting permission for Non Agriculture use of DDTP and ADTP offices.

\textsuperscript{8} SR II, Ulhasnagar did not furnish the information.

\textsuperscript{9} Aurangabad, Nagpur and Pune; other offices viz. DDTP Mumbai and ADTPs of Amravati, Nashik and Thane did not furnish the information.

\textsuperscript{10} Nagpur and Pune.

\textsuperscript{11} Amravati, Nashik and Thane.
3.2.7.2 Preparation of ASR on the basis of inadequate data

The DMVR provides for submission of data by SRs of all the months in a year to DDTP/ADTP. Our scrutiny of the information collected from the DDTP/ADTP revealed that data of the entire period of the year was not considered for preparation of ASR as detailed below:

<table>
<thead>
<tr>
<th>Name of the DDTP/ADTP</th>
<th>Period of transaction considered for preparation of ASR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban Area</td>
</tr>
<tr>
<td>Amravati</td>
<td>January to July</td>
</tr>
<tr>
<td>Aurangabad</td>
<td>January to August</td>
</tr>
<tr>
<td>Mumbai</td>
<td>January to September</td>
</tr>
<tr>
<td>Nagpur</td>
<td>January to September</td>
</tr>
<tr>
<td>Nasik</td>
<td>Information was not furnished to audit despite being called for in July 2012.</td>
</tr>
<tr>
<td></td>
<td>Rural Area</td>
</tr>
<tr>
<td></td>
<td>January to April</td>
</tr>
<tr>
<td></td>
<td>January to June</td>
</tr>
<tr>
<td></td>
<td>Not Applicable</td>
</tr>
<tr>
<td></td>
<td>January to June</td>
</tr>
<tr>
<td>Pune</td>
<td>January to July</td>
</tr>
<tr>
<td>Thane</td>
<td>January to July</td>
</tr>
</tbody>
</table>

Thus, data of all the months was not considered by the DDTP/ADTP in the preparation of ASR. Further, there was no uniformity in the period of data considered by the various DDTP/ADTP while preparing ASR. The data for the period from August/September/October to December for urban area and May/June/July to December for rural area was not considered at all in the preparation of ASR.

We recommend that the Government may prescribe specific 12 month’s data for considering the preparation of ASR for rural and urban area.

In the exit conference the Government accepted our recommendation and issued instructions (November 2012) prescribing specific 12 month’s data to be considered for preparation of ASR for rural and urban area.

3.2.7.3 Absence of database and data analysis

The Department introduced computerised registration of document by developing software “SARITA” (Stamp and Registration Information Technology Administration) in 2002 for registration of documents. However, no module was developed in the software for transmitting the required data to the concerned DDTP/ADTPs of the Valuation Cell. No database of such transactions was maintained by the Department to facilitate trend analysis. In the absence of the necessary module and database, rates of ASR were revised without adequate analysis.

The Government may consider developing a module in “SARITA” for transmitting the data to the DDTP/ADTP in respect of the transactions wherein the consideration was higher than the market value as per ASR to facilitate trend analysis.

In the exit conference, the Principal Secretary agreed to take necessary action at Departmental level as per our recommendation.

---

12 transactions where the consideration was higher than the market value as per ASR.
3.2.7.4 Difference between consideration and market value as per ASR

In order to ascertain whether the rates prescribed in ASR reflect the true market value of the property, we listed 5,045 instruments wherein the consideration was more than the market value from the Token register\(^{13}\) (between 2007 and 2011) maintained by the selected SRs and obtained “Index-II\(^{14}\) Statements” of these cases.

District wise analysis of “Index-II Statements” of these 5,045 instruments revealed huge variations between the market value as per ASR and the consideration in the instrument as mentioned in the following table:-

<table>
<thead>
<tr>
<th>District</th>
<th>Total documents</th>
<th>Number of documents with percentage variation ranging</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0-10</td>
</tr>
<tr>
<td>Amravati</td>
<td>206</td>
<td>88</td>
</tr>
<tr>
<td>Aurangabad</td>
<td>140</td>
<td>18</td>
</tr>
<tr>
<td>Latur</td>
<td>306</td>
<td>115</td>
</tr>
<tr>
<td>MSD</td>
<td>965</td>
<td>172</td>
</tr>
<tr>
<td>Mumbai</td>
<td>839</td>
<td>143</td>
</tr>
<tr>
<td>Nagpur</td>
<td>419</td>
<td>115</td>
</tr>
<tr>
<td>Nashik</td>
<td>156</td>
<td>86</td>
</tr>
<tr>
<td>Pune</td>
<td>1,200</td>
<td>225</td>
</tr>
<tr>
<td>Thane</td>
<td>814</td>
<td>144</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5,045</strong></td>
<td><strong>1,106</strong></td>
</tr>
</tbody>
</table>

As can be seen from above:

- Out of 5,045 ‘Index- II Statement’, in 2,503 (49.61 per cent), the difference in market value as per ASR and consideration mentioned in the deeds was more than 50 per cent and in 1,367 out of 2,503, the difference between the two values was more than 100 per cent.

- In five districts, (Aurangabad, Mumbai, MSD, Pune and Thane) the difference between the two values was more than 50 per cent in 50 per cent or more of the selected ‘Index- II Statements’.

- In three districts, (Amravati, Latur and Nagpur) the difference between the two values was more than 50 per cent in more than 40 per cent of selected ‘Index–II Statements’.

- In Nasik district the difference between the two values was more than 50 per cent in 26 per cent of selected ‘Index–II Statements’.

The above paragraphs indicate that the market value determined as per the ASR prepared does not reflect the true market value of the properties.

---

\(^{13}\) Token register is a register maintained by the SRs, which contains name of the parties, type of transaction, brief description of the property, consideration/market value amount of SD recovered, Document Number, signature, date, time of registration, etc.

\(^{14}\) Index-II statements is prepared by SRs showing inter-alia the details of parties involved in the transaction, description of the property, type of document, amount of consideration, amount of market value as per ASR, SD and RF recovered.
In the exit conference, the Principal Secretary stated that the variation may be by virtue of some other factors like monopoly value, higher specifications, and high quality infrastructure and so on. Preparation of ASR is a continuous process and refinement to ASR is done every year with the available resources including staff. As preparation of ASR progresses, the variations will be minimised year by year.

We recommend that the Department may analyse the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation.

### 3.2.7.5 Non-implementation of ASR prepared for the year 2009

As per rule 4(3) and 4(4) of the DMVR, the CCRA shall, by an order, issue ASR every year on first day of January. If CCRA is not in a position to issue ASR on first day of January in any year due to any administrative difficulties, the rates mentioned in the ASR for the immediately preceding year may be incremented by the CCRA in consultation with JDTP keeping in view the increase in market rates of immovable properties.

The ASR for the year 2009 was prepared for implementation from first day of January 2009. We noticed that the Minister of State (Revenue) gave an assurance in the Legislative Council to continue the rates of ASR of 2008 in the year 2009. It was decided in a meeting held on 27 December 2008 between the Revenue minister, CCRA and JDTP that for the time being, ASR of 2008 shall be continued for the year 2009.

Our analysis of documents registered and SD recovered between 1 July 2009 and 31 December 2009 and corresponding period in 2008 revealed that 9,13,448 documents were registered in 2009 as compared to 8,22,962 documents in 2008 and SD and RF of ₹ 5,684.61 crore was realised in 2009 as compared to ₹ 3,970.30 crore in 2008. Though there was increase of 11 per cent in number of documents registered and 43.17 per cent in revenue realised in the second half of the year 2009, no mid-term review to assess the possibility of application of rates of ASR for the year 2009 was made by the Department.

In the exit conference the Principal Secretary stated that the DMVR do not provide for revision of ASR in mid year as such mid-term review could not be conducted.

