

## CHAPTER-IV: STAMPS AND REGISTRATION FEES

### 4.1 Tax administration

The levy and collection of Stamp duty and Registration fees in the State is governed by the Indian Stamp (IS) Act, 1899, the Registration Act, 1908 and the rules framed thereunder as applicable in Uttar Pradesh. Stamp duty and Registration fees are levied on the execution of instruments at the rates prescribed under the above Acts. Valuation of properties is decided as per the circle rates fixed by the Collector of the district as per the provisions of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997.

The determination of policy, monitoring and control at the Government level is carried out by the Principal Secretary, Stamps and Registration. The Inspector General (Registration) (IGR) is the head of the Stamps and Registration Department. He/she is empowered with the task of superintendence and administration of the registration work. The IG is assisted by 92 Assistant Inspectors General (AIsG) at the district/headquarters level and 355 Sub-Registrars (SRs) at the *tehsil* level respectively.

### 4.2 Results of audit

During 2018-19, test-check of records in 64 units<sup>1</sup> out of 431 auditable units of the Stamps and Registration Department revealed short levy of stamp duty and registration fees and other irregularities involving ₹ 91.69 crore in 2,577 cases, which fall under the following categories as mentioned in **Table - 4.1**.

Table- 4.1

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Short levy of Stamp duty and Registration fees due to undervaluation of properties	41	1.13
2	Short levy of Stamp duty and Registration fees due to misclassification of documents	895	81.31
3	Other irregularities <sup>2</sup>	1,641	9.25
<b>Total</b>		<b>2,577</b>	<b>91.69</b>

Irregularities involving 404 cases worth ₹ 22.48 crore have been illustrated in this Chapter. The Department accepted 17 cases amounting to ₹ 71.62 lakh, out of which in eight cases, recovery of ₹ 11.43 lakh was reported. Out of these cases, some irregularities have been repeatedly reported during the last five years as detailed in **Table - 4.2** (cases pertaining to previous audit reports). The errors/omissions pointed out are on the basis of a test audit. **The Government/Department may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and if so, to rectify them and put in place a system that would prevent such errors/omissions.**

<sup>1</sup> One Principal Secretary Stamps and Registration Lucknow and 63 SRs.

<sup>2</sup> Improper allocation of collected additional stamp duty, short levy of stamp duty on lease deeds, excess expenditure against the allocated budget etc.

**Table – 4.2**  
**Cases pertaining to previous audit reports**

(₹ in crore)												
Nature of observation	2013-14		2014-15		2015-16		2016-17		2017-18		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Residential land valued at agricultural rate	97	4.35	194	7.78	214	9.66	157	6.05	266	11.42	928	39.26

### **4.3 Systemic deficiencies in collection, allocation and accountal of Additional Stamp Duty**

Under Section 39 of the Uttar Pradesh Urban Planning and Development (UPUPD) Act, 1973, the duty imposed by the IS Act, 1899 on any deed of transfer of property shall, in case of an immovable property situated within a ‘development<sup>3</sup>’ area, be increased by two *per cent* on the amount or value of consideration with reference to which the duty is calculated under the said Act. The area to be earmarked as ‘development’ area is notified by the State Government from time to time. All collection resulting from the said increase shall, after deduction of incidental expenses, if any, be allocated and paid by the State Government at its discretion, either to the Development Authority alone or to the Development Authority, the Uttar Pradesh *Avas Evam Vikash Parishad* and the *Nagar Mahapalika* or the Municipal Board, as the case may be, in such proportion as may from time to time be determined.

An examination of the current system of collection, accountal and allocation of additional stamp duty revealed a number of deficiencies, both systemic and at the implementation level. These are detailed in the succeeding paragraphs.

#### **(i) Failure to create a sub-head:**

As per the existing system of classification, Stamps and Registration Fees (including additional stamp duty) is accounted for under the major head 0030-Stamps and Registration Fees, 02-Stamps Non-Judicial, 102-Sale of Stamps. No sub-head has been opened by the State Government for accounting of additional stamp duty.

