

Phone No. 324560:  
Registered.

No. 2701-83/846 -ST.II.,  
Board of Revenue, Punjab,  
Lahore dated the 24th July, 1985.

From

The Secretary (Settlements),  
Board of Revenue, Punjab.

To

The Deputy Commissioner/District Registrar,  
Faisalabad.

Subject: RECOVERY OF STAMP DUTY AND PENALTY ON IN-SUFFICIENTLY  
STAMPED DOCUMENTS.

Reference: Your memorandum No. 440-G/H.R.C, dated the 19th June,  
1983, on the above subject.

MR. MAQBOOL AHMAD SHEIKH, MEMBER (REVENUE), BOARD OF REVENUE, PUNJAB.

MEMORANDUM:

During his inspection of the office of Sub-Registrar, Faisalabad, in December, 1982, the Chief Inspector of Stamps, Board of Revenue, Punjab, impounded the following two documents considering them to have been insufficiently stamped under the Stamp Act.

- i) Lease deed registered on 29.11.1982 at S.No. 18297 in Book No. 1, executed on 1.11.1982, between Sheikh Ishtiaq Mehmood and others (lessors) and Mst. Nawaz Akhtar and others (lessees), in respect of Shop No. 4 in Aisha Centre, Bhawana Bazar, Faisalabad.
- ii) Lease deed registered on 29.11.1982 at S.No. 18305 in Book No. 1, executed on 1.11.1982 between Sheikh Ishtiaq Mehmood and others (Lessors) and Mst. Razia Sultana and others (Lessees), in respect of Shop No. 6 in Aisha Centre, Bhawana Bazar, Faisalabad.

2. The deeds in question had secured leases of two shops for a term of 20 years at an average annual rent of Rs. 9,950/- each. Advance payments of Rs. 1,00,000/- and Rs. 80,000/-, respectively, were also made by way of security for the due performance of the terms and conditions of lease contracts refundable to the lessees or sub-lessees, as the case may be, on surrendering the possession of premises to the lessors. The Chief Inspector of Stamps observed that the two lease deeds were leviable to stamp duty of Rs. 5,800/- and Rs. 4,700/- respectively, under Article 35(c)(1) of Schedule I to the Stamp Act, 1899, as amended. As these lease deeds had been executed on stamp papers valuing Rs. 285/- each, he proposed to the Collector that the

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deficient stamp duty of Rs.5,515/- and Rs.4,415/- respectively might be recovered alongwith penalty not exceeding 10 times the deficient stamp duty, in terms of Section 40 of the Act.

3. The Deputy Commissioner/District Registrar, Faisalabad, is of the view that the security paid by the lessee cannot be called money advanced and leases are for the rent fixed only which render them leviable to stamp duty under Article 35(a) and not under Article 35(c). He has referred to the commentary on the stamp Act by Sardar Muhammad Iqbal Mokal (1979 Edition) saying that the deposit to be refunded at the end of term is to fall under Article 35(a), i.e. as on a bond on the average annual rent reserved. He is, therefore, of the view that there is no deficiency on the documents, except to the extent of Rs.15/- each, which might be recovered alongwith penalty equal to 10 times of the deficiency.

4. The matter has been placed before the learned Meber(Revenue), Board of Revenue, Punjab, as Chief Revenue Authority under the Stamp Act. He has observed that the whole point for decision in this case hinges on the point whether the amount of security deposited under a lease for the due performance of the terms and conditions thereof and refundable on the expiry of lease should be considered as money advanced so as to attract Article 35(c)(i) of Schedule I of the Stamp Act. In case reported as A.I.R(30)1943 Madras 643, it was held that a lease at a monthly rent of Rs.250/- providing that the lessee had to deposit one month's rent with the lessor as a security for future payment of rent was chargeable under clause (c) of Article 35. This decision is further supported by a decision taken on a reference by the Full Bench of the same High Court reported as A. I.R 1961 Madras, 210. It refers to the <sup>case</sup> reported as A.I.R. 1952 Bom.285, in which Mr.Chagla, C.J.had observed as follows:-

"If the lessee pays an amount in respect of the rent prior to the liability arising, that payment is nothing more than an advance made by the lessee to the lessor. He makes an advance, and the agreement is that the lessor will satisfy the lessee's

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liability out of that amount when that liability arises. But the legal character of that payment is not rent, but moneys advanced by the lessee to the lessor".

In the instant cases, the lessees have paid amount as security for the due performance of the terms and conditions of the lease, and one of the conditions is to pay rent till the 20th of each current month. The condition of its being refundable on the expiry of the term of the leases which initially extends to 20 years with option of further extension is immaterial, because it is one of the objects of the security to satisfy the lessee's liability out of that amount when that liability arises. Obviously, there can be no other purpose of tendering the security.

5. In the circumstances, the learned Member (Revenue) has ruled that the amounts of security deposited by the lessees in addition to the rent reserved bring the two leases within the mischief of Article 35(c)(i) of Schedule I to the Stamp Act, and, as such, have been correctly assessed to Stamp duty by the Chief Inspector of Stamps. He has further ordered that the deficient stamp duty of Rs.5,515/- and Rs.4,415/- in the two respective lease deeds may be recovered alongwith penalty equal to 10 times of the deficient stamp duty.

6. Lease deeds registered at No.18297 and 18305, in question received with your memorandum under reference are returned herewith in original.

7. Please acknowledge receipt.

(M.A. LONE)  
Secretary (Settlements),  
Board of Revenue, Punjab.

No.2701-83/847-ST.II.,

A copy is forwarded for information and further guidance to:-

1. All Commissioners of Divisions, in the Punjab,
2. All Deputy Commissioners in the Punjab,
3. All Sub-Registrars, in the Punjab,
4. I.G.R. Punjab, Lahore,
5. S.M. Isa Masood Shah, Chief Inspector of Stamps, BOR., Pb.,
6. Senior Inspectors of Stamps/Inspector of Stamps in the Punjab.

(M.A. LONE)  
Secretary (Settlements)  
Board of Revenue, Punjab.