

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 as applicable in Odisha and are administered at the Government level by the Principal Secretary, Revenue & Disaster Management (R&DM) Department. The Inspector General of Registration (IGR) is the head of the Revenue Department who is empowered with the task of superintendence and administration of registration work. He is assisted by one Joint Inspector General (JIG), three Deputy Inspectors General (DIGs), 30 District Registrars and 30 District Sub-Registrars (DSRs) at the district level and 151 Sub-Registrars (SRs) at the unit level.

4.2 Internal Audit

The Internal Audit Wing (IAW) of R&DM Department was created in the year 1969. During 2014-15, out of 54 units planned for audit, the IAW of the Department covered only 26 units thereby resulting in shortfall of 28 units. The reason for shortfall has been attributed by the Department to shortage of staff. Audit noticed that 9,457 paragraphs of Internal Audit Reports having money value of ₹ 3,644.91 crore issued up to March 2015 were pending for disposal as on 31 March 2015.

4.3 Results of Audit

A. REVENUE RECEIPTS

In 2014-15, test check of the records of 32 units of the R&DM Department showed non-levy / short levy of stamp duty and registration fee etc. and other irregularities amounting to ₹ 12.34 crore in 10,387 cases, which fall under the categories given in **Table 4.1** below:

Table 4.1

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Incorrect determination of market value of property and irregular exemption on housing loan	43	0.32
2.	Non-levy /short levy of stamp duty and registration fee	162	12.02
3.	Other irregularities	10,182	Nil
Total		10,387	12.34

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 12.40 crore in 10,262 cases which were pointed out in 2014-15 and realised an amount of ₹ 1.82 crore in 158 cases relating to years 2000-01 to 2014-15. A few illustrative cases involving ₹ 3.47 crore are discussed in paragraphs 4.5.1 to 4.5.4.

B. EXPENDITURE

Similarly, test check of records relating to Expenditure Accounts showed irregularities amounting to ₹ 5.67 crore in 53 cases, which fall under the categories given in **Table 4.2** below.

Table 4.2

(₹ in crore)			
Sl. No	Category	No. of cases	Amount
1.	Cash book and management of cash	25	Nil
2.	Other Miscellaneous expenditure	28	5.67
Total		53	5.67

During the year, the Department accepted 48 cases involving ₹ 5.50 crore and recovered ₹ 1.02 lakh in six cases.

4.4 Audit Observations

Audit scrutinised records relating to assessment and collection of Stamp Duty and Registration Fee which revealed short realisation of revenue on sale certificates, cancellation deeds, general power of attorney and due to under valuation of land and wrong calculation of cost of buildings as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a 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 prescribe that deeds of sale certificate, cancellation of sale deeds, general power of attorney and conveyance deeds etc. are to be registered on realisation of Stamp Duty (SD) and Registration Fee (RF) at the prescribed rates on the consideration truthfully and correctly mentioned therein keeping in view the benchmark value¹ (BMV) or the rates prescribed in the Industrial Policy Resolutions (IPRs) of the Government of Odisha. The documents registered with undervaluation of properties are to be impounded for correct valuation and realisation of differential SD and RF.

Non-observance of the provisions of the above Acts by the Assessing Authorities (AAs) in the cases as mentioned in the following paragraphs resulted in under valuation of documents and short realisation of SD and RF.

¹ Benchmark Valuation: Under Benchmark Valuation principle, Revenue and Disaster Management 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 / price of the land.

4.5.1 Short realisation of Stamp Duty and Registration Fee on Sale Certificates

As per Article 18(b) of Schedule I-A of Indian Stamp Act, 1899 as amended by Odisha Act 1 of 2003, certificate of sale granted to a purchaser of any property sold by public auction shall be deemed as conveyance and SD shall be charged accordingly on the consideration equal to the amount of purchase money. Instrument as defined under Section 2(14) of the Stamp Act, 1899 includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. Sale certificate issued under Rule 9(6) of Security Interest (Enforcement) Rules, 2002 in favour of auction purchaser while securing immovable property from borrower is therefore an instrument since possession of the property is handed over to the purchaser and right of the property is recorded in the sale certificate and endorsement as “registered” is recorded by the Registering Authority (RA) under Section 60 of Registration Act.

