

Chapter - IV

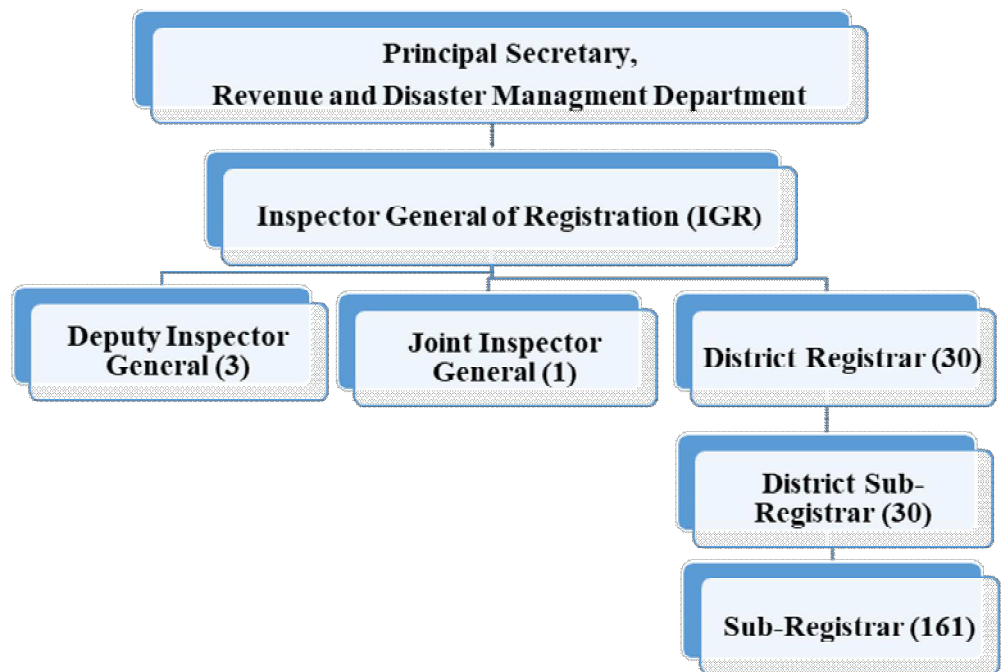
Stamp Duty and Registration Fee

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 Revenue and Disaster Management (R&DM) Department was created in the year 1969. During 2018-19, out of 67 units planned for audit, the IAW of the Department covered only 37 units. Audit noticed that 9,750 paragraphs in Internal Audit Reports having money value of ₹2493.34 crore issued up to 31 March 2019 were pending for disposal as on the date.

4.3 Audit Methodology and Results of Audit

The R&DM Department uses e-Registration database to maintain meta-data of 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) and 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.

During the period under Audit, Audit did not have access to the data dump of the Central server in the e-Registration database, which would have facilitated more audit coverage. Instead consolidated data was provided by IGR on an annual basis. The audit units were selected from this consolidated data based on risk parameters such as revenue generated, *etc.* During field audit of the selected units, a login based access to the meta-data of documents registered by the particular audit unit only was provided to the audit team. Herein, Audit accessed the Fee Book, Valuation Report and scanned images of deeds. The meta-data was extracted and used for selection of sample of deeds to be audited.

Audit was conducted in 49 out of 191 units (25.65 *per cent*) in Registration wing of R&DM Department during 2018-19. Revenue receipts collected in the test checked 49 units was ₹628.53 crore, which was 54.99 *per cent* of total revenue receipts of ₹1,142.91 crore collected in 191 units. Test check of assessment and other records showed incorrect determination of market value of land and building and non/ short levy of stamp duty and registration fee on lease, Agreement to sale, Power of Attorney *etc.*, involving ₹34.13 crore in 19,060 cases. Details of category wise audit observations have been mentioned in Table 4.1.

Table 4.1: Category wise details of Audit observations

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Incorrect determination of market value of land and building	108	12.98
2	Non/short levy of stamp duty and registration fee	1,056	21.15
3	Other Irregularities	17,896	0.00
Total		19,060	34.13

During 2018-19, the Department accepted under assessment and other deficiencies worth ₹2.20 crore in 18,533 cases that were pointed out in earlier years. An amount of ₹0.41 crore in 26 cases, pointed out in 2018-19, was realised.

Similar errors/ omissions in other Registration wing under the Department but not covered in the test audit are required to be internally examined by the Departmental in 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 and 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 and RF at the prescribed rates on the consideration truthfully and correctly mentioned therein keeping in view the benchmark value⁴⁵ (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 and Development Agreements

The Registering Officer did not levy Stamp Duty and Registration Fee on ‘Agreement to sale and Development Agreements’ deeds as Conveyance where recitals of the document indicated that possession was deemed to have been delivered as per the recital. Due to misclassification, Stamp Duty and Registration Fee of ₹97.33 lakh was short levied.

