

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, (IR Act) 1908. The Inspector General of Registration & Commissioner of Stamp Revenue (IGR & CSR) is the head of the Directorate of Registration and Stamp Revenue under the Finance (Revenue).

5.2 Internal audit

As on December 2017, 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 2016-17, test check of the records of 57 units revealed non/short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹ 18.53 crore in 193 cases, which fall under the categories given in **Table 5.1**.

Table - 5.1
Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Short levy of stamp duty and registration fees due to misclassification of deed/property	18	1.16
2.	Short assessment/realisation of stamp duty and registration fees due to incorrect consideration of lease period	11	0.64
3.	Short levy of stamp duty and registration fees due to omission of property details during registration	2	0.41
4.	Short levy of stamp duty due to incorrect particulars of amenities	7	0.34
5.	Short levy of stamp duty and registration fees due to irregular grant of remission	2	0.12
6.	Others	153	15.86
Total		193	18.53

During the course of the year, the Department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 1.27 crore in 108 cases, of which 102 cases involving ₹ 0.69 crore were pointed out during the year 2016-17 and the rest in earlier years. An amount of ₹ 33.21 lakh was realised in six cases at the instance of audit.

A few illustrative cases involving ₹ 50.57 crore are discussed in the following paragraphs.

5.4 Short levy of stamp duty and registration fees due to misclassification of instruments

In registration of nine deeds, stamp duty and registration fees was short-realised by ₹ 25.02 crore due to misclassification of instruments.

Stamp duty chargeable on an instrument depends upon the nature of instrument. The rate of stamp duty chargeable on an instrument is prescribed under Schedule IA of the Indian Stamp (IS) Act, 1899.

5.4.1. Article 63 of Schedule IA of the IS Act, 1899, provides that in case of instrument of transfer of lease by way of assignment, stamp duty applicable for sale/conveyance deed is chargeable on the market value of the properties. According to the clarification issued by IGR&CSR, West Bengal²⁴⁵, sub-lease for the entire unexpired remainder of term lease is treated as assignment of lease.

During scrutiny of deeds in two²⁴⁶ Registration offices, Audit found²⁴⁷ that two deeds of immovable properties involving market value of ₹ 10.82 crore were registered²⁴⁸. The Registering Authorities (RAs) classified these as sub-lease. On further scrutiny of both the deeds, Audit observed that the lessees were entitled to hold the properties on lease for a period of 99 years. Thereafter, the lessees sub-leased the properties to sub-lessees for the entire balance unexpired period of the original lease. Thus, the entire leasehold rights, title and interests of the lessees on the leasehold property was assigned to the sub-lessees in these cases. Accordingly, stamp duty and registration fees of ₹ 87.66 lakh, as calculated by Audit, was chargeable on the instruments on the market value of the properties. RAs, however, classified the instruments as sub-lease and realised stamp duty and registration fees of ₹ 0.40 lakh, on the basis of average annual rent and/or premium paid by the sub-lessees for the sub-lease. Thus, there was short levy of stamp duty and registration fees of ₹ 87.26 lakh.

The IGR&CSR, West Bengal, accepted the audit observations and stated²⁴⁹ that, in both the cases, demand notices had been issued²⁵⁰ by the RAs to the concerned parties. The cases were also referred to Deputy Inspector General of Registration (DIGR) for realisation of deficit stamp duty and registration fees. Demand notices were issued in October/December 2015. However, no recovery had been reported (February 2018).

This issue was brought to the notice of the Government in September 2017. Reply was awaited (February 2018).

²⁴⁵ Memo No. CON-347/(28)/4C-54/2003 dated 19 December 2003.

²⁴⁶ Additional Registrar of Assurances (ARA) I and II, Kolkata.

²⁴⁷ Between October 2015 and December 2015.

²⁴⁸ Between November 2014 and December 2014.

²⁴⁹ May 2017.

²⁵⁰ Between October and December 2015.

5.4.2. Section 118 of the Transfer of Properties (TP) Act, 1882, provides that when two persons mutually transfer the ownership of one thing for the ownership of another, the transaction is called an exchange. Under Section 2 (24) (b) of the IS Act, 1899, settlement means any non-testamentary disposition, in writing, of movable or immovable property made for the purpose of distributing property of the settlor. Under Articles 31 and 58 of Schedule IA of the IS Act, same stamp duty applicable for the conveyance/sale deed is applicable in case of the exchange and settlement deeds. Under Section 122 of the TP Act, 1882, gift is the transfer of certain existing movable or immovable property made voluntarily and without any consideration, by donor to the donee, and accepted by or on behalf of the donee. Gift to family members attracts lower rate of stamp duty of 0.5 per cent of the market value of the property under Article 33 of Schedule IA of the IS Act.