We recommend that the Government may consider making provision for mid-term review in a year in the DMVR.
3.2.8 Non-availability of the adequate mechanism in ASR to evaluate the property in MIDC area

Under the DMVR, SD on the instrument such as agreement to lease/lease deed in respect of plots situated in MIDC areas involving transactions between MIDC as a lessor and party as a lessee, is to be levied on predetermined\(^{15}\) price. However, in case of subsequent transfer of lease by way of assignment with the permission of MIDC, the market value of the property should have been determined as per rates prescribed in ASR.

We noticed that the market value of the properties for MIDC areas had not been prescribed in ASR, except for Wagle industrial area in Thane district. The market value of the properties in Wagle industrial area was determined as per rates prescribed in ASR. However, due to absence of separate rates in ASR for properties in other MIDC area like Pimpri industrial area, Bhosari industrial area, Latur MIDC area etc, the market value of the properties was worked out at the rate of land prescribed by MIDC and rate of construction as per ASR. We noticed that Chief Executive Officer, MIDC, Mumbai had not revised the rates of land in MIDC area during August 2008 to January 2012 and all the documents registered between August 2008 and December 2011 were valued at the rate in August 2008. Thus, Department was following two methods of valuation of property, one for Wagle and another for other MIDC areas, this was fraught with the risk of loss of Government revenue.

After we pointed out in June 2012, the Principal Secretary in exit conference (November 2012) agreed to incorporate separate zones for properties in MIDC area indicating the rate thereof in the ASR from the year 2013.

3.2.9 Instructions in ASR for valuation of development agreements

During test check of cases, we noticed that different practices were followed for determination of market value of developers share and considerations of the owners in respect of joint venture for development.

Market value of property has been arrived on the basis of cost of construction as per ASR in place of rates of residential/non-residential rates of ASR. These cases are discussed in the succeeding paragraphs.

\(^{15}\) Predetermined price is worked out by the MIDC on the basis of rates of land in MIDC area prepared by the Chief Executive Officer, MIDC, Mumbai (CEO, MIDC).
3.2.9.1 Lack of uniformity for levy of stamp duty

As per section 27 of the Act, where the amount or value of the subject matter of any instrument cannot be ascertained on the date of its execution, nothing shall be claimable under such instrument more than the highest amount or value of which, the stamp duty has been actually paid on the date of such execution.

During the test check of four development agreements in COS, Kurla and Andheri, we noticed that the owners executed development agreement for development of land. The executants agreed to develop the property as a joint venture on “revenue sharing basis”. We noticed that uniform procedure was not followed by these COS at the time of adjudication of the documents to work out the value of the property and the consideration as stated below:-

**Method applied in first case:** Two development agreements were examined in COS, Kurla, in one development agreement it was mentioned that the owner shall retain one third of total revenue and balance two third revenue shall be with the developer. In another case, the sharing between the owner and the developer was in the ratio of 43 and 57 per cent. The COS determined the permissible built up area on the basis of FSI of 1.4 of the area of land and apportioned it on the basis of ratio of sharing between the owners and the developers.

The market value of developers share was determined by applying the rate of open land prescribed in the ASR. The market value of the owners share was determined by applying the rate of construction and was treated as consideration. SD was levied on the higher of the two values.

**Method applied in 2nd case:** In COS Andheri, we noticed that in two development agreements, the sharing between the owner and the developer was in the ratio of 45 and 55 per cent. The COS determined the permissible built up area on the basis of FSI of 1.4 of the area of land and determined the market value of permissible built up area as per the rate of land prescribed in ASR.

The market value so determined was apportioned on the basis of ratio of sharing between the owners and the developers. SD was levied on the market value of share of developer being higher than market value of share of owner.

The sharing of revenue is indeterminate at the stage of execution. In such cases, there were no instructions regarding determination of value and different offices were following different methods. The risk of taking undue advantage of such a situation cannot be ruled out.

**We recommend that the Department may consider prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to bring uniformity in determining market value of properties in development agreement so that the valuations made are transparent and correct.**

In the exit conference the Principal Secretary stated that separate guidelines will be prepared to bring uniformity in determining market value of properties in development agreement.
3.2.9.2 Incorrect valuation of construction components given as consideration by the developer

As per order No. 684 of the Maharashtra Registration Manual Part-II (Manual), where the developer offers to allot residential/non-residential components to the owner in lieu of the development rights, the value of residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of execution. The SD and RF should be levied on the higher of the two values i.e.; the value of the property and the value of residential and non-residential components.

During the test check of 27 development agreements adjudicated/registered in COS, Thane City, COS, Pune City and six\textsuperscript{16} SR offices, we noticed that the developer had agreed to allot residential/non-residential components like flats/shop/offices to the owners in lieu of grant of development rights of the property. The COS/SR determined the market value of the flats/shop/offices by applying the rates of new construction prescribed in the ASR and levied SD of \textcurrency{2.48} crore on \textcurrency{65.23} crore. The market value of the flats/shop/offices by applying the residential/commercial rates prescribed in ASR along with cash consideration works out to \textcurrency{129.02} crore on which SD of \textcurrency{5.07} crore was leviable. This led to short levy of SD of \textcurrency{2.59} crore.

After we pointed out (between January and July 2012), the Principal Secretary stated (November 2012) that applications of rates in these cases is a debatable matter and the matter has been referred to the Law and Judiciary Department for clarification.

3.2.10 Irregular grant of benefit in valuation of the tenant occupied property

As per instruction number 'l' of ASR, where the land situated in Mumbai is sold along with the old building with tenants, the market value is determined by considering permissible built up area (FSI), area occupied by the tenant and total monthly rent of all the tenants. As per the instructions of ASR, Market value of the area occupied by the tenant is determined on the basis of 112 times the total monthly rent. After deducting the area occupied by tenants from the permissible built up area, market value of remaining area is determined as per rate of land prescribed in the ASR. Aggregate of both the values is the market value of the property. Further, as per note below instruction 2 of ASR, benefit of tenanted property is available only if tenant gives at least two of the eight prescribed documents to support tenancy for last five years and should form the part of the instrument. Further, area occupied by tenant is required to be stated in detail in the recitals of the instrument.

During the test check of two instruments of conveyance and a deed of assignment in three\textsuperscript{17} COS, we noticed that the details of area occupied by tenants were not stated in the recital of the instruments. Statement showing the


\textsuperscript{17} Andheri, Borivali and Enforcement-II, Mumbai.
area occupied by the tenants was obtained by the COS at the time of adjudication but it was not made a part of the instruments. The area of properties mentioned in above instruments was 7,496.92 sq m on which 10,495.69 sq m of FSI was permissible and the area occupied by the tenant as per statement was 5,811.56 sq m. Since the area occupied by tenant was not mentioned in the instrument, the market value should have been determined without considering the area occupied by tenant. Accordingly, the market value of the property works out to ₹ 22.40 crore. However, the Department worked out the market value of the property by considering the area occupied by tenant at ₹ 10.71 crore. Thus, determination of market value of land without observing the instruction of ASR resulted in grant of irregular benefit of ₹ 58.45 lakh in stamp duty due to incorrect determination of market value to the extent of ₹ 11.69 crore.

In the exit conference the Principal Secretary stated that instructions will be issued to incorporate area occupied by tenants in the instrument and the signed annexure showing details of the area occupied by the tenant shall form the part of the document. However, the reply was silent about the action taken in this case.

## Compliance Issues

### 3.2.11.1 Non-compliance or incorrect interpretation of instructions of ASR

ASR consists of various instructions that are required to be applied for determination of market value by the adjudicating and registering authority.

Our scrutiny in nine offices revealed that the adjudicating and registering authorities have not complied with the instructions of ASR which led to incorrect determination of market value and consequent short levy of SD and RF of ₹ 1.62 crore in 34 instruments registered/adjudicated between April 2008 and December 2011. A few cases are mentioned in the following table:

---

18 Permissible FSI x rate of land for one FSI as per ASR. i.e., 
\[(1,960.70 \times ₹ 22,700) + (5,665.55 \times ₹ 20,500) + (2,869.44 \times ₹ 22,100)\] = ₹ 22.40 crore.

