

CHAPTER-V

CHAPTER V

STAMP DUTY AND REGISTRATION FEES

5.1 Tax administration

Receipts from stamp duty and registration fees are regulated under the Indian Stamp Act, 1899, (IS Act); Indian Registration Act, (IR Act) 1908 and the rules framed thereunder as applicable in West Bengal and are administered at the Government level by the Principal Secretary, Finance (Revenue) Department. The Inspector General of Registration & Commissioner of Stamp Revenue (IGR & CSR) is the head of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department who is empowered with the task of superintendence and administration of registration work. During 2015-16, the Directorate had strength of 13 posts of Deputy Inspectors General of Registration (DIGR) and above, 27 posts of District Registrars (DR) and equivalent, 26 District Sub-Registrars (DSR), 229 Additional District Sub-Registrars (ADSR) and three Sub- Registrars.

5.2 Internal audit

As per reply of the Directorate (October 2016), the Department did not have Internal Audit Wing (IAW) of its own for internal audit purpose. However, the Directorate had internal control mechanism at the district level through the DIGRs so far as the determination of proper market value of the property for registration was concerned and the overall supervision and administrative control of the registering offices was under the District Registrars. Within the registering offices, there existed internal checking system under which a transaction was allowed to pass through hands with a view to preventing mistakes, frauds, misrepresentations and internal collusion, if any. Also, at the Head Quarter, the Post of Joint Commissioner of Stamp Revenue (Audit), WB was manned by a senior WBA&AS officer of the Finance (Audit) Department.

5.3 Results of audit

In 2015-16, test check of the records of 54 units of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department, showed non/short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹ 91.30 crore in 172 cases, which fell under the categories given in **Table 5.1**.

Table 5.1
Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Misclassifications of deeds/instruments	24	18.06
2.	Short levy of stamp duty due to deficiency in the CORD software	1	1.28
3.	Misclassification of deed of mortgage with irrevocable POA as mortgage deed	1	16.20
4.	Lease period/lease consideration	9	16.08
5.	Non/short levy of stamp duty and registration fee	9	2.53
6.	Others	128	37.15
Total		172	91.30

During the course of the year, the Department accepted non-realisation/blocking of revenue and other deficiencies of ₹ 5.01 crore in 87 cases, of which 80 cases involving ₹ 4.18 crore were pointed out during the year 2015-16 and the rest in earlier years. An amount of ₹ 82.98 lakh was realised in seven cases at the instance of audit.

A few illustrative cases involving ₹ 16.68 crore are discussed in the following paragraphs.

5.4 Short levy of stamp duty and registration fees on a deed comprising several distinct matters

Under Section 5 of the Indian Stamp (IS) Act, 1899, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which individual instruments, each comprising or relating to one of such matters, would be chargeable under this Act. Articles 40(b) and 48(h) of Schedule IA to the Act prescribe the rates of stamp duty for mortgage deed without possession and power to sell immovable property, respectively.

During scrutiny of deeds in office of the Additional Registrar of Assurance (ARA)-I, Kolkata, in December 2015, Audit observed from the recital of a deed that Bata India Limited (BIL) had collaborated with Riverbank Developers Private Limited (RDPL) in April 2010 for developing a residential project. To fund the project, BIL and RDPL mortgaged immovable properties without possession to a debenture trustee⁸⁴ in March 2015 for securing loan of ₹ 200 crore. For that purpose, the deed classified as mortgage deed was executed between BIL and RDPL and the debenture trustee in March 2015, which was registered in April 2015, and stamp duty and registration fees of ₹ 1.55 lakh was levied and realised.

Further, Audit observed that in the same deed, BIL and RDPL had given an irrevocable power of attorney to the debenture trustee for enforcing security created over the mortgaged properties. Thus, the instrument contained two distinct matters, one for mortgaging property without possession and another

⁸⁴ IL&FS Trust Company Limited.

for giving irrevocable power of attorney to the debenture trustee. The aggregate of stamp duties and registration fees chargeable on each distinct matter of the deed stood at ₹ 16.22 crore. ARA-I, however realised stamp duty and registration fees of ₹ 1.55 lakh for mortgage of the property only. This resulted in short levy and short realisation of stamp duty and registration fees of ₹ 16.20 crore.

After this was pointed out, ARA-I, Kolkata did not furnish specific reply (October 2016).

The matter was brought to the notice of the Government in January 2016, followed by a reminder issued in November 2016; their reply has not been received.

5.5 Short levy of stamp duty due to misclassification of instruments

Schedule-IA of the IS Act, 1899 as amended from time to time, prescribes the rate of stamp duty chargeable on instruments registered in the State. Article 33(i) of the Schedule prescribes that any instrument of gift in favour of family members⁸⁵ is chargeable with stamp duty at the rate of 0.5 *per cent* of the market value of the property, whereas under Article 63, stamp duty on the transfer of lease by way of assignment is chargeable on the market value of the property as applicable in case of sale. Misclassification of instruments results in under charge of stamp duty and registration fees.

During scrutiny of the instruments in four⁸⁶ Registering Authorities (RAs), Audit observed between May 2014 and January 2015 that five instruments registered between August 2012 and February 2014 involved transfer by way of assignment of leasehold rights of properties having market value of ₹ 7.34 crore, as mentioned in the instruments. The RAs however, misclassified the instrument as gift deed and charged stamp duty and registration fees of ₹ 3.68 lakh accordingly, instead of ₹ 51.40 lakh chargeable for transfer of leasehold properties by way of assignment. This resulted in short levy of stamp duty of ₹ 47.72 lakh.

After this was pointed out, two⁸⁷ RAs accepted (in May 2014 and July 2014) the audit observation in two cases involving ₹ 22.98 lakh. In remaining cases, RAs did not furnish any/ specific reply (October 2016).

The cases were reported to the Government between June 2014 and March 2015, followed by reminders issued up to November 2016, their reply has not been received.

⁸⁵ Family member means parent, spouse, son, daughter, son's wife, grandson, granddaughter, brother or sister. (Explanation below Article 33 of Schedule-IA of IS Act as applicable in West Bengal).

⁸⁶ ADSR Alipore, ADSR Sealdah, ARA-I and DSR-III Alipore.

⁸⁷ ADSR Sealdah and DSR-III Alipore.

