

CHAPTER-V

CHAPTER V

STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

Receipts from stamp duty and registration fees are regulated under the Indian Stamp Act, 1899 (IS Act); Indian Registration Act, 1908 (IR Act) and the rules framed thereunder as applicable in West Bengal and are administered at the Government level by the Principal Secretary, Finance (Revenue) Department. The Inspector General of Registration (IGR) is the head of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department who is empowered with the task of superintendence and administration of registration work. He is assisted by 11 Deputy Inspectors General of Registration (DIGR), three Additional Registrars of Assurances (ARA), 20 District Registrars (DR), 25 District Sub-Registrars (DSR) and 190 Additional District Sub-Registrars (ADSR).

5.2 Internal audit

Despite being requested (June 2014), the Department did not furnish details regarding Internal Audit Wing (IAW). Therefore, the performance of internal audit conducted by the Department could not be analysed.

5.3 Results of audit

In 2013-14, test check of the records of 56 units of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department, showed non/short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹ 20.54 crore in 222 cases, which fall under the categories given in Table 5.1.

Table 5.1

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Splitting of property during registration	43	1.81
2.	Non-issue of demand notice	15	0.82
3.	Non-referring the cases to the Collector/DIGR	17	1.18
4.	Short collection of revenue in sale/gift deeds	26	2.74
5.	Non-realisation of stamp duty and registration fees/under-valuation of property	16	2.36
6.	Misclassification of documents	3	3.81
7.	Others	102	7.82
	Total	222	20.54

During the course of the year, the Department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 14.21 crore in 167 cases, of which 163 cases involving ₹ 13.83 crore were pointed out during the year 2013-14 and the rest in earlier years. An amount of ₹ 17.42 lakh was realised in six cases at the instance of audit.

A few illustrative cases involving ₹ 4.16 crore are discussed in the following paragraphs.

5.4 Short levy of stamp duty due to incorrect mapping of business rules in the CORD software

Under Article 23 of Schedule-IA to the IS Act, 1899 as applicable in West Bengal, the rate of stamp duty on deed of conveyance is as under:

Property situated in	Market value of the property (in ₹)	Rate of stamp duty
(a) areas to which the 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

As per Article 5(d) same rates are applicable for agreements of sale also. All assessments are made through a software called CORD (Computerisation of Registration of Documents) used in all Registration Offices (ROs).

From analysis of data of sale deeds/agreements for the period upto March 2013 obtained from the ARA-I in October 2013, the following audit observations were noticed indicating incorrect mapping of business rules in the CORD software:

5.4.1 In 246 cases, documents were executed and registered between April 2012 and March 2013 involving market value of ₹ 77.60 crore in respect of properties situated in 'panchayat areas' of Howrah district. The Directorate of Registration and Stamps assessed stamp duty through CORD software at the rate of five *per cent* or six *per cent* for these properties. As the Howrah Improvement Act, 1956 extends to the whole of Howrah district, stamp duty was leviable at the rate of six *per cent* or seven *per cent* under the category (a) of the Article 23 of Schedule-IA to the IS Act.

5.4.2 In 206 cases, documents were executed and registered between September 2012 and March 2013 involving market value of ₹ 64.27 crore in respect of properties situated in Joka-I and Joka-II Gram Panchayats. The Directorate of Registration and Stamps assessed stamp duty through CORD software at the rate of five *per cent* or six *per cent* for these properties. As these two Gram Panchayats were incorporated under the jurisdiction of Kolkata Municipal Corporation (KMC) with effect from 1 September 2012⁹³, stamp duty was leviable at the rate of six *per cent* or seven *per cent* under the category (b) of the Article 23 of Schedule-IA to the IS Act.

Thus, CORD software assessed stamp duty at one *per cent* lower rate in each case due to incorrect mapping of business rules in the software. This resulted in short levy of stamp duty of ₹ 1.42 crore.

⁹³ Government of West Bengal Notification No. 203/MA/O/C-5/CC/IL-1/2011 dt 28 May 2012.

