Chapter-IV
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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 112 units relating to Stamp Duty and Registration Fee during 2013-14 showed irregularities involving ₹ 101.01 crore in 54,760 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	506	21.37
2.	Non/short levy of stamp duty and registration fee on mortgage deeds, lease deeds and charitable deeds.	838	3.11
3.	Non levy of social infrastructure cess (SIC)	51,818	51.97
4.	Other irregularities	1,598	24.56
	Total	**54,760**	**101.01**

In 2013-14, the Department accepted non/short levy of stamp duty and registration fee and other deficiencies of ₹ 409.63 lakh in 1,344 cases and issued demand, out of which ₹ 8.77 lakh involved in 114 cases were pointed out in 2013-14 and rest in the earlier years. The Department further informed in 2013-14 that they had recovered ₹ 193.32 lakh in 636 cases pertaining to the earlier years.

A few illustrative cases involving ₹ 62.99 crore are discussed in the succeeding paragraphs.

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

Under the Punjab Stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the District Collector (DC) 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 of stamp duty and registration fee on the instrument of transfer of any property.

Audit noticed (February 2013 to January 2014) from the records of 20 Sub Registrars[1] (SRs) and three Joint Sub Registrars[2] (JSRs) that 58 instruments of transfer of properties valuing ₹ 24.14 crore were registered at the value set forth in these instruments instead of ₹ 60.17 crore computed on the basis of minimum market rate of properties fixed by the respective DC for residential/commercial and particular locality/khasra numbers for which separate/higher rates were fixed during the relevant years. The reasons for omission were misclassifying the properties as agriculture instead of residential/commercial as well as higher rates not being applied for particular khasra numbers. This resulted in short levy of stamp duty and registration fee of ₹ 2.53 crore.

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

4.4 Non levy of additional stamp duty

As per notification (February 2005), Punjab Government levied additional stamp duty at the rate of three *per cent* under the Indian Stamp Act on an instrument, if such an instrument is for transfer of properties situated within the jurisdiction of a Municipality/Corporation or within the area of five kilometres from the outer limit of the Municipality/Corporation, as the case may be, as may be specified by the Collector. The Government also clarified vide notification dated 6 May 2005 that additional stamp duty is not exempted in the cases where the levy of stamp duty is exempted by Government from time to time.

Audit noticed (between April 2013 and November 2013) from the records of three SRs[3] and two JSRs[4] that 11 instruments of transfer of immovable properties were registered in 2012-13 with consideration of ₹ 39.91 crore without charging additional stamp duty. As these instruments were for transfer

[1] Amritsar-I(2), Amritsar-II(2), Bathinda (7), Budhlada (2), Chamkaur Sahib (11), Derabassi (1), Ferozepur (1), Hoshiarpur (1), Kharar (3), Ludhiana (C) (2), Ludhiana (E) (1), Ludhiana (W) (2), Moga (3), Mohali (2), Mukerian (9), Phillaur (1), Rampuraphul (1), Samana (1), Sangrur (2) and Tarn Taran (1).

[2] Dinanagar (1), Makhu (1) and Sahnewal (1).

[3] Jalandhar-II, Ludhiana (West) and Ludhiana (East).

[4] Dhariwal and Sahnewal.

of properties which were either situated within Municipality/Corporation or within five kilometres of the outer limit of Municipality/Corporation, an additional stamp duty was required to be levied on the transactions as per notification *ibid*. This resulted in non-levy of additional stamp duty of ₹ 1.20 crore.

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

4.5 Irregular remission of stamp duty and registration fee

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 the mis-utilisation of this exemption by the charitable institutions, the Government issued instructions vide 16/27/08/ST/2/ 8070-90 dated 26 May 2010 that such remission was to be confirmed by the District Collector (DC) whether the transfer of immovable property in favour of the charitable institution is eligible for exemption from the levy of stamp duty/registration fee or not. Further, under Section 3C of the Indian Stamp Act 1989, Social Security Fund in the form of additional stamp duty leviable at the rate of three *per cent* is also chargeable in respect of every instrument of immovable properties falling within the municipal limit.