During scrutiny of deeds in two²⁵¹ Registration offices, Audit found²⁵² that three gift deeds in favour of family members involving market value of properties of ₹ 5.03 crore were registered²⁵³ in those offices. Of these, in two deeds registered under one²⁵⁴ Registration office, the donees also made return gifts of movable properties to the donors in exchange of the gifted properties. Thus, the deeds should have been classified as deed of exchange by the RA instead of gift deeds. In the remaining case, the gifted property belonged to a private trust to which the donor was one of the trustees. The property belonged to the trust which was not dissolved by the trustees. Therefore, the trustee/donor could only transfer his/her rights on the property through settlement deed. In the instant case, however, the property of the trust was gifted by the trustee/donor in favour of family members. Therefore, the deed should have been classified as deed of settlement instead of gift deed. The RAs levied and realised stamp duty of ₹ 2.51 lakh instead of ₹ 35.19 lakh leviable on the market value of the properties. This resulted in short levy of stamp duty of ₹ 32.68 lakh.

The IGR&CSR, West Bengal accepted the audit observations and stated²⁵⁵ that, in two cases, Additional District Sub-Registrar, Sealdah had been directed to issue notices to the parties and inform the matter to the concerned DIGR for realisation of deficit stamp duty. In the remaining case, it was stated that demand notice had been issued²⁵⁶ by the RA to the concerned party and the matter had also been referred²⁵⁷ to DIGR. However, no recovery has been reported (February 2018) even after lapse of more than 32 months.

This issue was brought to the notice of the Government in September 2017. Reply was awaited (February 2018).

²⁵¹ ADSR, Sealdah and ARA-I, Kolkata.

²⁵² Between May 2014 and January 2015.

²⁵³ Between January 2012 and December 2013.

²⁵⁴ Additional District Sub-Registrar, Sealdah.

²⁵⁵ May 2017.

²⁵⁶ February 2015.

²⁵⁷ April 2015.

5.4.3. Under Article 5 of Schedule IA of the IS Act, 1899, the rate of stamp duty on development agreement²⁵⁸ depends upon the market value of the property. The maximum rate of stamp duty chargeable on development agreement is ₹ 0.75 lakh only. Under Article 23 of the IS Act, sale/conveyance deed of any property situated under a municipal corporation and having market value exceeding ₹ 25 lakh attracts stamp duty of seven *per cent* on the market value of the property.

During scrutiny of records of Additional Registrar of Assurances (ARA)-I, Kolkata, it was found²⁵⁹ that four agreements of properties situated within the Kolkata Municipal Corporation were registered²⁶⁰ as development agreements. The RA classified the deeds as development agreements and levied stamp duty of ₹ 0.75 lakh in each case.

Further, Audit observed in all the cases, the properties were actually conveyed to the developers and the owners did not have any right, title or interest on the said properties. In order to avoid payment of higher stamp duty on conveyance deed, development agreements were executed to obscure the real motive of the transaction. Thus, stamp duty and registration fees of ₹ 23.86 crore was leviable in these cases on the assessed market value of the properties of ₹ 294.63 crore by classifying them as sale deeds. Due to misclassification of deeds by the RA, however, stamp duty and registration fees of only ₹ 0.04 crore was levied. This resulted in short levy of stamp duty and registration fees of ₹ 23.82 crore.

The IGR&CSR, West Bengal accepted the audit observations and stated (June 2017) that directions had been issued to the RA to refer the cases to the concerned DIGR for realisation of deficit stamp duty and registration fees. Audit verified that all the cases had been referred²⁶¹ to the concerned DIGR as per the directions of the IGR&CSR. Report on realisation, however, had not been received (February 2018).

The matter was reported to the Government in July 2017. Reply was awaited (February 2018).

5.5 Short levy of stamp duty due to incorrect determination of lease period

In registration of 50 lease deeds, stamp duty and registration fees of ₹ 22.87 crore was short-levied due to incorrect determination of lease period.

Under Sections 6 (3) (a) (iv), 6 (3) (b) (ii) and 6 (3) (c) (ii) of the IS (West Bengal Amendment) Act, 2012²⁶², where any lease purports to be for a term/any term renewed which exceeds 30 years, stamp duty applicable for conveyance/sale deed is applicable on the market value of the leased out property.