After Audit pointed out the case, the Government in 206 cases involving ₹ 64.27 lakh stated (November 2014) that business rules have been subsequently mapped in the CORD software for inclusion of Joka-I and Joka -II Gram Panchayats under the jurisdiction of KMC but did not furnish any report regarding levy and realisation of stamp duty and registration fees. In the remaining 246 cases involving ₹ 77.60 lakh, no specific reply was furnished (November 2014).

5.5 Undervaluation of properties due to non-mapping of minimum road width in CORD software

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 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 shall be depreciated by 20 per cent and 15 per cent for Kolkata/Howrah and other municipality areas respectively. However, Rule 45(2) of the West Bengal Municipal Building (WBMB) Rules, 2007 provides that the approach road in respect of a new building having height more than seven metres shall not be less than 2.40 metres (7.87 feet).

Audit found (October and November 2013) from analysis of CORD data of two⁹⁴ ROs that in 40 cases the purchasers of new flats/buildings having height more than seven metres had declared width of approach road between four and seven feet. The sale deeds of those flats were executed and registered with Registering Authorities (RAs) during 2012-13. Further scrutiny, however, revealed that due to non-mapping of minimum required road width of eight feet for such new buildings, the CORD system allowed depreciation while determining the market value of the properties. This resulted in undervaluation of properties by ₹ 1.40 crore and consequent short levy of stamp duty and registration fees of ₹ 10.59 lakh.

ROs did not furnish any specific reply (November 2014).

After Audit pointed out the case, the Government stated (November 2014) that necessary steps are being taken to ensure that the business rule in CORD software, regarding minimum width of approach road of not less than 2.4 meters in respect of new buildings having height more than seven meters as per WBMB Rules, 2007, is incorporated to check undervaluation, of property but did not furnish any report regarding levy and realisation of stamp duty and registration fees (November 2014).

5.6 Undervaluation of flats by non-declaration of amenities

As per Rule 3(2) of the WBS (PUI) Rules, 2001, prior to registration of any instrument, the registrants are required to furnish particulars of the properties in prescribed format before the RAs for determination of market value of the property using CORD software. Further, Rule 3B(17) read with the business process of CORD software provides that the market value of the flat or any

⁹⁴ ARA-I and II, Kolkata.

structure having amenities such as roof garden/gymnasium/swimming pool/club facility would be enhanced by ₹ 400 per square foot (sq ft).

Audit found (October and November 2013) from analysis of CORD data of two⁹⁵ ROs that in 307 cases purchasers of flats having super built up area of 3.09 lakh sq ft did not declare amenities of roof garden/gymnasium/swimming pool/club facility at the time of determination of market value. The sale deeds of those flats were executed and registered with ROs during 2012-13. Further scrutiny, however, revealed that other flat-purchasers of the same housing complexes registered their properties with the same ROs declaring availability of at least one of the said amenities. Audit also found from the recitals of the deeds that the amenities were offered in common for all the purchasers in those housing complexes. Thus, non-declaration of amenities by the purchasers led to undervaluation of the flats by the CORD software. This indicates that ROs did not take into consideration the particulars furnished by other registrants of the same locality while registering the documents as required under Rule 3(1) of WBS (PUI) Rules, 2001. This resulted in undervaluation of flats by ₹ 12.35 crore and consequent evasion of stamp duty and registration fees of ₹ 94.37 lakh.

ROs did not furnish any specific reply to audit observations (November 2014).

The Government did not furnish any specific reply to the audit observations (November 2014).

5.7 Short levy of stamp duty due to misclassification of gift deeds

Article 33(i) of Schedule-IA to the IS Act, as applicable in West Bengal 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.

During scrutiny of deeds in two⁹⁶ ROs, Audit found that in three cases either the family relation between the donor and the donee was not established or the relation did not fall under explanation of family members⁹⁷. However, the instruments were misclassified as gift deeds in favour of family members. Due to such misclassification of instruments by the ROs, there was short levy and consequent short realisation of stamp duty of ₹ 29.08 lakh.

