

## CHAPTER-IV STAMP DUTY

### 4.1 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899, (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Himachal Pradesh and are administered at the Government level by the Principal Secretary (Revenue). The Inspector General of Registration (IGR) is the head of the Revenue Department who is empowered with the task of superintendence and administration of registration work. He is assisted by the 12 Deputy Commissioners and 117 *Tehsildars/Naib-Tehsildars* acting as the Registrars and Sub-Registrars (SR) respectively.

### 4.2 Results of audit

In 2012-13, test check of the records of 62 units of the Revenue Department, showed non / short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹3.32 crore in 112 cases, which fall under the categories given in **Table 4.1**:

Table 4.1

Sr. No.	Categories	₹ in crore)	
		Number of cases	Amount
1.	Incorrect determination of market value of property and irregular exemption on housing loan	22	0.46
2.	Non / short levy of stamp duty and registration fee	60	2.67
3.	Other irregularities	30	0.19
<b>Total</b>		<b>112</b>	<b>3.32</b>

During the course of the year, the Department had accepted under assessments and other deficiencies of ₹2.97 crore in 35 cases which were pointed out in earlier years. An amount of ₹39.20 lakh was realised in 24 cases during the year 2012-13.

A few illustrative cases involving ₹2.83 crore are discussed in the following paragraphs.

### 4.3 Incorrect preparation of valuation report by *Patwaris*

As per clarifications issued by the IGR in July 1997, June 1998 and October 2004, market value of land is to be worked out on the basis of mutations done during the preceding 12 months. Under the IS Act, the market value of land for levy of stamp duty and registration fee is assessed on the basis of classification of land and is calculated in accordance with the procedure given in Appendix-XXI of the Himachal Pradesh Land Record Manual 1992. The registering officer is also required to verify the consideration shown in the sale deeds with valuation reports prepared by the concerned *patwaris*. In October 2004, the IGR further clarified that the average price should be based on the consideration amount or market value whichever is higher.

Audit test checked the documents of sale deeds at 21 SRs<sup>1</sup> between July 2012 and February 2013 and noticed that while preparing the valuation reports had taken incorrect / lower value of the land instead of higher value mentioned in the mutations done during preceding 12 months. Consequently 331 documents were registered for ₹48.92 crore during 2010-11 and 2011-12 at lower rates whereas the actual market value of these documents was ₹91.38 crore. This resulted in short realisation of stamp duty and registration fee of ₹2.18 crore, as detailed in **Appendix-VI**.

On being pointed out the cases between July 2012 and February 2013, the IGR intimated in August 2013 that out of ₹21.74 lakh, an amount of ₹3.28 lakh had been recovered in respect of six SRs<sup>2</sup> and efforts were being made to recover the balance amount. The replies from the remaining SRs had not been received (November 2013).

The matter was reported to the Government between August 2012 and March 2013. Replies have not been received (November 2013).

### 4.4 Incorrect determination of market value of properties

As per clarifications issued by the IGR in July 1997, June 1998 and October 2004, market value of land is to be worked out on the basis of mutations done during the preceding 12 months. The registering officer is also required to verify the consideration shown in the sale deeds with valuation reports prepared by the concerned *patwari*. Under the IS Act, stamp duty and registration fee on documents presented for registration is to be levied on consideration amount or market value whichever is higher. Under the Himachal Pradesh Land Record Manual 1992 (Appendix-XXI) the *patwaris* are responsible for preparation of valuation report of the land.

Audit test checked the records of seven SRs<sup>3</sup> between August 2012 and February 2013 and noticed that consideration amount of properties set forth in

<sup>1</sup> Barsar, Banjar, Bharwai, Bilaspur, Fatehpur, Ghumarwin, Hamirpur, Jhanduta, Keylong, Kullu, Kupwi, Moorang, Nalagarh, Nihari, Padhar, Sarkaghat, Shimla (Rural), Solan, Sundernagar, Sunni, and Una

<sup>2</sup> Banjar: ₹1.16 lakh, Jhanduta: ₹38,250, Kullu: ₹1.03 lakh, Moorang: ₹21,000, Sarkaghat: ₹5,565 and Sunni: ₹43,290

<sup>3</sup> Bilaspur, Hamirpur, Indora, Kullu, Nihari, Nalagarh and Una

24 documents registered between 2010 and 2011 was ₹5.44 crore which was much below the market value of ₹12.89 crore shown in the valuation reports prepared by the concerned *patwaris*. While registering these documents, the registering officers were supposed to consider the higher value of properties of ₹12.89 crore for levy of stamp duty and registration fee. This resulted in short realization of stamp duty and registration fee of ₹37.97 lakh as per the details given in the **Appendix-VII**.

On this being pointed out (between August 2012 and February 2013) the SRs stated that cases will be re-examined and compliance intimated accordingly. Replies have not been received (November 2013).

The matter was reported to the Government between September 2012 and March 2013. Replies have not been received (November 2013).

