

CHAPTER-4 Stamp Duty

4.1 Tax administration

The State Government exercises control over the Registration of instruments through the Inspector General of Registration, who is assisted by the Deputy Commissioner (Collector), Tehsildars and Naib-Tehsildars acting as Registrars, Sub-Registrars (SRs) and Joint Sub-Registrars (JSRs) respectively. No registration work is however, done in the office of the Registrars. The Registrar exercises Superintendence and Control over the SRs and JSRs of the district. For the purpose of levy and collection of Stamp Duty and registration Fee, the State has been divided into four divisions and 20 districts having 20 Registrars, 78 SRs and 76 JSRs.

4.2 Analysis of budget

Scrutiny of Budget records of the Department revealed that the actual receipts were ₹ 3,079.13 crore as against the revised Budget Estimates of ₹ 2,900 crore for the year 2011-12.

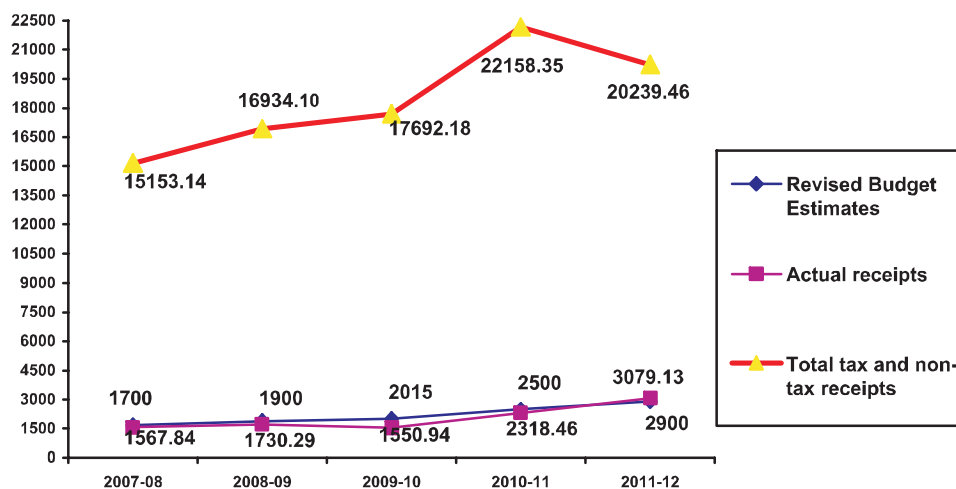
4.3 Trend of receipts

Actual receipts from Stamp duty and Registration fees in the State during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Revised budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts vis-à-vis total tax and non-tax receipts
2007-08	1,700.00	1,567.84	(-) 132.16	(-) 7.77	15,153.14	10.35
2008-09	1,900.00	1,730.29	(-) 169.71	(-) 8.93	16,934.10	10.22
2009-10	2,015.00	1,550.94	(-) 464.06	(-) 23.03	17,692.18	8.77
2010-11	2,500.00	2,318.46	(-) 181.54	(-) 7.26	22,158.35	10.46
2011-12	2,900.00	3079.13	(+) 179.13	(+) 6.18	20,239.46	15.21

The trend of actual receipts vis-a-vis budget estimates during 2007-08 to 2011-12 is depicted in the succeeding graph.



4.4 Analysis of arrears of revenue

No arrears of revenue are pending in the Department.

4.5 Cost of collection

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts during the year 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:

(₹ in crore)

Head of Revenue	Year	Gross Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage over the previous year
Stamp duty and registration fees	2007-08	1567.84	18.22	1.16	2.33
	2008-09	1730.29	23.69	1.37	2.09
	2009-10	1550.94	12.42	0.80	2.77
	2010-11	2318.46	25.47	1.10	2.47
	2011-12	3079.13	27.56	0.90	1.60

The percentage of expenditure to the collection of stamp duty and registration fee in the State was lower than the all India average percentage.

4.6 Impact of Audit Reports

4.6.1 Revenue impact

During the last five years, audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 204.59 crore involved in 2838 cases. Out of these, the Department/Government had accepted ₹ 29.77 crore involved in 600 cases and had recovered ₹ 6.32 crore in 849 cases. The details are shown in the succeeding table:

(₹ in crore)

Year	Number of Units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07 ¹	99	458	11.05	325	7.41	203	0.92
2007-08 ²	132	919	49.32	205	0.45	121	0.44
2008-09	116	316	42.32	24	0.31	88	0.37
2009-10	141	562	58.08	23	0.33	272	1.78
2010-11	108	583	43.82	23	21.27	165	2.81
Total	596	2838	204.59	600	29.77	849	6.32

The Government may consider issuing of instructions for the recovery of the revenue at least in the accepted cases on priority.

