

## Chapter V: Stamp Duty and Registration Fees

### 5.1 Results of audit

Test check of the records of stamp duty and registration fees during the year 2007-08, revealed irregularities amounting to Rs. 49.32 crore in 919 cases, which fall under the following categories:

(In crore of rupees)			
Sr. No.	Category	Number of cases	Amount
1.	Short levy of stamp duty and registration fees on lease deeds	73	22.32
2.	Non/short levy of stamp duty and registration fees	378	22.28
3.	Misclassification of instruments	33	2.72
4.	Other irregularities	435	2.00
<b>Total</b>		<b>919</b>	<b>49.32</b>

During the year 2007-08, the department accepted audit observations involving Rs. 45.17 lakh in 205 cases and recovered Rs. 44.18 lakh in 121 cases pertaining to the audit findings of the earlier years.

A few illustrative cases involving Rs. 44.08 crore are mentioned in the succeeding paragraphs.

## **5.2 Non/short levy of stamp duty on lease deeds**

Under the provisions of Indian Stamp Act, 1899 (Stamp Act) lease means a lease of immovable property and includes any instrument by which tolls of any description are let. No duty shall be chargeable in respect of any instrument executed by, or on behalf of or in favour of the Government in cases where, but for this exemption the Government would be liable to pay the duty chargeable in respect of such instrument. Further the Act provides that in case of a lease or agreement to lease, duty is to be paid by the lessee or intended lessee. The stamp duty is to be determined considering the average annual rent reserved, premium or fine paid and money advanced.

**5.2.1** During the review of records and information collected from the Chief Engineer (IP) Punjab, Public Works Department (PWD) (B&R Branch), Chandigarh in September 2007, it was noticed that nine roads were constructed by five<sup>1</sup> agencies on build, operate and transfer (BOT) basis for Rs. 624.22 crore. These agencies had to recover the cost of project (investment) alongwith profit and interest etc. by imposing toll tax on the vehicles of general public in the next 16 to 17 years. As the documents were executed with future consideration, these were required to be registered as lease deeds under the provisions of the Stamp Act. Non-execution of the lease deeds resulted in non-levy of stamp duty of Rs. 18.73 crore.

After the cases were pointed out in September 2007, the department stated that lease deeds were not got registered, as under Section 3 of the Stamp Act, no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or in favour of the Government. The reply is not tenable as provision of the Stamp Act was applicable only where the Government was liable to pay the stamp duty. Duty in this case was payable by the private agencies.

**5.2.2** Information collected from the Director State Transport, Punjab in July 2007 revealed that 11 bus terminals<sup>2</sup> were given on lease for a period of five years for operation and maintenance on BOT basis and on lease for a period ranging between eight and eleven years. These deeds were got registered between March 2004 and March 2007 for a consideration of Rs. 15 or Rs. 10 in each case against a consideration of Rs. 40.90 crore worked out on the basis of cost of project/annual rent reserved. Stamp duty of Rs. 1.19 crore was leviable as per the provisions of the Stamp Act but it was not levied. This resulted in non-levy of stamp duty of Rs. 1.19 crore.

**5.2.3** During the review of records and information collected from the Director of Industries in November 2007, it was noticed that the contracts of mining of sand, gravel and boulders etc. of 10 districts<sup>3</sup> were given to the contractors for a consideration of Rs. 12.52 crore for a period from 2001 to 2006 and further extended for three years in three<sup>4</sup> cases. However, lease

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<sup>1</sup> M/s Rohan Rajdeep tollways Ltd. Pune, M/s PD Agrawal Infrastructure Ltd. Indore, M/s Chetak Enterprises (P) Ltd. Udaipur (Rajasthan), M/s IDEB Projects (P) Ltd. Bangalore (Karnataka) and M/s Telecommunications Consultants India, N. Delhi.

<sup>2</sup> Eight bus terminals on annual fee and three on BOT basis.