19 Market value = \{(Permissible FSI minus area occupied by tenant) x rate of land for one FSI as per ASR \} plus (112 times of monthly rent of all the tenants).

That is 
\[(1,960.70-1,360) \times ₹ 22,700\] + \[(2,205 \times 112)\] = ₹ 1.52 crore (A)

\[(5,665.55-2,723.80) \times ₹ 20,500\] + \[(7,694 \times 112)\] = ₹ 6.12 crore (B)

\[(2,869.44-1,787.76) \times ₹ 22,100\] + \[(1,331 \times 112)\] + \[(187.51 \times 1.2 \times ₹ 49,400 \times 0.60)\] = ₹ 3.07 crore (C).

Out of area occupied by tenant of 5,811.56 sq m the Department disallowed 187.51 sqm due to non-submission of proof of tenancy.

Total (A) + (B) + (C) = 10.71.
### COS/ SR IV Pune.

<table>
<thead>
<tr>
<th>No. of instruments and case No.</th>
<th>SD Leviable/levied/Short levy</th>
<th>Nature of Irregularity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 (Doc 12324 and 12325 of 2011)</td>
<td>1.22 1.04 0.18</td>
<td>Instruction 17 of ASR prescribes five slabs for valuation of bulk land on percentage basis.</td>
</tr>
</tbody>
</table>

We noticed in four instruments of conveyance deed registered between July 2011 and December 2011 that the SRs incorrectly determined the market value as ₹ 25.57 crore by applying incorrect slab rates. The value of land for areas involving 4.001 sq m to 10,000 sq m was 70% of the rate of land and above 10,000 sq m was 60%, of the rate of land but the SRs incorrectly applied rate of 60% and 50% respectively for these two slabs. The correct market value works out to ₹ 29.51 crore. Application of incorrect slab led to undervaluation of the property and consequent short levy of SD of ₹ 20 lakh.

After this being pointed the Government and the Department accepted the audit observation. A report on recovery has not been received (January 2013).

### COS Thane City

| 1 (ADJ 642/2011) | 1.33 1.15 0.18 | As per instruction 17 of ASR, if land is sold after consolidating different pieces of land, the slab rate for valuation of bulk land shall not be applied on the consolidated area. We noticed that in an instrument of conveyance adjudicated in August 2011, the property sold included seven pieces of land bearing different survey numbers. The aggregate area of land was 30,870 sq m. The market value of ₹ 23 crore was incorrectly determined by applying slabs of concession on aggregate area. The correct market value by applying slabs separately for each piece of land works out to ₹ 26.56 crore. This resulted in short levy of SD of ₹ 18 lakh. |

The matter was referred to the Department and to the Government in July 2012; their reply has not been received (January 2013).

#### 3.2.11.2 Incorrect determination of market value of property

As per section 31 of the Act, when an instrument, whether executed or not, is brought to the Collector by one of the parties to the instrument to have the opinion as to the duty with which it is chargeable, the Collector may determine the stamp duty. Further, to determine the duty, the Collector, may require to be furnished, all the facts and circumstances affecting the chargeability of the instrument with duty for determining the market value.

Our scrutiny in four COS and SR XIII Haveli, Pune revealed that the adjudicating and registering authorities have determined the market value of the property sold, leased and given for development incorrectly due to incorrect determination of area of property/FSI, non-consideration of parking area, application of rates of incorrect zone, valuing the property situated in different floors of the multi storied building by considering the aggregate area instead of valuing
separately considering the floor position etc. This has resulted in short levy of SD of ₹ 3.60 crore. The reply of the Department and reasons for non-acceptance thereof are detailed below:

<table>
<thead>
<tr>
<th>COS/SR</th>
<th>No. of instruments</th>
<th>Nature of irregularity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andheri</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>SD leviable</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SD levied</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SD short levied</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>An unexecuted lease agreement for grant of lease of a semi finished building having ground plus 10 storey for running a medical and health centre was adjudicated in November 2010. We noticed from the architect report attached to the document that built up area of the building was 6750 sq m out of which area of a hall involving 185.87 sq m was not transferred to the lessee. The market value of 6,564.13 sq m worked out to ₹ 114.89 crore. However, the COS determined the market value at only ₹ 60.32 crore on the basis of built up area of 3,101.66 sq m mentioned in the schedule of property. This resulted in undervaluation of property of ₹ 54.57 crore and consequent short levy of SD.</td>
</tr>
</tbody>
</table>

**Remarks:** - After this being pointed out COS Andheri stated that the area mentioned in the schedule has been considered for determining the market value, as such it is correct. The reply furnished is not correct as the area mentioned in valuation report of the architect for determining the lease rent of the property was 6,750 sq m and the yearly rent of ₹ 1.50 crore was worked out on this area. Out of this only one hall involving 185.87 sq m was not transferred. Thus the area of remaining property worked out to 6,564.13 sq m. This valuation report attached with the documents should have been taken into account for determination of the correct value of the property.

<table>
<thead>
<tr>
<th>COS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mumbai</td>
<td></td>
<td>A lease and license agreement was entered into for lease of office premises situated at four different floors along with 125 car parking area. The market value should have been determined separately for each floor at ₹ 169.80 crore. However, the COS determined the market value of ₹ 162.40 crore by consolidating the areas of all four floors.</td>
</tr>
</tbody>
</table>

**Remarks:** - After this being pointed out COS Mumbai accepted the omission and stated that steps are being taken to recover deficit SD.

<table>
<thead>
<tr>
<th>COS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Enf-I</td>
<td></td>
<td>A development agreement was executed between the MIG Co-operative Housing Society and the developer. Besides cash consideration of ₹ 112.51 crore, the developer agreed to provide carpet area of 20,518.40 sq m to the existing members. The COS determined the cost of construction of carpet area at ₹ 27.08 crore and SD was levied on the total consideration at ₹ 139.60 crore. We noticed from the document that the developer had agreed to provide 336 car parking area admeasuring 4,620 sq m to the members. The cost of construction of car parking areas was not considered by the COS. The cost of construction of car parking area works out to ₹ 5.08 crore which should have been considered for determining the consideration. Thus, non-consideration of car parking area resulted in short levy of SD of ₹ 26 lakhs.</td>
</tr>
</tbody>
</table>

**Remarks:** - After this being pointed out COS Enforcement-I Mumbai stated that the construction cost for new structure for society members and tenants is a liability for the developer which is to be deducted for determination of market value. Reply is not acceptable as the cost of construction of parking spaces given free of cost needs to be included for determination of market value.

---

20 As per Development Control Rules standard car parking area for one car is 13.75 sq m.
<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>COS Pune (Rural)</td>
<td>0.13</td>
<td>Land admeasuring 28,000 sq m along with factory building having constructed area of 1,913.56 sq m was transferred. The market value of ₹ 2.32 crore was determined by considering rate of ₹ 360 per sq m instead of ₹ 665 per sq m prescribed in ASR and by allowing concession of bulk land. The correct market value works out to ₹ 3.31 crore by applying correct rate of ₹ 665 per sq m as per ASR and without allowing concession of bulk land. This resulted in undervaluation of property amounting ₹ 0.99 crore and consequent short levy of SD.</td>
</tr>
<tr>
<td>0.09</td>
<td>0.23</td>
<td>Remarks: - After this being pointed out COS Pune (Rural) accepted the omission for levy of incorrect rate but did not accept the disallowance of bulk land concession. Reply is not acceptable since the land sold was along with building, concession of bulk land is not allowed.</td>
</tr>
<tr>
<td>0.04</td>
<td>0.10</td>
<td></td>
</tr>
<tr>
<td>SR-XIII Pune</td>
<td>0.45</td>
<td>An agreement for transfer of occupancy rights was made for land admeasuring 4.398 hectares bearing General Land Register (GLR) survey number of 244. SR determined the market value at ₹ 9 crore. We noticed that rate of land bearing GLR survey number 244 has not been mentioned in the ASR. However, by adopting lowest rate of ₹ 6,050 per sq m prescribed for GLR and survey number in zone 37/554 of Khadki cantonment, the market value works out to ₹ 17.54 crore. This resulted in under valuation of the property at ₹ 8.54 crore and short levy of SD.</td>
</tr>
<tr>
<td>0.42</td>
<td>0.11</td>
<td>Remarks: - After this being pointed out the SR stated that final reply will be given after ascertaining the correct area of the land from the Khadki cantonment board. Final reply is awaited (January 2013).</td>
</tr>
</tbody>
</table>

### 3.2.11.3 Misclassification of instruments

For the purpose of stamp duty, the Collector may determine the article of Schedule I of the Act under which the stamp duty shall be leviable, in cases where an instrument, whether executed or not, is brought to the Collector by one of the parties to the instrument to have the opinion as to the duty with which it is chargeable under section 31 of the Act.