As per Article 23 of Schedule I-A of the Indian Stamp Act, 1899 (as amended in Odisha Amendment Act, 2014), an agreement to sale involving delivery of possession of any immovable property or a power of attorney authorizing the person to sell such immovable property, will be deemed to be a conveyance. Accordingly, the Stamp Duty (SD) thereon shall be chargeable on the basis of the market value of the property. It further provided that at the time of execution of the sale deed by the same person in pursuance of such agreement, the SD already paid on agreement to sale, shall be adjusted towards the total amount of such duty chargeable on the conveyance. As per Section 27 of the Indian Stamp Act, 1899, the consideration, if any, on 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. Fees for Registration (RF) at the rate of two *per cent* of the value on consideration shall be payable for the purposes specified in Section 78 of the Registration Act, 1908.

Audit test checked 49 out of 191 District Sub-Registrar (DSR) and Sub-Registrar (SR) offices during the period from April 2018 to March 2019. The following observations were made during the course of audit.

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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

(i) In the office of SR, Dolipur, Audit noticed that two documents titled as “Development Agreements” were registered for development of land measuring 5.415 acres by the developers/ builders. Lands were handed over by first parties (executants) in favour of second parties (developers) to develop the land and construct multi-storeyed buildings for sale. As per the recitals of these agreements, the developers were authorized to enter into agreement for sale of properties. Hence, the documents should have been classified as conveyance. The SR levied SD and RF on the value as recited in the agreement without determining the market value of property. Misclassification of the documents and non-determination of the market value of the properties resulted in short realisation of SD and RF worth ₹27.03 lakh (₹19.31 lakh + ₹7.72 lakh).

(ii) In case of another document registered in the same SR, an area of 3.890 acres of land was handed over to the developer for development and construction of residential/ commercial buildings. The document was registered as a development agreement. As per the recitals of the document, the developer had explicit right to sell the apartments constructed over the land. In consideration, the owners of the property were entitled for apartments measuring 50,000 sq.ft. of the built-up area *in lieu of* the development over the scheduled property. The cost of owners’ share worked out to ₹552 lakh taking the existing guidelines of valuation of building for 50,000 sq.ft. However, the SR levied SD and RF only on the advance amount of ₹40 lakh which was a token amount advanced by the developer while actual value of the transaction was ₹552 lakh.

This resulted in short realisation of SD and RF worth ₹35.84 lakh (₹25.60 lakh + ₹10.24 lakh).

(iii) During test check of documents relating to Agreement to Sale, Audit noticed (November 2018 to January 2019) in two DSR⁴⁶ and two SR⁴⁷ Offices that five documents were registered as agreements to sale in respect of land measuring 21.57 acres. The owners of the lands had handed over physical possession of properties to the purchasers. Therefore, the documents should have been classified as conveyances. The RAs had collected SD and RF only on the advance money/ consideration money mentioned in recitals instead of value of properties or market value. This resulted in short realisation of SD and RF worth ₹34.46 lakh (₹24.94 lakh + ₹9.52 lakh).

The matter was intimated to Inspector General of Registration (IGR), Odisha during May 2019. In reply, IGR in respect of three cases of Development Agreements, stated (September 2019) that three Registering Officers⁴⁸ had issued demand notices for realisation of deficit dues. No responses in respect of the remaining cases have been received.

The matter was brought to the notice of Government during November 2019. Their replies are awaited (October 2020).

⁴⁶ DSR, Kalahandi and DSR, Nuapada

⁴⁷ SR, Berhampur Town and SR, Padmapur

⁴⁸ DSR, Kalahandi; DSR, Nuapada and SR, Berhampur Town

4.5.2 Short realisation of Stamp Duty and Registration Fee on Power of Attorney instruments *in lieu of conveyance*

The Registering Officer did not levy Stamp Duty and Registration Fee on 'Power of Attorney instruments' as Conveyance where possession was deemed to have been delivered as mentioned in the recitals of the documents. Due to misclassification, Stamp Duty and Registration Fee of ₹27.44 lakh was short levied.

