

CHAPTER IV

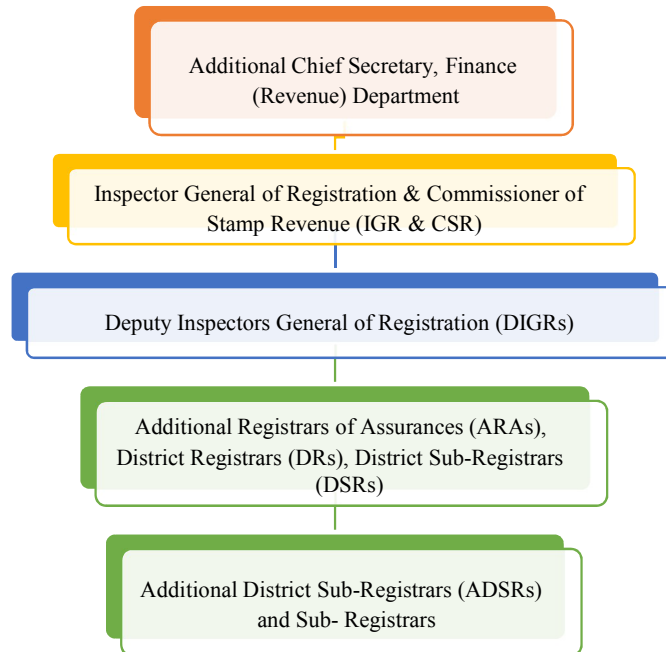
CHAPTER IV

Stamp Duty and Registration Fees

4.1 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 as detailed in the chart below:

Chart 4.1: Tax Administration



4.2 Internal audit

The Department, though requested (August 2018), failed to furnish details regarding the Internal Audit Wing (IAW). The performance of internal audit wing could not, therefore, be reviewed and reported.

4.3 Results of audit

In 2017-18, test check of the records of 59 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 ₹ 63.60 crore in 265 cases, which fall under the categories given in **Table 4.1**.

Table-4.1
Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Short levy of stamp duty and registration fees due to misclassification of deed/property	87	49.47
2.	Short levy of stamp duty due to incorrect particulars of amenities	35	8.19
3.	Short assessment/realisation of stamp duty and registration fees due to incorrect consideration of lease period	28	2.33
4.	Short levy of stamp duty and registration fees due to irregular grant of remission	2	0.26
5.	Others	113	3.35
Total		265	63.60

During the course of the year, the Department accepted non- realisation/blockage of revenue and other deficiencies of ₹ 7.14 crore in 85 cases, of which 80 cases involving ₹ 0.49 crore were pointed out during the year 2017-18 and the rest in earlier years. An amount of ₹ 6.47 crore was realised in 2017 -18 in five cases at the instance of audit.

A Performance Audit on “**Assessment and Collection of Stamp Duty and Registration Fees**”, having money value of ₹ 212.02 crore is discussed in the following paragraphs.

4.4 Performance Audit on “Assessment and Collection of Stamp Duty and Registration Fees”

4.4.1 Introduction

‘Stamp duty’ is a tax payable on certain documents specified by statute to make them legally effective. Registration fee refers to the fee levied and collected by the State Government for registration of documents.

Stamp duty on Bills of Exchange, promissory notes, bills of lading, letters of credit, insurance policies, transfer of shares, debentures, proxies and receipts are levied by the Central Government as per Entry 91 of the Union List and are collected by the State Government in which they are levied. Stamp duties on documents other than those mentioned above are levied and collected by the States by virtue of the legislative entry 63⁹⁶ in the State List in the 7th Schedule of the Constitution of India.

In 1999, the Department introduced the system of Computerisation of Registration of Documents (CORD) with the support of the National Informatics Centre (NIC) for bringing transparency in the assessment of market value and for speedy disposal of registration cases. In the CORD system, assessment of revenue and maintenance of records of registration were done on localised servers maintained at each registration office (RO). The erstwhile CORD system was replaced by ‘e-Nathikaran’ software since December 2014, which works on

⁹⁶ Entry 63 in the State List empowers the State Government to prescribe the rates of stamp duty in respect of documents other than those specified in List I.

the same principles as that of the earlier system, the only difference being that it works on a centralised server.