<sup>3</sup> Ferozepur, Gurdaspur, Hoshiarpur, Jalandhar, Ludhiana, Moga, Mohali, Nawanshahr, Patiala and Ropar.

<sup>4</sup> Mohali, Patiala and Ropar.

deeds were executed but not got registered with the respective sub registrars (SRs). This resulted in short realisation of revenue of Rs. 12.52 lakh.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

### **5.3 Evasion of stamp duty and registration fee**

Under the provisions of the Stamp Act, conveyance includes a conveyance on sale and every instrument by which, property whether movable or immovable, is transferred inter vivos<sup>5</sup> and which is not otherwise specifically provided by Schedule I-A of the Act. Further, under the provisions of the Registration Act, 1908, conveyance is a compulsorily registerable document.

During review of the records of the Director, Housing & Urban Development and information collected from Patiala Development Authority (PDA) in November 2007, it was noticed that the PDA had entered (November 2006) into an agreement with a developer to develop an integrated township at Patiala. The possession of the land measuring 336.5 acres was handed over to the developer for a consideration of Rs. 109 crore. The agreement was not registered with the registering office. This resulted in evasion of stamp duty and registration fee of Rs. 9.81 crore.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

### **5.4 Non-levy of stamp duty on sale of industrial property**

Under the provisions of the Stamp 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 by Schedule I-A of the Act. Further, under the provisions of the Registration Act, 1908, conveyance is a compulsorily registerable document. It was noticed in audit that the Revenue Department (Stamp and Registration Branch) did not have a system of obtaining periodic information from the Department of Industries on the disposal of property of sick/defaulting industrial units through public auction.

During review of the records of the Director of Industries and information collected from Punjab Financial Corporation (PFC) Chandigarh in February 2008, it was noticed that properties of 59 defaulting industrial units were sold by PFC during the years 2004-05 to 2006-07 for a consideration of Rs. 19.71 crore. These deeds were required to be registered with the registering offices as per the provisions of the Registration Act. Non-execution of conveyance deeds of the industrial units sold by PFC, resulted in the loss of revenue of Rs. 1.82 crore.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

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<sup>5</sup> From one living person to another.

### **5.5 Short levy of stamp duty and registration fee**

Under the Punjab Stamp Rules, 1983 as amended in 2002, the Collector of a district in consultation with the committee of experts as defined thereunder, fixes the minimum market value of land/properties, locality wise and category wise in the district, for the purpose of levying stamp duty on instrument of transfer of any property.

During test check of the records of 26 sub registrars (SRs<sup>6</sup>)/joint sub registrars (JSRs) and information collected from Director Tourism, it was noticed between November 2006 and December 2007 that in respect of 56 conveyance deeds registered during 2005-06 and 2006-07 on account of sale of residential/agricultural/ commercial property/built up houses and tourist complex, stamp duty was charged on consideration of Rs. 32.53 crore as set forth in the instruments instead of Rs. 115.45 crore being the value of land determinable on the basis of price fixed by the respective Collectors. This resulted in short levy of stamp duty and registration fee of Rs. 7.41 crore.

The matter was reported to the department and the Government in March 2008; their replies have not been received (August 2008).

### **5.6 Misclassification of instruments**

Under the provisions of the Stamp Act, every instrument is chargeable with duty at the prescribed rates. A 'mortgage deed' includes every instrument whereby, for the purpose of securing money advanced by way of loan or an existing or future debt, one person transfers or creates in favour of another, a right over or in respect of specified property. For availing of cash credit facility from commercial and banking institutions, property mortgaged by individuals with/without possession was required to be stamped under the Act.

During test check of the records of five<sup>7</sup> SRs/JSRs, it was noticed between August and December 2007 that nine instruments were executed between June 2004 and December 2006 as collateral security and power of attorney etc., for securing loan of Rs. 75.23 crore against the security of immovable property. These instruments were to be classified as mortgage deed with/without possession. Thus, misclassification of these instruments resulted in short levy of stamp duty of Rs. 1.29 crore.