Audit observed, based on examination of records in offices of the Sub-Registrar (SR), that the amounts being collected with respect to additional stamp duty are being depicted as stamp duty under the IS Act, 1899.

In absence of a sub-head to account for additional stamp duty, the levies with respect to stamp duty for transfer of immovable property in ‘development’ areas and other areas together with collection of additional stamp duty for the transfer of property in ‘development’ areas are getting merged. Since the UPUPD Act, requires that amounts collected as additional stamp duty is to be earmarked specifically for entities as notified by the State Government and it is not possible at present to ascertain specifically how much money is received in the Government account with respect to two *per cent* additional stamp duty leviable in transfer of an immovable property within a ‘development’ area, it is essential both from the point of view of transparency as well as adherence to

<sup>3</sup> “Development area” means any area declared development area under Section 3 of UPUPD Act, 1973.

the provisions of the UPUPD Act that a specific sub-head be created for collection and accounting of additional stamp duty.

Audit reported the matter to the Department (between October 2018 and April 2019). In reply (June 2020), the Department stated that additional stamp duty under the provisions of the UPUPD Act, 1973, on the transfer of immovable property situated in 'development' area is being collected together with stamp duty. Under the head of account 0030-Stamps and Registration Fees, a sub-head 02-Stamps-Non-Judicial is already provided. As such, there seems no requirement for opening a distinct sub-head.

The reply of the Department is not acceptable as the duty so collected under additional stamp duty is meant for fulfilling the specific intent of the UPUPD Act, 1973 viz. allocation to the Development Authority, the Uttar Pradesh *Avas Evam Vikash Parishad*, *Nagar Mahapalika* or Municipal Board. Therefore, it is essential to distinctly account for it for fulfilling the requirement of the UPUPD Act, 1973. In the absence of a distinct sub-head, the Department is not in a position to specifically ascertain how much money was received with respect to additional stamp duty.

**(ii) Allocation of amounts with respect to lease and mortgage:**

In addition to the systemic deficiencies observed with regards to accountal and subsequent allocation of amounts collected with respect to additional stamp duty, Audit also observed further systemic deficiency with respect to lease and mortgage deeds on which additional stamp duty is to be levied, collected and allocated.

Audit observed (March 2019) that additional stamp duty in case of transfer of immovable property was being levied/collected and noted in the *SYAHA* (Fees Register) maintained by the office of the SR. This provided a rough basis for allocation of amounts to the Development Authorities, the Uttar Pradesh *Avas Evam Vikash Parishad* and the *Nagar Mahapalika* or the Municipal Board etc. However, in respect of additional stamp duty to be levied for leases and mortgages for immovable properties, the same is being collected and accounted for under stamp duty head and not being separately noted or accounted for. It is therefore essential that amounts collected by way of additional stamp duty for lease and mortgage are distinctly accounted for separately from amounts collected by way of stamp duty in case of transfer of immovable property.

Audit test-checked the records of 30 Sub-Registrar Offices<sup>4</sup> (SROs) and noticed (between August 2018 and March 2019) that in 226 deeds of mortgage/lease deeds registered in these SROs, SRs levied and realised stamp duty amounting to ₹ 3.54 crore and additional stamp duty amounting to ₹ 4.91 crore. Both the duties have not been recorded separately in the *SYAHA* (Fees Register), as stamp duty and additional stamp duty, as required by the Act. The duties so collected under two different Acts<sup>5</sup> have been booked in one column of the *SYAHA* as stamp duty treating them as a duty leviable under the

<sup>4</sup> *Sadar* I, II and III, Agra; *Sadar* I, II and III, Aligarh; *Sadar* I, Allahabad, *Sadar* I and II, Bareilly; Modinagar, *Sadar* I, II, III and IV, Ghaziabad; *Sadar* I and II, Gorakhpur; Baxi ka talab, *Sadar* I, II, III, IV and V, Lucknow; *Sadar* II and III, Meerut; *Sadar* I, Muzaffarnagar; *Sadar* III, Saharanpur; Chandausi, Sambhal; *Sadar* II, III and IV, Varansasi.