During analysis of e-Registration database and test check of records relating to sale certificates in the offices of four District Sub-Registrars² (DSRs) and three Sub-Registrars³ (SRs) between February 2014 and May 2015 revealed that 51 sale certificates in respect of land auctioned for ₹ 15.31 crore were endorsed by the DSRs / SRs as “registered” between October 2010 and July 2014. Audit noticed that as against SD of ₹ 76.57 lakh realisable on all the 51 documents at the rate of five *per cent*, the DSRs / SRs realised SD of ₹ 0.69 lakh only without any basis. Similarly, in 20 out of the above documents presented for registration, Registration Fee (RF) of ₹ 3.46 lakh was realised as against ₹ 12.33 lakh realisable at the rate of two *per cent*. This resulted in short realisation of SD of ₹ 75.88 lakh and RF of ₹ 8.87 lakh.

After Audit pointed out (February 2014) these cases, DSRs of Cuttack, Khurda and Bhadrak stated (between February and May 2014) that sale certificates are not compulsorily registrable under Section 17(1) of Registration Act and are only to be filed in Book No. 1 as per the provisions of Section 89 (4) of Registration Act. While SR, Khandagiri stated (March 2014) that compliance would be submitted after scrutiny of the document, DSR, Balasore admitted (September 2014) the lapses and SR, Jagatpur stated (September 2014) that demand would be raised.

Replies of DSRs of Cuttack, Khurda and Bhadrak are not tenable as sale certificates are to be compulsorily stamped as per Article 18 (b) of Schedule I-A of IS Act, 1899 at the rates applicable to conveyance deeds. While registration of sale certificates being optional under Section 18(b) of the Registration Act, when presented for registration, RF is also to be realised at the applicable rate of two *per cent*.

The matter was reported to the Inspector General of Registration (IGR), Odisha, Cuttack in February 2015 and the Government in May 2015. Their replies are awaited (December 2015).

² DSRs: Balasore, Bhadrak, Cuttack and Khurda.

³ SRs: Jagatpur, Khandagiri and Pipili.

4.5.2 Short realisation of Stamp Duty and Registration Fee due to misclassification of instrument of conveyance as cancellation deeds

As per Article 17 of Schedule I-A of IS Act, 1899 as amended in Odisha Act 1 of 2003, in case of an instrument by which any instrument previously executed is cancelled, if attested and not otherwise provided for, SD of ₹ 150 is leviable. As per Section 27 of IS Act, 1899 (Odisha Amendment), the consideration, if any, the market value of property and all other facts and circumstances affecting chargeability of any instrument with duty or the amount of the duty with which it is chargeable shall be fully and truly set forth therein. Further, as per Section 64 of the Act, if any person who, with intent to defraud the Government, executes any instrument in which all the facts and circumstances are not fully and truly set forth or neglects or omits fully and truly to set forth therein all such facts and circumstances or does any other act to deprive the Government of any duty or penalty under this Act, shall be punishable with fine which may extend to five thousand rupees.

The term “conveyance” as defined under Section 2(10) of IS Act, 1899 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 for in Schedule I-A of the Act.

During test check of e-Registration database and copies of deeds in the office of DSR, Khurda and SR, Khandagiri, Audit noticed that 20 cancellation deeds were registered during 2013 and SD of ₹ 150 and Registration Fee (RF) of ₹ 200 in each case were realised. The reasons for cancellation as recorded in the said deeds, among other things, were that consideration money was not received after execution of the original deeds. Audit scrutinised the original deeds and noticed that the vendors had already received full consideration money at the time of execution of such deeds and rights and interests over the said properties had been transferred to the vendees. As such, if the original vendors intended to reacquire the said properties by cancellation of original deeds, the same should have been reconveyed through execution of fresh conveyance deeds and SD and RF should have been realised at appropriate rates applicable to conveyance deeds. Thus, registration of the above instruments of conveyance as cancellation deeds resulted in short realisation of SD of ₹ 17.50 lakh and RF of ₹ 6.97 lakh. Besides, fine was leviable.

After Audit pointed out (March 2014) these cases, SR, Khandagiri stated (March 2014) that compliance would be submitted after scrutiny of the documents. DSR, Khurda stated (March 2014) that as per Article 17 of IS Act, 1899, any instrument by which any instrument previously executed was cancelled, if attested, SD is leviable at ₹ 150.

The reply of DSR, Khurda was not tenable since rights and interests to the properties were already vested with the vendees through registration of sale deeds on receipt of full consideration money and the same could not be divested unto the vendors again by registration of deed of cancellation even with the consent of the parties.

The matter was reported to the IGR, Odisha, Cuttack in January 2015 and Government in May 2015. Their replies are awaited (December 2015).

