

CHAPTER-V

Stamp Duty and Registration Fees

EXECUTIVE SUMMARY	
Increase in tax collection	In 2012-13, the collection from Stamp Revenue increased by 59.51 <i>per cent</i> over the previous year which was attributed by the Department to sale of judicial stamps, stamp duties on unstamped document, collection of registration fees, standard user charges, sale of other non-judicial stamps, duty on impressing of documents.
Very low recovery by the Department against observations pointed out by Audit	During 2008-09 to 2012-13, audit pointed out non/short levy, non/short realisation, under assessment/loss of revenue etc., with revenue implication of ₹ 216.80 crore in nine paragraphs. Of these, the department/ Government had accepted audit observations in eight paragraphs involving ₹ 167.57 crore and had since recovered ₹ 2.11 crore which is only 1.26 <i>per cent</i> .
Audit coverage by Internal audit wing	The internal Audit Branch set up in November 1998 under the Finance Department conducts internal audit in various departments. Audit found that the Directorate of Registration and Stamp Revenue did not have an Internal Audit Wing. Further, the Department of Internal Audit of the State Government had not conducted audit of the Directorate during 2007-08 to 2011-12.
Results of audit conducted in 2012-13	<p>In 2012-13 test check of the records of 61 units relating to stamp duty and registration fees indicated non-realisation/blocking of revenue and other irregularities involving ₹ 10.74 crore in 255 cases.</p> <p>During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 8.23 crore in 177 cases, of which 168 cases involving ₹ 6.77 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 60.56 lakh was realised in three cases at the instance of audit.</p>
What has been highlighted in this Chapter	<p>In this Chapter a Performance Audit on “Evasion of Stamp Duty and Registration Fees” with financial effect of ₹ 154.10 crore has been presented.</p> <p>The following points have been highlighted in the Performance Audit:</p> <ul style="list-style-type: none"> • Absence of a system of sharing of information between the Public Offices and

	<p>the Registration Offices relating to execution/submission of documents in the Public Offices led to avoidance/ evasion of tax of ₹ 60.21 crore.</p> <ul style="list-style-type: none"> • Absence of provision in the Acts/Rules to prevent splitting of properties led to avoidance of additional stamp duty of ₹ 4.73 crore. • Incorrect mapping of the business rules in CORD software resulted in short-levy of stamp duty of ₹ 23.77 crore. • Under valuation of properties by furnishing of incorrect property details led to evasion of stamp duty and registration fees of ₹ 23.73 crore. • Misclassification of instruments by registering authorities resulted in short-levy of stamp duty of ₹ 1.05 crore.
Conclusion	<p>Performance Audit has brought out number of system as well as compliance deficiencies which resulted in evasion of stamp duty and registration fees. Audit found that due to absence of system of sharing of information between Public Offices and Registration Offices relating to execution/submission of documents in the Public Offices, the department could not detect the cases of unduly stamped instruments executed/submitted in those Public Offices. Due to lacunae in the Acts/Rules, there has been avoidance of additional stamp duty by splitting of instruments. Incorrect mapping of business rules in CORD software resulted in short-levy of stamp duty. Due to improper scrutiny of the deeds, stamp duty and registration fees were evaded by property owners through undervaluation of properties by furnishing incorrect property details. Deeds were misclassified by RAs resulting in short-levy of stamp duty and registration fees. Further, potential revenue could not be mobilised by the department due to non-implementation of the Finance Act, 2011.</p> <p>The department may :</p> <ul style="list-style-type: none"> • devise an effective system of coordination with the POs to ensure realisation of proper stamp duty and registration fees.

- **incorporate all business rules properly in the CORD software for correct levy of stamp duty.**
- **direct the RAs to check deeds scrupulously with respect to market value assessment slips generated through the CORD software to detect the mismatch of particulars of properties to avoid evasion of stamp duty.**
- **establish an effective internal audit wing of its own to ensure that various provisions of the Acts and Rules are properly administered for effective tax administration.**

CHAPTER V: STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

Levy and collection of stamp duty and registration fees are regulated under the Indian Stamp (IS) Act, 1899 and the Indian Registration (IR) Act, 1908 and the Rules framed thereunder as applicable in West Bengal. Instruments to be registered under the Acts are chargeable to stamp duty and registration fees at the rates prescribed by the State Government from time to time.

5.2 Trend of revenue

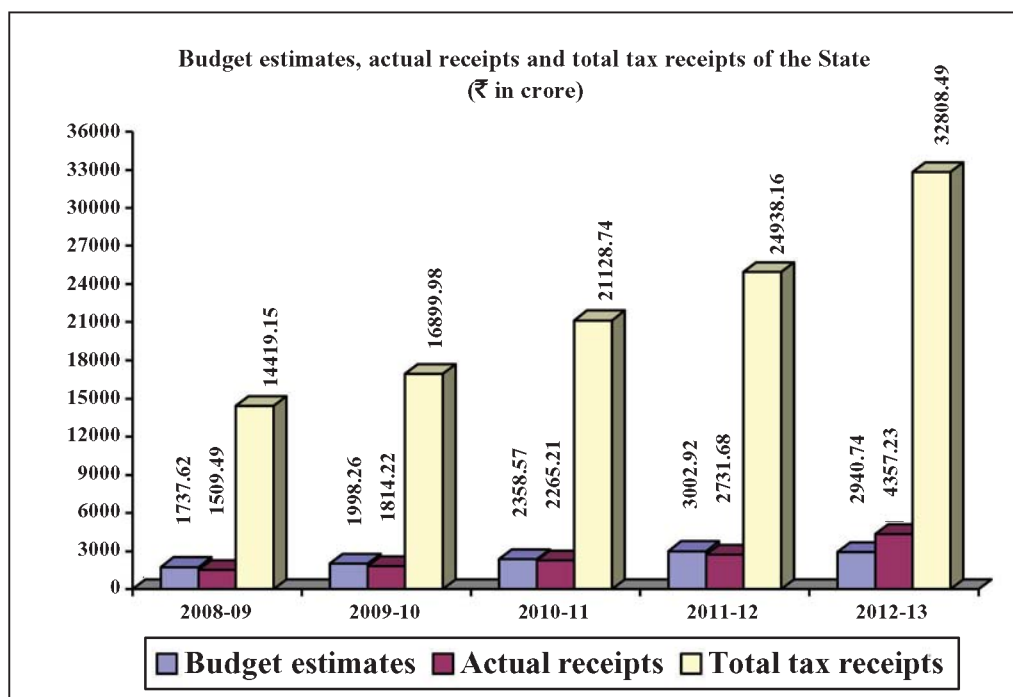
Actual receipts from stamp duty and registration fees during the years 2008-09 to 2012-13 along with the budget estimates and the total tax receipts of the State during the same period is exhibited in the following table and chart:

Table 5.1 - Trend of revenue

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess(+)/shortfall(-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	1,737.62	1,509.49	(-)228.13	(-)13.13	14,419.15	10.47
2009-10	1,998.26	1,814.22	(-)184.04	(-)9.21	16,899.98	10.74
2010-11	2,358.57	2,265.21	(-)93.36	(-)3.96	21,128.74	10.72
2011-12	3,002.92	2,731.68	(-)271.24	(-)9.03	24,938.16	10.95
2012-13	2,940.74	4,357.23	(+)1,416.49	(+)48.17	32,808.49	13.28

Source: Finance Accounts and Budget Publications of the Government of West Bengal.