<sup>5</sup> Under Article 40 of Schedule 1B of the IS Act and Section 39 of the UPUPD Act.

Stamp Act. In absence of this, it is not clear to Audit whether the amounts of additional stamp duty so collected with respect to mortgage and lease are being transferred/allocated to the Development Authority, the Uttar Pradesh *Avas Evam Vikash Parishad* and the *Nagar Mahapalika* or the Municipal Board etc.

In reply (June 2020), the Department stated that in 77 cases, due to deficiencies in the *PRERNA* software<sup>6</sup>, the amount so collected under additional stamp duty could not be shown separately with respect to lease and mortgage deeds. However, this is not revenue loss. In the monthly statements the amount of two *per cent* under additional stamp duty has been included.

The reply of the Department confirms the *PRERNA*-generated *SYAHA* did not include the amount of additional stamp duty collected with respect to mortgage and lease deeds as the Department itself has acknowledged the deficiencies in the *PRERNA* software and approached National Informatics Centre (NIC) for remedy.

### **Recommendations:**

- 1. With a view to effecting transparency in the budgeting and accounting of additional stamp duty a distinct sub-head may be opened in the Government account to account for their levy and collection.**
- 2. While accounting for additional stamp duty it needs to be ensured that all receipts under this category are included viz. conveyance deeds, leases and mortgages.**

#### **4.4 Short levy of stamp duty due to limiting stamp duty to ₹ five lakh**

**Limiting the amount of stamp duty on mortgage deeds to ₹ five lakh resulted in short levy of stamp duty of ₹ 8.82 crore.**

In a notification<sup>7</sup> dated 25 May 2001, the State Government remitted the stamp duty chargeable<sup>8</sup> on instruments of mortgage to the extent of amount of stamp duty that exceeds ₹ five lakh. Vide a subsequent notification<sup>9</sup> dated 10 July 2008, in partial modification of the earlier notification, the Government remitted the stamp duty chargeable (on any instrument of mortgage without possession), to the extent of the amount that exceeds the amount of duty calculated at the rate of ₹ five for every one thousand rupees or part thereof on the amount secured by such deeds.

Audit test-checked (between November 2018 and December 2018) 2,470 deeds in four SROs and noticed that in 17 deeds of simple mortgage (without possession) registered between June 2017 and October 2018, the duty chargeable on these documents was higher than ₹ five lakh as worked out at the rate of 0.5 *per cent*. However, the Department limited the stamp duty to ₹ five lakh which was not in accordance with the later notification dated 10 July 2008 which stipulated that stamp duty at the rate of 0.5 *per cent* was

---

<sup>6</sup> *PRERNA* (Property Evaluation and Registration Application) software was introduced by the Department on 1 August 2006 for computerisation of the registration process.

<sup>7</sup> Notification No. KN---3139/11-2001-500 (121)/2000 TC dated 25 May 2001.

<sup>8</sup> Clauses (b) and (c) of the Article 40 of Schedule 1B.

<sup>9</sup> Notification No. Ka.Ni. 5-2758/XI-2008-500 (159)-2000 dated 10 July 2008.

chargeable without limiting the duty to ₹ five lakh. The SRs failed to comply with the revised notification which resulted in short levy of stamp duty amounting to ₹ 8.82 crore as shown in **Appendix-VIII**.

Audit reported the matter to the Department (between December 2018 and January 2019). In reply (June 2020), the Department stated that through the notification dated 10 July 2008, clause B-1 has been inserted by partially modifying the earlier notifications issued in this behalf and Clause (b) and (c) of the notification dated 25 May 2001 has not been contravened. Therefore, as per the notification dated 25 May 2001 the chargeability of stamp duty on instruments of mortgage will be remitted to the extent of amount that exceeds ₹ five lakh and the stamp duty shall be payable according to the notification dated 10 July 2008. Thus, both the notifications will be applicable together.

