

**Chapter-IV**  
**Stamp Duty**

## CHAPTER-IV 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 Commissioners (Collectors), Tehsildars and Naib-Tehsildars acting as Registrars, Sub-Registrars (SRs) and Joint Sub-Registrars (JSRs) respectively. 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 five divisions and 22 districts having 22 Registrars, 82 SRs and 87 JSRs.

### 4.2 Results of audit

Test check of the records of 110 units relating to Stamp Duty and Registration Fee during 2014-15 showed irregularities involving ₹ 145.89 crore in 25,163 cases, which broadly fall under the following categories:

**Table 4.1**

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Non/short levy of stamp duty and registration fee due to misclassification of instruments	867	11.55
2.	Non levy of stamp duty on mortgage deeds/power of attorney	428	74.50
3.	Non levy of social infrastructure cess (SIC) and additional stamp duty	23,781	25.76
4.	Other irregularities	87	34.08
	<b>Total</b>	<b>25,163</b>	<b>145.89</b>

In 2014-15, the Department accepted non/short levy of stamp duty and registration fee and other deficiencies of ₹ 398.64 lakh in 1,527 cases and issued demand, out of which ₹ 0.05 lakh involved in three cases were pointed out in 2014-15 and rest in the earlier years. The Department further informed in 2014-15 that they had recovered ₹ 398.59 lakh in 1,524 cases pertaining to the earlier years.

A few illustrative cases involving ₹ 18.87 crore are discussed in the succeeding paragraphs.

#### **4.3 Short levy of stamp duty and registration fee due to misclassification of properties**

*Stamp Duty and Registration Fee of ₹ 2.11 crore was short levied in 20 cases due to misclassification of properties as agriculture instead of residential/ commercial.*

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 as defined thereunder, fixes the minimum market rate of land/properties locality wise and category wise in the district, for the purpose of levying stamp duty on the instrument of transfer of any property.

We noticed (March 2014 to January 2015) from the records of 11 Sub Registrars<sup>1</sup> (SRs) and two Joint Sub Registrars<sup>2</sup> (JSRs) that 20 instruments of transfer of properties valuing ₹ 31.88 crore were registered during 2012-14 at the value set forth in these instruments instead of ₹ 56.93 crore on the basis of minimum market rates of properties fixed by respective District Collectors for residential/commercial properties. The omission were either due to misclassification of the properties as agriculture instead of residential/commercial or non-application of higher rates for particular locality/khasra numbers. Application of stamp duty on incorrect value of property resulted into short levy of stamp duty and registration fee of ₹ 2.11 crore.

The matter was reported to the Government/Department (October 2014 to April 2015); their replies were awaited (November 2015).

#### **4.4 Irregular remission of stamp duty and registration fee**

*Stamp Duty and Registration Fee of ₹ 59.67 lakh was irregularly remitted in six cases in contravention of Government instructions.*

Punjab 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 rule out mis-utilisation of this exemption by the charitable institutions, the Government issued instructions (May 2010) that such remission was to be confirmed by the District Collector (DC) who would determine whether the transfer of immovable property in favour of the charitable institution was eligible for exemption from the levy of stamp duty/registration fee or not. Under Section 3C of the Indian Stamp Act, 1989, Social Security Fund in the form of additional stamp duty

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<sup>1</sup> SRs: Abohar, Barnala, Bathinda, Derabassi, Ferozpur, Kapurthala, Ludhiana (East), Ludhiana (South/Central), Moga, Nabha and Samana.

<sup>2</sup> JSRs : Koom kalan and Malaud.

leviable at the rate of three *per cent* was also chargeable in respect of every instrument of immovable properties falling within the municipal limit.

