

# CHAPTER-V



## CHAPTER V

### STAMP DUTY AND REGISTRATION FEES

#### 5.1 Tax administration

Receipts from stamp duty and registration fees are regulated under the Indian Stamp (IS) Act, 1899; Indian Registration (IR) Act, 1908 and the rules framed thereunder as applicable in West Bengal and are administered at the Government level by the Principal Secretary, Finance (Revenue) Department. The Inspector General of Registration (IGR) is the head of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department who is empowered with the task of superintendence and administration of registration work. He is assisted by one Joint Inspector General of Registration (JIGR), one Joint Commissioner of Stamp Revenue (JCSR), seven Deputy Inspectors General of Registration (DIGR), 20 District Registrars (DR), 26 District Sub-Registrars (DSR) and 184 Additional District Sub-Registrars (ADSR).

#### 5.2 Internal audit

Internal Audit Wing (IAW) of an organisation is a vital component of its internal control mechanism to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

Audit observed that the Directorate of Registration and Stamp Revenue has no IAW. Deficiencies such as detected in paragraphs 5.4 to 5.7 occurred unchecked in the absence of internal control.

#### 5.3 Results of audit

In 2014-15, test check of the records of 54 units of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department, showed non/short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹ 76.68 crore in 244 cases, which fall under the categories given in **Table 5.1**.

**Table 5.1**

(₹ in crore)

SL No.	Categories	Number of cases	Amount
1.	Misclassifications of documents/property	25	31.05
2.	Non-levy of additional stamp duty	4	11.76
3.	Furnishing of incorrect particulars of amenities /car parking space	19	4.04
4.	Under-valuation of property	19	3.44
5.	Splitting of property during registration	33	0.67
6.	Others	144	25.72
	<b>Total</b>	<b>244</b>	<b>76.68</b>

During the course of the year, the Department accepted non-realisation/blockage of revenue and other deficiencies of ₹ 31.14 crore in 125 cases, of which 117 cases involving ₹ 30.70 crore were pointed out during the year 2014-15 and the rest in earlier years. An amount of ₹ 18.39 lakh was realised in eight cases at the instance of audit.

A few illustrative cases involving ₹ 15.13 crore are discussed in the following paragraphs.

#### 5.4 Short levy of stamp duty due to incorrect mapping of business rules in the CORD software

Under Article 23 of Schedule-IA to the Indian Stamp (IS) Act, 1899 as applicable in West Bengal, the rate of stamp duty on deed of conveyance is as under:

Property situated in	Market value of the property (in ₹)	Rate of stamp duty
(a) areas to which the Kolkata Improvement Act, 1911 or Howrah Improvement Act, 1956 extends	>25,00,000	7 per cent
	≤25,00,000	6 per cent
(b) areas under any Municipal Corporation/ Municipality/ Notified Area other than those included in (a) above	>25,00,000	7 per cent
	≤25,00,000	6 per cent
(c) areas other than those included in (a) or (b)	>25,00,000	6 per cent
	≤25,00,000	5 per cent

Further, as per Articles 5(d), 33, 35 and 63 of the Schedule-IA, same rates are applicable for agreements of sale, gift made to any person other than family member, lease granted for a period exceeding five years and transfer of lease. All assessments are made through a software called CORD (Computerisation of Registration of Documents) used in all Registration Offices (ROs).

From analysis of CORD data of sale deeds/agreements, gift deeds and lease deeds obtained from three<sup>81</sup> ROs, Audit observed (between October 2013 and November 2014) the following which indicate incorrect mapping of business rules in the CORD software:

**5.4.1** In 6,316 cases, documents were executed and registered between April 2012 and March 2014 involving market value of ₹ 1,036.19 crore in respect of properties situated in ‘panchayat areas’ of Howrah district. The Directorate of Registration and Stamps assessed stamp duty through CORD at the rate of five per cent or six per cent for these properties. Since the Howrah Improvement Act, 1956 extends to the whole of Howrah district, stamp duty was leviable at the rate of six per cent or seven per cent under the category (a) of Article 23 of Schedule-IA to the IS Act.

**5.4.2** In another 1,084 cases, documents were executed and registered between September 2012 and March 2014 involving market value of ₹ 148.21 crore in respect of properties situated in Joka-I and II Gram Panchayats. The Directorate of Registration and Stamps assessed stamp duty through CORD at

<sup>81</sup> ADSR, Behala; DSR, Howrah and Registrar of Assurance, Kolkata.

the rate of five *per cent* or six *per cent* for these properties. Since these two Gram Panchayats were incorporated under the jurisdiction of Kolkata Municipal Corporation (KMC) with effect from 1 September 2012<sup>82</sup>, stamp duty was leviable at the rate of six *per cent* or seven *per cent* under the category (b) of the Article 23 of Schedule-IA to the IS Act.

Thus, CORD assessed stamp duty at one *per cent* lower rate in each case due to incorrect mapping of business rules in the software. This resulted in short levy of stamp duty of ₹ 11.73 crore.

After Audit pointed out the cases, the Department did not furnish any specific reply (October 2015).

The cases were reported to the Government between January and December 2014 followed by reminders issued up to February 2015; their reply has not been received (October 2015).

## 5.5 Short levy of stamp duty and registration fees due to misclassification of deeds

**5.5.1** Article 33(i) of Schedule-IA to the IS Act, 1899 as applicable in West Bengal provides that any instrument of gift in favour of family members<sup>83</sup> is chargeable with stamp duty at the rate of 0.5 *per cent* of the market value of the property. However, Article 33(ii) of the Act provides that if the gift of any property is made to any other person, stamp duty is chargeable as in the case of sale.