#### **4.5 Short realization of stamp duty and registration fee due to change of classification of land**

As per clarifications issued by the IGR in July 1997, June 1998 and October 2004, market value of land is to be worked out on the basis of mutations done during the preceding 12 months. The market value of land for levy of stamp duty is assessed on the basis of classification of land and is calculated in accordance with the procedure given in Appendix-XXI of the Himachal Pradesh Land Record Manual 1992. The registering officer is also required to verify the consideration shown in the sale deeds with valuation reports prepared by the concerned *patwari*. Under the IS Act, stamp duty and registration fee on documents presented for registration is to be levied on consideration amount or market value whichever is higher.

Audit test checked the records of two SRs<sup>4</sup> between July and August 2012 and noticed that 12 documents were registered during 2011 for a consideration of ₹1.95 crore. Audit further cross checked these documents with the valuation reports prepared by the concerned *patwaris* and found that the valuation reports were not prepared on the basis of classification of land and were based on lower value of the land instead of higher value chargeable. The market value of the land should have been ₹4.43 crore as against ₹1.95 crore recorded in the reports. The registering officers, while registering the documents did not verify the correctness of these considerations with that of the valuation reports. This resulted in short realization of stamp duty and registration fee of ₹12.98 lakh as per the details given in the **Appendix-VIII**.

On this being pointed out between August 2012 and September 2012, the SR Nahan stated that cases as pointed out by the audit will be re-examined and sent to the Collector for evaluation under Section 47-A while SR, Solan stated that after reviewing all the cases outcome will be intimated to audit accordingly.

The matter was reported to the Government and to the Department in August and September 2012. Their replies had not been received (November 2013).

<sup>4</sup> Nahan and Solan

#### **4.6 Non-valuation of property by Collector / District Valuation Committee**

The IGR in September 2003 clarified that for the calculation of market value in urban / industrial areas and areas adjoining the roads / highways, where transaction of land takes place for non-agriculture / commercial activities, the Registering Officer may after registering such instrument refer the case to the Collector for determination of market value. The Government in December 2005 decided on formation of District Valuation Committee (DVC) of designated officers in each district for devising a proper and uniform system as present system of valuation did not provide for proper valuation of land located in urban areas, industrial areas and areas near to the national / state highways.

Audit test checked the Registration records of SR, Nahan in August 2012 and noticed that eight plots of land (113 *Biswa*) were sold and registered for consideration amount of ₹30.76 lakh between April and December 2011 in Jarja *mohal*. These plots were approved by the Town and Country Planning for the residential and commercial purposes but were not forwarded for valuation to DVCs / Collector as required under Section 47-A of the Act. The registering officers did not detect the mistake while registering these documents. However, the market value of the land was worked out to ₹2.03 crore in audit on the basis of valuation reports prepared by the *patwaris* for the year 2011. This resulted in short realization of stamp duty and registration fee of ₹11.14 lakh.

On this being pointed out in August 2012, the SR, Nahan stated that all such cases will be re-examined and sent to the Collector for valuation under Section 47-A.

The matter was reported to the Department and to the Government in September 2012. Their replies have not been received (November 2013).

#### **4.7 Short realisation of stamp duty and registration fee on lease deed**

Article 35 of schedule-I of IS Act, 1899, provides that where a lease is granted for a fine or premium or for money advanced in addition to rent received, the same duty as applicable to conveyance (No. 23), is chargeable. As per the Indian Stamp (Himachal Pradesh Amendment) Act 1970, where lease purports to be for a term exceeding 30 years but not exceeding 100 years, stamp duty is chargeable at the rate of three *per cent*. Besides, registration fee at the rate of two *per cent* subject to maximum of ₹25,000, is also leviable in terms of Government of Himachal Pradesh, Department of Revenue notification dated 18 March 2002. Further, the rule 6.8 (e) of Grant of incentives, concessions and facilities to industrial units in HP, 2004 provides that in case the regular lease deed is entered into between the Department and the allottee after the expiry of a period of two years from the date of allotment of the plot, the lease deed will be made by the Department at the allotment rates prevailing at the time of entering into such regular lease deed. The Industries Department had fixed (June 2009 & April 2011) the rates of premium (per square meter) of plots falling in the industrial area of the respective districts in the State.

Audit test checked the documents of lease deeds of two Sub Registrars<sup>5</sup> between August 2012 and February 2013 and found that in five cases, land measuring 19,511 square meters falling in the industrial area of Shimla and Una districts was allotted / leased out to the parties between February 2010 and April 2011 for the period ranging from 45 to 95 years. Audit scrutiny further showed that both the SRs while registering the documents did not levy the stamp duty and registration fee on the prevailing consideration amount of premium, fixed by the Industries Department for the years in which the cases were leased out as the leases were more than two years old. Consequently, five lease deeds executed between February 2010 and April 2011 were registered at the consideration of premium of ₹2.21 crore calculated at the rates on the date of original allotment, instead of ₹3.13 crore. This resulted in short realisation of stamp duty and registration fee of ₹3.17 lakh.

On this being pointed out (between September 2012 and March 2013), SRs intimated that cases will be reviewed and information in respect of action taken intimated to audit accordingly. Further report on recovery and replies from the said SRs had not been received (November 2013).

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<sup>5</sup> SR Shimla (Rural) and SR Una