4.7 Working of internal audit wing

Internal audit is intended to examine and evaluate the level of compliance with the Rules and procedures so as to provide a reasonable assurance on the adequacy of the internal control. Effective internal audit system both in the manual as well as computerised environment are a pre-requisite for the efficient functioning of any Department. However, no internal audit wing exists in Department.

4.8 Results of audit

Test check of the records of 101 units relating to stamp duty and registration fee during 2011-12 revealed irregularities involving ₹ 18.92 crore in 1920 cases, which fall under the following categories:

(₹ in crore)

Sl.No.	Categories	Number of cases	Amount
1.	Non/short levy of stamp duty and registration fee	1,062	7.17
2.	Short levy of stamp duty and registration fee on lease deeds	487	6.52
3.	Misclassification of instruments	107	0.79
4.	Other irregularities	264	4.44
	Total	1,920	18.92

During the year 2011-12, the Department accepted ₹ 7.86 crore involved in 621 cases and recovered ₹ 1.77 crore in 414 cases pertaining to earlier years.

A few illustrative cases involving ₹ 6.83 crore are discussed in the succeeding paragraphs.

¹ Outstanding paragraphs pertaining to Audit Reports for the years 2006-07 and 2007-08 had been transferred (January 2012) by the Public Accounts Committee to the concerned departments with direction to take further action at their own level.

² As Sr. no. 1

4.9 Audit observations

Audit noticed several cases of non-observance of provisions of Acts/Rules; resulting in loss of Government money, non/short levy and irregular remission of stamp duty and registration fee due to misclassification of documents, application of incorrect rates of stamp duty and inadmissible benefits as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Sub-Registrars/Joint Sub Registrars (SRs/JSRs) are pointed out in audit repeatedly, however the irregularities persist and they also remain undetected till we conduct audit. There is need for the Government to improve the internal control system so that such omissions can be detected and corrective measures taken.

4.10 Non-observance of provision of Act/Rules

The Indian Stamp Act 1899, The Indian Registration Act 1908 and Rules frame there under provide for:-

- (i) levy of stamp duty and registration fee at the prescribed rates,*
- (ii) documents entitling for exemption from levy of stamp duty and registration fee and*
- (iii) correct determination of stamp duty and registration fee.*

The SRs/JSRs while registering the deeds did not observe some of the provisions of Acts/Rules in the cases mentioned in paragraphs 4.10.1 to 4.10.7. This resulted in non/short levy and non-realisation of stamp duty and registration fee of ₹ 6.83 crore.

4.10.1 Thematic audit on “Receipt and accounting of Revenue on account of Embossment/Impressments of instruments”

INTRODUCTION

Section 2(13) of Indian Stamp Act, 1899 defines Impressed Stamp as (a) labels affixed and impressed by the proper officer and (b) Stamp embossed or engraved on stamped paper. Further, Section 18 of Indian Stamp Act, 1899 stipulates that every instrument chargeable with duty executed out of India and may be stamped within three months after it has been first received in India. In the Punjab State, the Financial Commissioner Revenue (FCR) and four³ Divisional Commissioners (Revenue) are entrusted with the power to emboss/impress the documents which are detailed in appendices II & III of Indian Stamp Rules, 1925, the embossment/impressments of which are subjected to levy of such duty as may be prescribed.

Misappropriation of revenue of ₹ 2.43 crore on account of embossment fee was noticed in the office of Divisional Commissioner (Revenue) Jalandhar by accepting bogus/fake challans representing payment of fees for embossment without cross verifying it with treasury records. In order to detect such misappropriations relating to embossment fee elsewhere, the audit of all the

³ Division Commissioners Faridkot, Ferozepur, Jalandhar and Patiala.