We noticed (May 2014 and June 2014) from the records of three Sub-Registrars<sup>3</sup> for the year 2013-14 that six instruments of transfer of immovable properties were registered with consideration of ₹ 9.85 crore as set forth in the deeds. These instruments were registered during 2013-14 in favour of charitable institutions without charging stamp duty/registration fee, treating it as a transfer for charitable purposes. The prior certification of the DC required to be obtained in such cases was not obtained, which was in contravention of Government instructions stated *ibid*. This resulted in irregular remission of stamp duty and registration fee of ₹ 59.67 lakh.

The matter was reported to the Government/Department (December 2014 and January 2015); their replies were awaited (November 2015).

#### 4.5 Non levy of social security fund and social infrastructure cess

***Failure to comply with the Government instructions resulted in non-levy of Social Infrastructure Cess and Social Security Fund of ₹ 1.71 crore in 32 cases.***

Punjab Government vide notification (February 2005) levied Social Security Fund (SSF) at the rate of three *per cent* on every instrument mentioned in entry 23 of Schedule 1-A, if such an instrument is for transfer of properties situated within the jurisdiction of a Municipality/Corporation or within the area of five kilometers from the outer limit of Municipality/Corporation as may be specified by the Collector. Further, Punjab Government vide notification (February 2013) amended the Indian Stamp Act, 1899, in its application to the State of Punjab by inserting Section 3-D which provided *inter alia*, that every instrument mentioned in entry 23 of Schedule 1-A chargeable with duty under Section 3 and additional duty under Sections 3-B and 3-C, shall, in addition to such duty be also chargeable with such Cess at the rate of one *per cent*, as is specified in Schedule 1-C. The Cess shall be paid by means of Stamp or Stamp papers bearing the inscription "Social Infrastructure Cess" (SIC) and was required to be levied at once.

(a) We noticed (April 2014 to December 2014) from the records of eight Sub Registrars<sup>4</sup> (SRs) and Joint Sub Registrar, Majri for the year 2013-14 that 18 deeds with consideration of ₹ 25.45 crore were executed between April 2013 and March 2014 without charging SSF and SIC. As these instruments were for transfer of properties which were either situated within Municipality/Corporation or within five kilometers of the outer limit of

<sup>3</sup> Amritsar-I, Bathinda and Patiala.

<sup>4</sup> Amritsar-I, Amritsar-II, Barnala, Bathinda, Ludhiana (West), Mohali, Patiala, and Sunam.

Municipality/Corporation, SSF and SIC was required to be levied on the transactions as per notifications *ibid*. Failure to comply with the Government instructions resulted in non-levy of SSF and SIC amounting to ₹ 99.84 lakh.

(b) We noticed (April 2014 to November 2014) from records of four Sub Registrars<sup>5</sup> (SRs) and two Joint Sub Registrars<sup>6</sup> (JSRs) for the year 2012-14 that SIC amounting to ₹ 71.21 lakh at the rate of one *per cent* of total consideration of ₹ 71.21 crore of 14 deeds executed between February 2013 and March 2014 was not levied on the instruments as was required to be levied as per the notification mentioned *ibid*. It resulted in non-levy of SIC amounting to ₹ 71.21 lakh.

The matter was reported to the Government/Department (August 2014 to April 2015); their replies were awaited (November 2015).

#### **4.6 Non levy of stamp duty and registration fee on mortgage deeds**

*Mortgage deeds were executed and registered for securing loan for development purposes (other than agriculture purpose) without levying Stamp Duty and Registration Fee of ₹ 12.06 crore in three cases.*

Punjab Government exempted (June 2001) stamp duty and registration fee leviable on instruments executed by a person for securing loan from bank, co-operative society or banking institution to meet the expenditure on any of the items specified in connection with agricultural purposes or purposes allied to it. Further, as per Government instructions (August 2009), if the loan is secured from the bank for non-agriculture purpose, stamp duty at the rate of four *per cent* and Registration fee at the rate of one *per cent* of the amount secured is leviable.

