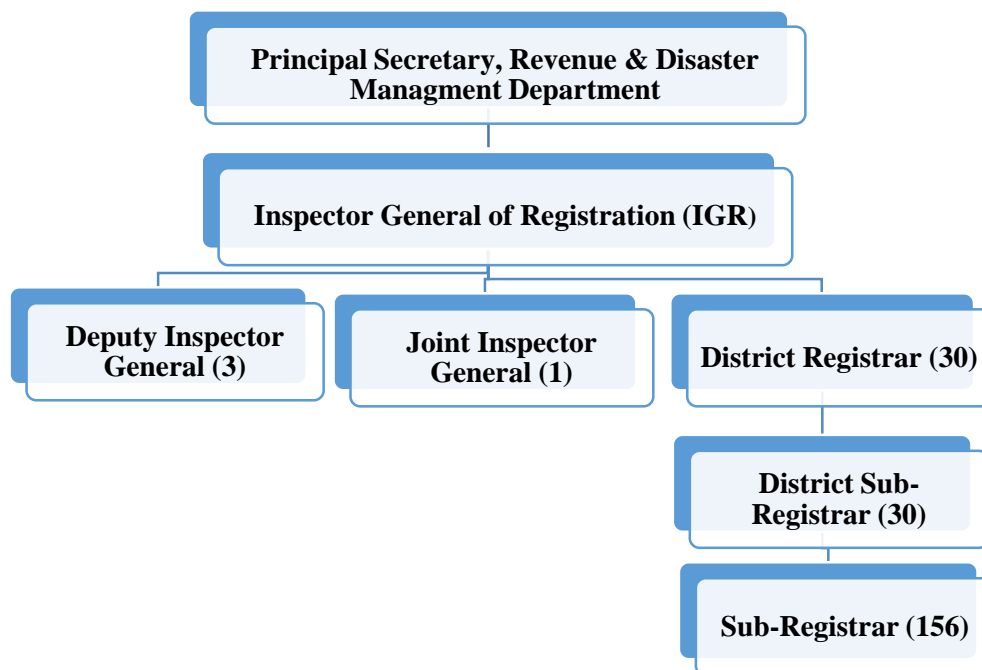


CHAPTER IV

STAMP DUTY AND REGISTRATION FEE

4.1 Tax Administration

Receipts from Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp Act 1899 (IS Act), the Registration Act 1908 and the Rules framed thereunder. The organisational setup for administration of Stamp Duty and Registration fee is as under:



4.2 Internal Audit

The Internal Audit Wing (IAW) of R&DM Department which is responsible for evaluating the Internal Control measures in the department and its field offices was created in the year 1969. During 2017-18, the IAW planned audit of 58 units but was able to cover 38 units. The shortfall was attributed to shortage of manpower by the Department. Further, 10,367 paragraphs of Internal Audit Reports issued up to March 2018 having money value of ₹ 3,705.36 crore were pending for disposal as on 31 March 2018.

4.3 Audit Methodology and Results of Audit

The Revenue & Disaster Management Department uses the e-Registration database to maintain the meta-data on the documents registered in the Sub-Registrar (SR) and District Sub-Registrar (DSR) offices. The meta-data includes instrument registration number, classification of deed, information relating to parties involved, consideration, stamp duty and registration fee that was collected, etc. All the documents registered are scanned and stored in a Central server by the Registration offices. All the Registration offices and the Inspector General of Registration (IGR) are linked to the e-registration database through Odisha State Wide Area Network (OSWAN) & Virtual Private Network (VPN). All the Registration offices login as clients to the central server for retrieval and updating of any

data pertaining to the particular Registration office only. Citizens access the services over the IGR website.

Audit does not have access to the data dump of the central server in the e-Registration database. The audit units under IGR are selected based on risk parameter such as revenue generated, etc. based on consolidated data provided by IGR on an annual basis. During the field audit of the selected audit units, a login based access to the e-registration database is provided to the audit team. This login provides access to meta-data of documents registered by the particular audit unit only. Further, Audit can also access the Fee Book, Valuation Report and scanned images of deeds. The meta-data is extracted and used for audit planning in terms of selection of sample of deeds to be audited.

During 2017-18, audit was conducted in 57 out of 183 units (31.15 *per cent*) of the Registration wing of the R&DM Department. Revenue collected in the test checked 57 units was ₹ 891.20 crore, which constituted 65.35 *per cent* of the total revenue of ₹ 1,363.72 crore collected by 183 units. Test check of assessment and other records showed incorrect determination of market value of property, irregular exemption on housing loan and non/ short levy of Stamp Duty and Registration Fee on various documents registered and other irregularities involving ₹ 251.75 crore in 450 cases, which are as given in the **Table 4.1** below.