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

As per Section 27 of IS Act, 1899 (Odisha Amendment), 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. Government of Odisha issued guidelines in March 2011 and in December 2013 for valuation of buildings / superstructure with instruction to registering authorities to follow the guidelines while checking the valuation of buildings / superstructure set forth in the instruments presented for registration. As per Section 47A of the Act, in case of undervaluation of a property during registration, the case shall be referred to the Collector who would determine the value and the deficient amount shall be paid by the person liable to pay the duty.

During test check of conveyance deeds in the offices of four DSRs⁴ and three SRs⁵, Audit noticed (between February and July 2014) that 41 parcels of land measuring 1.56 acres with buildings sold by the vendors to the vendees for a consideration of ₹ 10.46 crore were registered between January and December 2013. It was however noticed that while the value of 4 parcels of land measuring 0.51 acres was ₹ 2.34 crore as per the guidelines issued by Government in March 2011, the value of the remaining 37 parcels of land measuring 1.05 acres of land registered in December 2013 was ₹ 9.67 crore as per the Government's guidelines issued in December 2013. However, the RAs, while registering the documents, levied SD and RF on ₹ 10.46 crore instead of ₹ 12.01 crore as per the above guidelines. This resulted in undervaluation of property by ₹ 1.55 crore and consequential short realisation of SD and RF amounting to ₹ 10.51 lakh.

After Audit pointed this out, SR, Berhampur (Town), DSRs, Sambalpur and Koraput stated (May and July 2014) that the matter would be looked into and compliance would be intimated to Audit. However, DSRs, Cuttack and Khurda, SRs, Berhampur (Rural) and Khandagiri stated (between February and May 2014) that the guidelines issued on 13 December 2013 prescribing rates of buildings and superstructure were received belatedly between 19 and 23 December 2013 and hence could not be adhered to.

The replies of DSRs, Cuttack and Khurda, SRs, Berhampur (Rural) and Khandagiri were not tenable as deficit of SD and RF caused due to undervaluation of property in the said documents registered at old rates after revision of rates in the guidelines need to be realised as per the provisions of Section 47A of IS Act.

The matter was reported to the IGR, Odisha in February 2015 and the Government in May 2015. Their replies are awaited (December 2015).

⁴ DSR, Cuttack (six conveyance deeds), DSR, Khurda (fifteen conveyance deeds), DSR Koraput (two conveyance deeds) and DSR Sambalpur (two conveyance deeds).

⁵ SR, Berhampur Rural (two conveyance deeds), SR, Berhampur Town (four conveyance deeds) and SR, Khandagiri (ten conveyance deeds).

4.5.4 Short realisation of Stamp Duty and Registration Fee due to registration of documents as General Power of Attorney

As per Article 48(f) read with explanation below Article 23 of Schedule I-A of IS Act, 1899 as amended by the State in 2003, and Sections 78 and 79 of the Registration Act, 1908, an agreement to sell any immovable property or a power of attorney (POA) shall, in case of transfer of possession of such property before or at the time of or after execution of such Agreement or POA, be deemed to be a conveyance. Accordingly, SD and RF applicable to conveyance shall be charged thereon. Further, it was clarified (December 2011) by the Deputy Inspector General of Registration (Central Region) that as the 'principal' permanently hands over the possession of the property to the 'attorney holder' for development of land and relinquishes his power to cancel the POA in future, such document should be classified as deed of conveyance and SD and RF should be charged as per benchmark value of the property. Section 33 of IS Act also empowers the RA to impound the instrument if it is not duly stamped.

During test check of documents relating to general power of attorney (GPA) in the offices of DSR, Khurda and SR, Khandagiri, Audit noticed (March 2014) that in 40 documents, owners of land executed irrevocable / general power of attorney with second parties for land measuring 55.26 acres valued at ₹ 32.17 crore. As per recitals in those documents, the 'principals' agreed to transfer the possession of said lands after registration to Attorney holders (second party) to sell, lease out, develop, construct buildings and to receive consideration from prospective purchasers. As such, these documents were classifiable as instruments of conveyance and SD of ₹ 1.61 crore and RF of ₹ 64.34 lakh was leviable. However, the RAs, while registering the documents, realised SD of ₹ 0.15 lakh and RF of ₹ 0.15 lakh classifying the documents as GPA. This resulted in short realisation of SD and RF of ₹ 2.25 crore.

After Audit pointed out these cases, DSR, Khurda and SR, Khandagiri stated (March 2014) that compliance would be submitted after scrutiny of the documents.

The matter was reported to the IGR, Odisha in January 2015 and the Government in May 2015. Their replies are awaited (December 2015).