

Chapter V: Stamp Duty and Registration Fees

5.1 Results of audit

Test check of the records of stamp duty and registration fees during the year 2008-09, revealed irregularities amounting to Rs. 42.32 crore in 316 cases which fall under the following categories:

(In crore of rupees)

Sr. no.	Category	Number of cases	Amount
1.	Short levy of stamp duty and registration fees on lease deeds	12	0.10
2.	Non/short levy of stamp duty and registration fees	204	8.51
3.	Misclassification of instruments	33	1.85
4.	Other irregularities	67	31.86
Total		316	42.32

During the year 2008-09, the department accepted the audit observations involving Rs. 31.13 lakh in 24 cases and recovered Rs. 36.97 lakh in 88 cases pertaining to the audit findings of the earlier years.

A few illustrative audit observations involving Rs.34.83 crore are mentioned in the succeeding paragraphs.

5.2 Audit observations

Scrutiny of records of various registration offices revealed several cases of non-compliance of the provisions of the Indian Stamp Act, 1899 (IS Act) and the Registration Act, 1908 and Government notifications/instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided, detected and corrected.

5.3 Non-compliance of provisions of the Acts/Rules

The provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 require:-

- (i) levy of registration fee;*
- (ii) levy of stamp duty at the prescribed rates; and*
- (iii) levy of stamp duty and registration fee on minimum market value of land/properties.*

The registering authorities did not observe some of the above provisions in some cases at the time of registration of documents as mentioned in the paragraphs 5.3.1 to 5.3.4. This resulted in short levy/evasion of stamp duty and registration fee of Rs. 31.90 crore.

5.3.1 Incorrect remission of the registration fee

The Registration Act 1908 (Act) empowers the State Government to fix the fee for the registration of various documents and other instruments enumerated in clauses (a) to (i) of section 78. There is no provision in the Act empowering the State Government to remit the fees payable in respect of any matter enumerated in clauses (a) to (i) of the Act. The registration fee was leviable at the prescribed rates subject to a minimum of Rs. 50 and maximum of Rs. 10,000.

The State Government issued notifications for remission of the registration fee leviable on registration of the documents for transfer of land in favour of charitable institutions in February 1981 and for securing loans for specified purposes in June 2001 under section 78 of the Act.

The information collected from seven Collectors¹ and three Sub Registrars² (SRs) between July 2007 and June 2008 revealed that 64,187 deeds³ of mortgage (without possession of the property) were registered for securing the loans availed by the farmers from the banks and execution of deeds for transfer of land in favour of charitable institutions during the years 2004-05 to 2006-07. But no registration fee was charged under the cover of the aforesaid

¹ Faridkot, Fatehgarh sahib, Jalandhar, Kapurthala, Ludhiana, Mansa and Mohali.

² Pathankot, Patran and Patti.

³ Does not include the number of deeds executed in Kapurthala, Jalandhar and Ludhiana districts.

notifications. Since these notifications issued were not in conformity with the provisions of the Act, the department instead of bringing out these facts to the notice of the Government, allowed remission of registration fee of Rs. 30.09 crore.

The Government to whom the case was pointed out in February 2008, intimated in January 2009 that Section 21 of the General Clauses Act, 1897 (GC Act) empowers the State Government to add, amend, vary or rescind the table of fees so prepared. However, it was noticed that the Government issued orders for remittance of the fee under section 78 of the Act, which did not empower the State Government to remit or exempt or reduce the fee and there was no explicit provision/clause in the GC Act empowering the Government to remit the fees payable. Some of the states⁴ have already amended the Act by inserting a provision under section 78 which empowers the Government to remit the fees payable in respect of any matter enumerated in clauses (a) to (i) under section 78 either generally or for any particular class of persons.

5.3.2 Short levy of stamp duty and registration fee

Under the Punjab Stamp Rules, 1983 as amended in 2002, the Collector of a district in consultation with the committee of experts as defined thereunder, fixes the minimum market value of land/properties, locality wise and category wise in the district, for the purpose of levying stamp duty on the instruments of transfer of any property.

During test check of the records of 17 SRs/Joint Sub Registrars⁵ (JSRs), it was noticed between November 2007 and November 2008 that in respect of 28 conveyance deeds registered during 2005-06 to 2007-08 for the sale of residential/ agricultural/ commercial properties, sheds and built up houses etc., stamp duty was charged on the consideration of Rs. 7.40 crore set forth in the instruments instead of Rs. 25.53 crore being the value of land determinable on the basis of price fixed by the respective Collectors. This resulted in short levy of stamp duty and registration fee of Rs. 1.72 crore.

The matter was reported to the department and the Government between August 2008 and February 2009; their replies have not been received (September 2009).

5.3.3 Non-levy of additional stamp duty

By a notification issued in February 2005, the Government levied additional stamp duty at the rate of three *per cent* under the IS Act on an instrument, if such an instrument is executed in the area falling within the jurisdiction of the municipality and the municipal corporation or within five kilometres of the outer limit of the municipality and the municipal corporation as the case may be or the area as may be specified by the collector.

⁴ Goa, Kerala, Pondicherry, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

⁵ Abohar, Adampur, Amritsar-II, Batala, Bhawanigarh, Dasuya, Fatehgarh Sahib, Hoshiarpur, Jalandhar I and II, Kapurthala, Kotkapura, Ludhiana (West), Mahilpur, Malerkotla, Patiala and Rajpura.

