

CHATER III
STAMP DUTY AND REGISTRATION FEE

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3.1 Tax administration

The Registration Department administers the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made thereunder. The administration of the Department is vested with the Inspector General of Registration (IGR). There are 50 registration districts comprising 576 registration offices including three camp offices in the State. The levy and collection of stamp duty and registration fees are done by the registering authorities. The monitoring and control at the Government level is done by the Principal Secretary, Commercial Taxes and Registration Department.

3.2 Internal audit

Internal audit is a vital component of internal controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. The Department has a system of internal audit to ensure *cent per cent* audit of all the instruments registered. There are 45 audit units, each headed by a District Registrar and assisted by an Assistant, Junior Assistant and a Typist. The periodicity of audit of all offices is on monthly basis. The Registration Manual (Part II) provides guidance for establishment and working of internal audit in the department. The Department has also prepared and published a Hand Book of Internal Audit for instant and simplified guidance.

Table 3.1

Year	Number of audits due	Number of audits completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
Upto 2013-14	2,332	2,332	NIL	--
2014-15	1,721	974	747	57
2015-16	1,617	980	637	61
2016-17	1,321	979	342	74
2017-18	2,426	1,916	510	79
Total	9,417	7,181	2,236	

Source: Reply of the Department

The table indicates an increasing trend in the number of offices in respect of which internal audit was in arrears. The Department attributed the reasons for arrears in audit to vacancy of Audit Registrars and stated that a special team has been formed to clear the backlog.

The Department may consider strengthening internal audit so that audit may be conducted for all the units due for audit.

As at the end of 31 March 2018, 30,322 paragraphs involving money value of ₹ 116.98 crore were outstanding as detailed in Table 3.2.

Table 3.2

(₹ in crore)

Year	Opening Balance		Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
Upto 2015-16	19,996	70.91	25,538	72.09	24,285	54.87	21,249	88.13
2016-17	21,429	88.13	27,147	67.09	25,798	58.91	22,598	96.31
2017-18	22,598	96.31	24,078	60.16	16,354	39.49	30,322	116.98

Source: Reply of the Department

It is suggested that action may be taken for speedy clearance of old outstanding objections.

3.3 Results of audit

Test check of records of 18 departmental offices out of 599 auditable units conducted during the period from April 2017 to March 2018 revealed non/short levy of stamp duty and registration fee and other irregularities amounting to ₹ 8.29 crore in 85 cases, which broadly fall under the following categories:

Table 3.3

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Undervaluation of instruments	9	0.43
2	Misclassification of instruments	55	6.65
3	Incorrect grant of exemption	1	0.15
4	Excess/Incorrect allocation of Transfer Duty Surcharge	3	0.40
5	Others	17	0.66
	Total	85	8.29

During the course of the year 2017-18, the department accepted and recovered underassessments and other deficiencies amounting to ₹ 3.22 crore in 157 cases pointed out in earlier years.

After the issue of one draft paragraph, the Department collected an amount of ₹ 11.31 lakh.

Few illustrative cases involving ₹ 1.30 crore are discussed in the following paragraphs.

3.4 Audit Observations

3.4.1 Short collection of stamp duty and registration fee in respect of Partition deeds

As per Article 45 (b) of Schedule I to the IS Act, instrument of partition among persons other than family members is chargeable to stamp duty at the rate of four *per cent* on the amount of the value of the separated share or shares of the property. In addition, registration fee is leviable at one *per cent* on the value of the property subject to partition. As per Article 45 (a) of Schedule I to the IS Act, instruments of partition involving transfer of properties in favour of family members attract stamp duty of one *per cent* on the value of properties partitioned, subject to a maximum of ₹ 10,000 (upto 30 September 2013) and ₹ 25,000 thereafter. Besides, registration fee at the rate of one *per cent* on the value of properties transferred was also leviable, subject to a maximum of ₹ 2,000 (upto 30 September 2013) and ₹ 4,000 thereafter. 'Family' as defined under the IS Act includes father, mother, husband, wife, son, daughter, grandchild, brother, sister and also adoptive father and mother, adopted son and daughter in the case of any one whose personal law permits adoption.

During test check (between June 2016 and March 2018) of 567 partition instruments in 11³⁶ Registering Offices, Audit noticed that through 22 instruments of partition (four *per cent*) executed and registered between November 2012 and February 2017, immovable properties valued at ₹ 55.50 crore were partitioned among family and non-family members. Scrutiny of the instruments revealed that the share of properties worth ₹ 5.79 crore allotted to non-family members were also classified by the Registering Officers (ROs) as partition among family members and stamp duty and registration fee were levied at concessional rates. Thus, against ₹ 44.51 lakh, the ROs collected stamp duty and registration fee of ₹ 16.84 lakh resulting in short collection of stamp duty and registration fee of ₹ 27.67 lakh.

After being pointed out by Audit (between June 2016 and March 2018), six³⁷ ROs replied (between August 2016 and March 2018) that as per the instructions of IGR, in the case of inheritance of property, the instrument could be directly classified under family partition and there was no need for verification of relationship between the parties. The ROs further stated that as per the orders of IGR issued in May 2012, legal heirs of the deceased family members were also to be considered as family members. The reply is not acceptable as the transfer of share in property through the partition deeds was made to persons other than family members and the concessional rate of stamp duty as per the IS Act was applicable only in respect of transfer to family members. Further, the Madurai Bench of Honourable Madras High Court³⁸ held in February 2014 that the definition of the term “family” given in the Explanation under Article 58 was exhaustive and the benefit of Explanation under Article 58 would not be applicable to persons other than those mentioned therein.