After Audit pointed out the cases, the ARA-I, Kolkata admitted (October 2013) the audit observation in one case involving ₹ 18.10 lakh and stated that parties concerned had been asked to make immediate payment of deficit stamp duty. In the remaining two cases involving ₹ 10.98 lakh, one RO⁹⁸ did not furnish any specific reply (November 2014).

⁹⁵ ARA-I and II, Kolkata.

⁹⁶ ARA-I and II, Kolkata.

⁹⁷ Family member means parent, spouse, son, daughter, son's wife, grandson, granddaughter, brother or sister. (*Explanation below Article 33 of Schedule-IA of IS Act as applicable in West Bengal*)

⁹⁸ ARA-II, Kolkata.

The Government accepted (November 2014) the audit observations and stated that demand notices have been issued but did not furnish any report on realisation (November 2014).

5.8 Evasion of additional stamp duty by splitting of properties

The IS Act (as applicable in West Bengal) 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.

During scrutiny of deeds of conveyance in 52⁹⁹ ROs, Audit found between December 2012 and January 2014 that in 281 cases, the sellers and buyers split the properties having market value more than ₹ 25 lakh into two or more parts to keep the market value of each piece of land below ₹ 25 lakh. In each case, the transacting parties were the same and the deeds of conveyance were also executed on the same day which indicated that splitting was done. Consequently this led to evasion of additional stamp duty of ₹ 1.40 crore.

After Audit pointed out the cases, five¹⁰⁰ ROs admitted (between October and December 2013) the audit observations in 24 cases involving ₹ 10.39 lakh. In 217 cases involving ₹ 1.13 crore, 35¹⁰¹ ROs contested (between December 2012 and January 2014) that there was no provision in the Act and Rules to prevent such splitting of properties. The remaining 12 ROs did not furnish any specific reply (November 2014).

Although the Directorate of Registration and Stamp Revenue issued a circular in October 2012 which directs the RAs to keep strict vigil so that the properties are not split with the intention to avoid additional one *per cent* stamp duty, there is no provision for specific action to be taken against such activity in the absence of any enabling provision in the IS Act to that effect.

On being pointed out, Government referred (November 2014) to Directorate's circular of October 2012.

⁹⁹ ADSRs- Amdanga, Arambag, Balichak, Basirhat, Berhampore, Bhagabanpur, Bishnupur, Burdwan, Chandrakona, Contai-I, Dhaniakhali, Diamond Harbour, Domjur, Galsi, Gangarampur, Garbeta, Hanschara, Helencha, Howrah, Indus, Jalpaiguri, Jamalpore, Jhargram, Joynagar, Kadambagachi, Kakdwip, Kaliachak, Kalyani, Katwa, Khargram, Mahishadal, Malda, Nabadwip, Nabagram, Naihati, Nimtita, Panskura, Paschim Medinipur, Purbasthali, Ramnagar, Saltora, Siliguri, Sonarpur, Sutahata, Tufanganj and Uluberia; DSRs Darjeeling, Jalpaiguri, Malda; DSR-I Burdwan, DSR-I Paschim Medinipur and Registrar of Assurances, Kolkata.

¹⁰⁰ ADSRs- Balichak, Jhargram, Indus, Paschim Medinipur and Tufanganj.
¹⁰¹ ADSRs- Amdanga, Arambag, Basirhat, Berhampore, Bhagabanpur, Bishnupur, Burdwan, Chandrakona, Contai-I, Dhaniakhali, Domjur, Hanschara, Howrah, Jalpaiguri, Joynagar, Kadambagachi, Kakdwip, Kaliachak, Katwa, Khargram, Mahishadal, Nabagram, Naihati, Nimtita, Panskura, Purbasthali, Ramnagar, Siliguri, Sonarpur, Sutahata and Uluberia; DSRs Darjeeling, Jalpaiguri, DSR-I Paschim Medinipur and Registrar of Assurances, Kolkata.