Our scrutiny of records in two COS revealed that title of the property in four instruments was misclassified/misinterpreted resulting in short/non levy of SD of ₹ 7.10 crore as detailed in the following table:
<table>
<thead>
<tr>
<th>COS/ACOS</th>
<th>No. of Instruments</th>
<th>Nature of Irregularity in brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>COS En½-I Mumbai</td>
<td>3 11.20 6.72 4.48</td>
<td>The National Textile Corporation limited (NTC) submitted integrated development scheme (IDS) of seven textile mills. Under the scheme, the entire area of land of seven mills was regarded as one, as per the DCR 1991. On surrender of land of 34,576 sq m to the Municipal Corporation of Greater Mumbai (MCGM) against reservation of recreation ground (RG), the NTC got FSI of 45,987 sq m which can only be utilised on the land within the scheme, out of which the NTC has put 2,00,000 square feet of RG FSI for auction vide e-auction notice dated 21 February 2011 and sold to different parties. The subject matter of the property was treated as Transfer of Development Rights (TDR) as movable property instead of FSI as immovable property. This led to short levy of SD.</td>
</tr>
<tr>
<td>Thanpe Rural</td>
<td>1 2.62 0 2.62</td>
<td>An agreement was executed in 2008 between M/s Evershine Developers as vendor and Enigma Constructions Private Limited as purchaser for sale of FSI of 1,55,628.15 sq m out of land admeasuring 8,83,211 sq m for a consideration of ₹ 200.11 crore on which SD of ₹ 10 crore was levied. Subsequently, conveyance deed was executed in March 2009 between the same parties for sale of one half of the same land. The adjudicating authority levied one per cent cess of ₹ 2 crore on consideration of ₹ 200.11 crore as differential duty since SD of ₹ 10 crore was already levied on agreement of 2008. However, as per the recitals of the documents, the correct subject matter of this conveyance deed was land admeasuring 3,63,341.42 sq m being one half of 8,83,211 sq m after deducting FSI of 1,55,628.15 sq m already sold. The market value works out to ₹ 43.72 crore on which SD should have been levied.</td>
</tr>
</tbody>
</table>

After we pointed out, COS Enforcement-1, Mumbai stated that the FSI is in two forms, one which is used on the same land and other that may be used on another land in the form of TDR. The purchaser used the FSI in the form of TDR on land other than the RG and hence, it is virtual transfer of FSI in the form of TDR. Thus, the subject matter of the property was TDR and is treated as a movable property. SD at the rate of three per cent was correctly levied on the consideration.

The contention of the Department is not acceptable as the entire land under the IDS scheme was treated as one under the provisions of DCR 1991 and the FSI generated by surrender of RG FSI was to be utilised within the IDS land. Further, the NTC has floated e-tenders for sale of RG FSI hence the transaction was related to sale of FSI and not TDR. It should have been treated as immovable property for levy of SD.

After this being pointed out COS, Thane (Rural) stated that earlier deed of sale of FSI and the present deed of conveyance of one half of the property was executed between the same parties, since SD of ₹ 10 crore was recovered on earlier deed, differential cess of one per cent was recovered on the present deed as the same is executed in pursuance of the earlier deed. Reply is not relevant as in the conveyance deed, land admeasuring 3,63,341.42 sq m being one half of 8,83,211 sq m after deducting FSI of 1,55,628.15 sq m was transferred and SD should have been charged on this area.
3.2.12 Short realisation due to non-addition of unearned income

As per Section 25 of the Act and explanation thereunder, where the property is sold and is subject to mortgage or other encumbrances, any unpaid mortgage money or money charged shall be deemed to be part of the consideration for the sale, whether or not the purchaser expressly undertakes with the seller to pay the same or indemnify the seller if the seller has to pay the same.

During the test check of cases adjudicated/registered in three offices (COS Nasik, SR XV Pune and SR Niphad) we noticed in the recitals of six out of the seven cases that the landholders have accepted the consideration mentioned in the instrument, as the purchasers have agreed to pay unearned income\(^{21}\) of ₹ 5.52 crore. In one instrument, the purchaser had already made payment of unearned income on behalf of the seller in addition to the agreed consideration. However, while levying SD, the adjudicating/registering authorities have not considered the amount of unearned income in addition to the consideration resulting in short levy of SD of ₹ 24.16 lakh.

This also had an effect on preparation of ASR as the data of cases where the consideration was more than the market value remained unreported.

In the exit conference the Principal Secretary directed the COS/SRs to submit the replies. SR Haveli XV, Pune accepted (November 2012) the omission. Reply from remaining two offices has not been received (January 2013).

3.2.13 Internal control

3.2.13.1 Loss of revenue due to delay in circulation of notification

As per Registration Act, 1908, registration fee (RF) is leviable on registration of instruments at the rate of one per cent on the market value of the property or the consideration whichever is higher, subject to maximum of ₹ 30,000. Government in R&FD by notification dated 16 February 2009 deleted the restriction of “subject to maximum of ₹ 30,000” with effect from 17 February 2009.

We found that implementation of the said notification from 17 February 2009 was stayed by the Government from 1 March 2009. Thus, the notification was operative from 17 February to 28 February, 2009. During the scrutiny of information received from 35 out of 37 selected SR offices, we noticed that 19 SRs applied pre-revised rates of registration fee in respect of 137 instruments involving market value/consideration more than ₹ 30 lakh, which were registered between 17 February 2009 and 28 February 2009. This resulted in short realisation of registration fee of ₹ 98.21 lakh.

\(^{21}\) As per Government Resolution (GR) of 9 July 2002 issued by Revenue and Forest Department, on granting permission to sell Government land, the occupant of land shall pay unearned income at 50 per cent of market value of land as on date of order granting such permission or price realised by way of sale, whichever is higher.
In the exit conference the Principal Secretary accepted the observation. However progress made in recovery has not been received (January 2013).

### 3.2.13.2 Delay in disposal of revision cases

Information obtained from IGR office revealed that 377 cases were pending for revision at the level of CCRA for a period ranging from one year to 20 years as detailed in the table below:

<table>
<thead>
<tr>
<th>Age of pendency</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-20 years</td>
<td>64</td>
</tr>
<tr>
<td>1-10 years</td>
<td>303</td>
</tr>
<tr>
<td>Below 1 year</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>377</td>
</tr>
</tbody>
</table>

Thus, 377 cases were pending due to failure on the part of Department to expedite the disposal of revision cases. Further, there was no system to safeguard the revenue, as the risk of the properties being transferred before finalisation of cases cannot be ruled out. In such an event, recovery of the deficit SD, if any, would never be possible.

### 3.2.13.3 Inadequate internal audit and internal inspection

As per the instructions issued by IGR, Pune internal audit wing is required to conduct monthly audit of six offices and DIGs/JDRs are required to inspect two offices of SRs per month. An effective internal audit wing always acts as a deterrent to the occurrence of any major irregularity.

We noticed from the information furnished by IGR that as against yearly target of 72 units, in year 2010, only six audits were conducted and in the year 2011, only 29 units were audited. Information for the period from 2007 to 2009 has not been furnished.