Chart 5.1 – Budget estimates, Actual receipts and Total tax receipts



In 2012-13, collection from stamp duty and registration fees increased by 59.51 *per cent* over the previous year which was attributed by the Department to sale of judicial stamps, stamp duties on unstamped document, collection of registration fees, standard user charges, sale of other non-judicial stamps, duty on impressing of documents. However, the percentage of variation in budget estimates and actual receipts was (+) 48.17 *per cent* in 2012-13. This shows that the budget estimates failed to project the prospective collection properly.

5.3 Cost of collection

The gross collection of stamp duty and registration fees and the expenditure incurred on collection during the years 2010-11 to 2012-13 are given in the following table:

Table 5.2 – Cost of collection

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average of expenditure on collection for the preceding year
Stamp duty and registration fees	2010-11	2,265.21	94.31	4.16	2.47
	2011-12	2,731.68	96.62	3.54	1.60
	2012-13	4,357.23	101.39	2.33	1.89

Source: Finance Accounts.

The percentage expenditure on collection of stamp revenue has steadily come down from 4.16 *per cent* in 2010-11 to 2.33 *per cent* in 2012-13 but is still higher than the All India average.

5.4 Revenue impact of audit reports

During the last five years (including current year's report), Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 216.80 crore in nine paragraphs. Of these, the department/Government had accepted audit observations in eight paragraphs involving ₹ 167.57 crore and had since recovered ₹ 2.11 crore.

The details are shown in the following table:

Table 5.3 – Revenue impact of audit reports

(₹ in crore)

Year of audit report	Paragraph included		Paragraph accepted by the departments		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2008-09	3	52.30	2*	50.54	NIL	NIL
2009-10	1	1.84	1*	1.54	1	0.20
2010-11	1	5.23	1	5.23	1	0.99
2011-12	3	3.33	3	3.33	2	0.92
2012-13	1	154.10	1*	106.93	NIL	NIL
Total	9	216.80	8	167.57	4	2.11

* partly accepted.

Thus, against the accepted cases of ₹ 167.57 crore, the department/Government has recovered ₹ 2.11 crore during 2009-10 to 2011-12 which is only 1.26 *per cent*.

It is recommended that the Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.

5.5 Results of audit

In 2012-13 Audit test checked records of 61 units relating to stamp duty and registration fees and found non-realisation/blocking of revenue and other irregularities involving ₹ 10.74 crore in 255 cases which fall under the following categories:

Table 5.4 – Results of audit

(₹ in crore)

Sl. no	Categories	No of cases	Amount
1.	Non-realisation of stamp duty and registration fees/under-valuation of property	37	3.26
2.	Non-referring the cases to the collector/DIGR	23	2.15
3.	Splitting of property during registration	35	0.90
4.	Non-issue of demand notice	18	1.38
5.	Others	142	3.05
Total		255	10.74

During the year, the department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 8.23 crore in 177 cases, of which 168 cases involving ₹ 6.77 crore were pointed out during the year 2012-13 and the rest in earlier years. An amount of ₹ 60.56 lakh was realised in three cases at the instance of audit.

Audit findings of Performance Audit on 'Evasion of Stamp Duty and Registration Fees' with financial effect of ₹ 154.10 crore are mentioned in the subsequent paragraphs.

5.6 Performance Audit on “Evasion of Stamp Duty and Registration Fees”

5.6.1 Introduction

Stamp duty and registration fees are major sources of revenue of the Government of West Bengal and contribute around 10 *per cent* to the State’s total own revenues. The Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department is entrusted with the task of assessment, levy and collection of stamp duty and registration fees. Levy and collection of stamp duty and registration fees are governed by the Indian Stamp (IS) Act, 1899, the Registration Act, 1908 and the Rules framed thereunder as applicable in West Bengal. In 1999, the department introduced the system of **Computerisation of Registration of Document (CORD)** with technical support of the National Informatics Centre (NIC) for bringing transparency in the assessment of market value and for speedy disposal of the registration process. The CORD software was implemented in all Registration Offices in West Bengal by 2011¹.

Highlights

Absence of a system of sharing of information between the Public Offices and the Registration Offices relating to execution/submission of documents in the Public Offices led to avoidance/evasion of tax of ₹ 60.21 crore.

(Paragraphs 5.6.5.1 to 5.6.5.4)

Absence of provision in the Acts/Rules to prevent splitting of properties led to avoidance of additional stamp duty of ₹ 4.73 crore.

(Paragraph 5.6.6)

Incorrect mapping of the business rules in the CORD software resulted in short-levy of stamp duty of ₹ 23.77 crore.

(Paragraph 5.6.7.1)

Undervaluation of properties by furnishing incorrect property details led to evasion of stamp duty and registration fees of ₹ 23.73 crore.

(Paragraphs 5.6.8.1 to 5.6.8.3)

Misclassification of instruments by the registering authorities resulted in short-levy of stamp duty of ₹ 1.05 crore.

(Paragraphs 5.6.9.1 and 5.6.9.2)

5.6.2 Organisational setup

Stamp duty and registration fees are administered by the Finance (Revenue) Department headed by the Principal Secretary. The overall control and superintendence over assessment, levy and collection of stamp duty and registration fees vest with the Inspector General of Registration (IGR), West

¹ CORD software in the units selected for the Performance Audit (except for three units) was implemented by 2008.

Bengal, who is assisted by 12 Deputy Inspectors General of Registration (DIGR) in charge of Range Offices, three Additional Registrars of Assurances (ARA), 26 District Sub-Registrars (DSR) and 211 Additional District Sub-Registrars (ADSR).

5.6.3 Audit objectives, criteria, scope and methodology

Performance Audit on “**Evasion of Stamp Duty and Registration Fees**” for the period from 2007-08 to 2011-12 was conducted with the objective to ascertain whether:

- Department had devised an effective system of coordination with various Public Offices² (POs) to ensure that the documents required to be registered are presented for registration and the requisite stamp duty and registration fees are levied correctly;
- business rules had been duly mapped in the CORD software;
- provisions of the relevant Acts/Rules and departmental instructions are enforced properly by the Registering Authorities to safeguard revenue of the State; and
- internal control mechanism was effective and sufficient to safeguard collection of stamp duty and registration fees.