The reply of the Department is not acceptable, as in the notification dated 25 May 2001 it was provided that stamp duty chargeable under clauses (b) and (c) of the Article-40 of Schedule 1B on instrument of mortgage shall be limited to ₹ five lakh. Subsequently this notification was partially modified vide notification dated 10 July 2008 which provided that the stamp duty on mortgage deeds under clauses (b) and (c) of the Article 40 would be leviable at ₹ five for every one thousand rupees or part thereof on the amount secured by such deeds.

While modifying the earlier notification of 2001 vide notification dated 10 July 2008, the provision of remission of stamp duty exceeding ₹ five lakh was not mentioned. In view of the foregoing, the contention of the Department does not appear to be correct and therefore limiting the stamp duty to ₹ five lakh in such cases were not as per the notification dated 10 July 2008.

#### 4.5 Residential land valued at agricultural rate

**Residential land measuring 2.03 lakh square meter was wrongly registered for ₹ 37.74 crore at agricultural rates. Correct valuation at the residential rate worked out to ₹ 125.43 crore which resulted in short levy of stamp duty and registration fees by ₹ 5.66 crore.**

The IS Act, 1899 defines that stamp duty on a deed of conveyance is chargeable either on the value of the consideration set forth therein or on the market value of the property, whichever is higher. The Inspector General of Registration (IGR), vide guidelines issued in June 2003, further clarified that a property in the same *arazi*<sup>10</sup> number should not be split in more than one part for different purposes i.e. one part for agriculture and the other for non-agriculture for the purpose of levy of stamp duty.

A *Khasra*-based search facility to get the details of lands sold in a given *Khasra* is available in the *PRERNA* software. However, this feature was not being used by the SRs while determining the stamp duty to be charged at the time of registration of the sale deeds of land.

Audit test-checked (between July 2018 and March 2019) 36,643 sale deeds in 35 SROs and noticed that 75 sale deeds related to 2.03 lakh square meters of residential land valued at ₹ 37.74 crore were registered (between January 2017 and February 2019) at agricultural rates in violation of the clarification of the

<sup>10</sup> *Arazi/Khasra/Gata* indicate the particular number of a land holding in a locality.

IGR issued in June 2003. As a result, stamp duty and registration fees of only ₹ 2.51 crore was levied. Out of these 75 cases, Audit further noticed that a part of the same *arazi* was sold earlier or on the same day at residential rates (on the same day, one case involving short levy of stamp duty and registration fees of ₹ 0.05 crore, within one to 30 days, 14 cases - ₹ 0.84 crore and 31 days to 1,836 days, 60 cases - ₹ 4.75 crore). Hence, the land in question should have also been valued at ₹ 125.43 crore at the prevalent residential rates with due stamp duty and registration fees of ₹ 8.17 crore being charged. The incorrect valuation of property and under utilisation of the *PRERNA* software thus resulted in short levy of stamp duty and registration fees of ₹ 5.66 crore as shown in **Appendix-IX**.

Audit reported the matter to the Department (between October 2018 and April 2019). In reply (June 2020), the Department accepted 13 cases amounting to ₹ 30.57 lakh, out of which in eight cases, recovery of ₹ 11.43 lakh was reported by the Department. In the remaining 62 cases the Department stated that action was under process (September 2020).

**Recommendation:**

**The Department should ensure correct valuation of property using the *PRERNA* software and after mandatory physical verification by the SR or *Tehsildar/Patwari* where a part of the same *arazi* has been sold within a reasonably short period at residential rates.**

**4.6 Irregularities relating to lease deeds**

**4.6.1 Non-levy of stamp duty on Service Tax/GST amount on lease**

**Stamp duty of ₹ 1.47 crore was short levied as Service Tax/GST amount was not included in the consideration amount on which the stamp duty was calculated.**

Under the IS Act, 1899, chargeability of stamp duty on lease deeds is two *per cent*. The Act<sup>11</sup> further states that when a lessee undertakes to pay recurring charge, such as the Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which by law, is recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent. Service tax is payable at the rate of 14 *per cent* of the rental income in case the rent for one year is more than ₹ 10 lakh up to 30 June 2017. Further, GST (which came into force from 01 July 2017) is payable at the rate of 18 *per cent* on amount of rent in case it is more than ₹ 20 lakh for 12 months.