As per the explanation under Article 23 of Schedule 1-A of Indian Stamp (IS) Act, 1899 (as amended in Odisha Amendment Act, 2014), a Power of Attorney (PoA) authorising a person other than father, mother, wife, husband, son, daughter, brother or sister in relation to the executant as mentioned in clause (g) of Article 48, to sell immovable property, shall be deemed to be a conveyance. Accordingly, SD shall be payable on the instrument on the basis of the market value of the property which is the subject matter of such instrument. SD shall be chargeable at the rate of five *per cent* of the amount or value of the consideration for such conveyance as set forth in the deed or market value of the property, whichever is higher, as per Government of Odisha, Revenue and Disaster Management Department order No.10/06-33267/RDM dated 5.8.2008. Registration Fee (RF) at the rate of two *per cent* of the value of documents shall also be payable for the purposes specified in Section 78 of the Registration Act, 1908.

Audit test checked PoAs in 50 out of 183 registering offices (December 2017 to January 2019) and observed in six RAs⁴⁹ that nine PoAs were registered on realisation of SD and RF amounting to ₹5.24 lakh and ₹1.31 lakh respectively. The market value of the properties registered through PoAs was ₹4.86 crore. The RAs did not classify the PoAs as conveyance though the recitals of the documents clearly indicated that the PoA holders were not the family members of executants. This indicated lack of due diligence on the part of Registering Officers, which led to short realisation of SD worth ₹19.04 lakh and RF worth ₹8.40 lakh.

In reply, five RAs⁵⁰ stated that steps would be taken after verification of documents. SR, Berhampur-II stated that the PoAs may be treated as Development Agreements and hence, the SD and RF had been realised accordingly. The reply of SR, Berhampur-II was not acceptable as the entire building along with land was transferred and possession was handed over by principal to attorney holder in the PoA, Hence, the document should have been considered as conveyance and not as a Development Agreement or PoA. No further steps taken after verification of documents has been reported by the Registering Authorities (October 2020).

The matter was brought to notice of the IGR (May 2019) and Government (September 2019). The replies are awaited (October 2020).

⁴⁹ DSR, Kalahandi(2); SR, Bisam Cuttack(1); SR, Nandapur(1); SR, Nuapada(3); SR, Sohela(1) and SR, Berhampur-II(1)

⁵⁰ DSR, Kalahandi; SR, Bisam Cuttack; SR, Nandapur; SR, Nuapada and SR, Sohela

4.5.3 Short realisation of Stamp Duty and Registration Fee due to undervaluation of land

Registering Officers while registering documents of sale of landed properties did not realise Stamp Duty and Registration Fee on verifying the Benchmark Valuation of land. This resulted in undervaluation of the documents and consequently short levy of Stamp Duty and Registration Fee worth ₹28.65 lakh.

Section 27 of the Indian Stamp (IS) Act, 1899 (as amended in Odisha Amendment Act, 2014), read with Section 3 of the Act *ibid*, provides that the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty, shall be fully and truly set forth in the document. Further, as per Article 23 (b) of Schedule 1A of Indian Stamp Act and R&DM Department, Government of Odisha order dated 5 August 2008, conveyance deed of an immovable property is leviable with Stamp Duty (SD) at the rate of five *per cent* of the consideration set forth in the deed or the market value of the property, whichever is higher. Section 78 read with section 79 of the Registration Act, 1908 prescribes that sale/ conveyance deeds are to be registered for realisation of Registration Fee (RF) at two *per cent* of the consideration set forth in the deed or the market value of the property, whichever is higher.

Audit test checked 50 out of 183 registering offices (July 2018 to January 2019) and observed in eight documents registered in three registering offices⁵¹ that lands measuring 104.970 acres were sold by vendors to the vendees for a consideration of ₹6.83 crore and SD and RF worth ₹46.68 lakh (₹33.02 lakh + ₹13.66 lakh) were realised. The RAs did not consider the correct benchmark valuation rate of the land as fixed by the collector mentioned in all the deeds while registering which amounted to ₹10.76 crore. This resulted in short realisation in SD and RF worth ₹28.65 lakh (₹20.79 lakh + ₹7.86 lakh).

The matter was intimated to IGR (May 2019) and Government (September 2019). The reply is awaited (October 2020).

4.5.4 Short realisation of Stamp Duty and Registration Fee due to undervaluation of buildings and superstructures

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 superstructures. This resulted in undervaluation of the documents and consequently short levy of Stamp Duty and Registration Fee amounting to ₹0.24 crore.

Section 27 of the Indian Stamp (IS) Act, 1899 (as amended in Odisha Amendment Act, 2014) 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

⁵¹ SR, Nandapur; DSR, Nuapada and DSR, Dhenkanal

document. R&DM Department, Government of Odisha issued guidelines in December 2003, March 2011 and December 2013 for valuation of buildings and superstructures for the purpose of levy of Stamp Duty (SD) and Registration Fee (RF). As per Section 47A of the Act, in case of undervaluation of a property/ document during registration, the case shall be referred to the collector who would determine the value. The deficient amount shall be paid by the person liable to pay the duty. Rates for the SD and RF applicable to conveyance deed were five and two *per cent* respectively.