Divisional Commissioners (Revenue) for the period March 2007 to March 2012 was taken up on thematic basis and a meagre misappropriation of ₹ 0.04 lakh and ₹ 0.07 lakh in the offices of Divisional Commissioner, Patiala and Faridkot respectively were noticed. The misappropriation of embossment fee was accepted by all the three offices and an amount of ₹ 34.54 lakh, ₹ 0.04 lakh and ₹ 0.07 lakh was stated to be recovered by Divisional Commissioners, Jalandhar, Patiala and Faridkot respectively. The irregularities noticed in this thematic audit are as under:

(i) Loss of Government revenue due to non compliance of laid down procedure

Section 2(13) of Indian Stamp Act, 1899 and instructions issued by Government of Punjab on 5 February, 1981 provides that the applications from outstations for embossment of the instruments, stamped with impressed labels should be made to the treasury officer of the district, supported with the challans containing deposit of appropriate fees in the bank. The treasury officer send the instruments to the office of the Commissioner of the Division concerned for affirming and Impressments of necessary label alongwith a certificate that duty had been paid. The instruments, duly stamped will be returned to the applicant through same channel. Further, Punjab Financial Rules provide that the head of office, by 15 of every month, should obtain from the treasury a consolidated receipt of all remittances made during previous month and compare the postings in the cash book to ensure that all collections of Government revenue stands remitted and accounted for.

(a) Audit observed from the office of the Divisional Commissioner (Revenue), Jalandhar and pointed out that Government revenue amounting to ₹ 2.43 crore out of ₹ 4.79 crore representing embossment/impressment fee was misappropriated, as a result of non- reconciliation and absence of cross verification of remittances with the treasury records. It was noticed that in violation of the laid down procedure of receiving the applications through the district treasury officer, the applications for embossment were entertained directly from the applicants and 10,999 nos. challans out of total 14,565 challans covering the above remittances accompanied with the applications for embossment of instruments (between April 2009 and January 2012) were found fake/bogus as entries of the remittance in respect of these challans were not traceable in the records of the treasury. The certificates of reconciliation of deposits by the treasury officer were also found to be fake as the treasury officer denied to have ever recorded these certificates. Thus, violation of the laid down procedure for receiving applications had resulted in loss of Government revenue of ₹ 2.43 crore.

When Audit pointed out the loss the Department accepted the audit objection and initiated action against the defaulting officials, recovering ₹ 4.72 lakh through 33 challans dated 23/24 January, 2012 and ₹ 29.82 lakh in June 2012. The balance amount is stated to be under recovery. The department further stated that it has stopped to emboss the agreements of the companies. The fee regarding embossment of power of attorneys is being realized in the form of Indian Postal Orders (IPOs) w.e.f. 12 July 2012 and the deposit of fee in the

bank is being reconciled on the internet w.e.f. 11 July 2012. Final outcome of the cases were awaited.

Audit reported the matter to the Government; its reply was awaited.

(b) Similarly, Audit found from the records of the office of Divisional Commissioner (Revenue) Faridkot and Patiala relating to embossment of documents etc., that embossment fee of ₹ 0.04 lakh and ₹ 0.07 lakh received in the shape of Indian Postal Orders was also not en-cashed during April 2009 to March 2011 and March 2007 to March 2012, in the office of Divisional Commissioner Patiala and Faridkot respectively and cash was deposited into the treasury, after it was pointed out by audit.

(ii) Short realisation of embossment/impressments fee due to delay in implementation of enhanced rate

Punjab Government vide Notification No.12-Leg./2009 dated 3-8-2009 amended the entry No. 10, 39 and 48 of Schedule I-A of Indian Stamp Act, 1899 and enhanced Stamp duty/fee for embossment of the instruments viz. Article of Association of Companies, Memorandum of Association and the Power of Attorneys with immediate effect.

Audit observed that the enhanced duty/fee was not levied with immediate effect from the date of notification resulting into short levy of embossment fee amounting to ₹ 10.72 lakh on account of 501 numbers of documents as detailed below:

Sr. No.	Name of unit	Period of Registration	No. of documents	Amount due ₹	Amount charged ₹	Amount Short realised ₹
1	Divisional Commissioner (Revenue), Jalandhar	04/08/2009 to 31/08/2009	386	11,74,600	1,84,820	9,89,780/-
2	Divisional Commissioner (Revenue), Patiala	04/08/2009 to 21/08/2009	59	55,000	16,300	38,700/-
3	Divisional Commissioner (Revenue), Ferozepur	04/08/2009 to 01/09/2009	18	14,500	5,100	9,400/-
4	Divisional Commissioner (Revenue), Faridkot	04/08/2009 to 26/08/2009	8	7,000	2,000	5,000/-
5	F.C.R (Punjab), Chandigarh	04/08/2009 to 20/08/2009	30	40,000	10,500	29,500
Total			501	12,91,100	2,18,720	10,72,380

On being pointed out by audit, the department stated that notification regarding amendment in the Act was issued and printed by the Department of Legal and Legislative Affairs, Punjab and the same was received on 20 August 2009 and further issued to the concerned offices on 21 August 2009. The reply of the department is not acceptable as the enhanced rates of duty/fee were required to be applied from the date of publication of the notification i.e. 3 August 2009.