Performance Audit was conducted between April and July 2013 in 21³ Registration Offices (RO) selected through Stratified Random Sampling Method from 60 major ROs located in urban developing areas out of the total 240 ROs in the State for the period from 2007-08 to 2011-12. The units selected for the Performance Audit cover more than 56.5 *per cent* of the total revenue of the State from these duties and fees during the last three years (2009-10 to 2011-12). The CORD data of all the selected ROs were analysed using Interactive Data Extraction and Analysis (IDEA) software. Besides, manual records of the ROs, three⁴ out of 12 Range Offices of DIGRs and records of some major Public Offices were also test checked. Audit observations noticed during the course of transaction audit had also been suitably incorporated in this report.

Provisions of the Indian Stamp Act, 1899, Registration Act, 1908, Rules framed under the said Acts and the business rules of the CORD software were used as criteria for the audit.

5.6.4 Acknowledgement

Entry Conference to discuss the objectives, scope and methodology of the Performance Audit was held in March 2013 with the IGR. Observations and recommendations of audit were discussed with the IGR in the Exit Conference held in September 2013. Audit acknowledges the co-operation of the

² Public Office is an office held by a Public Officer as defined in Section 2(17) of Code of Civil Procedure, 1908.

³ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Cossipore, Durgapur, Howrah, Kharagpur, Singur, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

⁴ DIGRs Range-I, Range-II and Range-IV.

department in providing necessary information and records. Replies of the Directorate furnished during the Exit Conference have been suitably incorporated in the report.

Audit findings

Absence/inadequacy of the provisions in the Acts/ Rules leading to evasion or avoidance of tax

Audit observed a number of deficiencies relating to inadequacy of provisions in respect of coordination between the Directorate of Registration and the Public Offices, deficiencies in the CORD software resulting in short-levy of stamp duty and splitting of properties leading to avoidance of stamp duties. These are discussed as follows:

5.6.5 Absence of a system to ensure realisation of proper stamp duty and registration fee through co-ordination with public offices

Section 3 of the Indian Stamp (IS) Act, 1899 provides that subject to the provisions of Act and the exemptions contained in Schedule I, all the instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore. Further, Section 17 of the Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. Documents prescribed under Section 17 of the Registration Act, 1908 are ‘compulsorily registrable’.

Section 33(1) of the IS Act, 1899 provides that every person in charge of a public office (PO) before whom any instrument chargeable with duty is produced shall impound the same if such instrument is not duly stamped. Under Section 38(2) of the Act, the impounded documents are required to be sent to the Collector. Further, Section 73 of the Act provides that every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings etc.

The Income Tax Act mandates certain specified persons⁵ to furnish an annual information return relating to specified high value transactions for monitoring the payment of tax. But there is no such provision in the IS Act making the POs accountable for furnishing returns on the details of documents executed /presented before them so that it can be checked whether those were duly stamped and registered. Audit noticed that the provisions of the IS Act relating to impounding of such documents and forwarding these to the Collector were not complied with by many POs and these remained undetected in the absence of any return prescribed. One way to check this was through the inspection of the POs by the Collectors, but Audit noticed that here also the department had not fixed any norm or target for such inspections

⁵ Section 285BA(1) of the Income Tax Act, 1961 read with Rule 114E of the Income Tax Rules, 1962.

and that the inspections of POs were not conducted. Thus, due to the absence of adequate provisions and procedural lapses, substantial amount of stamp duty and registration fees remained un-assessed and uncollected as discussed below:

Non-registration of documents

Audit scrutinised various instruments executed/presented in different POs and found that many of these instruments were not duly stamped/registered, but the POs did not impound these instruments. As a result, they remained insufficiently stamped/unregistered.

5.6.5.1 Non-registration of lease agreements

As per Section 2(16) of the IS Act, 1899 “lease” means a lease of immovable property and includes a *patta*; a *kabuliyat* or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property; any instrument by which tolls of any description are let; any writing on an application for a lease intended to signify that the application is granted; any agreement to lease and mining lease. Further, Section 17(d) of the Registration Act, 1908 provides that leases of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is compulsorily registrable. As per Section 29(c) of the IS Act, the lessee is responsible for payment of Stamp Duty on execution of lease agreement.

Audit scrutiny of relevant records in different Public Offices⁶ revealed that different nature of lease agreements were required to be executed/presented in those offices. It was seen that such lease agreements were either not executed or executed with insufficient stamp duties and were not registered even though those were ‘compulsorily registrable’ under the Registration Act, 1908 leading to non-realisation of duties amounting to ₹ 30.03 crore in cases as discussed below:

- Audit found from the records of the Chief Mining Officer, Asansol under the C&I Department that in two cases, mining leases for a term of 20 years were granted by the department in favour of two companies between September 2008 and June 2012 for extraction of coal-bed methane (CBM) in Raniganj (South) block under the district of Burdwan. Both the companies continued exploration of CBM without executing the lease deeds even after a lapse of period ranging between 10 and 56 months and consequently no stamp duty and registration fees was paid by the lessees.
- Scrutiny of records of KMC and KMDA revealed that in three cases, they granted lease of land, commercial building and market complex between November 2007 and October 2010 for a period ranging between 60 and 99 years in favour of three companies. Audit found that the lease agreements were executed but were not got registered. There were payments of

⁶ Of various units of the Commerce and Industries (C&I) Department, Kolkata Municipal Corporation (KMC), Kolkata Metropolitan Development Authority (KMDA), West Bengal Industrial Infrastructure Development Corporation (WBIIDC), Directorate of Commercial Taxes, Urban Local Bodies (ULBs) and Bharat Sanchar Nigam Limited (BSNL) etc.

nominal amount of stamp duty (₹ 10 to ₹ 100) but no registration fee was paid in these cases by the lessees.

- From records of WBIIDC audit found that in 37 cases, it granted lease of land measuring 181.01 acre for a period ranging between 72 and 99 years to the entrepreneurs between 2007-08 and 2011-12. The lessees executed lease agreements on non-judicial stamp paper of ₹ 100 each and did not get them registered though compulsorily registrable. Resultantly, the lessees did not pay the due amount of stamp duty and registration fee.
- Audit found that in 87 cases of lease of ferries granted by seven⁷ Municipalities, one⁸ Municipal Corporation and one⁹ Zilla Parishad (ZP), between 2007-08 and 2011-12, lease agreements were either not executed or executed on insufficient value of stamp papers. Out of these 87 cases, in 29 cases, where lease term ranged from 12 to 60 months, lease agreements were not registered though compulsorily registrable. Resultantly, amount of stamp duty and registration fee due was not paid in these cases by the lessees.
- Audit found that in two cases lease of toll plazas along the ‘Kalyani-Dum Dum Express Way’ were granted by the KMDA in September 2006 and December 2012 for a term of two years in each case. Audit found that the lease agreements were executed on non-judicial stamp paper of ₹ 100 and were not registered. Consequently, amount of stamp duty and registration fee due was not paid in these cases.
- Audit found that in 78 cases of seven¹⁰ divisional offices under the Calcutta Telephones, BSNL did not register the lease agreements entered into with private parties for using lands/buildings for the installation/operation of mobile towers although the lease agreements were compulsorily registrable as the period of leases ranged between seven and 15 years in each case. Audit found that the lease agreements were executed on stamp papers ranging from ₹ 10 to ₹ 100. Resultantly, amount of stamp duty and registration fee due was not paid in these cases by BSNL.
- Audit found in 39 cases that 11¹¹ charge offices under the Directorate of Commercial Taxes allowed dealers to obtain VAT registration on the basis of unregistered lease agreements executed on nominal value of stamp papers with the owners of their respective business premises. These agreements were compulsorily registrable, but amount of stamp duty and registration fee due was not paid in these cases by the dealers.