During scrutiny of deeds in the office of the Additional District Sub-Registrar (ADSR), Sealdah, Audit found in May 2014 that in two deeds (registered in August and September 2011), the relation between the donor and the donee did not fall within the ambit of family members. However, the deeds were misclassified as gift deeds in favour of family members and stamp duty of ₹ 1.14 lakh was levied instead of ₹ 13.05 lakh leviable. Due to such misclassification of deeds, there was short levy and consequent short realisation of stamp duty of ₹ 11.91 lakh.

After Audit pointed out the cases, the Department admitted (May 2014) the audit observation but did not furnish any report on further action taken (October 2015).

**5.5.2** Under Section 5 of the IS Act, 1899, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which individual instruments, each comprising or relating to one of such matters, would be chargeable under the Act. Schedule-IA of the Act prescribes the rates of stamp duty for development agreements and lease deeds under Articles 5 and 35 respectively. Section 105 of the Transfer of Property Act, 1882 defines a lease of immovable property as transfer of rights to enjoy such property for a certain time or in perpetuity in

<sup>82</sup> Government of West Bengal Notification No. 203/MA/O/C-5/CC/IL-1/2011 dated 28 May 2012.

<sup>83</sup> Family member means parent, spouse, son, daughter, son's wife, grandson, granddaughter, brother or sister. (Explanation below Article 33 of Schedule-IA of IS Act as applicable in West Bengal)

consideration of money to be rendered periodically to the transferor by the transferee.

During scrutiny of deeds in the office of the Registrar of Assurance, Kolkata in October 2013, Audit found that one deed (registered in July 2012) was classified as development agreement and accordingly stamp duty and registration fees of ₹ 0.75 lakh was levied and realised. However, from the recitals of the deed it was observed that in addition to the development of the property, the rights to use the immovable property were also transferred to the developer for a period of 25 years on an annual payment as user fees. Hence, the deed contained two distinct matters – (a) development agreement and (b) lease as the transfer of property falls in the definition of lease as defined in Transfer of Property Act. The stamp duty and registration fees leviable on the lease stood at ₹ 2.38 crore. Thus, due to misclassification of the deed as development agreement only instead of a combination of development agreement and lease resulted in short levy of stamp duty and registration fees of ₹ 2.38 crore.

After audit pointed out the case, the Department admitted (November 2013) the audit observation but did not furnish any report on further action taken (October 2015).

The cases were reported to the Government in August 2014 followed by reminders issued up to February 2015; their reply has not been received (October 2015).

#### **5.6 Irregular allowance of remission on subsequent transfer of flats of Co-operative Housing Societies**

The Government of West Bengal vide a notification (2014), remitted stamp duty and registration fees on the amount of difference between the cost of construction of the property of a Co-operative Housing Society and its present market value on execution of deed of conveyance of the property by the Society in favour of its members. However, the benefit of remission is not applicable in case of second or subsequent transfer of such property.

During scrutiny of deeds in the office of the District Sub-Registrar (DSR)-III, Alipore, Audit found (July 2014) that in 13 cases remission of stamp duty and registration fees was allowed on transfer of flats in March 2014 of five Co-operative Housing Societies. However, a cross-checking of the names of purchasers of these flats with the Co-operation Directorate (under which Co-operative Housing Societies are registered) revealed that these purchasers were not the initial members of the societies but the subsequent transferees of the property. Hence, the benefit of remission was not applicable to these purchasers and stamp duty and registration fees of ₹ 63.17 lakh was chargeable instead of ₹ 11.20 lakh. This resulted in irregular allowance of remission of ₹ 51.97 lakh.

After Audit pointed out the cases, the Department did not furnish any reply (October 2015).

The cases were reported to the Government in August 2014 followed by reminders issued up to February 2015; their reply has not been received (October 2015).

### 5.7 Short realisation of interest on delayed payment of stamp duty

Under Rules 3 and 5 of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, a registering authority can refer a case to the Collector/Deputy Inspector General of Registration (DIGR) for determination of the market value of property. The Collector/DIGR shall determine the market value of the property and send notice to the executant for payment of deficit stamp duty within the specified date. Further, the executant shall be liable to pay interest at the rate of two *per cent* for each month of default from the month following the month in which payment of deficit stamp duty was to be made upto the month preceding the month of full payment of such duty.

During scrutiny of deeds in District Sub-Registrar (DSR)-III, Alipore, Audit found in July 2014 that in two cases of deeds of conveyance, DSR-III determined the market value of the properties as ₹ 9.61 crore and deficit stamp duty as ₹ 52.29 lakh<sup>84</sup>. As the executants disputed the market value determined by DSR-III, the matters were referred (under Rule 3) to the DIGR, Range-I in October 2009. DIGR determined (November 2009) the market value of the properties at ₹ 9.15 crore and issued notices to the executants directing them to make payment of the deficit stamp duty of ₹ 49.07 lakh by December 2009. The executants did not pay the demanded deficit stamp duty by due date. After 42 months (July 2013), instead of making payment of ₹ 90.29 lakh (demanded stamp duty of ₹ 49.07 lakh and accrued interest thereon of ₹ 41.22 lakh), the executants made payment of ₹ 52.29 lakh as per the earlier demand and the registering authority registered the deeds without levying interest, resulting in short realisation of interest of ₹ 38 lakh.

After Audit pointed out the cases, the Department did not furnish any specific reply (October 2015).

The cases were reported to the Government in August 2014 followed by reminder issued up to February 2015; their reply has not been received (October 2015).

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<sup>84</sup> After deducting the cost of the stamps already paid by executants.