We noticed (September 2014) from the records of Sub Registrar, Ludhiana (East) that three instruments of mortgage deeds were executed and registered in favour of Municipal Corporation, Ludhiana in 2013-14 for securing loan of ₹ 300.00 crore from Canara Bank for development purposes (other than agriculture purposes) without levying Stamp Duty and Registration Fee which was irregular as per notification *ibid*. Thus, stamp duty and registration fee of ₹ 12.06 crore was required to be levied on the amount secured.

The matter was reported to the Government/Department (March 2015); their replies were awaited (November 2015).

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<sup>5</sup> SR Amritsar-I Jalandhar-I, Khanna and Nawan shahar,

<sup>6</sup> JSR Majri, Tanda.

#### 4.7 Short levy of stamp duty and registration fee

*Application of incorrect rate for valuation of the property as agriculture land resulted in short levy of stamp duty and registration fee of ₹14.90 lakh in two cases.*

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 rate of land/properties locality wise and category wise in the district for the purpose of levying of stamp duty.

While fixing the minimum rates of the property for the year 2013-14, two<sup>7</sup> District Collectors (DC) clarified that the instrument of transfer of property measuring more than two kanals purchased by Commercial Company or Developer will be registered at the residential/commercial rates.

We noticed (April 2014 and June 2014) from the office of the two Sub Registrars<sup>8</sup> that two instruments of the transfer of property were executed and registered in favour of a company and developer treating the property as agricultural. The area of land purchased in each instrument was more than two kanals. Stamp Duty of ₹ 2.97 lakh and registration fee of ₹ 0.37 lakh was charged on the consideration of ₹ 37.00 lakh set forth in the instruments against the leviable duty of ₹ 15.98 lakh and Registration fee of ₹ 2.26 lakh worked out on the basis of minimum market rates fixed by the respective DC for the commercial property on the consideration of ₹ 225.60 lakh. Application of incorrect rate for valuation of the property as agriculture land resulted in short levy of stamp duty and registration fee of ₹ 14.90 lakh (₹ 13.01 lakh + ₹ 1.89 lakh).

The matter was reported to the Government/Department (January 2015); their replies were awaited (November 2015).

#### 4.8 Short levy of stamp duty

*Stamp duty of ₹7.99 lakh was short levied in 14 cases on Power of Attorneys registered in favour of the persons who did not fall in the ambit of their family members as defined in the Government notification.*

Punjab Government vide its notification (30 July 2013) amended entry no. 48 of schedule 1-A of the Indian Stamp Act, 1899 and levied stamp duty at the rate of two *per cent* applicable with immediate effect on a Power of Attorney (PoA) executed to give right to a person to sell any immovable properties to a person other than family members. Family member will include spouse, child, parents, siblings, grand-parent and grand-child. Stamp duty is to be charged on

<sup>7</sup> Fatehgarh Sahib and Jalandhar.

<sup>8</sup> Fatehgarh Sahib and Phillaur.

the amount of consideration or on the amount calculated on Collector rate in respect of the property mentioned in the instruments, whichever is higher.

We noticed (April, August and September 2014) from the records of the three Sub Registrars<sup>9</sup> that 14 PoAs were registered in which the persons gave rights to sell their properties to persons who did not fall in the ambit of their family members as defined in the above cited notification. Stamp duty of ₹ 0.14 lakh was charged against the leviable duty of ₹ 7.99 lakh. It resulted in short levy of stamp duty of ₹ 7.85 lakh.

The matter was reported to the Government/Department (January and February 2015); Sub Registrar, Derabassi replied that recovery of ₹ 1.43 lakh<sup>10</sup> in respect of six cases had been made. Replies of Government/Department in other cases were awaited (November 2015).