Due to non-compliance of the provisions contained in Section 33(1) of the IS Act, 1899 by these Public Offices, non-execution/non-registration of lease agreements, 248 cases remained undetected and stamp duty and registration

⁷ Baidyabati, Bhadreswar, Champdany, Garulia, Hooghly-Chinsurah, Naihati and Serampore Municipalities.

⁸ Chandannagar Municipal Corporation.

⁹ Hooghly Zilla Parishad.

¹⁰ Barrackpore, Bidhannagar, Central, City, Serampore, Shyambazar and Howrah Division.

¹¹ Asansol, Ballygunge, Beliaghata, Bhawanipore, Bowbazar, College Street, Ezra Street, Park Street, Salt Lake, Siliguri and Ultadanga.

fees of ₹ 30.03 crore was evaded by the lessees as shown in the following table:

Table 5.5 – Non-registration of lease agreements

(₹ in lakh)

Name of the source department/office	No. of cases	Nature of lease	Term of lease (Year)	Assessable value ¹²		Evasion of stamp duty and registration fees
				Average annual rent/royalty	Premium	
Commerce and Industries Department	2	Mining lease	20	117.82	--	2,414.00
Kolkata Municipal Corporation	1	Lease of market complex	60	18.42	--	5.97
Kolkata Metropolitan Development Authority	2	Lease of land and commercial complex	99	--	4,101.94	325.79
West Bengal Industrial Infrastructure Development Corporation	37	Lease of land	Between 72 and 99	--	1,583.19	112.37
Urban Local Bodies	87	Lease of ferries	From 6 months to 5 years	605.66	461.66	60.72
Kolkata Metropolitan Development Authority	2	Lease of Toll Plazas	2	526.58	--	26.85
Bharat Sanchar Nigam Limited	78	Lease of mobile towers	Between 7 and 15	53.33	--	8.43
Directorate of Commercial Taxes	39	Lease of business premises	Between 1.5 and 99	647.30	107.20	49.03
Total	248			1,969.11	6,253.99	3,003.16

Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with concerned departments for taking necessary action at their end.

5.6.5.2 Non-registration of sale of properties of liquidated companies

As per Article 18 of Schedule IA to the IS Act, Certificate of sale, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer is chargeable with same duty as a Conveyance for a consideration equal to the amount of purchase-money. Under Section 17(2)(xii) of the Registration Act, 1908, such certificates of sale are compulsorily registrable.

¹² Assessable value is the consideration value against which the lease is granted. A lease may be granted against rent or premium or both.

Audit noted from the records of the Official Liquidator (OL), Kolkata that immovable properties of five liquidated companies were disposed in public auction by the OL between 2007-08 and 2011-12 at a consideration of ₹ 28.55 crore. However, the purchasers neither paid the stamp duty nor registered the certificates of sales even after a lapse of period ranging between 22 and 60 months. Consequently, stamp duty and registration fees amounting to ₹ 2.31 crore remained unrealised as detailed in **Annexure-II**. Non-detection of these transactions was attributable to the absence of a mechanism for sharing the information by the OL (a public office) with the Registration Authorities regarding the sales.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with the concerned liquidators.

5.6.5.3 Non-registration of sale agreement

Article 5(d) of Schedule-IA of the IS Act provides that agreement relating to the sale of immovable property is chargeable to same duty as applicable to a conveyance deed. Further, an agreement to sale is compulsorily registrable under Section 17(1A) of the Registration Act, 1908.

Absence of a provision making it mandatory on the part of public offices to share information relating to lease or sale with the registration authorities, even when the instruments relating to such transactions were not impounded, led to loss of substantial revenue due to non-payment of the correct amount of stamp duties and registration fees by the transacting parties. From the records of the Kolkata Municipal Corporation (KMC) audit found that in one case, an agreement for sale was executed among a group of different developers and KMC (as a confirming party) for sale of land measuring 204 cottah¹³ at a consideration of ₹ 51.00 crore in May 2010. Audit, however, found that the said agreement was executed on non-judicial stamp paper of ₹ 20 only and the same was not registered either. Absence of provisions in the relevant Acts/Rules for detection of such transactions where public offices were involved resulted in evasion of stamp duty of ₹ 3.57 crore.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that communication would be initiated with the concerned department for taking necessary action at their end.

5.6.5.4 Non-payment of stamp duty on Power of Attorneys for development of properties

Article 48(g) to the Schedule-IA of the IS Act provides that agreements or memorandum of agreements, giving authority or power to a promoter or a developer for construction, development, sale or transfer of any immovable property shall be chargeable with the same stamp duty as in an actual sale transaction.

Audit noted from the records of the West Bengal Housing Board (WBHB) that in 41 cases the WBHB entered into development agreements with different companies between April 2007 and March 2012 for construction of different

¹³ Cottah is a unit for measuring the area of land and is equivalent to 720 sq.ft.

housing projects. After the execution of the development agreements, power of attorneys (POA) were executed by the WBHB authorising the companies/developers to construct the projects on the land belonging to the WBHB with the power to sell the constructed portion of the projects. Audit, however, found that the development agreements and POAs were notarised on non-judicial stamp paper with denomination of ₹ 50 and ₹ 100 only. This resulted in evasion of stamp duty of ₹ 24.30 crore. The transactions remained undetected, despite the involvement of a Public Office as a party because of absence of relevant provisions in the related Acts/Rules in respect of sharing of information.

After Audit pointed this out, the Directorate stated (September 2013) that the Government (Finance Department) would look into the issue so that registration of documents involving Government agencies/ undertakings/ statutory bodies/constitutional bodies takes place in all the cases where the registration is compulsory.

5.6.6 Absence of provision in the Act to prevent splitting of properties to avoid additional stamp duty

The IS Act, 1899 (as applicable in West Bengal) as amended by the West Bengal Finance Act, 2007 provides for levy of additional stamp duty at the rate of one *per cent* if the market value of the property exceeds ₹ 25 lakh.

From the analysis of CORD data and scrutiny of deeds of conveyance in 35 ROs, Audit found that in 879 cases, the purchasers of properties subdivided one piece and parcel of land/flat involving market value in excess of ₹ 25 lakh into several smaller plots/flats to keep the market value of each of such divided plots or flats below ₹ 25 lakh. In each case, the transacting parties were the same and the deeds of conveyance against the properties were also executed on the same day, indicating that the intention of the purchasers was to purchase the whole piece of land/flat, and that the properties were subdivided in order to avoid the additional stamp duty by splitting of original properties into several. Audit found that in place of 879 instruments (deeds of conveyance) that should have been executed, 2,514 deeds were actually executed, each attracting a lower rate of duty and resulting in avoidance of additional stamp duty of ₹ 4.73 crore. There is no provision in the Act or Rule to prevent splitting of instruments for avoiding additional stamp duty, neither is there any provision to realise composite stamp duty on the whole property for avoidance of stamp duty by the purchasers. Due to the absence of any such provision in the Acts/Rules, additional stamp duty can easily be avoided by splitting of instruments.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that due to absence of provision relating to splitting of properties, no legal action could be initiated by the RAs. However, a circular in this regard had already been issued in October 2012.