(iii) Inordinate delay in deposit of Embossment fee

Rule 2.4 of Punjab Financial Rules Vol-1 provides that while signing the cash book, the head of the Department should see that the Department receipts

collected during the days, the utilisation of which towards the expenditure is strictly prohibited under the Punjab Treasury Rules are credited into the treasury on the same day or on the morning of the next day.

Audit found that embossment fees received in the shape of Indian Postal Orders (I.P.Os) of ₹ 49.79 lakh were sent to the post office for encashment late with a delay ranging between one week to thirty two months resulting in loss of interest to Government as detailed below:

Sr. No.	Name of unit	Period of delay	Amount ₹
1	Divisional Commissioner (Revenue), Jalandhar	1-4 months	10,71,675/-
2	Divisional Commissioner (Revenue), Patiala	1-32 months	15,36,500/-
3	Divisional Commissioner (Revenue), Ferozpur	2 weeks-2 months	1,95,150/-
4	Divisional Commissioner (Revenue), Faridkot	1 week-7 months	25,000/-
5	F.C.R. (Punjab), Chandigarh	1 week-3 months	21,51,020/-
Total			49,79,345/-

(iv) Inadequate internal control mechanism leading to non reconciliation of deposits with the treasury

As per Rule 2.2(v) of P.F.R Vol-I, when the Government money in the custody of the Government Officer are paid into the treasury or the bank, the head of the office making such payments should compare the Treasury Officer's or the Bank's Receipts on the challan or his pass book with the entry in the cash book before attesting it and satisfy himself that the amounts have been actually credited into the Treasury or the Bank. By 15 of every month, he should obtain from the Treasury a consolidated receipt for all remittance made during the previous month, which should be compared with the posting in cash book.

Audit found that the receipts of embossment fee amounting to ₹ 7.86 crore collected through treasury challans and Indian Postal Orders during the period from April, 2007 to March, 2012 were shown as credited into Government account but were not actually reconciled with the treasury records as detailed below:

Sl. No.	Name of unit	Period	Amount
1.	Divisional Commissioner (Revenue), Jalandhar	04/2009 to 12/2011	4.60
2.	Divisional Commissioner (Revenue), Patiala	04/2007 to 03/2011	0.34
3.	Divisional Commissioner (Revenue), Faridkot	11/2007 to 03/2012	0.03
4.	F.C.R. (Punjab), Chandigarh	04/2010 to 03/2012	2.89
Total			7.86

This has resulted in violation of the codal provision of the PFR.

On being pointed out in audit, FCR (Punjab) stated that the amount will be reconciled with treasury record.

(v) Internal audit

Internal Audit Organisation (IAO) is a vital component of the internal control mechanism and is generally defined as the controller of all controls to enable an organization to assure itself that the prescribed systems are functioning reasonably well. IAO was set up in 1985 as an independent organization under the State Finance Department.

IAO of the State Government or Audit team of the State Finance Department are required to conduct the audit of revenue departments before the commencement of statutory audit i.e. audit by the auditors of the A.G. (Audit) Punjab.

Scrutiny of records of FCR (Punjab) and three Divisional Commissioners (Revenue) revealed that the internal audit of the revenue collected was not conducted for the period 4/2005 to 3/2012. Had the department conducted the internal audit, the probability of avoiding misappropriation/fraud of ₹ 2.43 crore could have been enhanced.

(vi) Conclusion & recommendations

Lack of compliance with the laid down procedure coupled with lack of monitoring and exercising due checks at each level by the Departmental authorities resulted in misappropriation/fraud causing loss to the State. Department needs to increase its extent of compliance with the laid down procedure and improve the functioning of internal control system.

Compliance deficiencies

4.10.2 Misappropriation of Government receipts

The Punjab Financial Rules provide that all monetary transactions should be entered in the cash book as soon as they occur and attested by head of the office in token of check. The rules further provide that at the close of the day while signing the cash book, the head of the office should see that the Departmental receipts collected during the day are credited into the treasury on the same day or on the next working day. The rules further provides that the head of the office should verify the totaling of the cash book or have this done by some responsible subordinate other than the writer of the cash book.