After the cases were pointed out, SRs/JSRs stated between August and December 2007 that necessary action would be taken and recovery due would be made. A report on recovery has not been received (August 2008).

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

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<sup>6</sup> Amloh, Amritsar II, Balachaur, Bathinda, Bholath, Barnala, Bassi Pathana, Batala, Chamkaur Sahib, Gidderbaha, Jalandhar I & II, Jalalabad, Jaitu, Kapurthala, Ludhiana (East and West), Moga, Muktsar, Patiala, Pathankot, Phagwara, Rajpura, Sunam, Mahilpur and Nathana.

<sup>7</sup> Dera Bassi, Jalandhar I, Ludhiana (East and West) and Nathana.

### **5.7 Misclassification of instruments of conveyance deed**

Under the provisions of the Stamp Act, an instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded and is chargeable under Schedule I-A of the Act.

Under the provisions of the Stamp 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 by Schedule I-A of the Act. Further, amendment to Schedule I-A of the said Act in December 2001 provides that in case of an agreement to sell followed by possession or evidence of delivery of immovable property agreed to be sold, the same duty is leviable as leviable in the case of a conveyance deed.

**5.7.1** During test check of the records of SR Ludhiana (East) in December 2007, it was noticed that in three cases memorandum of agreement/ understanding and collaboration agreement of immovable property valued as Rs 40.97 crore<sup>8</sup> were entered between the owners and the developers during January 2003 and May 2006 for the construction of mall and shopping complex. These documents were classified as such and stamp duty of Rs. 900 (Rs. 300 each) was levied. The substance of the documents entered between the parties clearly indicated handing over of possession of the property for construction. Subsequent sale by the developers created a right of the developers on the property and hence stamp duty as applicable under a conveyance deed was leviable. Thus, misclassification of the instruments resulted in short levy of stamp duty of Rs. 1.22 crore.

**5.7.2** During test check of the records of SR Ludhiana (East) in December 2007, it was noticed that in two cases agreements to sell immovable property for consideration of Rs. 1.30 crore were entered into between the parties. After receipt of the consideration amount the possession of the property was handed over to the purchasers during the year 2006-07. Though the description of the title of each document read as 'agreement to sell', the substance of the document clearly indicated handing over of possession of the property to the purchasers after receiving consideration. As such stamp duty as applicable under a conveyance deed was leviable whereas stamp duty as applicable to 'agreement to sell' of immovable property was levied. This resulted in short levy of stamp duty of Rs. 11.70 lakh.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

### **5.8 Non-levy of stamp duty through power of attorney**

Under the provisions of the Stamp Act, when power of attorney is given for consideration and/or authorising possession of the immovable property, the same stamp duty is leviable as in the case of conveyance. The expenses for providing proper stamps shall be borne by the grantee (vendee).

During test check of the records of SR Rajpura, it was noticed in July 2007 that three general power of attorneys (GPAs) of land measuring 129 *bighas*

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<sup>8</sup> worked out on the basis of minimum rates fixed by the Collector.

and seven *biswas* with absolute ownership and possession of the land were executed in September 2005. However, the stamp duty and registration fee of Rs. 95.53 lakh leviable as on conveyance deed was not levied.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

#### **5.9 Incorrect grant of exemption to charitable institutions**

By a notification issued in February 1981, the Government exempted from the levy of stamp duty and registration fee, instruments of transfer of land by sale or gift executed in favour of a charitable institution established for charitable purposes within the meaning of the Charitable Endowments Act, 1890 (Central Act of 1890) for the purpose of construction of roads or buildings of schools, colleges, hospitals and dispensaries on such land.

During test check of the records of 13 SRs<sup>9</sup>/JSR, it was noticed between May and December 2007 that stamp duty of Rs. 80.14 lakh including registration fee was not levied on 24 conveyance deeds of land valuing Rs. 9.86 crore which were executed between August 2005 and October 2007 in favour of the institutions. These institutions were not charitable institution within the meaning of the Charitable Endowments Act, 1890. This resulted in incorrect grant of exemption of Rs. 80.14 lakh.