5.6.7 Deficiency in the CORD system

CORD software was implemented to eliminate the shortcomings of the conventional registration system and to improve citizen services by making them faster, user friendly and transparent. Audit observed a number of deficiencies in the CORD system as discussed below:

5.6.7.1 Short-levy of stamp duty by the CORD system

Under Article 23 of Schedule-IA to the IS Act the rate of stamp duty on deed of conveyance is as under:

Property situated in	Market Value of the Property	Rate of stamp duty
(a) areas to which 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

(1) Howrah Improvement Act, 1956 (HIA) extends to all areas within the jurisdiction of the district of Howrah. Thus, stamp duty under Article 23(a) of the Act is leviable in case of sale of any property situated in the district of Howrah. From the analysis of computerised data of CORD in three¹⁴ ROs, Audit found that in 22,624 cases, sale deeds of immovable properties situated in the district of Howrah involving market value of ₹ 1,502.13 crore were executed and registered between April 2007 and March 2012. In all these cases the properties were treated as falling under category (c) under article 23 of Schedule-IA to the IS Act, for being situated in ‘Panchayat areas (Local body code - 6)’ and the CORD software accordingly assessed the stamp duty under Article 23(c) at the rate of five *per cent* or six *per cent* as the case may be. The software did not take into cognisance the fact that categories (b) and (c) under article 23 above did not apply to Howrah district which was covered by the category (a) under the above article attracting duties at the rate of seven *per cent* or six *per cent*. Due to incorrect mapping of business rules in the CORD software, the system assessed stamp duty at one *per cent* lower rate in each case. This resulted in short-levy of stamp duty of ₹ 15.01 crore as shown in **Annexure-III**.

After Audit pointed this out, the Directorate stated (September 2013) that Howrah Improvement Act, 1956 may extend to the entire district of Howrah for the purpose of implementation of various development schemes, but that could not cease the jurisdiction of the Panchayats so far as their territories

¹⁴ ADSR, Howrah, ARA-I and DSR, Howrah.

were concerned within the district. The reply is not tenable because the whole Howrah district is covered under Howrah Improvement Act, 1956 and therefore jurisdiction of Panchayat is not relevant in this case.

(2) Under the West Bengal Town and Country (Planning & Development) Act, 1979, Government of West Bengal, notified the following areas under the district of Birbhum, Burdwan, North 24 Parganas and South 24 Parganas as Planning Area¹⁵.

Name of district	Name of Police Stations	Areas included in the Planning Area
Birbhum	Bolpur	Areas under Sian Muluk, Raipur-Surpur, Ruppur and Kankalitala Gram Panchayats
Burdwan	Burdwan	Areas under the Burdwan-I and Burdwan-II Panchayat Samiti
North 24 Parganas	Rajarhat	Areas under JL Nos. 6, 12, 13, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35, 36 and 55
South 24 Parganas	Kolkata Leather Complex	Areas under JL Nos. 25, 26, 28, 29, 30, 31, 32, 33, 35, 44 and 45

The said areas were declared to be notified areas from the dates of effect of the respective notifications.

Analysis of CORD data of six¹⁶ ROs by audit revealed that in 16,143 cases, immovable properties involving market value of ₹ 875.76 crore under the said areas were transferred by the owners of the properties by executing deeds of conveyance between April 2007 and March 2012. In all the cases, the properties were treated as falling under category (c) of Article 23 of Schedule-IA to the IS Act, for being situated in 'Panchayat areas (Local body code 6)' and the CORD software accordingly assessed stamp duty under Article 23(c) at the rate of five *per cent* or six *per cent* as the case may be. Since, the said areas fall under the notified area covered by Article 23(b), stamp duty at higher rates was leviable in all these cases. Non-mapping of the notified areas in the CORD software resulted in short-levy of stamp duty of ₹ 8.76 crore as shown in **Annexure-IV**.

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that the CORD system would be updated in this regard.

5.6.7.2 Non-mapping of minimum Car Parking Space in CORD software

As per Rule 65 of the West Bengal Municipal (Building) Rules, 1996 read with memo no. 695/25 dated 23.04.2004 of District Registrar, the minimum car parking space or garage shall be 2.5 metres x 5 metres = 12.5 square metres (135 sq ft).

¹⁵ Planning Area means any area declared to be a planning area under the West Bengal Town and Country (Planning & Development) Act, 1979 and includes Kolkata Metropolitan Area.

¹⁶ ADSRs Bidhannagar, Bolpur, Burdwan, ARA-I, ARA-II and DSR-III, Alipore.

Analysis of CORD data pertaining to 18¹⁷ ROs revealed that in 16,233 cases car parking space were registered between 2007 and 2012 not complying with the prescribed norm of minimum parking/ garage space of 135 sq ft. There was no validation control in the CORD software to that effect so that any parking/garage space below this limit is not accepted for the purpose of registration. This resulted in short realisation of stamp duty and registration fees of ₹ 6.86 crore in 16,233 cases.

After audit pointed this out, the Directorate stated (September 2013) that the ROs were not empowered to take the garage area other than those specified in the documents. The reply is not tenable because minimum car parking space has been prescribed in West Bengal Municipal (Building) Rules, 1996 and was accepted by the District Registrar. That should have been mapped in the CORD system.

Deficiencies in the implementation of Acts/Rules/Departmental orders

Efficient compliance to the provisions of the Acts/Rules is essential for any effective administration of revenue. Any deviation from the provisions may result in undervaluation of market value of properties, misclassification of instruments and consequent short realisation of stamp duty and registration fees. Deficiencies in implementation of the provisions of Acts/Rules noticed in audit are discussed in the succeeding paragraphs:

5.6.8 Undervaluation of properties due to mis-declarations

Prior to registration of any instrument, the registrants are required to furnish the required particulars of the properties in the prescribed format before the Registering Authorities (RA) for generation of market value of the property through the CORD software. Suppression or omission of this information will result in incorrect determination of market value and will adversely affect the revenue.

5.6.8.1 Undervaluation of flats/apartments by furnishing incorrect particulars

As per Rule 3B(17) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) [WBS (PUI)] Rules, 2001 read with the business process of CORD software, the market value per sq ft of the flat or any structure appreciates according to the amenities in the following manner:

Nature of amenities	Rate of appreciation of market value per sq ft
Roof garden/ gymnasium/ swimming pool/ club facility	₹ 400
Lift facility	₹ 100

¹⁷ ADSRs Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Cossipore, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III and Hooghly-I.