As far as inspection of the SR offices to be conducted by DIG (for offices of SRs in Mumbai region) and JDR (for offices of SRs in other regions) are concerned, we noticed from the information furnished that during the period between 2007 and 2011, only JDR, Latur has achieved the target of 120 inspections. Three JDRs (Thane Urban, Thane Rural and Aurangabad) did not
conduct any inspection. JDR Pune Urban, JDR Pune Rural, JDR Amravati and JDR Nagpur Urban had conducted inspection of 14, 40, 41 and 16 SRs respectively as against 120 SRs each. Information from JDR Nashik and Nagpur Rural is still awaited. Information on inspection to be conducted by DIG has not been received. Thus, though system of internal audit and inspection is in place, it has not been effectively implemented.

3.2.14 Conclusion

The above findings reveal that the department needs to improve its system of preparation of rates for ASR on scientific basis. A reliable data base is essential for which monitoring system needs strengthening. A module needs to be developed for transmitting of data to the DDTP/ADTP. We also noticed different methods for valuations including those in Industrial areas. A uniform system of valuation is required to be prescribed so that the valuations made are transparent and correct. Periodical internal audit and inspection are also required to facilitate better compliance.

3.2.15 Recommendations

The Department/Government may consider;

- developing a module in “SARITA” for transmitting the data in respect of the transactions wherein the consideration was higher than the market value as per ASR to the DDTP/ADTP to facilitate trend analysis in preparation of ASR of the next year;

- set up a system to ensure that ASR rates are based on the rates for entire year by specifying 12 months data for preparation of ASR on uniform basis every year;

- analysing the reasons for variation between the market value as per the ASR and the price realised in open market and initiate steps to minimise such variation; and

- prescribing a uniform system of valuation by preparing the necessary guideline for the ASR to bring uniformity in determining market value of properties in development agreement and those in MIDC areas so that the valuations made are transparent and correct.

All the above recommendations were accepted by the Government in the exit conference.
3.3 Audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.

3.4 Non-observance of the provisions of Act/Rules

The provisions of the Bombay Stamp Act, 1958 and Government notifications and instructions require:-

i. Levy of stamp duty on market value of property;
ii. Levy of stamp duty at prescribed rate; and
iii. Levy of stamp duty as per the substance and real nature of transaction.

We observed that the registering authorities did not observe some of the above provisions at the time of registration of documents in cases mentioned in the succeeding paragraphs.

3.4.1 Short levy of stamp duty due to incorrect application of rate

Superintendent of Stamps, Mumbai

As per section 33 of Bombay Stamp Act (BS Act), 1958, if an instrument chargeable with duty is produced or comes in the performance of any person having authority to receive evidence shall impound the instrument, if it appears to him that such instrument is not duly stamped. Further, stamp duty (SD) on development agreement is leviable at the rate of one per cent upto 4 June 2008 and thereafter, at the rate of five per cent as leviable on conveyance on the market value of the property or the consideration, whichever is higher. The market value of the property is worked out by applying the rates of the ready reckoner applicable to the area in which the property is situated.

During the test check of cases of impounding in November 2009 we noticed that five instruments of development agreement were impounded and the Collector of Stamps levied stamp duty of ₹ 2.03 crore at the rate of one per cent on the market value of ₹ 202 crore treating the date of execution of agreement prior to 5 June 2008. We noticed that:

- The date of execution was either not mentioned in the document or mentioned in ink on photocopy without proper attestation by the executors.
- The date of impounding was not recorded in the register.
- The endorsement/certificate under section 32 was given by the Collector of Stamps, Enforcement-II Mumbai on 21 June 2008 but
while putting endorsement as “IMPOUNDED under section 33” he failed to scribe the date at place below his signature.

- No application of submission of document under action of impounding was available on record.
- Subject document bears no date of impounding as mandated for the purpose of changeability of stamp duty on the document.

Thus, stamp duty on the instruments should have been charged at the rate of five \textit{per cent} amounting to ₹ 10.10 crore. Incorrect application of rate by not exhibiting the date of execution led to short levy of stamp duty of ₹ 8.07 crore.

After we pointed out (December 2009), the Inspector General of Registration (IGR), Pune accepted the omission in September 2011 and directed to recover the deficit stamp duty. While delivering the judgment IGR Pune stated that there was gross negligence on the part of Lower Authority in processing the file and performing official duty and directed to initiate independent administrative enquiry and necessary action. The report on realisation of deficit stamp duty has not been received (October 2012).

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

\textbf{3.4.2 Short levy of stamp duty due to misclassification of instrument}

\textbf{Joint Sub Registrar, Haveli-I, Pune, Joint Sub Registrar, Haveli-13, Pune, Joint Sub Registrar-I, Ulhasnagar, District Thane, Collector of Stamps, Borivali, Mumbai and Superintendent of Stamps, Mumbai}

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on instrument of conveyance and development agreement is leviable at the rate of five and one \textit{per cent} respectively on the true market value of the property. Where in the case of agreement to sell an immovable property, the possession of immovable property is transferred or agreed to be transferred to the purchaser, such agreement shall be deemed to be a conveyance. Further, for charging stamp duty, the instrument is not to be treated by the name it appears but by the substance or real nature of the transaction as derived from its recitals. Maharashtra Registration Manual also provides that if the owner agrees to sell the property to the developer in the development agreement it should be treated as an agreement to sell and charged as conveyance.

\textbf{3.4.2.1 During the test check of registered documents of Joint Sub Registrar Haveli-I, Pune in January 2009, we noticed that an agreement of development was executed and registered in March 2007. The Department levied stamp duty of ₹ 17.50 lakh at the rate of one \textit{per cent} on the consideration value of ₹ 17.50 crore. We noticed from the recitals of instrument that:}

- The owners agreed for absolute transfer of land along with building thereon in lieu of consideration, which includes the cost of construction.
• Developers are entitled to either demolish or make use of the structures as they may deem fit.

• The developers have all the rights of future conveyance of the property etc.

Therefore, the instrument should have been treated not as agreement of development but as an agreement to sale on which stamp duty of ₹ 87.50 lakh at the rate of five per cent was leviable. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 70 lakh.

After we pointed out (February 2009), the Joint District Registrar, Grade-I, Pune city accepted the omission in May 2010 and directed to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on recovery has not been received (January 2013).

3.4.2.2 In another case, during the test check of registered documents of Joint Sub Registrar, Haveli-13, Pune in February 2009, we noticed that an agreement of development was executed and registered in May 2007. The Department levied stamp duty of ₹ 2.16 lakh at the rate of one per cent on the consideration of ₹ 2.16 crore.

We noticed that the owners transferred the right to develop the land, construct residential/ commercial tenements on it and sell them or sell the vacant land without prior consent/confirmation of the owner. The owners had handed over the possession of land on permanent basis. The instrument should have been treated as an agreement to sale on which stamp duty of ₹ 10.80 lakh at the rate of five per cent was leviable. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 8.64 lakh.

After we pointed out (March 2009), the Inspector General of Registration, Pune accepted the omission in June 2011 and directed to recover the deficit stamp duty. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

3.4.2.3 During the test check of registered documents (November 2009) in Joint Sub Registrar-I, Ulhasnagar, District Thane, we noticed that 128 instruments of power of attorney executed on stamp papers of ₹ 100 and ₹ 200 were registered between June 2008 and December 2009. Sub Registrar classified these
instruments as general power of attorney and levied stamp duty aggregating ₹ 0.16 lakh and registration fees aggregating ₹ 0.13 lakh. We noticed from the recitals of document that the power of attorney were executed without consideration in favour of persons other than close relatives authorising them to sign sale agreement or sale deed in favour of any person intending to purchase their immovable properties, execute and register sale deed in favour of any person. The instruments should have been classified under amended article 48(f) (ii) (b) on which stamp duty of ₹ 70.29 lakh and registration fee of ₹ 14.18 lakh was leviable at the rate of five and one per cent respectively. Thus, misclassification of instruments led to short levy of stamp duty of ₹ 70.13 lakh and registration fee of ₹ 14.05 lakh.