(a) Audit observed from the records of Sub-Registrar Amritsar-I relating to registration, cash book and receipt books etc. for the year 2010-11 that in eight cases a sum of ₹ 1.25 lakh was recovered by the Sub-Registrar as deficit stamp duty by issuing of receipts from book-B but cash receipts of ₹ 0.07 lakh only was accounted for and entered in cash book. This was done by adopting the modus operandi of tampering with the counterfoil of receipt, which accounted for lower amount of stamp duty in the receipt book and in the cash book than that entered in the deeds and non-accountal of the amount mentioned in the counterfoil of receipt in the cash book. In five cases the cash recovered was neither entered in the cash book nor were the counterfoils of the receipts in these cases available in the respective receipt books. This has resulted in misappropriation of Government receipts of ₹ 1.17 lakh.

(b) Similarly, Audit noticed that a sum of ₹ 0.03 lakh collected during April 2010 to June 2010, representing copying fee in 49 cases, though recovered by issuing of receipts, was not accounted for in the cash book and thus resulted in misappropriation of Government money of ₹ 0.03 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.3 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 there under, 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.

Audit noticed from the office of 20 SRs⁴ and four JSRs⁵ that 46 instruments were registered during 2009-10 and 2010-11 at a value of ₹ 17.01 crore set forth in these instruments instead of ₹ 52.14 crore, which was the minimum market value of properties as per the price fixed by respective Collectors for the sale of agricultural/residential/commercial properties due to misclassification of properties. This mistake was due to classifying the residential/commercial properties as agriculture/residential properties respectively. It resulted in short levy of stamp duty of ₹ 2.49 crore inclusive of registration fee of ₹ 5.12 lakh.

When audit pointed this out, all the SRs and JSRs except SRs Kapurthala, Patiala and Patti stated that recovery will be made after verification of records. SRs Kapurthala, Patiala and Patti stated that action will be taken after verification of the records. Final outcome of the cases is awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.3.1 Short levy of stamp duty

Under the Punjab stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the Committee of Experts fixes the minimum market value of land/properties locality wise and category wise in the district for the purpose of levying stamp duty. Further, Government of Punjab, Department of Revenue and Rehabilitation vide their letter dated 28 January 2011 has clarified that in the case of purchase of land for more than one acre in urban area and 2.5 acre in rural area by a company or a Registered body for Housing Project and other commercial project, a copy of their articles of association and a declaration indicating the purpose of purchase of land is required to be obtained from them. The rates of non agriculture land shall be applied for valuation of the property for the charging of stamp duty and registration fee if the land is being purchased for Housing and other commercial purpose. Additional stamp duty

⁴ Amritsar I, II, Bagha Purana, Barnala, Hoshiarpur, Jalandhar-I, Khanna, Kapurthala, Kharar, Ludhiana (West), Mansa, Mohali, Nawan Shahar, Phagwara, Phillaur, Patiala, Patti, Rajpura, Rampura Phul and Samana.

⁵ Mandi Gobindgarh, Majri, Kalanaur and Kotkapura.

at the rate of three percent is also leviable on the consideration value of the property if the property falls within the Municipality or Corporation.

Audit noticed from the records relating to registration for 2010-11 in the office of Sub –Registrar, Tarn Taran that an instrument of transfer of property for 36 kanals-19 marlas in rural area was registered (March 2011) in favour of a developer company and stamp duty of ₹ 7.09 lakh was charged on the consideration of ₹ 1.42 crore treating the land as agricultural land and falling outside the limit of the Municipality. It was further noticed that neither the articles of association/declaration of the company was obtained in this case nor the rates for *gair mumkin* (other than agriculture category) land was applied for the valuation of the property whereas the purchaser was a developer as mentioned in the deed and the property was located in the village which came within the limit of municipality. This has resulted in short levy of stamp duty of ₹ 7.09 lakh on the consideration of ₹ 1.77 crore worked out in audit and computed at the rate of eight *per cent*.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.3.2 Short levy of stamp duty and registration fee

Under the Punjab Stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the Committee of Experts fixes the minimum market value of land/properties locality wise and category wise in the district for the purpose of levying stamp duty. While fixing the minimum rates of the property the District Collector Amritsar clarified (24.08.2010) that transfer of land property below three Kanal falling in the Municipal Corporation will not be registered as a agriculture land.