#### **4.9 Cases referred to Collector under Section 47-A of the Indian Stamp Act, 1899**

*Delay in referring the undervalued cases to the Collector resulted in non realization of deficient amount of ₹ 1.57 crore. No action was taken by the department to recover the deficient amount of ₹ 19.08 crore in 2,134 cases even after being decided by the Collector. Interest amounting to ₹ 34.64 lakh was not levied on the delayed recovery of deficient amount of ₹ 1.24 crore.*

Section 47-A of Indian Stamp Act, 1899 (IS Act) stipulate that if the market value of any property, which is the subject of any instrument on which duty is chargeable on market value as set forth in such instrument, is less than even the minimum value as determined in accordance with the rules made under this Act, the Registering Officer appointed under the Registration Act, 1908, shall, after registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

Our examination (between July 2014 and March 2015) of records of five out of 22 District Collectors and 43 out of 169 Sub-Registrars (SRs)/Joint Sub-Registrars (JSRs), pertaining to the period 2011-14 selected through statistical sampling by applying the Probability Proportional to Size method, showed cases of delay in referring of undervaluation cases to the Collector, non-recovery of decided cases, non-levy of interest, improper maintenance of records, absence of time limit for disposal of undervalued cases etc., which have been discussed in the following paragraphs:

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<sup>9</sup> Derabassi, Ludhiana (East) and Ludhiana (West).

<sup>10</sup> ₹ 141277 + Interest ₹ 2200 = ₹ 143477.

### 4.9.1 Delay in disposal of undervalued cases

Section 47-A (3) of IS Act stipulates that the Collector may, *suo moto*, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908, in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated, or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, call for and examine any instrument, within a period of three years from the date of registration of an instrument for the purpose of satisfying himself as to the correctness of the value of the property.

(a) We noticed from the records of eight<sup>11</sup> SRs/JSRs that 170 cases of undervalued registrations involving deficient amount of ₹ 1.57 crore<sup>12</sup>, were referred (between April 2011 and March 2014) to Collectors under Section 47-A, for adjudication after the stipulated period of three years from the date of registration.

In nine out of 26 cases relating to SR Barnala, Additional Deputy Commissioner admitted that the documents were registered after applying wrong codes of rate list resulting in evasion of stamp duty and registration fee of ₹ 3.17 lakh and sought action under 47-A of IS Act. The Collector filed these cases with the remarks that no action could be taken on these cases under Section 47-A as they had already become time barred. Thus, delayed referral of undervalued registrations caused the State to suffer avoidable loss of revenue which could not be ascertained in view of incomplete information provided to audit.

***(b) Non-initiation of any action by the Registering authorities on undervalued cases.***

We noticed from the information provided by nine<sup>13</sup> SRs/JSRs that in 691 cases, undervaluation of ₹ 2.30 crore was pointed out by statutory audit or internal audit up to March 2011. The concerned SR/JSR neither initiated any action to recover the deficient amount nor referred the cases to the respective Collectors for adjudication even after a lapse of more than three years from the date of registration of the instruments.

<sup>11</sup> Banga, Barnala, Jagraon, Jalandhar-I, Ludhiana (Central), Machhiwara, Mullanpur Dakha and Nawan Shahar.

<sup>12</sup> Calculated in 92 cases, amount in remaining 78 cases was not furnished.

<sup>13</sup> Banga, Delhon, Ludhiana (West), Mullanpur Dakha, Nawanshahar, Pathankot, Patiala, Rupnagar and Tarn-Taran.



*(c) Absence of time limit for disposal of undervalued cases referred to the Collector under Section 47-A of IS Act.*

We noticed from the information furnished by the office of six<sup>14</sup> Collectors that 397 undervalued cases received under Section 47-A between September 2004 and March 2014 were still pending for finalisation as on October 2014, for the period ranging between one year and 10 years.