After we pointed out (December 2009), the Joint District Registrar Class-I, Thane accepted the omission in March 2010 and intimated (December 2011) after reviewing similar cases at our instance that apart from 128 cases noticed by us, short levy of stamp duty and registration fees amounting ₹ 9.21 crore and ₹ 1.65 crore respectively was noticed in 784 such instruments registered in 2008 and 1072 instruments registered in 2009. The report on realisation has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.2.4 During the test check of adjudicated cases of Collector of Stamps, Borivali, Mumbai in August 2009, we noticed that a power of attorney executed in June 2004 and registered in July 2004 stamped with stamp duty and registration fee of ₹ 100 each was presented for adjudication in April 2007. The adjudicating authority classified the instrument as Power of Attorney for development and levied stamp duty of ₹ 4.80 lakh at the rate of one per cent on market value of ₹ 4.80 crore. Penalty of ₹ 0.19 lakh was also levied. We noticed from the recitals of document that the owners have entered into a Memorandum of Understanding to convey and transfer the property to the Attorney and that the right, title and interest in property have been transferred. Hence, the instrument should have been classified as conveyance and levied stamp duty of ₹ 48.05 lakh and registration fee of ₹ 0.30 lakh. Thus, misclassification of instrument led to short levy of stamp
duty of ₹ 43.25 lakh and registration fee of ₹ 0.30 lakh. Penalty of ₹ 35.46 lakh is also leviable.

After we pointed out (September 2009), the Inspector General of Registrations (IGR), Pune accepted the omission in September 2011 and directed the Collector of Stamps, Mumbai to recover the deficit stamp duty and registration fee along with penalty. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

3.4.2.5 During the test check of records (November 2009) in Superintendent of Stamps, Mumbai, we noticed that a supplementary agreement executed between the Firm and the Developers in June 2008 was impounded by the Department. The Department levied stamp duty of ₹ 5.85 lakh at the rate of one per cent on the market value of property as development agreement. We further noticed that the firm and the developer had executed a joint development agreement in March 2005. As per this agreement, out of the premises available for sale and disposal to probable purchasers, “The Firm” shall be entitled to 18 per cent of the constructed premises and remaining 82 per cent shall be of the “Developer”. In the supplementary agreement, the firm has agreed to surrender and relinquish their right to acquire the said 18 per cent of the constructed premises in favour of the developer. The instrument should have been classified as release deed and levied stamp duty of ₹ 54.19 lakh at the rate of five per cent on the correct market value of ₹ 10.84 crore. Thus, misclassification of instrument led to short levy of stamp duty of ₹ 48.34 lakh.

After we pointed out (December 2009), the Inspector General of Registration, Pune accepted the omission in September 2011 and directed to recover the deficit stamp duty. The report on recovery has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).
Incorrect and irregular exemption of stamp duty

3.4.3 Incorrect exemption of stamp duty

Sub Registrar, Palghar, District Thane

The Government of Maharashtra under notification of June 2007 remits stamp duty on instruments of hypothecation, pawn, pledge, deposit of title deeds, conveyance, further charge on mortgage of property, lease, mortgage deed for starting a new industry/extension of existing industry in group C, D and D+ areas and in no industry district, classified as such area under the package scheme of incentives, 2007 introduced under Government resolution Industries, Energy and Labour Department of March 2007. As per the provisions of Bombay Stamp Act, 1958, stamp duty on conveyance of immovable property within limits of rural area is leviable at the rate of three \textit{per cent} on the true market value of the property.

During the test check of registered documents in August 2009, we noticed that an instrument of conveyance was executed in November 2007 for sale of land together with factory building situated at Tarapur industrial area, Palghar, Thane. The Sub Registrar worked out the market value at ₹ 14.62 crore and levied stamp duty of ₹ 24.95 lakh after allowing 50 \textit{per cent} concession under notification of June 2007. We noticed from annexure to Government resolution Industries, Energy and Labour Department of March 2007 that Palghar is classified under “Group A” area which is not covered under above notification and consequently not eligible for exemption of stamp duty. The stamp duty of ₹ 43.86 lakh was leviable on market value of property. Thus, irregular grant of exemption led to short levy of stamp duty of ₹ 18.91 lakh.

After we pointed out (September 2009), the Joint District Registrar Class-I, Thane Rural accepted the omission in December 2011 and directed the Sub Registrar to recover the deficit stamp duty. Although year after year similar observations have been pointed out by us, the Department is yet to put in place a mechanism to avoid recurrence of such cases. The report on realisation has not been received.

The matter was reported to the Government in February 2012; their reply has not been received (January 2013).
3.4.4 Irregular grant of concession on stamp duty

Collector of Stamps, Mumbai

The Government of Maharashtra under notification of October 2007 reduces fifty per cent of stamp duty chargeable under clause (b) of Article 25 of the Schedule I to the Bombay Stamp Act (BS Act), 1958 on the instrument of first conveyance of land executed for starting of new tourism unit or expansion of existing tourism unit in prescribed areas/zone. A tourism unit shall mean units certified by Maharashtra Tourism Development Corporation Limited. As per the provisions of BS Act, 1958, stamp duty on conveyance and transfer of lease by way of assignment is leviable at the rate of five per cent on the true market value of the property.

During the test check of registered documents in May 2011, we noticed that an unexecuted deed of assignment of lease cum conveyance for land along with building situated at Lower Parel, Mumbai for a consideration of ₹ 22 crore was submitted for adjudication. The Collector of Stamps determined the market value at ₹ 22.34 crore and levied stamp duty of ₹ 55.86 lakh after allowing fifty per cent concession under notification of October 2007. We noticed from the contents of instrument that the deed was not an instrument of first conveyance but was transfer of lease by way of assignment which is not covered under the notification. Thus, irregular grant of concession led to short levy of stamp duty of ₹ 55.86 lakh.

After we pointed out (June 2011), the Inspector General of Registration, Pune accepted the omission in December 2011. The report on recovery of realisation has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

3.4.5 Short levy of stamp duty due to undervaluation of property

The market value of the property is worked out by applying the rates of the ASR applicable to the area in which the property is situated.

During the test check (between October 2009 and May 2011) of registered documents (between January 2008 and October 2009), we noticed that undervaluation of property resulted in short levy of stamp duty of ₹ 1.49 crore. The details are mentioned in the following table:
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>O/o the SR</th>
<th>SD leviable (₹ in lakh)</th>
<th>SD levied (₹ in lakh)</th>
<th>SD short levied (₹ in lakh)</th>
<th>Irregularities in brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Joint Sub Registrar City III, Mumbai</td>
<td>131.21</td>
<td>42.50</td>
<td>88.71</td>
<td>The market value on an instrument of lease of land with building for a period of 99 years, was determined as ₹ 8.50 crore. The correct market value based on ASR for the year 2009 applicable to the area in which the property is situated was ₹ 29.16 crore.</td>
</tr>
<tr>
<td>2</td>
<td>Joint Sub Registrar (Class II), No. I, Akola</td>
<td>39.08</td>
<td>20.78</td>
<td>18.30 0.04</td>
<td>On seven instruments of conveyance registered between February 2009 and October 2009, the SR determined market value of ₹ 4.16 crore. The correct market value based on ASR applicable to the area in which the property is situated was ₹ 7.81 crore.</td>
</tr>
<tr>
<td>3</td>
<td>Collector of Stamps, Mumbai</td>
<td>37.17</td>
<td>21.15</td>
<td>16.02</td>
<td>An unexecuted instrument of leave and license for a term exceeding 116 months was adjudicated by the Collector of Stamps. The market value was incorrectly determined as ₹ 16.92 crore instead of ₹ 29.73 crore as per ASR.</td>
</tr>
<tr>
<td>4</td>
<td>Joint Sub Registrar Haveli-VI, Pune</td>
<td>16.55</td>
<td>5.36</td>
<td>11.19</td>
<td>On an instrument of development agreement market value of ₹ 5.36 crore was determined instead of ₹ 16.55 crore.</td>
</tr>
<tr>
<td>5</td>
<td>Joint Sub Registrar VI, Nagpur</td>
<td>10.78</td>
<td>2.97</td>
<td>7.81</td>
<td>On an instrument of conveyance, the SR determined the market value of ₹ 0.54 crore instead of ₹ 1.96 crore.</td>
</tr>
<tr>
<td>6</td>
<td>Joint Sub Registrar-III, Jalgaon</td>
<td>15.47</td>
<td>8.55</td>
<td>6.92</td>
<td>On an instrument of conveyance, the SR determined market value of ₹ 1.71 crore. The correct market value based on ASR for the year 2008 works out to ₹ 3.09 crore.</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>250.26</strong></td>
<td><strong>101.31</strong></td>
<td><strong>148.99</strong></td>
<td></td>
</tr>
</tbody>
</table>

After we pointed out these cases (between November 2009 and June 2011), the Department accepted (between September 2010 and January 2012) the omissions and directed to recover the deficit SD.