Audit noticed from the records of office of the Sub Registrar Amritsar-II relating to registration that in an instrument for the transfer of land of 2K-12M situated within the Municipal Corporation registered (October 2010), stamp duty of ₹ 0.32 lakh was charged on the consideration of ₹ 3.93 lakh set forth in the instrument treating the property as agricultural against the leviable duty of ₹ 3.37 lakh worked out by audit on the consideration of ₹ 42.12 lakh, the minimum market value of the property fixed by the Collector for the residential property. Application of incorrect rate for valuation of the property applicable for agriculture land has resulted in short levy of stamp duty of ₹ 3.32 lakh inclusive of short levy registration fee of ₹ 0.26 lakh.

When audit pointed this, the Sub-Registrar stated that action for recovery will be taken after visiting the site.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.4 Irregular remission of stamp duty and registration fee

Government remitted (February 1981) stamp duty and registration fee chargeable on instruments of conveyance by sale or gift in favour of the charitable institutions for charitable purposes. In order to avoid the mis-utilisation of this exemption by the charitable institutions, the Government

issued instructions vide 16/27/08/ST/2/ 8070-90 dated 26.5.10 that it is to be confirmed by the District Collector whether the transfer of immovable property in favour of the charitable institution is exempted from the levy of stamp duty/registration fee or not. Further, under Section 3C, Social Security Fund in the form of additional stamp duty at the rate of three *per cent* is chargeable in respect of every instrument of immovable properties falling within the municipal limit.

Audit found from the office of four SRs⁶ and JSR Dinanagar that the records relating to registration that five instruments of transfer of immovable property with consideration of ₹ 16.57 crore set forth in the deeds in four cases and as per collector rate in the case of SR Mansa. These instruments were registered during 2010-11 in favour of charitable institutions without charging stamp duty/registration fee, except charging of additional stamp duty in one case and registration fee in two cases, treating the transfer as for charitable purposes. The prior approval of the District Collector required to be obtained in such cases were not obtained in these cases which was irregular. This had resulted in violation of the instructions circulated to all the District Collectors and leading to irregular remission of stamp duty and registration fee of ₹ 1.03 crore.

When Audit pointed this out (between May 2011 and March 2012), the SRs Jagraon and Fatehgarh Sahib stated that cases will be sent to the Collector under section 47-A. The rest of the SRs/JSR stated that recovery will be made after verification of the records. Final outcome of the cases was awaited.

Audit reported the matter to the Department and the Government whose replies are awaited.

4.10.4.1 Inadmissible remission of stamp duty and short levy of Registration fee

The Punjab Government by notification issued on 3 November 2006 remitted the stamp duty chargeable in the case of transactions of transfer by an owner of agricultural and residential property situated in rural areas, when the transactions are executed in favour of class I heirs as defined in the schedule under section 8 of the Hindu Succession Act. This concession shall also be available when the transfer of the above mentioned category of properties are registered in favour of class II heirs of the executor and the executor is unmarried or issueless; provided that he has no Class I heirs. Further Punjab Government vide notification dated 21 July 2009, revised the rate of registration fee to one *per cent* of the value of the deeds subject to a minimum of ₹ 50 and maximum of ₹ 30,000 with effect from 21 July 2009 in respect of all compulsorily registerable documents other than leases of immovable property.

Audit noticed from the records relating to registration in the office of SR, Jaitu and Fatehgarh Sahib for the year 2009-10 and 2010-11 that three instruments for transfer of agricultural land in rural areas involving consideration of ₹ 1.66 crore were executed and registered without charging stamp duty,

⁶ Fatehgarh Sahib, Jagraon, Mansa and Phagwara.

treating it as executed in favour of Class-I heirs. However, audit noticed that properties had been transferred to Class II heirs (Grandsons) in two cases when Class I heirs (Sons) of the executor were alive. Similarly, in the third case the property was transferred in favour of the Class-II heir (nephew) when the wife of the executor was alive. These omissions had resulted in inadmissible remission of stamp duty of ₹ 8.30 lakh and short levy of registration fee of ₹ 0.20 lakh.