²⁵⁸ Article 5 of Schedule IA of the Act states that a development agreement is an agreement giving authority to a promoter or developer for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property.

²⁵⁹ Between January 2015 and February 2015.

²⁶⁰ Between August 2013 and October 2013.

²⁶¹ June 2017.

²⁶² Issued under Notification No. 42 L dated 8 January 2013 by Law Department, Government of West Bengal.

Further, explanation-II below the said Sections provides that, apart from the lease period stated in the lease document, any prior/subsequent period in continuation of the present lease shall also be added with the present lease period for the purpose of determination of the lease period, if the lessor and lessee for the said periods are same.

Stamp duty on lease deeds up to 30 years is chargeable on the basis of average annual rent and/or premium paid for the lease. Further, Section 27 of the IS Act, 1899, provides that the consideration and all other facts and circumstances affecting the chargeability of any instruments with duty shall be fully and truly set forth therein.

During scrutiny of the lease deeds, Audit found²⁶³ that 50 lease deeds involving market value of ₹ 333.58 crore were registered²⁶⁴ under five²⁶⁵ Registering Authorities (RAs). In these cases, leases were granted for a period ranging between 20 and 30 years. Further, Audit observed that in one case, renewal of the lease for a period of 30 years was registered in continuation of the previous lease of 25 years. In another case, the lessor had executed and registered two lease deeds on the same day in favour of a lessee for a period of 30 years each, with consecutive effect. The lessor, however, in order to avoid payment of higher stamp duty, did not disclose this fact in the recitals of the deeds.

In remaining 48 cases, the lease deeds contained specific clauses of automatic renewal/ further renewal of the leases for the subsequent period ranging between 30 and 99 years. Therefore, the RAs, while determining the actual lease period, were required to take into consideration the previous or subsequent lease periods²⁶⁶. Thus, due to incorrect determination of lease periods by the RAs, stamp duty of ₹ 0.46 crore was levied in those cases on the basis of the average annual rent/premium paid for the leases instead of ₹ 23.33 crore leviable, on the market value of the properties. This resulted in short levy of stamp duty of ₹ 22.87 crore.

The IGR&CSR, West Bengal accepted the audit observations. IGR&CSR further stated²⁶⁷ that in six cases involving ₹ 13.48 crore, demand notices had been issued²⁶⁸ by the RAs. In six cases involving ₹ 1.59 crore, the matter had been referred to the concerned DIGR by the RAs for realisation of deficit stamp duty. In the remaining 38 cases involving ₹ 7.80 crore, the concerned RAs had been directed to refer the cases to the concerned DIGR. Report on realisation, however, had not been received (February 2018).

The matter was reported to the Government in July 2017. Their reply was awaited (February 2018).

²⁶³ Between December 2014 and December 2015.

²⁶⁴ Between August 2013 and March 2015.

²⁶⁵ ADSR, Asansol; Additional Registrar of Assurances-(ARA)-I, II &III, Kolkata and DSR, Malda.

²⁶⁶ As per explanation-II below Section 6 of the IS (West Bengal Amendment) Act, 2012.

²⁶⁷ June 2017.

²⁶⁸ Between February 2015 and December 2015.

5.6 Stamp duty and registration fees in respect of deeds containing several distinct matters not levied

In registration of three deeds containing several distinct matters, stamp duty and registration fees of ₹ 1.61 crore was not levied.

Under Section 5 of the IS Act, 1899, if any instrument contains several distinct matters, it shall be chargeable with the aggregate amount of the duties applicable on each instrument containing such matters.

Article 5 of Schedule IA of the Act states that a development agreement is an agreement giving authority to a promoter or developer for construction on, or sale of, or transfer (in any manner whatsoever) of, any immovable property. Further, Section 2(24)(b) of the IS Act states that 'settlement' means any non-testamentary²⁶⁹ disposition, in writing, of movable or immovable property made for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him.

Audit observed²⁷⁰ in the office of Additional Registrar of Assurances-I & II, Kolkata that three deeds were registered²⁷¹ as development agreements. Stamp duty of ₹ 0.75 lakh was levied on registration of each deed. Audit observed in recital of one deed that the share of the owner and the developer was 30 per cent and 70 per cent respectively in 48 land properties and 10 units of constructed properties of flats/shops/garages. Thus, the deed contained two separate distinct matters. One for 'settlement' by means of the distribution of share out of constructed flats/shops/garages having market value ₹ 14.03 crore²⁷² and another for development agreement on the property.