The matter was referred to the Government in June 2018 and reminded in February 2019. Reply was awaited (March 2019).

3.4.2 Misclassification of conveyance deeds as cancellation deeds

As per Section 2(10) of the IS Act, conveyance includes a 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 in Schedule I. As per Article 23 of Schedule I to the IS Act, instrument of conveyance of immovable property attracts stamp duty at the rate of eight *per cent* upto 31 March 2012 and at seven *per cent* thereafter on the market value of the property. Registration fee is leviable at the rate of one *per cent* on the market value of the property. As per Article 17 of Schedule I to the IS Act, for instrument of cancellation, if attested and not otherwise provided for, stamp duty of ₹ 50 is to be levied on the same.

³⁶ SR, Annur, SR, Athur, SR, Cheyyur, Joint-II SR, Pattukottai, Joint-IV SR, Kanchipuram, SR, Kodambakkam, SR, Nambiyur, SR, Pallikonda, SR, Poonamallee, SR, Sembium and SR, Thalavadi

³⁷ Athur, Kodambakkam, Nambiyur, Pallikonda, Poonamallee and Sembium

³⁸ Madurai Bench of Honourable Madras High Court in W.P.No.58 of 2012 in the case of T. Muthu Babu Vs IGR dated 24.02.2014

It was judicially held (cf Emperor Vs Rameshardoss 32 All 171 SIC 697) that there can be no such thing as cancellation of a conveyance under which right of property has already been passed. Property can be retransferred only by re-conveyance. Further, it was held (W.A.Nos.592 & 938 of 2009, in Latif Estate Line India Ltd. Vs. Registration Department) by the Madras High Court that cancellation of a sale deed by a deed of cancellation can be effected only when a condition that title will pass on payment of consideration, was included in the original sale deed.

During scrutiny (between July 2015 and January 2018) of records in eight³⁹ Sub-Registries, Audit noticed that conveyance of properties valued at ₹ 4.97 crore and effected through 28 conveyance deeds registered between the years 2014 and 2016 were cancelled by 'deeds of cancellation' citing reasons of non-receipt of consideration and failure to hand over possession of the properties. Scrutiny of original deeds of conveyance, however, indicated receipt of consideration by the sellers and handing over of properties to the purchasers. Since the original sellers had re-acquired right and interest over the properties from the original purchasers and the properties vested again in the vendors through cancellation deeds, these deeds were to be treated as re-conveyance deeds, involving levy of stamp duty and registration fee of ₹ 39.72 lakh. The ROs, however, treated the instruments as deeds of cancellation and collected ₹ 0.06 lakh. Thus, the misclassification of instruments resulted in short levy of stamp duty and registration fee of ₹ 39.66 lakh.

After audit pointed this out (between June 2015 and February 2018), the Department replied that the instruments did not indicate re-conveyance of properties by the purchasers to the vendors and the IGR had clarified in December 2011 that unless it was specifically recited in the instrument that the property was re-conveyed, it cannot be treated as re-conveyance. The Department further stated that as per Article 17 of Schedule I to the IS Act, instrument by which any instrument previously executed was cancelled was only a cancellation and the deed of cancellation cannot be treated as re-conveyance.

The reply is not correct because, after registering the cancellation deeds, necessary entries were made in the original sale deeds recording their cancellation and the same was also featured in the Encumbrance Certificate. The cancellation of a sale deed can be effected only when there was a condition in the original deed for cancellation and in the absence of such condition, the subsequent instruments retransferring the properties to the original vendors were to be classified as conveyance deeds falling under Article 23 of the IS Act.

The matter was referred to the Government in June 2018 and reminded in February 2019. Reply was awaited (March 2019).

³⁹ Joint II SR Chennai South, SR Avadi, SR Cheyyur, SR Kodambakkam, SR Padappai, SR Rasipuram, SR Sivakasi and SR Thamaraiatti,

3.4.3 Excess allocation of Transfer Duty Surcharge

As per Section 175 of the Tamil Nadu Panchayat Act, 1994 and Section 94 of the Tamil Nadu Urban Local Bodies Act, 1998, a duty, in the form of surcharge, shall be levied and collected on the instruments of sale, exchange, gift, mortgage with possession and lease in perpetuity and subsequently allocated to the concerned Director of Municipal Administration / Town Panchayats. The rate of surcharge is two *per cent* on the market value of the property.

Audit observed (between August 2015 and October 2017) from the periodical quarterly returns of transfer duty surcharge and registers in three⁴⁰ Registering Offices that during the period 2012 to 2017, in respect of 57 cases, ₹ 69.94 lakh was allocated to local bodies towards Transfer Duty Surcharge (TDS) as against ₹ 7.28 lakh due for allocation. This resulted in excess allocation of ₹ 62.66 lakh out of the revenue due to the Government. The excess allocation was due to arithmetical error, incorrect computation of value of properties and allocation of surcharge in respect of ineligible instruments.

When the matter was referred in June 2018, Government replied (September 2018) that the excess allocation of ₹ 39.10 lakh pertaining to Joint II SR, Chennai (South) was adjusted. Government further stated that excess allocation in respect of the remaining two offices would be adjusted in the ensuing quarter. Further report regarding adjustment of excess allocation in respect of the remaining two offices was awaited (March 2019).

⁴⁰ DR, Tenkasi, Joint II SR, Chennai (South) and SR, Aruppukottai.