The matter was reported to the Government in May 2012 and June 2012; their reply is awaited. However, the SRs intimated (October 2012) that full recovery has been made in cases at serial number three and four of above table. Further, out of seven cases at serial number two, recovery of ₹ 2.61 lakh has been made in one case and in remaining six cases note of incumbrance has been made in the property card.

---

22 Short levy of registration fee of rupees four thousand in one conveyance deed.
3.4.6 Short levy of stamp duty due to incorrect application of section 4 of B.S. Act, 1958

During the test check of registered documents of Joint Sub Registrar, Ilaveli-19, Pune in March 2011, we noticed that a sale deed was executed and registered in April 2009 between owners, purchaser and consenting party for sale of land situated at village Balewadi within the limits of Pune Municipal Corporation for a consideration of ₹ 50 lakh. Prior to execution of this sale deed, the vendors/owners had executed a development agreement in July 2005 with the consenting party referred as developer therein for a consideration of ₹ 50 lakh on which stamp duty of ₹ 0.50 lakh at the rate of one per cent was levied. Thereafter, they decided to sell out the property to the intending purchaser and executed this sale deed in April 2009 with third party namely Nandan Associates. The market value of property as per ready reckoner for the year 2009 works out to ₹ 1.95 crore on which stamp duty of ₹ 9.75 lakh and registration fee of ₹ 0.30 lakh is leviable. However, the Sub Registrar (SR) worked out the stamp duty of ₹ 2.50 lakh at the rate of five per cent on the consideration value of agreement made in 2005 and recovered stamp duty of ₹ 2 lakh after adjusting the stamp duty of ₹ 0.5 lakh paid at the time of development agreement. Incorrect application of section 4 of B.S. Act, 1958 resulted in short levy of stamp duty of ₹ 7.75 lakh and registration fee of ₹ 0.30 lakh.

After we pointed out (March 2011), the Joint District Registrar and Collector of Stamps Pune city accepted (January 2012) the short levy. The details of recovery have not been received (January 2013).
The matter was reported to the Government in June 2012; their reply has not been received (January 2013).

### 3.4.7 Short levy of stamp duty due to non-consideration of material alterations

**Joint Sub Registrar Class-II, Nagpur-VI**

During the test check of records in November 2010, we noticed that two development agreements were executed in July and August 1993 for development of 7962.30 sqm leasehold lands situated within the Municipal limits of Nagpur. The development agreements were adjudicated by the Collector of Stamps, Nagpur in October 1997 by working out market value of ₹ 1.35 crore. Since the development agreements were not registered within the prescribed time limit, confirmation deed was executed in March 2009. The Department levied stamp duty of ₹ 6.08 lakh on the market value of ₹ 1.35 crore. On comparing the agreement of August 1993 with the confirmation deed of March 2009, we noticed that material alterations were made in the confirmation deed leading it as transfer of lease and not a development agreement. In confirmation deed the society was referred as “party No.1, the Seller society”, N. Kumar Construction Company Private Limited as “party No.2, the Purchaser” and Link House Industries Limited as “party No.3 the Consenter” whereas the development agreement of August 1993 was executed between the society (party No.1, the seller), Link House Commercials Limited (Developer/party No. 2) and M/s N. Kumar Construction Company (Confirming party/party No. 3). Further, in confirmation deed it was stated that the seller society by virtue of lease deed is the sole and exclusive owner with leasehold ownership rights of the land and agreed to sell the said entire land to the purchaser company (N. Kumar Construction Company Private Limited “the party No.2”); whereas in agreement of 1993 it was stated that the society/party No.1 agreed to permit and the confirming party/party No.3 (N. Kumar Construction Company) has consented and confirmed to assign and permit the developer/party No.2 (Link House Commercials Ltd) to develop the land. We also noticed that based on the agreement, the society executed sale deed with N. Kumar Construction Company Private Limited, the Purchaser on

---

23 **Adjudication** means determining the chargeability of stamp duty on instruments by an authority mentioned in the Act.

24 **Confirmation**: Acceptance of facts of the earlier document by the concerned parties.

25 **Material alteration**: The changes made in the instrument so as to materially or substantially alter the character of the instrument are called material alteration.
March 31, 2009. Further, the clause in the development agreement of 1993 that the developer shall offer 20 per cent of the constructed built up area to the consenter was not included in the confirmation deed. The registering authority completely ignored the material alterations made in the confirmation deeds and levied stamp duty of ₹ 6.08 lakh on the market value of ₹ 1.35 crore. The confirmation deed should have been treated as fresh instrument of transfer of lease by way of assignment chargeable with stamp duty ₹ 49.76 lakh on the current market value of ₹ 9.95 crore on the basis of ready reckoner for the year 2009. Thus, non-consideration of material alterations in instruments led to short levy of stamp duty of ₹ 43.68 lakh.

After we pointed out (December 2010), the Collector of Stamps, Nagpur city accepted the omission in December 2011 and directed the Joint Sub Registrar Class-II, Nagpur-VI to initiate the recovery process. The report on recovery has not been received.

The matter was reported to the Government in March 2012; their reply has not been received (January 2013).

### 3.4.8 Short levy of stamp duty due to incorrect computation of market value

**Jt. Sub Registrar, Haveli – XVII, Pune**

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding ten years but not exceeding twenty nine years, with a renewal clause contingent or otherwise, stamp duty is leviable as on conveyance, on 50 per cent of market value of the property. The market value of the property is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated. The rate of stamp duty for movable and immovable property is three and five per cent respectively.

During the test check of registered documents in March 2011, we noticed that an instrument of lease was executed in January 2009 for lease of premises on first floor at Yashwantrao Chavan Memorial hospital, Pimpri Waghere for a period of twenty years. The Department levied stamp duty of ₹ 7.70 lakh on market value of ₹ 1.54 crore. The details of working of market value were not available on record. The correct market value as per ready reckoner works out to ₹ 4.39 crore. We noticed from the terms of agreement that the lessor also agreed to provide machinery and equipments valuing ₹ 20.64 crore. Stamp duty leviable at the rate of five and three per cent on 50 per cent of market value of movable and immovable property works out to ₹ 10.98 lakh and ₹ 30.96 lakh respectively. Thus, incorrect computation of market value led to short levy of stamp duty of ₹ 34.24 lakh.