Table 4.1
Category of Audit observations on revenue receipts

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Non/ short levy of SD&RF on various documents registered	289	251.12
2	Incorrect determination of market value of property and irregular exemption on housing loan	161	0.63
Total		450	251.75

During 2017-18, the Department accepted underassessment and other deficiencies of ₹ 5.76 crore that was pointed out in earlier years. An amount of ₹ 0.64 crore in one case, pointed out in the current year, and an amount of ₹ 0.12 crore in six cases, pointed out in earlier years, was realised.

There are two broad categories of audit observations which are detailed below. There may be similar irregularities, errors/ omissions in other Registration Units under the department but not covered in the test audit. Department may, therefore, like to internally examine all the other units with a view to ensure that the duty and fee are levied as per provisions of the Act and rules.

4.4 Audit observations

Audit scrutinised records relating to assessment and collection of SD&RF and found short realisation of revenue on agreement to sale, certificate of sale and in valuation of land and building as mentioned in the succeeding paragraphs. These cases are illustrative and are based on test check carried out by audit.

4.5 Non-observance of the provisions of the Acts/ Rules and Government instructions

The Indian Stamp (IS) Act 1899 and the Registration Act 1908 prescribed that agreement to sale involving delivery of possession of any immovable property to sell such property shall be deemed to be a conveyance and accordingly, the SD shall be payable. Deeds of certificate of sale are to be charged to duty as conveyance on the legal process of transferring property from one owner to another. Conveyance deeds are to be registered on realisation of SD&RF at the prescribed rates on the consideration truthfully and correctly mentioned therein keeping in view the benchmark value¹ (BMV) of the Government of Odisha. The documents where properties were shown to be undervalued were to be impounded for correct valuation for realisation of differential SD and RF.

Non-observance of the provisions of the above Acts by the Registering Authorities (RA) in the cases as mentioned in the following paragraphs resulted in short realisation of SD and RF.

4.5.1 Short levy of Stamp Duty and Registration Fee on Agreement to sale

The Registering Officer did not levy Stamp Duty and Registration Fee on ‘Agreement to sale’ deeds as Conveyance where possession was deemed to have been delivered as per the recital. Due to misclassification, Stamp Duty and Registration Fee of ₹ 64.14 lakh was short levied.

As per Schedule 1-A of Article 23 of the Indian Stamp Act 1899, (Odisha Amendment Act 2014) read with the explanation thereon, an Agreement to sale involving delivery of possession of any immovable property shall be deemed to be a conveyance and accordingly, SD shall be payable on the instrument on the basis of the market value of the property which is a subject matter of such instrument. Provided that the SD already paid on such agreement to sale shall at the time of execution of the sale deed by the same person in pursuance of such agreement be adjusted towards the total amount of duty chargeable on the conveyance. As per Article 5 (C) of the Act *ibid*, SD&RF was chargeable at the rate of ₹ 10 per instrument and two *per cent* of the consideration respectively for agreement deed. SD&RF applicable to conveyance deed were five and two *per cent* respectively.

Audit checked records of 57 out of 183 Registration Offices. During test check of records in one Registration Office², it was observed that five ‘Agreement to sale’ documents were registered during 2016. As per the recital of the documents, the owners had transferred their land measuring 58.160 acres valued at ₹ 930.56 lakh³ to a Land Developer. An advance money of ₹ 50 lakh was received by the owners. The conditions mentioned in the documents were explicit and gave ample opportunities to the developer to carry on developmental works over the land including preparing the layout of plots. Further, the Developer could also sell it to the third parties at his own will. Therefore, the documents should have been classified as a Conveyance deed and accordingly levied SD and RF of ₹ 65.14 lakh. The term possession, however, was deliberately avoided in the recital to stay away from the ambit of deed of Conveyance. The Registering Officer ignored the deemed possession over the land while registering the documents and realised SD and RF worth

¹ Benchmark Valuation: Under Benchmark Valuation principle, R&DM Department of Government of Odisha approves the rates of land from time to time in all districts of the State which ought to be taken into consideration while determining the prevailing market rate/ value of the land

² DSR, Sambalpur

³ SD @ 5% of ₹ 930.56 lakh = ₹ 46.53 lakh, RF @ 2% = ₹ 18.61 lakh, Total = ₹ 65.14 lakh

one lakh rupees only treating them as agreement deed under Article 5 (C). This resulted in short levy of SD and RF amounting to ₹ 64.14 lakh (₹ 65.14 lakh - ₹ 1.00 lakh⁴).

In reply, the Government stated (December 2018) that the parties concerned did not deposit the deficit amount and hence the documents have been impounded in all the cases.

4.5.2 Short levy of Stamp Duty and Registration Fee on Certificate of Sale

While registering Certificate of Sale documents, the Registering Officers did not realise Stamp Duty and Registration Fee as applicable to Conveyance deeds. This resulted in short realisation of Stamp Duty and Registration Fee of ₹ 34.01 lakh.