Audit noticed (between March 2013 and February 2014) from the offices of seven SRs[5] and four JSRs[6] that 15 instruments of transfer of immovable property were registered with consideration of ₹ 9.72 crore as set forth in the deeds. These instruments were registered during 2011-13 in favour of charitable institutions without charging stamp duty/registration fee, treating the transfer as it were for charitable purposes. The prior certification of the DC required to be obtained in such cases was not obtained, which was a contravention of Government instructions stated *ibid.* This resulted in irregular remission of stamp duty and registration fee of ₹ 71.99 lakh.

The matter was reported to the Government/Department (February to March 2014). The Financial Commissioner Revenue (FCR) in his reply (April 2014) stated that it is a procedural irregularity which cannot lead to the automatic inference that loss to Government revenue has been caused. However, audit is of the view that such cases cannot be treated merely as procedural lapses and DC, while allowing such exemption to the charitable institutions should have certified that the organization to which exemption was granted was indeed eligible for grant of such exemption as was required in the

[5] Banur (1), Barnala (2), Ludhiana (E) (1), Ludhiana (W) (1), Moonak (1), Patiala (1) and Samrala (1).

[6] Banga (3), Gardiwala (1), Goniana Mandi (2) and Maur (1).

Government instructions *ibid*. In two cases of Sub Registrar Banga, the concerned Collector had ordered (April 2014) to recover the stamp duty and Registration fee of ₹ 28.09 lakh**.** FCR, further stated (May 2014) that guidelines would be issued to the Sub-Registrars to help them to arrive at a reasoned decision about grant of exemption to such institutions. Further action was awaited (November 2014).

4.6 Short levy of stamp duty and registration fee

Under the Punjab Stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the Committee of Experts fixes the minimum market 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 2012-13, the respective District Collectors[7] clarified that the transfer of property less than two kanals per purchaser (if purchasers are more than one) will be registered at the residential rates.

Audit noticed (May 2013, January and February 2014) from the office of the two SRs[8] and JSR Sri Hargobindpur that 20 instruments of the transfer of property were executed and registered treating the property as agricultural. The area of land per share purchased in each instrument was less than two kanals. Stamp duty of ₹ 9.89 lakh and registration fee of ₹ 1.33 lakh was charged on the consideration of ₹ 130.18 lakh set forth in the instrument against the leviable duty of ₹ 50.24 lakh and Registration fee of ₹ 4.88 lakh worked out by audit on the consideration of ₹ 650.56 lakh, on the minimum market rates fixed by the respective District Collectors for the residential property. Application of incorrect rate for valuation of the property as agriculture land resulted in short levy of stamp duty and registration fee of ₹ 43.91 lakh (₹ 40.35 lakh + ₹ 3.56 lakh).

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

4.7 Non levy of social infrastructure cess (SIC)

Punjab Government vide notification (6 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

[7] Gurdaspur and Ludhiana.

[8] Ludhiana (W) and Raikot.

inscription "Social Infrastructure Cess" (SIC) and was required to be levied at once.

Audit noticed (April 2013 to March 2014) from records of 57 SRs and 32 JSRs for the year 2012-13 that SIC amounting to ₹ 48.89 crore at the rate of one *per cent* of total consideration of ₹ 4,889.14 crore of 49,370 deeds executed between 6 February 2013 to 31 March 2013 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 ₹ 48.89 crore.

On this being pointed out, Sub-Registrar Rajpura and Gurdaspur replied that recovery of ₹ 41.07 lakh[9] in respect of 627 cases has been made. Remaining Sub-Registrars stated that they received the notification late or that action would be taken up as per rules.