Audit test-checked (between September 2018 and March 2019) 7,937 deeds in 12 SROs and noticed that 30 lease deeds of properties for different periods ranging from one year to 29 years were executed by different lessees. Under the Service Tax (ST) Act and Goods & Services Tax (GST) Act and Rules, liability to pay ST/GST is of the service provider/lessor. However, in these cases, the lessees have owned the responsibility of paying ST/GST. Under the IS Act, the amount of ST/GST was required to be included in the consideration while assessing the stamp duty. The SRs failed to comply with the above provision of IS Act and did not include ST/GST amount in consideration while

---

<sup>11</sup> Explanation (1) of Article 35 of schedule 1-B.

levying stamp duty. This resulted in short levy of stamp duty of ₹ 1.47 crore as shown in **Appendix-X**.

Audit reported the matter to the Department (between October 2018 and March 2019). In reply (June 2020), the Department accepted the audit observation in four cases amounting to ₹ 41.04 lakh. In the remaining 26 cases the Department stated that the action was under process (September 2020).

#### 4.6.2 Short levy of stamp duty on mining lease deeds

**Contribution payable to the District Mineral Foundation Trust (DMFT) was not included in consideration of 56 mining lease deeds which resulted in short levy of stamp duty of ₹ 6.53 crore.**

Article 35(b)(i) of Schedule I-B of the IS the Act stipulates that where lease for a term not exceeding 30 years has been granted for a fine or premium, or for money advanced and where no rent is reserved, the stamp duty chargeable should be the same as a conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease. Vide Notification dated 10 July 2008, stamp duty on such lease deeds was chargeable at the rate of two *per cent* of the consideration. In addition, Explanation (I) of Article 35 stipulates that when a lessee undertakes to pay recurring charge, such as the Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which by law, is recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.

Under Rule 10 (2) of the Uttar Pradesh DMFT Rules, 2017, the lessees are also required to pay an amount equivalent to 10 *per cent* of royalty to the DMFT.

Further, Section 33(1) of the said Act stipulates that every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

In the course of test-check of mining lease deeds in Stamp and Registration Department and Mining Department, audit noticed that stamp duty was not levied on the amount payable to the DMFT. The details of the cases are discussed below:

- Audit test-checked (between July 2018 and March 2019) 4,541 deeds in seven SROs and noticed that in seven mining lease deeds, the amount of contribution payable to the DMFT were not included in the consideration for assessing the stamp duty at the time of execution of the lease deeds. Though recitals relating to deposit of contribution to the DMFT had been mentioned by each lessee in the respective lease deeds, these were not taken into account by the SRs. This resulted in short levy of stamp duty of ₹ 1.65 crore as shown in **Appendix-XI**.
- Audit test-checked (between October 2018 and March 2019) 99 lease deeds and related lease files in nine DMOs and noticed that only the amount of royalty was included in consideration in 49 mining lease deeds executed between February 2018 and February 2019 for charging stamp

duty. The amount of contribution payable to the DMFT was not included in consideration for chargeability of stamp duty. Stamp duty of ₹ 56.60 crore was charged on the consideration of ₹ 2,155.48 crore in these lease deeds against stamp duty of ₹ 61.48 crore chargeable on the consideration of ₹ 2,371.02 crore. Thus, the Government was deprived of revenue of ₹ 4.88 crore due to short levy of stamp duty as shown in **Appendix-XII**.

Audit reported the matter to the Mining Department (between March 2019 and April 2019) and the Stamp and Registration Department (September 2020). Their reply was awaited (September 2020).