After the cases were pointed out in November 2007, SR Hoshiarpur intimated in April 2008 that deficient amount of stamp duty and registration fee of Rs. 5.35 lakh had been recovered in March 2008. Reply in the remaining cases has not been received (August 2008).

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

#### **5.10 Non-levy of additional stamp duty**

By a notification issued in February 2005, the Government levied additional stamp duty at the rate of three *per cent* under the Stamp Act on an instrument if such an instrument is executed in the area falling within the jurisdiction of the municipality and the municipal corporation or within five kms of the outer limit of the municipality and the municipal corporation as the case may be or the area as may be specified by the collector.

During test check of the records of four<sup>10</sup> SRs/JSRs for the year 2004-05 to 2006-07, it was noticed between May and November 2007 that 37 instruments were executed between April 2005 and February 2007 pertaining to the area falling within five kms of the outer limit of the municipal corporations and municipalities for total consideration of Rs. 11.15 crore. Additional stamp duty of Rs. 33.45 lakh was however, not levied.

After the case was pointed out in August 2007, JSR Mandi gobindgarh intimated in May 2008 that recovery of Rs. 7.67 lakh (out of Rs. 14.47 lakh)

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<sup>9</sup> Ajnala, Bathinda, Batala, Hoshiarpur, Jalandhar I, II, Kharar, Ludhiana (East and West), Moga, Phagwara, Rajpura and Tanda.

<sup>10</sup> Amritsar II, Bathinda, Mandi gobindgarh and Phagwara.

had been made and the remaining cases involving Rs. 6.80 lakh had been referred to the collector to determine the value of the land. Reply in the remaining cases has not been received (August 2008).

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

#### **5.11 Short levy of stamp duty and registration fees on lease deed**

Under the provisions of the Stamp Act, stamp duty at the prescribed rate is chargeable on an instrument of lease on the basis of the periods of lease and the amount of the average annual rent reserved. The Act further provides that where the lease is granted for a fine or premium or for the money advanced in addition to the rent reserved, duty is to be charged on the value of such fine or premium or money advanced set forth in lease deed.

During test check of the records of two<sup>11</sup> SRs for the year 2006-07, it was noticed that in respect of two instruments of lease registered between June and December 2006, periodical increase in the rent reserved and premium/money advanced in addition to the rent reserved had not been taken into account while determining the value of the average annual rent reserved for the levy of stamp duty on the instrument. This resulted in short levy of stamp duty and registration fee amounting to Rs. 17.37 lakh.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

#### **5.12 Incorrect grant of exemption**

The Government vide a notification issued on 21 June 2001, exempted stamp duty and registration fee on the instruments executed by a person in favour of any commercial/banking institution to meet the expenditure for any of the items specified in connection with agricultural purposes or a purpose allied to it.

During test check of the records of three<sup>12</sup> SRs, it was noticed between May and October 2007 that five instruments were executed between June 2006 and March 2007 for securing a loan of Rs. 4.79 crore from the scheduled banks against the security of immovable property. These loans were secured for the purpose of non-farming i.e. for the construction of building, cash credit limit and plantation of medicinal plants etc., which were not specified in the notification. Thus, remission of stamp duty and registration fee was not admissible. Incorrect grant of exemption resulted in non-levy of stamp duty of Rs. 10.08 lakh including registration fee.

After the cases were pointed out between May and October 2007, the SR Phillaur stated that the loan was taken for agricultural purpose. The reply is not tenable as plantation of medicinal plants is not covered under the notification.

The matter was reported to the department and the Government in February 2008; their replies have not been received (August 2008).

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<sup>11</sup> Ludhiana (East and West).

<sup>12</sup> Jalandhar II, Kharar and Phillaur.