4.8 Short levy of stamp duty and registration fee due to misclassification of conveyance deeds into development agreements/agreements

Section 2 (10) of the Indian Stamp Act (Act), provides that 'conveyance' includes conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule 1-A of the Act. Further, Section 54 of the Transfer of Property Act, 1882 defines "sale" as transfer of ownership in exchange for a price paid or promised or part paid and part promised. The classification of an instrument depends upon the nature of the transaction recorded therein.

a) Audit noticed (May 2013) from the records of the office of SR, Mohali that a development agreement was registered (June 2012) in respect of land on which stamp duty of ₹ 0.02 lakh was levied as applicable in the case of an agreement not involving sale of land. Scrutiny of the agreement showed that the owner of the land authorized the developer to take possession of the land with the right to construct, develop and deal with the land in accordance with the terms and conditions of the agreement. In exchange of the land, the owner of the land was entitled to take a part of the developed land. The developer was entitled to dispose of his share of developed land in such a manner as may deemed fit without requiring any consent from the owner. Hence, the development agreement was conveyance of right to develop, construct and sell the property and was liable to pay Stamp Duty (as applicable to conveyance deed) in respect of developers' share of land.

Total value of land transferred to the developer worked out to ₹ 7.04 crore on which Stamp Duty of ₹ 56.34 lakh was leviable. However, the registering authority misclassified the instrument as development agreement charging

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[9] SR Rajpura ₹ 31.47 lakh (in 430 cases) + Gurdaspur ₹ 9.60 lakh (in 197 cases).

Stamp Duty of ₹ 0.02 lakh instead of ₹ 56.34 lakh. It resulted in short levy of Stamp Duty of ₹ 56.32 lakh and Registration Fee of ₹ 0.30 lakh**.**

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

b) Audit noticed (June 2013) from the records of the office of JSR, Majri that an agreement was registered (July 2011) in respect of land on which stamp duty of ₹ 0.02 lakh was levied as applicable in the case of an agreement not involving sale of land. Scrutiny of the agreement showed that the owner of the land sold his land measuring 5.9 acre and given the possession to the developer after taking the consideration of ₹ 8.00 lakh. Further, the agreement contained all the ingredients of conveyance and was not stamped accordingly. The executor of the agreement instead of executing conveyance deed sold the property on the basis of agreement only and evaded the stamp duty and registration fee of ₹ 9.25 lakh calculated on the basis of circle rates.

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

4.9 Evasion of Stamp Duty and Registration Fee on mortgage deeds

Incorrect grant of remission of stamp duty on mortgage deeds for securing loan for other than agriculture purpose resulted in short levy of stamp duty of ₹ 1.03 crore. Application of pre-revised rates for stamp duty in mortgage deeds resulted in short levy of stamp duty of ₹ 1.59 crore.

Registration of the documents attracts levy of stamp duty and registration fee. The levy of stamp duty on various types of the instruments namely conveyance, exchange, mortgage and lease etc., is governed by the Indian Stamp Act, 1899 (Stamp Act) and the Rules framed thereunder. The duty is paid by the executors of instruments either by using impressed stamps or by affixing stamps (non-judicial) of proper denomination. The levy of registration fee on the instruments presented for registration is regulated by the Indian Registration Act, 1908 and the Rules framed thereunder.

"Mortgage Deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfer, or creates, to, or in favour of, another, a right over or in respect of specified property. The State Government is empowered under the Act to reduce or remit prospectively or retrospectively, the levy of stamp duty and/or registration fees.

An audit on 'Levy of Stamp Duty and Registration Fee on mortgage deeds' covering the period of 2010-13 was conducted between March 2014 to

June 2014 through test check of records of four districts[10] consisting of 30 units selected through statistical sampling on the basis of random selection method as per maximum mortgage deeds registered in each district. In addition, irregularities of similar nature noticed during audit of units other than the selected ones, for the period 2012-13 and 2013-14 were also incorporated. The following are the audit findings:

4.9.1 Non/short levy of stamp duty and registration fee

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 Section-78 of the Registration Act, 1908, registration fee is to be fixed by the State Government for the purposes enumerated in clauses (a) to (i). In case the State Government wants to remit the fees payable in respect of any of the matters enumerated in clauses (a) to (i), provision for the same is required to be made under Section 78 by an Act.