When Audit pointed this out SR Jaitu stated that action will be taken after verification of records and SR, Fatehgarh Sahib stated that efforts will be made to recover the amount. Final outcome of the cases were awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.5 Non-levy of additional stamp duty

The Stamp Act provides that stamp duty is leviable at the prescribed rate on every instrument unless it is otherwise remitted by the State Government. Under the Industrial Policy on Mega Projects, the State Government on the recommendations of the Empowered Committee on Mega Projects grants exemption from levy of duty. Further, additional stamp duty is chargeable in respect of every instrument of immoveable properties falling within the municipal limit. The Government had also clarified vide notification no. 13/2/2009-ST-II/2009 dated 6.5.2005 that additional stamp duty is not exempted in the cases where the levy of stamp duty is exempted by Government from time to time.

(i) Audit noticed in SR, Ludhiana (Central) that an instrument for the transfer of 14,429.25 sq. yard land in village Dhandari Kalan, falling within outer limit of Municipal Corporation, Ludhiana, with total consideration of ₹ 8.15 crore set forth in the instrument was registered during 2010-11 without charging the stamp duty as the purchaser being a mega project. It was further noticed that additional stamp duty at the rate of three *per cent* in all cases was not levied resulting in loss of ₹ 24.45 lakh.

When Audit pointed this out the SR stated that action will be taken after verification of record. The outcome of the final action in this case is awaited.

Audit reported the matter to the Department and the Government whose replies are awaited.

As per notification issued in November 2006, the Punjab Government remitted the stamp duty chargeable in the case of transactions of transfer of agricultural and residential property situated in rural areas, when the transactions are executed in favour of Class I heirs as defined under section 8 of the Hindu Succession Act. Further, as per Punjab Government notification no. 13/9/2004-11/5116 dated 13.6.2005, an additional stamp duty at the rate of three *per cent* is chargeable in the area falling within five kilometers from the outer limit of Municipal Corporation and Class-I municipality.

(ii) Audit noticed in the office of SR, Ferozepur that two transfer deeds for transfer of agriculture properties involving consideration of ₹ 2.52 crore were registered and executed by owners in favour of his Class I heirs without charging of stamp duty and additional stamp duty. As the properties were

situated within five kilometer from the outer limit of the municipality they were not exempted from the levy of additional stamp duty. This has resulted in non-levy of additional stamp duty of ₹ 7.57 lakh.

When Audit pointed this out, SR stated that recovery will be made after verification of records. Final outcome of the cases were awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.6 Short levy of stamp duty due to application of pre-revised rates of duty

As per the Indian Stamp Act, 1899 (Schedule 1-A), a mortgage deed in respect of a specified property for securing loan, when possession is neither given nor agreed to be given, is chargeable to stamp duty at the rate of two *per cent* of the amount secured. The rate of stamp duty was revised from two *per cent* to four *per cent* vide notification, issued (August 2009) by the Punjab Government.

Audit noticed three SRs⁷ office that four mortgage deeds without possession were registered and executed by individuals in order to secure loans of ₹ 6.49 crore from the Commercial/ Banking institutions were charged with stamp duty of ₹ 13 lakh at the pre-revised rate of two *per cent* against the leviable duty of ₹ 25.96 lakh at the revised rate of four *per cent*. Application of incorrect rate of duty resulted in short levy of stamp duty of ₹ 12.96 lakh.

When Audit pointed this out, the SRs stated that action will be taken after verification of records. The final outcome of action taken is awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

4.10.7 Non levy of Stamp Duty on Plant and Machinery

The Indian Stamp Act provides that “Conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos⁸ and which is not otherwise specifically provided for by Schedule I or by Schedule I-A or by Schedule I-B, as the case may be. It has been judicially⁹ held that sale of business including land, building and machinery which was installed permanently on land for running the business, machinery would be treated as immovable property for ascertaining value of property for stamp duty.

Audit noticed in the office of the Sub-Registrar, Ludhiana (East) that two instruments for the sale of property in public auction were registered (December 2010) for the consideration of Land and Building of ₹ 6.77 crore excluding the value of Plant and Machinery. Stamp duty was paid on the value of land and building only and no stamp duty was levied on the consideration of plant and machinery of ₹ 1.54 crore resulting in non levy of stamp duty of ₹ 12.28 lakh.

⁷ Nakodar, Samana and Samrala.

⁸ From one living person to another.

⁹ Duncans Industries Ltd. V. State of U.P., 2000 (4) RCR (Civil) 147 (SC).

When Audit pointed this out, SR stated that recovery will be made. Final outcome of the case was awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.