Absence of time limit to finalise the undervalued cases by the Collector resulted not only into inordinate delay to finalise the cases but also puts financial burden of interest under Sub Section 2 of Section 47-A on the executants. *In Haryana State, instructions were issued (November 2013) to dispose of the cases received under Section 47-A within two months from the date of receipt in the Collectors office.*

**4.9.2 Non recovery of decided cases**

Rule 5 of the Punjab Stamp (Dealing of under-valued Instruments) Rules, 1983 provides that recovery of deficient amount is made by issuing a notice in Form 2 in which concerned person is directed to pay the full amount of deficient stamp duty due from him into treasury and to furnish a copy of challan showing the payment of such amount. The deficient amount, which remains unpaid after the specified date in the notice is recovered as arrear of land revenue under Section 48 of IS Act.

We noticed in 22<sup>15</sup> SRs/JSRs that the respective Collectors decided 2,134 cases upto 2014 involving recovery of ₹ 19.08 crore but recovery in these cases was still pending.

Out of 22, five<sup>16</sup> SRs/JSRs stated that in 172 cases, no action was initiated to recover the deficient amount of ₹ 4.80 crore as arrear of land revenue under Section 48 of the Indian Stamp Act, 1899. No reasons for not initiating such action were given. The replies of remaining SR/JSRs were awaited.

**4.9.3 Non-levy of interest on the deficient amount**

Sub-Section 2 of Section 47-A stipulates that interest at the rate of 12 *per cent* per annum on deficient amount shall be payable by the person liable to pay duty from the date of registration of the instrument to the date of payment of deficient amount.

We noticed in 17<sup>17</sup> SRs/JSRs that on the basis of Collector's decision, the deficient amount of ₹ 1.24 crore was recovered in 196 cases during 2011-14

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<sup>14</sup> Barnala, Pathankot, Patiala, Rupnagar, Mansa and Mohali.

<sup>15</sup> Banga, Banur, Barnala, Dehlon, Derabassi, Dhanaula, Faridkot, Jalandhar-I, Kapurthala, Kharar, Ludhiana (East), Ludhiana (West), Mansa, Nabha, Nawanshahar, Patiala, Patran, Raikot, Rajpura, Rupnagar, Sahnewal and Sidhwan Bet.

<sup>16</sup> Barnala, Kapurthala, Kharar, Ludhiana (East) and Mansa.

<sup>17</sup> Balachaur, Banga, Banur, Barnala, Dhanaula, Faridkot, Ghanaur, Kapurthala, Ludhiana (West), Machiwara, Maloud, Nawanshahar, Pathankot, Patran, Rajpura, Samana and Sidhwan Bet.

but the interest at the rate of 12 *per cent* per annum on deficient amount was not levied. The omission resulted into non-levy of interest of ₹ 34.64 lakh.

#### 4.9.4 Improper maintenance of records

Rule 6 of the Punjab Stamp (Dealing of under-valued Instruments) Rules, 1983 provides that the reference received by the Collector under Sub-Section (1) of Section 47-A of IS Act and dealt with in accordance with the provisions of these Rules shall be entered in a register to be maintained in Form 3. Further, Rule 7 provides that the Collector shall send a copy of the final order passed by him to the Registering Officer concerned alongwith the instrument, which was referred to him under Sub-Section (1) of Section 47-A. On receipt of order under Sub-Rule 1, the Registering Officer shall enter the particulars of the case in a register to be maintained by him in Form-4.

We noticed in the offices of three<sup>18</sup> Collectors and 33 JSRs/SRs that the registers were not being maintained in the prescribed proforma in the offices of the Collectors and JSRs/SRs. Due to non-maintenance of these registers in prescribed proforma, the information regarding the decided cases could not be monitored and also the recovery could not be watched properly. Further, we observed from the information from 11<sup>19</sup> SRs/JSRs that while 1,458 cases were referred to respective Collectors between April 2011 and March 2014, only 668 cases were shown as received in the respective Collector's office during the same period. Thus, there was a huge un-reconciled difference of 790 cases.