(1) From analysis of CORD data of 13¹⁸ ROs in 2,294 cases, Audit found that purchasers of flats /apartments having super built up area of 28.35 lakh sq. ft. declared that none of the amenities like gymnasium/roof garden /club/swimming pool etc. were available in those flats/apartments. The sale deeds were registered with RAs by executing these between 2007-08 and 2011-12. Audit, however, found that other owners of flats of the same housing complexes registered their properties with the same RAs declaring availability of the said amenities in those housing complexes. From the recitals of the deeds, Audit found that the amenities were offered in common for all the flat owners in those housing complexes. Thus the purchasers of the flats/apartments in these complexes did not furnish correct particulars of the amenities available in the complex at the time of generation of market value by the CORD software leading to suppression of market value of the properties and evasion of duty, and concerned RAs also did not scrutinise or cross-check the particulars mentioned in these deeds with information supplied by other registrants. This resulted in undervaluation of properties by ₹ 113.37 crore and consequent evasion of stamp duty and registration fees of ₹ 8.61 crore.

(2) Similarly, from the analysis of CORD data of 18¹⁹ ROs, Audit found that in 2,142 cases, the purchasers of flats/apartments had declared non-availability of lifts and registered the sale deeds between 2007-08 and 2011-12. However, from sale deeds executed in respect of other flats/apartments in the same complexes, Audit, found that these were registered with the facility of lifts. Incorrect particulars were furnished by the aforementioned 2,142 flats/apartments for generating lesser market values through the CORD software, which was not scrutinized or detected / cross-checked at the time of registration by the RAs with information supplied by other registrants. This resulted in undervaluation of properties by ₹ 17.52 crore and consequent evasion of stamp duty and registration fees of ₹ 1.27 crore.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation that there was no inbuilt mechanism in the system to detect such cases by linking them with the previously registered documents and contended that the registering authorities were required to verify the contents of the documents with the particulars shown in the query form by the registrants. The contention is not tenable as Rule 3(1) of the WB Stamp (Prevention of Undervaluation of Instruments) Rules provides that the value be determined by comparing the value of similar properties in the same locality.

5.6.8.2 Undervaluation of properties by furnishing incorrect particulars of road width

As per Rule 3B(10) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) [WBS (PUI)] Rules, 2001 read with the business process of

¹⁸ ADSRs Alipore, Bagdogra, Barasat, Behala, Bidhannagar, Burdwan, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III and Howrah.

¹⁹ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barasat, Barrackpore, Baruipur, Behala, Bidhannagar, Burdwan, Cossipore, Durgapur, Howrah, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

CORD software, if the land or flat or any structure is not located on the road by which it is addressed but on the lane/by-lane emanating from the said road, and if the width of the said approach road is less than eight feet, the market value of the property per sq ft of it shall be depreciated by 15 *per cent* and 20 *per cent* for Kolkata and Howrah/other municipality areas respectively.

Audit found from the analysis of CORD data of 18²⁰ ROs that in 11,197 cases the purchasers of flats and lands executed sale deeds between April 2007 and March 2012 and registered their properties with the concerned RAs declaring that the properties were not located on the roads by which they were addressed, but on the approach roads emanating from those. Audit, however, found that in these 11,197 cases the approach road width had been shown as 'zero', which was incorrect. Thus, by furnishing incorrect particulars of the road width, the registrants availed undue advantage of depreciating the market value. The CORD system also accepted the inadmissible values in that field in the absence of proper validation checks and allowed depreciation in the market value. This resulted in undervaluation of properties of ₹ 165.47 crore and consequent evasion of stamp duty and registration fees of ₹ 12.29 crore.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard for realisation of revenue.

5.6.8.3 Undervaluation of properties by furnishing incorrect particulars of age of flats

As per Rule 3C(6) of the WBS (PUI) Rules, 2001 read with the business process of CORD software, the market value of old flat shall be depreciated considering the age of the flat at the following rates.

Age of flat (in year)	Rate of depreciation
0-5	Nil
6-20	0.5 % per annum
21-40	0.75 % per annum
More than 40	1% per annum subject to maximum of 40%

Audit analysed the CORD data of three²¹ ROs and found that in 133 cases the purchasers of flats /apartments registered their properties with the concerned RAs declaring the age of the flat between 10 and 30 years. From the recitals of deeds, however, Audit found that age as per the building plans sanctioned by the local authorities were less than their declared ages. Thus, the purchasers furnished incorrect particulars of the age of the flats in order to reduce the market value of the properties and due to improper scrutiny of deeds by the RAs the registrants were allowed excess depreciation. This resulted in suppression of market value by ₹ 19.31 crore and consequent evasion of stamp duty and registration fees of ₹ 1.56 crore.

²⁰ ADSRs Alipore, Asansol, Bagdogra, Baharampur, Barrackpore, Baruipur, Behala, Bidhannagar, Bolpur, Burdwan, Durgapur, Howrah, Kharagpur, ARA-I & II Kolkata, DSRs Alipore-III, Hooghly-I and Howrah.

²¹ ADSRs Asansol, Baruipur and ARA-II.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard for realisation of revenue.

5.6.9 Misclassification of instruments

Rate of stamp duty depends on the nature of documents registered. Misclassification of documents into an incorrect category results in under charge of stamp duty and registration fees.

5.6.9.1 Misclassification of gift deed

Article 33(i) of Schedule-IA of the IS Act provides that any instrument of gift in favour of family members 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.

From the records of four²² ROs, Audit found that in five cases the instruments were misclassified as gift deeds in favour of family members²³. In four cases, gifts of properties were made in favour of persons other than family members and in one case deed of conveyance was classified as gift deed while in reality it was a deed of conveyance. Due to misclassification of instruments by the RAs, there was short-levy and under realisation of stamp duty by ₹ 41.61 lakh as shown in **Annexure -V**.

Directorate accepted (September 2013) the audit observation and stated that necessary action would be taken in this regard.

5.6.9.2 Misclassification of deed of assignment as lease deed

Under Article 35 of Schedule-IA of the IS Act, the stamp duty on lease deed is charged on the premium²⁴ and/ or the average annual lease rent of the property whereas under Article 63, stamp duty on the transfer of lease by way of assignment is chargeable on the market value of the property as in case of sale.

Audit found from the records of ARA-I & II, Kolkata that in eight cases instruments of transfer of lease of properties by way of assignment involving market value of ₹ 9.02 crore were executed between August 2010 and February 2011. RAs misclassified the instruments as lease deeds and charged stamp duty and registration fees of ₹ 9.84 lakh instead of ₹ 72.77 lakh. This resulted in short-levy of stamp duty of ₹ 62.93 lakh.

After audit pointed this out, the Directorate stated (September 2013) that the cases would be verified in detail.

5.6.10 Arrears of revenue

Arrears of revenue relate to the pre-CORD registration period when valuation of properties was done by the RAs and monitored through a market-value monitoring register updated from time to time by the Department. If any

²² ADSR Cossipore, ARA-I, ARA- III and DSR-III Alipore.