After we pointed out (April 2011), the Joint District Registrar and Collector of Stamps Pune City accepted the omission in December 2011 and directed the Sub Registrar to recover the deficit stamp duty. The report on realisation has not been received.
The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

### 3.4.9 Short levy of stamp duty due to non-consideration of commercial complex in determining the market value

**Joint Sub Registrar-VII, Nagpur**

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding twenty nine years stamp duty is leviable as on conveyance, on 90 per cent of market value of the property. During the test check of registered documents in November 2007 we noticed that a supplementary agreement was executed in December 2005 by Maharashtra Industrial Development Corporation (MIDC) granting lease of commercial plot situated in industrial area in favour of M/s Surya Enterprises with the consent of original lessee and was registered on 23 February 2006. Another supplementary agreement was executed on 22 February 2006 by MIDC granting lease of same property in favour of M/s Rai Udyog Limited with the consent of M/s Surya Enterprises and was registered on 23 February 2006. The Department worked out the market value of ₹ 1.72 crore on both the documents and levied stamp duty of ₹ 6.47 lakh.

We noticed from the recitals of the document that the land was originally leased by MIDC to M/s VANRAI by an agreement (referred by the parties as principal agreement) in February 1997. As per clause 3 (m) of the agreement, the lessee shall not directly or indirectly transfer, assign, sell, encumber or part with their interest under or benefit of this agreement without the previous consent in MIDC. Based on this clause, M/s VANRAI requested the MIDC to transfer the said plot and execute an agreement in favour of M/s Surya Enterprises which the MIDC agreed to do upon M/s VANRAI joining such execution as confirming party. Accordingly, MIDC executed supplementary agreement in December 2005 with M/s Surya Enterprises on same terms and conditions of principal agreement. Meanwhile, MIDC granted permission to change the use of industrial land for commercial purpose in September 2004 and commercial complex consisting of shops having a built up area of 7396.87 square meters was completed in January 2006. Thereafter, M/s Surya Enterprises requested the MIDC to transfer the said plot and execute an agreement in favour of M/s Rai Udyog Limited for which the MIDC agreed to do upon M/s Surya Enterprises joining such execution as confirming party. Accordingly, MIDC executed supplementary agreement on 23 February 2006 with M/s Rai Udyog Limited on same terms and conditions of principal agreement. We also noticed that in both the agreements of December 2005 and February 2006 the transfer of lease was for the said plot and the commercial complex constructed thereon. However, the registering authority while valuing stamp duty completely ignored the value of commercial complex amounting ₹ 4.29 crore. Thus, failure to consider the market value of commercial complex resulted in undervaluation and consequent short levy of stamp duty of ₹ 23.17 lakh.
After we pointed out in December 2007, the Inspector General of Registration, Pune accepted the omission in July 2011 and directed the Sub Registrar to recover the deficit stamp duty. The report on recovery has not been received. The matter was reported to the Government in May 2012; their reply has not been received (January 2013).

3.4.10 Short levy of stamp duty due to incorrect application of market rate

Joint Sub Registrar -III, Jalgaon

As per the provisions of Bombay Stamp Act (BS Act), 1958, where the lease including sub-lease is for a period exceeding twenty nine years stamp duty is leviable as on conveyance, on 90 per cent of the market value of the property. The rate of stamp duty for non-residential properties situated in rural areas and within the limits of municipal corporation is three and five per cent respectively. The market value of the property is worked out by applying the rates of ready reckoner applicable to the area in which the property is situated.

During the test check of registered documents in August 2010, we noticed that a lease deed was executed in June 2007 for lease of land for a period of thirty years for municipal solid waste plant. The Department levied stamp duty of ₹ 0.89 lakh at the rate of three per cent on market value of ₹ 29.75 lakh by applying the market rate prescribed for rural area. We noticed that the survey number of property falls under rural area as well as within the municipal corporation limits of Jalgaon for which different market rate is prescribed. We also noticed from the recitals of document that the property is situated within the municipal limits. The correct market value of land, by applying the rates prescribed for municipal limits, works out to ₹ 1.73 crore on which stamp duty of ₹ 8.64 lakh at the rate of five per cent was leviable. Thus, incorrect application of market rate led to short levy of stamp duty of ₹ 7.75 lakh.

After we pointed out in September 2010, the Collector of Stamps, Jalgaon accepted the omission in August 2011. The report on realisation has not been received.

The matter was reported to the Government in April 2012; their reply has not been received (January 2013).

3.4.11 Short levy of stamp duty due to incorrect concession of bulk land

Joint Sub Registrar-VI, Nagpur and Joint Sub Registrar-VIII, Nagpur

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on conveyance deed is leviable on the true market value of the property. The market value of the property is worked out by applying the rates of the ready reckoner applicable to the area in which the property is situated. The ready reckoner prescribes various slabs of concession for valuation of bulk land.

3.4.11.1 During the test check of registered documents of Joint Sub Registrar VI Nagpur in November 2010, we noticed that an instrument of
conveyance was executed in July 2009 for sale of land situated within the limits of Nagpur Municipal Corporation. The Department levied stamp duty of ₹18.82 lakh on market value of ₹3.42 crore worked out by allowing the concession of bulk land. We noticed that land under sale consisted of 52 plots of various sizes and hence, allowing the concession of bulk land was incorrect. The correct market value of land works out to ₹4.83 crore on which stamp duty of ₹26.59 lakh was leviable. Thus, undervaluation of property led to short levy of stamp duty of ₹7.77 lakh.

After we pointed out (December 2010), the Collector of Stamps, Nagpur City accepted the omission in October 2011 and directed the Joint Sub Registrar to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on realisation of deficit stamp duty has not been received (October 2012).

3.4.11.2 During the test check of the registered documents of Joint Sub Registrar-VIII, Nagpur in November 2008, we noticed that an instrument of conveyance was executed in January 2007 for sale of plot situated within the limits of Nagpur Municipal Corporation. The Department determined the market value at ₹3.96 crore by allowing the concession of bulk land and levied stamp duty of ₹21.79 lakh. As the plot under sale is within the sanctioned layout, the concession allowed is incorrect. The correct market value as per ready reckoner for the year 2007 is ₹5.20 crore on which stamp duty of ₹28.61 lakh is leviable. Thus, incorrect allowance of concession of bulk land resulted in undervaluation of property and consequent short levy of SD of ₹6.82 lakh.

After we pointed out (November 2008), the Inspector General of Registration (IGR), Pune accepted the omission in May 2011 and directed the Joint District Registrar, class-I, Nagpur to recover the deficit stamp duty. The Sub Registrar stated that note of incumbrance has been made on the property card. The report on realisation of deficit stamp duty has not been received.

The matter was reported to the Government in January 2012; their reply has not been received (January 2013).

3.4.12 Escapement of stamp duty on earlier transaction

Joint Sub Registrar-VIII, Nagpur

As per the provisions of Bombay Stamp Act (BS Act), 1958, stamp duty on any agreement relating to giving authority or power to a promoter or a developer for construction or development of or sale or transfer of any immovable property, shall be levied at the rate of one per cent on the consideration or market value whichever is higher. As per section 33 of BS Act, 1958, if an instrument chargeable with duty is produced or comes in the performance of any person having authority to receive evidence shall impound the instrument, if it appears to him that such instrument is not duly stamped. Further, as per section 39(b) penalty shall be leviable at the rate of two per cent per month on the deficient portion of the stamp duty.

During the test check of registered documents in November 2010, we noticed that a sale deed was executed and registered in March 2009 for sale of land along with 45 years old building standing
thereon between owners and purchaser with the consent of the developer. The registering authority levied stamp duty of ₹ 33 lakh on consideration of ₹ 6 crore. We noticed from the recitals of document that prior to execution of this deed with the purchaser, the owners executed and registered a general power of attorney (POA) in favour of the developer in September 2007 authorising him to perform various acts including development of property for a consideration of ₹ 5.50 crore. On cross verifying this POA, we noticed that the consideration of ₹ 5.50 crore was not mentioned in the document and stamp duty of ₹ 100 was levied treating the document as POA without consideration.

After we pointed out, District Registrar and Collector of Stamps Nagpur accepted our observation and stated that stamp duty of ₹ 5.50 lakh at the rate of one per cent on ₹ 5.50 crore should have been levied on the said development agreement. He directed the sub registrar to initiate action under section 33 and 39(b). The report on realisation of deficit stamp duty has not been received (January 2013).