#### 4.9.5 Absence of provision regarding entry of deficient amount in revenue record

We noticed from the records of two<sup>20</sup> SRs for the period 2011-2014 that nine cases were decided by the respective District Collectors in favour of the Department and orders were issued to recover the deficient amount of ₹ 25.29 lakh. No amount was recovered even after a lapse of the period of one to five years of Collector's decision.

After cross verification of the information provided by the area patwari in respect of nine cases, it was noticed that the properties mentioned in all these cases were further sold either fully or partly by owners to other persons without paying the deficient amount of ₹ 25.29 lakh. Had suitable provisions been made in the Stamp Act regarding entry of deficient amount in the revenue records to safeguard Government interest, the owners could have been barred from selling their properties till the payment of the outstanding amounts. In one such order, District Collector, Mansa had specifically ordered

<sup>18</sup> Ludhiana, Mohali and Patiala.

<sup>19</sup> Faridkot, Derabassi, Kharar, Ludhiana (Central), MullanpurDakha, Nawanshahar, Patiala, Raikot, Sahnewal, Samrala and Sidhwan Bet.

<sup>20</sup> Barnala and Kharar.

(January 2013) making an entry in the revenue records but the same was still not made.

#### **4.9.6 Non-preferring of appeal to the Divisional Commissioner**

Section 47-A (4) stipulates that any person aggrieved by an order of the Collector under Sub Section (2) or Sub-Section (3) may, within thirty days from the date of that order, prefer an appeal before the Commissioner and all such appeals shall be heard and disposed off in such manner as may be prescribed by rules made under this Act.

No instances were noticed where the respective SRs/JSRs had gone in appeal before the Commissioner. This is probably due to the fact that SRs/JSRs are subordinate officers of the Collector, and naturally feels inhibited to appeal against the orders of their superior.

We came across three undervalued cases<sup>21</sup> which were referred to the respective Collector under Section 47-A. The decisions in two cases were given against the Department. Respective SR/JSR did not prefer appeal against these orders, though these cases were fit for appeal due to below mentioned reasons:

(i) Deed no. 1705 dated 29 November 2012 was registered by applying the lower agriculture rates than the rates applicable to that property as per approved Collector rate list. JSR, Dirba referred the same to the Collector, Sangrur under Section 47-A. The Collector declared that the value set forth in the deed was correct.

After careful scrutiny of this deed, we noticed that specific khasra number wise rates were fixed in the approved Collector rate list but while registering the deed, correct code/rate of approved rate list was not applied. Moreover, in the revenue records i.e. *khasra girdawari* record, the property was shown as residential colony at the time of execution.

Had the JSR filed an appeal to the Divisional Commissioner, extra revenue in the form of stamp duty and registration fee could have come to the Government exchequer.

(ii) In SR Mansa, we noticed that two<sup>22</sup> cases of non-levy of additional stamp duty were pointed out by statutory audit and the same were referred to the Collector, Mansa under Section 47-A. In one case (deed no. 165), Collector levied (February 2012) three *per cent* additional stamp duty but in the other case, the Collector decided (May 2012) that additional stamp duty was not leviable as the notification in this regard was issued in June 2009 i.e. after the registration of the document (April 2009). However, the notification in this regard was actually issued in February 2005. In view of

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<sup>21</sup> Collector Sangrur (1) + Collector Mansa (2).

<sup>22</sup> Deed no.165 dated 15 April 2009 and 177 dated 15 April 2009.

this, the SR Mansa should have preferred an appeal to the Divisional Commissioner.

In view of the position discussed above, there is a case for constituting a Review Committee to consider the cases decided against the Department, for further appeal instead of leaving this decision to SRs/JSRs.

Our examination of records of five District Collectors and 43 Sub-Registrars pertaining to the period of 2011-14 showed the cases of delay in referring the undervalued cases to the Collector. No action was taken by the Department to recover the deficient amount even after being decided by the Collector. Interest was not levied on the recovery of deficient amount.

The above points were reported to the Government (August 2015); its reply was awaited (November 2015).