During test check of the records of two SRs⁶ for the years 2005-06 to 2007-08, it was noticed between December 2006 and August 2008 that four instruments were executed between April 2005 and May 2007 in the area falling within five kilometres of the outer limit of the municipal corporations and municipalities for a total consideration of Rs. 2.34 crore without levy of the additional stamp duty. This resulted in non-levy of additional stamp duty of Rs. 5.58 lakh.

After the cases were pointed out in December 2006, the SR Faridkot stated that recovery would be made. No reply was furnished by the SR Ludhiana (West).

The matter was reported to the department and the Government in January 2009; their replies have not been received (September 2009).

5.3.4 Short levy of stamp duty on lease deed

Under the provisions of IS Act, stamp duty at the prescribed rate is chargeable on an instrument of lease on the basis of the periods of lease and the amount of the average annual rent reserved. The IS Act further provides that where the lease is granted for a fine or premium or for the money advanced in addition to the rent reserved, duty is to be charged on the value of such fine or premium or money advanced as set forth in the lease deed.

During test check of the records of SR Patiala for the year 2007-08, it was noticed in May 2008 that an instrument of lease was registered in August 2007 for Rs. 90 lakh of premium/money advanced. The stamp duty on the rent reserved had correctly been levied. However, stamp duty on the premium/money advanced of Rs. 90 lakh was not levied. This resulted in short levy of stamp duty of Rs. 2.70 lakh.

After the case was pointed out in May 2008, the SR stated that the matter would be looked into and recovery would be made.

The matter was reported to the department and the Government in January 2009; their replies have not been received (September 2009).

5.4 Non-compliance of Government notifications

The Government notifications provides for exemption/remission from the levy of stamp duty and registration fee to:-

- (i) charitable institution; and*
- (ii) legal heirs*

Non-compliance of some of the instructions contained in the notifications in some cases as mentioned in paragraphs 5.4.1 and 5.4.2 resulted in incorrect exemption/remission of stamp duty and registration fee amounting to Rs. 32.80 lakh.

⁶ Faridkot and Ludhiana (West).

5.4.1 Incorrect grant of exemption to charitable institutions

By notifications issued in February 1981, the Government exempted from the levy of stamp duty and registration fee on the instruments of transfer of land by sale or gift executed in favour of a charitable institution established for charitable purposes within the meaning of the Charitable Endowments Act, 1890 (Central Act of 1890) for the purpose of construction of roads or buildings of schools, colleges, hospitals and dispensaries on such land.

During test check of the records of six SRs/JSR⁷, it was noticed between December 2007 and December 2008 that stamp duty of Rs. 28.60 lakh including registration fee was not levied on eight conveyance deeds of land valuing Rs. 4.42 crore which were executed between December 2006 and January 2008 in favour of the institutions. These institutions were not charitable institutions within the meaning of the Charitable Endowments Act, 1890. This resulted in incorrect grant of exemption of Rs. 28.60 lakh.

The matter was reported to the department and the Government in January 2009; their replies have not been received (September 2009).

5.4.2 Incorrect remission of stamp duty and registration fee

By notifications issued in December 2001 and November 2006, the State Government remitted the stamp duty chargeable under the IS Act on the instruments executed for the transaction of transfer during life time of an owner of agricultural land and rural residential property to his heirs.

During test check of records of two SRs⁸, it was noticed between November 2006 and July 2008 that two deeds were executed in favour of grandson of brother transferring rural land and sons transferring urban land without levy of stamp duty and registration fee. The remission of stamp duty on transfer of rural land in favour of grandson of brother and transfer of the urban property was not admissible. This had resulted in irregular remission of stamp duty of Rs. 4.20 lakh including registration fee of Rs. 10,000.

After the cases were pointed out in July 2008, the SR Kharar stated that recovery would be made after verification of records. No reply was furnished by the SR Gidderbaha.

The matter was reported to the department and the Government in January 2009; their replies have not been received (September 2009).

5.5 Non-execution of conveyance deeds of plots/flats

Non-observance of terms and conditions of allotment by the allottee resulted in non-realisation of Government revenue of Rs. 2.60 crore.

Under the provisions of Registration Act, all instruments relating to sale or lease of immovable property for any term of one year or more are required to be registered. Freehold commercial/residential plots and built up houses/flats were allotted by Punjab Urban Development Authority (PUDA) through allotments/auction. As per the terms and conditions of allotment, payment

⁷ Amritsar, Dera Bassi, Gurdaspur, Goraya, Mansa and Phillaur.

⁸ Gidderbaha and Kharar.

was to be made on lumpsum basis or in instalments as the case may be. The owner had to execute a conveyance deed in the prescribed form in such manner as may be directed by the Estate Officer, PUDA within three months from the date of final payment.

Information collected from PUDA, Mohali in April 2008 revealed that 205 no due certificates were issued in favour of the allottees of residential/commercial plots and built up houses/flats by PUDA between April 2004 and March 2007 after full and final payment had been made by them. However, conveyance deeds in these cases for a value of Rs. 28.94 crore had not been got executed/registered. This has resulted in non-realisation of stamp duty of Rs. 2.60 crore.

After the cases were pointed out, the Estate Officer, PUDA (now Greater Mohali Area Development Authority-GMADA) intimated in August 2008 that allottees were directed through public notices published in various news papers to get the required conveyance deeds executed. However, the final position of the execution of conveyance deeds was awaited (September 2009).

The matter was reported to the department and the Government in January 2009; their replies have not been received (September 2009).