²³ Family member means parent, spouse, son, daughter, son's wife, grand son or grand daughter, brother or sister. (*Explanation below Article 33 of Schedule-IA of IS Act*)

²⁴ Premium- A one time lump sum amount paid by the lessee to the lessor at the time of execution of lease agreement.

instrument did not reflect the correct market value as per the register, or if the market value of a property was not determined, the RAs had the option of registering the properties provisionally pending determination of actual market value, by accepting whatever duties were paid. On determination of correct market value, a fresh demand notice was required to be issued to the registrant. After introduction of the CORD system, the situation changed as the system automatically generates the market value depending on information supplied by the registrant. Arrears of revenue, thus, relate to the period before introduction of CORD, in phased manner from 2004.

Audit found that in a number of cases, demand notices were either not issued at all after valuation was done or not followed up properly. Besides, in the absence of any time limit in the Act/Rules for disposal of pending cases, substantial revenue remains unrealised as discussed below:

5.6.10.1 Non-realisation of deficit stamp duty and registration fees due to non-issue of demand notices

Section 47A of the IS Act, 1908 read with Rule 3(8) of the [WBS (PUI)] Rules, 2001 provides that where the registering authority (RA) has reason to believe that the market value of the property has not been truly set forth in any instrument presented for registration, he shall ascertain the market value of the property and issue notice to the concerned party directing him to pay the deficit stamp duty and registration fees within the time specified in the said notice.

Audit found from records of 11²⁵ ROs between October 2011 and July 2013, 1,579 instruments presented for registration between September 1994 and January 2012 were kept pending for final registration by the RAs due to under valuation of the properties. Audit found that though the market values of these properties were determined by the RAs subsequently in all these cases, no demand notices were issued to the concerned parties for payment of deficit stamp duty and registration fees. This resulted in non-realisation of revenue of ₹ 5.85 crore. Out of the test checked cases 80.49 *per cent* cases of arrears were pending for more than seven years. Age wise analysis of the pending cases is shown in the following table:

Table 5.6 – Age-wise analysis of the pending cases

Pendency period	No. of Cases	Percentage
More than 10 years	194	12.29%
7-9 years	1,077	68.20%
4-6 years	236	14.95%
0-3 years	72	4.56%
Total	1,579	100%

After audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard have been issued to the respective ROs for necessary compliance.

²⁵ ADSRs Alipore, Barasat, Burdwan, Cossipore, Ghateswar, Hariharpara, Ketugram, Mekhliganj, Patashpur and DSRs Murshidabad-I and II.

5.6.10.2 Non-realisation of deficit stamp duty and registration fees due to non-reference of pending cases to the Collector

Section 47A of the IS Act, 1908 read with Rule 3(8) and 4(1) of the [WBS(PUI)] Rules, 2001 provides that on receipt of the notice from RA, if the deficit stamp duty and registration fees are not paid by the concerned party within the time, the RA shall refer the case to the Collector for determination of the market value of the properties. Under Section 48 of the Act, all dues are recoverable by any process, for the time being in force, for the recovery of arrears of land revenue.

Audit found from the records of 11²⁶ ROs that 2,269 instruments of sale, gift etc. were kept pending for final registration by the RAs as market value of the properties were not truly set forth in those instruments. Subsequently, market value of the properties were determined by RAs in all these cases and demand notices were also issued to the concerned parties for payment of deficit stamp duty and registration fees of ₹ 7.52 crore. Since, the registrants did not pay the deficit stamp duty and registration fees within the time specified in demand notices, RAs were required to refer the cases to the Collectors for determination of market value of the properties and stamp duty payable thereon. Audit, however, found that the RAs neither referred the cases to the Collectors (DIGRs)²⁷ for adjudication nor took any action under Section 48 of the IS Act for recovery of the arrear revenue even after lapse of periods ranging from six to 193 months from the date of issue of the demand notices. The delay in referring the cases to the DIGRs was due to non-stipulation of a time frame in the Acts/Rules for forwarding such cases.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard had been issued to the respective ROs toward compliance of the same.

5.6.10.3 Non-realisation of deficit stamp duty and registration fees due to delay in adjudication

Under Rules 5(1), 5(4) and 5(5) of the [WBS (PUI)] Rules, 2001 the Collector on receipt of reference from the RA under Section 47 of the IS Act, shall issue a notice for hearing in Form-VIII to the concerned party, within 30 days from the date of receipt of such reference and after hearing the person shall determine the market value of the property and proper stamp duty payable thereon.

Audit found from the records of three²⁸ Range Offices that 16,134 instruments were referred to the Collectors by 67 registering authorities for determination of market value of the properties between August 2000 and March 2012. In 7,095 out of 16,134 cases, market values of the properties were not determined by the Collectors even after a lapse of period ranging between 14 and 153

²⁶ ADSRs Barasat, Bhangore, Burdwan, Cossipore, Dinhata, Durgapur, Goas, Lalbagh, Sagardighi and DSRs, Bankura and Murshidabad-II.

²⁷ DIGRs act as the Collector under the IS Act, 1908.

²⁸ DIGRs Range-I, Range-II and Range-IV.

months and even the notices (in Form-VIII) for hearing had not been issued to the parties in 5,555 out of 7,095 cases.

Audit test checked 1,504 instruments where the hearing notices were not issued and found that stamp duty and registration fees were paid by the registrants on the set forth value of ₹ 68.66 crore instead of the market value of ₹ 314.17 crore subsequently assessed by the RAs. Delay in adjudication of these cases resulted in non-realisation of stamp duty and registration fees of ₹ 20.01 crore.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that instructions in this regard had been issued to the respective ROs toward compliance of the same.

Government may consider taking up a special drive for disposal of the pending cases pertaining to the pre-CORD registration period and initiate certificate proceedings²⁹ to recover the arrears of revenue.

5.6.11 Internal control mechanism

Internal Control is an integral component of an organisation's management processes established in order to provide reasonable assurance that the organisation's operation are carried out effectively, economically and efficiently. Evaluation of internal control mechanism in the administration of stamp duty and registration fees revealed deficiencies in the administrative, operational and monitoring controls. Deficiencies in the internal control mechanism of the department are discussed in the succeeding paragraphs:

5.6.11.1 Non-existence of Manual

Audit observed that the Directorate did not prepare any Office Procedure Manual for the working of the Directorate where segregation of duties, power, role and responsibility of various registering authorities and Collectors are documented.

After audit pointed this out, the Directorate stated (September 2013) that the procedure specified in relevant Acts and Rules were followed in this regard. However, no reply had been furnished regarding the absence of the manual.

5.6.11.2 Absence of target for inspection of Public Offices

Under Section 73 of the IS Act, 1899 the Collectors are authorised to inspect the Public Offices to detect any fraud or omission of duty in respect of documents executed/presented in those offices.

Audit found that the department did not prescribe any norm/target for the inspection of the Public Offices by the Collectors. In the absence of such monitoring, the department could not ensure that the documents executed in the Public Offices are duly stamped and the documents compulsorily registrable are presented in the Registration Offices.