As per Article 18 (b) of Schedule I-A of Indian Stamp (Odisha Amendment) Act 2001, as amended in 2003, SD on Certificate of Sale, granted to a purchaser of any property sold by public auction shall be treated as a Conveyance and SD shall be chargeable at the prescribed rate on the consideration equal to the amount of purchase money. Stamp Duty and Registration Fee chargeable to Conveyance deed were five and two *per cent* of the consideration respectively.

Under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and in exercise of the powers conferred under Section 13 read with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, the immovable property secured from borrowers in favour of secured creditor/ institution towards financial facility is put to auction to recover the secured debt for which a Certificate of Sale document is registered.

Audit test checked e-registration database in 57 out of 183 Registration Offices during July to November 2017. It was observed that 18 Certificate of Sale documents were registered during 2013-17 in five Registration Offices⁵. Different banks had auctioned immovable properties totalling 11.94 Acres. The auction holders presented Certificate of Sale documents along with Conveyance deeds for transfer of right title and interest relating to those auctioned properties. The Documents had recorded the purchase value as ₹ 545.01 lakh. During registration, the Registering Officers realised SD of ₹ 1.68 lakh and RF of ₹ 2.46 lakh. The reasons for levying less SD and RF were not on record. SD and RF, however, worked out to ₹ 27.25 lakh and ₹ 10.90 lakh at the rate of five and two *per cent* of the consideration respectively as applicable to Conveyance deeds. This resulted in short realisation of SD of ₹ 25.57 lakh and RF of ₹ 8.44 lakh totalling to ₹ 34.01 lakh (₹ 25.57 lakh + ₹ 8.44 lakh). Thus, SD and RF on Certificate of Sale documents were not levied as applicable to Conveyance deeds which resulted in short realisation of SD and RF.

In reply, Government stated (December 2018) that ₹ 1.83 lakh in two cases out of ₹ 34.01 lakh have been realised and in remaining cases, documents have been sent to the respective Certificate Officers⁶ for institution of certificate cases⁷ and realisation of deficit revenue.

⁴ SD realised @ ₹ 10 = ₹ 50; RF @ 2% of ₹ 50,00,000 = ₹ 1,00,000

⁵ Bonai, Dolipur, Jagatpur, Kujanga and Sambalpur

⁶ An Officer defined under Odisha Public Demands Recovery Act, 1962

⁷ A written requisition in a prescribed form sent to the Certificate Officer for recovery of Public demand

4.5.3 Short realisation of Stamp Duty and Registration Fee due to under valuation of land and building

Registering Officers while registering documents of sale of landed properties with buildings did not realise Stamp Duty and Registration Fee on verifying the prescribed rate of buildings and Bench Mark Valuation of land. This resulted in undervaluation of the documents and consequently short levy of Stamp Duty and Registration Fee.

As per Section 27 of the Indian Stamp (IS) Act 1899, (Odisha Amendment, 1987) read with Section 3 of the Act *ibid*, the consideration if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth in the document. SD and RF was to be charged on the Bench Mark Value prescribed by the R&DM Department which was revised from time to time. Similarly, guidelines were issued by the R&DM Department, Government of Odisha in December 2003, March 2011 and December 2013 for valuation of buildings and superstructures for the purpose of levy of SD and RF. As per Section 47-A of the Act, in case of under valuation of a property/ document during registration, the case shall be referred to the Collector who would determine the value and the deficit amount shall be paid by the person liable to pay the duty. SD and RF applicable to conveyance deed were five and two *per cent* respectively.

Audit test checked (July 2017 to February 2018) documents registered in 57 out of 183 Registration Offices. It was observed that landed properties with buildings were sold by registering 21 Conveyance deeds during 2013 to 2016 in 10 Registering Offices⁸. The consideration money of those documents was ₹ 1237.31 lakh. The Registering Officers realised SD of ₹ 61.87 lakh and RF of ₹ 24.75 lakh.

It was noticed that the Registering Officers while evaluating the value of the properties registered did not verify the prescribed rate of buildings (floor-wise), number of years for which depreciation was to be worked out, value of land as per BMV, etc., as per the guidelines prescribed. This resulted in undervaluation of the properties registered and consequently short levy of SD and RF.

The value of these properties worked out to ₹ 1488.07 lakh taking into account the BMV and value of building/ superstructure as per the guidelines prescribed by the Government. Accordingly, SD & RF payable worked out to ₹ 74.40 lakh and ₹ 29.76 lakh respectively. This resulted in short realisation of SD of ₹ 12.53 lakh and RF of ₹ 5.01 lakh, totaling to ₹ 17.54 lakh. This indicated lack of due diligence on the part of the Registering Officers in evaluating the value of properties for the purpose of levy of SD and RF.

In reply, the Government stated (December 2018) that the documents have been sent to respective Certificate Officers for institution of certificate cases for realisation of deficit revenue in all the cases.

⁸ SRs Attabira, Bahalda, Berhampur-1, Binika, Dharmasala, Lakhanpur, Pattamundai and Rajgangpur DSRs Sambalpur and Sundargarh