Audit test checked documents in 50 out of 183 RAs (April 2018 to March 2019) and observed that landed properties having buildings thereon were sold by registering 45 conveyance deeds in 18 RAs⁵² for consideration of ₹1621.77 lakh as set forth in the instruments. The RAs realised SD of ₹79.04 lakh and RF of ₹32.43 lakh. Audit observed that the consideration set forth in the documents was less than the value as per the government guidelines for valuation of buildings/ structures, but while registering the conveyance deed, RAs did not refer the cases to the collector for determination of the value. The value of those properties worked out to ₹1944.32 lakh taking into account the cost of land and value of building/ superstructure as per the guidelines prescribed by the Government. Accordingly, SD and RF payable worked out to ₹96.98 lakh and ₹38.87 lakh respectively. Undervaluation of the building/ superstructure resulted in short levy of SD amounting to ₹17.94 lakh and RF amounting to ₹6.46 lakh, totaling to ₹24.40 lakh.

The RAs while evaluating the value of the properties registered, did not verify the prescribed rate of buildings (floor-wise), number of years for which depreciation worked out *etc.*, as per the prescribed guidelines nor did the matters were referred to the Collectors for determination of correct value. This indicated lack of due diligence on the part of the RAs in evaluating the properties for the purpose of levy of SD and RF.

On this being pointed out during December 2018, Sub-Registrar, Bheden stated that notices would be issued to concerned parties for recovery of revenue short realised. Sub-Registrar, Baliapal stated that the document was to be booked under Section 47A (2-a) of IS Act which enabled the District Collector to *suo motu* examine the instrument within three years of date of registration. The reply of SR Baliapal was not acceptable as the document was registered in December 2013 and the time period of three years for *suo motu* examination by district collector, as provided in Section 47A (2-a), was already over. The SR may refer the undervalued documents to Collector under section 47A (1) of IS Act. Sub-Registrar, Bheden stated that notices would be issued to concerned parties for recovery of revenue short realized. All other Sub-Registrars and District Sub-Registrars stated that necessary action would be taken for realisation of deficient revenue after verification of relevant documents and compliance would be furnished to audit.

The matter was intimated to the IGR (July 2019) and Government (September 2019). Despite elapse of the period of more than a year, the reply is awaited (October 2020).

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SRs, Bhatli, Bheden, Dharmagarh, Rengali, Padmapur, Kaptipada, Baliapal, Chandabali, Champua, Badachana, Chhendipada, and DSRs, Nuapada, Sambalpur, Subarnapur, Jharsuguda, Kalahandi, Mayurbhanj and Deogarh

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

Stamp Duty and Registration Fees worth ₹14.75 lakh was short levied on registration of Certificate of Sale documents issued by Bank Authorities as they were not treated as conveyance deeds.

As per Article 18 (b) of Schedule I-A of Indian Stamp (Odisha Amendment) Act, 2001, as amended in 2003, Stamp Duty (SD) on Certificate of Sale granted to a purchaser of any property sold by public auction by a civil or revenue court or collector or other revenue officer shall be treated as a conveyance deed and SD shall be chargeable at the prescribed rate on the consideration equal to the amount of purchase money.

Under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 read with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, in exercise of the powers conferred, 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. Also, as per clarification of Government of Odisha (October 2016), the registration of certificate of sale issued by authorised officers of banks were not exempted from SD and RF as they were neither a civil nor a revenue authority and hence, the SD and RF were chargeable at five and two *per cent* of the consideration respectively.

Audit test checked 50 out of 183 Registration Offices (ROs) and observed that five certificates of sale documents were registered during 2015-16 in two ROs⁵³ in which different banks auctioned immovable properties involving 20.165 acres. The auction holders presented certificates of sale documents along with their respective conveyance deeds for transfer of right title and interest relating to those auctioned properties. The documents were registered with purchase money worth ₹230.41 lakh as recorded in the documents. The ROs realised SD worth ₹0.23 lakh and RF worth ₹1.15 lakh only by not treating the documents of certificate of sale as conveyance deeds. However, SD and RF worked out to ₹11.52 lakh and ₹4.61 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 ₹11.29 lakh and RF of ₹3.46 lakh totaling to ₹14.75 lakh. Thus, the certificate of sale documents were not treated as conveyance deeds which resulted in short realisation of SD and RF.

In reply, ROs stated (October 2018) that demand would be raised for collection of deficient Stamp Duty and Registration Fee after verification of records.

The matter was intimated to IGR (May 2019) Government (November 2019). Their replies are awaited (October 2020).