Audit noticed (May 2014 and June 2014) from the records of eight SRs/JSRs[11] that 11 mortgage deeds were executed and registered for securing loans of ₹ 26.01 crore from commercial/banking institutions for the construction of building, business, running of educational institution, cash credit limit, commercial dairy, rural godown and extension of cattle feed plant without levying/short levying of stamp duty and registration fee. As the loans were secured for the purposes other than those specified in the notification *ibid*, the remission of stamp duty and registration fee was not admissible. Further, exemption of registration fee was not in order as no provision under Section 78 of the Act mentioned *ibid* was made by the Government before issuing the notification. Incorrect grant of remission resulted in non/short levy of stamp duty and registration fee amounting to ₹ 1.03 crore.

Further, audit noticed (May 2014 and June 2014) from the records of 21 SRs/JSRs[12] that 28,256 mortgage deeds were executed during the year 2012-13 by the agriculturists for securing loans of ₹ 1,954.60 crore from the banks/banking institutions. The Registration Fee was remitted on the basis of notification issued under Sections 78 and 79 of the Registration Act, 1908. Remission of Registration Fee was irregular because Government was not empowered to remit/exempt the fee under these Sections. ***A mention was also***

[10] Bathinda, Ferozepur, Ludhiana and Patiala.

[11] Dera Bassi, Fatehgarh Churian, Ludhiana (East), Ludhiana (West), Maur Mandi, Nabha, Sahnewal and Talwandi Sabo.

[12] Bathinda, Dehlon, Dera Bassi, Ghanour, Khanna, Koom Kalan, Ludhiana (Central), Ludhiana (East), Ludhiana (West), Machhiwara, Maloud, Mullanpur Dakha, Patiala, Payal, Rajpura, Rampura Phool, Sahnewal, Samrala, Sidhwan Bet, Talwandi Sabo and Zira.

made in paragraph 5.6.7 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2010 (Revenue Receipts) Government of Punjab for considering appropriate amendment in the Act providing for remission of fee, as has been done in some other States, which was still awaited (November 2014).

4.9.2 Short levy of stamp duty and registration fee due to application of pre-revised rates of duty

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

Audit noticed (May 2014 and June 2014) from the records of 29 SRs/JSRs[13] that 573 instruments of mortgage deeds were executed and registered by individuals during 2010-13 for securing loans of ₹ 79.70 crore from the commercial/banking institutions after charging stamp duty of ₹ 1.60 crore at the pre-revised rate of two *per cent* against the leviable duty of ₹ 3.20 crore at the revised rate of four *per cent*. Application of pre revised rate of stamp duty resulted in short levy of stamp duty of ₹ 1.59 crore**.**

4.9.3 Non levy of stamp duty on agreements by deposit of title deed

Article Six of Schedule IA appended to Punjab Act provides for levy of stamp duty at the rate of ₹ 25.00 per ten thousand or part thereof in excess of 30 thousand on instruments of agreements of deposit of title deeds, pawn or pledge evidencing security for the repayment of money advanced or to be advanced. Instruments of pawn or pledge, if unattested, are exempted from stamp duty.

Audit noticed (May and June 2014) from the records of eight SRs/JSRs[14] and information gathered from the suvidha-centres that 3,933 equitable mortgage deeds for securing loans of ₹ 2,372.43 crore were executed during the years 2012-13 and 2013-14, but the stamp duty amounting to ₹ 5.93 crore on agreement relating to deposit of title deeds was not levied as per provisions *ibid.*

The above points were reported to the Government/Department (July 2014); their replies were awaited (November 2014).

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[13] Adampur, Bathinda, Bhakta Bhaika, Dehlon, Ghanour, Goniana Mandi, Jagraon, Kalanaur, Khanna, Koom Kalan, Ludhiana (Central), Ludhiana (East), Ludhiana (West), Machhiwara, Maloud, Maur Mandi, Moga, Mohali, Mullanpur Dakha, Patiala, Payal, Rampura Phool, Raikot, Rajpura, Samrala, Sahnewal, Sidhwan Bet, Talwandi Sabo and Zira.

[14] Bathinda, Maloud, Patiala, Payal, Rajpura, Rampura Phool, Talwandi Sabo and Zira.