In another case, the developer agreed to pay ₹ 6.50 crore as amount of compensation to the third party to withdraw litigation. The third party was neither the owner of the property nor the developer of the property. Thus, the instant development deed also contained another distinct matter of 'settlement' with third party.

In the remaining case, the agreement included a third party who was neither the developer nor the owner of the property. The market value of the property involved was ₹ 8.95 crore. The allocation of share agreed upon by the owner, the developer and the third party was 10 per cent, 50 per cent and 40 per cent respectively. Thus, the deed not only was a 'development agreement' between the 'owner' and the 'developer' but also included distinct matter of 'ownership'²⁷³ between the 'owner' and the 'third party' by entrusting 40 per cent of the share.

This resulted in overall non-realisation of revenue of ₹ 1.61 crore (stamp duty ₹ 1.39 crore and registration fee ₹ 21.89 lakh).

²⁶⁹ Non-testamentary disposition is the disposition or transfer of property that takes effect upon execution of the deed by the person making it.

²⁷⁰ December 2015.

²⁷¹ Between April 2014 and September 2014.

²⁷² SDRF of ₹ 79.55 lakh is leviable on ₹ 9.82 crore (70 per cent of ₹ 14.03 crore).

²⁷³ SDRF of ₹ 28.99 lakh is leviable under Article 23 of the Schedule IA of IS Act.

ARA-II, Kolkata contested the case involving land properties and constructed properties of flats/shops/garages stating that the deed was a development agreement, not a deed of settlement. The reply was not tenable. Distribution of share between owners and developers in constructed flats/shops/garages (already registered sale deeds executed between the year 2005 and 2008) was not for future development but a settlement. In remaining two cases, the ARA-I accepted the audit observations.

The matter was reported to the Government in July 2017. Reply was awaited (February 2018).

5.7 Allowance of incorrect exemption of stamp duty on assignment of copyright

In registration of a deed of assignment of copy right, incorrect exemption of stamp duty of ₹ 54 lakh was allowed by the Registering Authority.

Clause (a) under the Article 23 of Schedule IA to the IS Act, 1899, as applicable in West Bengal provides that assignment of copyright by entry made under Section 18²⁷⁴ of the Indian Copyright (IC) Act, 1957, is exempted from stamp duty. Correction of entries made in the register of copyright is permissible under Section 49 of the IC Act. Under Section 50A of the IC Act, every such correction made shall be published by the Registrar of Copyright in the Official Gazette or in such manner as may be prescribed.

Audit observed²⁷⁵ from the records of the Additional Registrar of Assurances (ARA)-III, Kolkata that one deed of assignment of copyright was registered in January 2015. The assignor assigned the copyright in favour of the assignee at a consideration of ₹ 9 crore by executing the deed of assignment on non-judicial stamp paper of ₹ 300. On further scrutiny of records, Audit observed that the stamp duty payable on the deed of assignment was assessed at ₹ 54 lakh through the Computerisation of Registration of Documents (CORD) software. Audit also observed that while registering the deed, the RA exempted the stamp duty in full, on the basis of provision contained in clause (a) below Article 23 of Schedule-IA of the IS Act. The said exemption was allowable only if the assignment had been done by entry made under the IC Act. The RA failed to produce the copy of gazette notification issued under Section 50A of the IC Act or any other document, on the basis of which such exemption was allowed. This resulted in allowance of incorrect exemption of stamp duty of ₹ 54 lakh.

IGR&CSR, West Bengal accepted the audit observation and stated²⁷⁶ that ARA-III had referred the matter to the concerned DIGR.

The matter was reported to the Government in July 2017. Reply was awaited (February 2018).

²⁷⁴ Section 18 of IC Act deals with assignment of copyright where the owner of the copyright may assign to any person the copyright.

²⁷⁵ December 2015.

²⁷⁶ June 2017.

5.8 Short levy of stamp duty and registration fees due to misclassification of property

Registering Authorities misclassified 10 commercial properties as residential and semi-commercial properties. This resulted in short levy of stamp duty and registration fees of ₹ 31.67 lakh.

As per Rule 3B of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, read with the business process of CORD software, market value of flats will be enhanced according to the type of use, namely, residential, semi-commercial and commercial. Market value of semi-commercial and commercial property shall be one and half times and two and half times of the market value of the residential property respectively.