²⁹ Certificate proceeding is a process of referring the case to the Certificate Officer for recovery of arrears of revenue.

The Directorate did not furnish specific reply to the audit observation (September 2013).

5.6.11.3 Absence of target for inspection of Registration Offices

Under Rule 5A of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, the Collectors are required to inspect the Registration Offices (RO) and to check the documents registered through the CORD software by random selection to assure that market value of the properties had been generated correctly from the CORD software. If the market value of any property has not been generated correctly due to non-furnishing of correct particulars of the property, the Collector shall determine the market value and the stamp duty payable thereon.

Audit found that the department did not fix the periodicity of inspection of ROs by the Collectors. The methodology of selection of the documents was also not prescribed. In the absence of prescribed norms, the efficiency and effectiveness of the inspections conducted by the Collectors could not be ascertained in audit.

After Audit pointed this out, the Directorate stated (September 2013) that collectors were asked to inspect five ROs and requested to submit report thereon after the end of each quarter. The fact, however, remains that no periodicity of inspection was prescribed. Regarding the methodology of selection of deeds, the Directorate did not furnish any reply.

5.6.11.4 Lack of reports/returns and improper maintenance of records

Reports/returns are important tools of an effective internal control mechanism. Proper maintenance of the prescribed records/registers are essential for preparation of correct and complete reports/returns.

Audit observed that the department did not prescribe any report/return on arrears of revenue to be submitted by the registering authorities. In absence of such returns, the department was not aware of the position of arrears of revenue and their progressive realisation. Under Rule 3(8) of the West Bengal Stamp (Prevention of Undervaluation of Instrument) Rules, 2001, the registering authorities shall, on determination of market value of the properties in respect of deeds registered provisionally, record the particulars thereof in Form-VA. The cases referred to the Collector under Section 47A of the IS Act by the registering authorities, for adjudication, is required to be maintained in Form-VI. Audit observed that the registers prescribed for pending documents and for the documents referred to the Collector were either not maintained or maintained improperly, leaving some vital columns blank.

After audit pointed this out, the registering authorities accepted that the registers were not maintained properly. The Directorate stated (September 2013) that report on arrears of revenue was obtained from time to time. Reply is not tenable as in the absence of the prescribed register which is basis for preparation of correct and complete reports, the authenticity of the report on arrears of revenue, as stated to be obtained, could not be ensured.

5.6.12 Non-existence of Internal Audit Wing

The internal Audit Branch set up in November 1998 under the Finance Department conducts internal audit in various departments. Audit found that the Directorate of Registration and Stamp Revenue did not have any Internal Audit Wing of its own. Further, the Department of Internal Audit of the State Government had not conducted audit of the Directorate during 2007-08 to 2011-12.

Other points of interest**5.6.13 Under mobilisation of revenue due to non-implementation of the Finance Act, 2011**

As per Section 2(2)(c) of the Finance Act, 2011 published under Gazette Notification No. 1070L dated 30.08.2011, the rate of stamp duty on deed of gift in favour of family members was enhanced from 0.5 *per cent* to two *per cent*. The department was required to issue notification giving effect to the change brought out in the Finance Act, 2011 in order to levy stamp duty at the enhanced rate.

Audit found that the department has not issued any notification to levy stamp duty at the enhanced rate even after a lapse of 18 months. Audit analysed the CORD data of all the 21 ROs and found that in 42,838 cases, gift deeds in favour of the family members were executed between October 2011 and March 2013. The market values of the gifted properties were assessed at ₹ 4,674.92 crore on which stamp duty of ₹ 23.91 crore at the existing rate was paid by the donees. Had the enhancement of duty been done by the department and enhanced rates applied, additional stamp duty of ₹ 69.62 crore could have been realised.

After Audit pointed this out, the Directorate accepted (September 2013) the audit observation and stated that the matter was pending with the Government.

5.6.14 Irregular allowance of remission

As per Section 9(1)(a) of the IS Act, read with G.O. No. 865-F.T. dated 21.05.2008, Government of West Bengal, Finance Department (Revenue Branch) had remitted stamp duty and registration fees in full on the execution of lease deed in favour of the West Bengal Industrial Development Corporation Limited (WBIDCL), a Government of West Bengal undertaking. However, the said remission was not available for any subsequent transfer of the same land by the WBIDCL to the sub-lessees or transferees.

Audit noticed from the records of the WBIDCL in July 2013 that in one case WBIDCL allotted 315.41 acres of land in Sahachawk Industrial Park in Paschim Midnapore to one private firm on lease for a term of 99 years for setting up industries against premium of ₹ 5.30 crore and annual lease rent of ₹ 1.58 lakh. The lease deed was executed between the WBIDCL and the company in September 2009 and was presented before the Additional Registrar of Assurance-III, Kolkata for registration. Audit found that though stamp duty and registration fees of ₹ 37.95 lakh was chargeable on the lease deed, RA remitted stamp duty and registration fees in full in contravention of

the Government order of May 2008. This resulted in irregular allowance of remission of ₹ 37.95 lakh.

After audit pointed this out, the Directorate stated (September 2013) that the case would be verified.

5.6.15 Conclusion

Performance Audit has brought out a number of system as well as compliance deficiencies which resulted in evasion of stamp duty and registration fees. Audit found that due to absence of a system of sharing of information between the Public Offices and the Registration Offices relating to execution/submission of documents in the Public Offices, the department could not detect cases of unduly stamped instruments executed/submitted in those Public Offices. Due to lacunae in the Acts/Rules, there has been avoidance of additional stamp duty by splitting of instruments. Incorrect mapping of the business rules in the CORD software resulted in short-levy of stamp duty. Due to improper scrutiny of the deeds, stamp duty and registration fees were evaded by the property owners through undervaluation of properties by furnishing incorrect property details. Deeds were misclassified by the RAs resulting in short-levy of stamp duty and registration fees. Further, potential revenue could not be mobilised by the department due to non-implementation of the Finance Act, 2011.

5.6.16 Summary of recommendations

To improve the effectiveness of the state machinery for better management of the receipts from stamp duty and registration fees, the Government may:

- consider framing provisions for compulsory sharing of information by the Public Officers with the Registering Authorities relating to instruments executed in their offices in relation to the construction, development, sale, lease or transfer of any immovable property;
- implement the system of regular inspection of the Public Offices to ensure collection of proper stamp duty and registration fees;
- consider devising a system to check splitting of property with an intent of avoidance of payment of additional stamp duty;
- incorporate all business rules properly in the CORD software for correct levy of stamp duty;
- direct the RAs to check the deeds scrupulously with respect to the market value assessment slips generated through the CORD software to detect the mismatch of particulars of properties to avoid evasion of stamp duty;
- consider stipulating a timeframe for disposal of pending cases and recovery of due taxes; and
- establish an effective internal audit wing of its own to ensure that various provisions of the Acts and Rules are properly administered for effective tax administration.