Audit observed²⁷⁷ from CORD data in the office of four²⁷⁸ RAs that in 10 deeds²⁷⁹, the RAs classified the properties mentioned in four deeds as residential property and that in six deeds, as semi-commercial property. Stamp duty was assessed and realised accordingly. From recitals of the deeds, Audit found that the properties were misclassified. The purpose of use of the property was categorically written in these deeds as commercial in place of residential/semi-commercial. This resulted in short determination of market value with consequent short realisation of stamp duty and registration fees of ₹ 31.67 lakh as detailed in the following table:

Table - 5.2
Misclassification of property

(₹ in lakh)						
Sl. No.	Nature of misclassification	No. of cases/deeds	Market value of property assessed	Market value of property assessable	Short determination of market value	Short levy of SDRF
1.	Residential property in place of commercial property	4	101.17	252.91	151.74	12.12
2.	Semi-commercial property in place of commercial property	6	363.65	606.09	242.44	19.55
Total		10	464.82	859.00	394.18	31.67

Two²⁸⁰ RAs accepted²⁸¹ audit observations in five cases involving ₹ 28.90 lakh. They however, did not furnish any report on realisation. In the remaining cases, reply was awaited (February 2018).

²⁷⁷ Between January 2015 and December 2015.

²⁷⁸ ADSR, Chandannagar and ARA-I, II&III, Kolkata.

²⁷⁹ Executed and registered between 2011 and 2013.

²⁸⁰ ARA-I&II, Kolkata.

²⁸¹ Between February 2015 and December 2015.

The matter was reported to the Government in July 2017. Reply was awaited (February 2018).

5.9 Short levy of stamp duty and registration fees due to short determination of market value of roof right

Stamp duty and registration fees of ₹ 21.15 lakh in case of registration of 28 flats was short-realised due to incorrect determination of market value of roof rights.

In terms of Rule 123 of West Bengal Registration Rules, 1962, every person shall submit a duly filled in requisition form to the Registration office corresponding to the subject matter of a deed for determination of market value (MV) of the property. After entering all particulars of such requisition form in the computer, the registering office shall take steps to generate an assessment slip automatically. The slip shall contain therein market value of the property, stamp duty and registration fees to be paid and other particulars. The RA shall verify such entries mentioned in the requisition form and scrutinise the assessment slip so generated.

Rule 3C (4b) of the West Bengal Stamp (Prevention of Undervaluation of Instruments) [WBS (PUI)] Rules, 2001, read with the business process of CORD software provides that in determining the MV of roof right²⁸² the following procedure may be adopted:

- (i) When the right of construction would be given over the roof of a residential flat, MV of roof right may be determined on 60 *per cent* of MV of the flat.
- (ii) When such right of construction would not be given over the roof, MV may be determined on 40 *per cent* of the MV of the residential flat of that locality only for the right to use the said roof.

Audit observed²⁸³ from analysis of CORD data of seven²⁸⁴ Registration offices that:

- In assessment slips²⁸⁵ in respect of 27 flats out of 28 flats registered between 2011 and 2014, there was mention of ‘right to use the roofs only’ (without right of construction) as roof right of the flats. Audit, however, found from recitals of deeds that right of construction over the roof was also given to the purchasers.
- In the case of one flat out of the 28 flats, registered in 2013, assessment slip did not have any information in respect of roof right, though right to use roof of the flat was specified in the deed. RAs did not cross-verify the accuracy of such declarations with those mentioned in the recitals of the deeds before assessing the

²⁸² Right over the roof of a residential flat for use or further construction.

²⁸³ Between May 2014 and February 2015.

²⁸⁴ ADSR, Alipore; ADSR, Asansol; ADSR, Sealdah; ARA-I, II & III, Kolkata and DSR, Howrah.

²⁸⁵ Generated on the basis of particulars furnished by the purchasers.

MV of the roof right. They accepted the declarations made in assessment slips to be correct. Thus,

- Stamp duty and registration fees in case of registration of roof right in 27 flats (out of 28 flats) was realised at 40 *per cent* instead of on 60 *per cent* of the MV of flats.
- In case of one flat (out of 28 flats), no stamp duty and registration fees on registration of roof right was realised.

This resulted in short determination of market value of roof right by ₹ 2.65 crore with consequent short levy of stamp duty and registration fees of ₹ 21.15 lakh.

Three²⁸⁶ RAs accepted the audit observations in 15 cases involving ₹ 7.65 lakh.

The matter was reported to the Government in July 2017. Reply was awaited (February 2018).

²⁸⁶ ADSR, Alipore; ADSR, Sealdah and ARA-II, Kolkata.