4.4.2 Trend of Revenue

Actual receipts from Stamp duty and Registration fees during the years 2012-13 to 2016-17, along with the total tax receipts during the period are shown in the following table:

Table-4.2
Trend of Revenue

(₹ in crore)

Financial Year	Budget Estimates	Actual Receipts	Variation excess (+)/ shortfall (-)	Percentage of variation to Budget Estimates	Total Tax Receipts of the State	Percentage of Actual Receipts vis-a-vis Total Tax Receipts
(1)	(2)	(3)	(4) (3-2)	(5)	(6)	(7)
2012-13	2,940.74	4,357.23	(+) 1,416.49	(+) 48.17	32,808.50	13.28
2013-14	4,500.00	4,053.07	(-) 446.93	(-) 9.93	35,830.60	11.31
2014-15	5,399.06	4,196.20	(-) 1,202.86	(-) 22.28	39,412.00	10.65
2015-16	4,597.67	4,174.97	(-) 422.70	(-) 9.19	42,492.10	9.83
2016-17	5,199.09	4,382.73	(-) 816.36	(-) 15.70	45,466.50	9.64

*Source :Finance Accounts and Budget Publications of the Government of West Bengal

The actual receipts fell short of the budget estimates substantially each year during 2013-14 to 2016-17. The percentage of variation between budget estimates and actual receipts ranged between 9.19 to 22.28 *per cent* to budget estimates. This indicates that the budget estimates except for the year 2012-13 were always on the higher side and rather unrealistic. Contribution of revenues from stamp duty and registration fees to the total tax receipts of the state decreased steadily from 13.28 *per cent* to 9.64 *per cent* over the period from 2012-13 to 2016-17. Reason for such decrease in revenue collection was not reported by the directorate even though called for.

4.4.3 Rationale for taking up the Performance Audit

A Performance Audit on “Evasion of Stamp Duty and Registration Fees” for the period from 2007-08 to 2011-12 was conducted in 2013 and was featured in Para 5.6 of the Audit Report No. 1 of 2014 of the Comptroller and Auditor General of India (Revenue Sector), Government of West Bengal for the year ended 31 March 2013. In the said Performance Audit, seven recommendations were made for effective administration of registration of documents and realisation of stamp duty and registration fees thereon. The present Performance Audit was conducted to re-assess the system of assessment and collection of stamp duty and registration fees after the introduction of e-Nathikarn software in the Directorate.

4.4.4 Audit Objectives

The objectives of the Performance Audit on Assessment and Collection of Stamp Duty and Registration Fees were to ascertain whether:

- The Directorate has devised an effective mechanism to ensure that documents that are mandatory for registration are presented for registration and proper stamp duty and registration fees are collected on those documents;
- The Directorate has devised an effective Change Management process for the computerised system to ensure correct assessment of stamp duty and registration fees;
- Provisions of the relevant Acts/Rules and departmental instructions are enforced by the Registering Authorities (RAs) to prevent loss of the State revenue; and
- Internal control mechanism of the Department is adequate and effective in ensuring collection of stamp duty and registration fees.

4.4.5 Audit Criteria

The audit criteria were derived from the following Acts and Rules:

- Indian Contract Act, 1872;
- Transfer of Properties Act, 1882;
- Indian Stamp (IS) Act, 1899;
- Indian Registration (IR) Act, 1908;
- West Bengal Registration Rules, 1962;
- West Bengal Stamp Rules, 1994;
- West Bengal (Prevention of Under valuation of Instruments) (WBPUVI) Rules, 2001;
- Business Rules of CORD and e-Nathikaran Software.

4.4.6 Scope and Audit Methodology

Audit Data Analytics

The Performance Audit covering transactions for the period from 2012-13 to 2016-17 was conducted between February 2018 and June 2018.

The Directorate of Registration and Stamp Revenue, Finance (Revenue Department), Government of West Bengal uses an IT application, 'e-Nathikaran' which is hosted @wbregistration.gov.in, for providing online services to the public. The core functions of the Directorate are determination of market Value of property, Registration of Property, Collection of Stamp Duty, Collection of Registration Fees, Issue of deeds to successful registrants. The web-based application is accessed by its stakeholders through State Wide Area Network (SWAN).

Audit was given the data dump of centralised transaction data of 'e-Nathikaran' system from the Directorate of Registration and Stamp Revenue. The data contained 27,97,385 cases registered in the State through the system upto March 2017. Hundred *per cent* of the population of transaction data was analysed using data analytic tool (IDEA) using functions like extraction, appending, joining, summarisation etc.

Audit selected 20⁹⁷ major revenue earning RAs having average revenue collection of ₹ 50 crore and above for the last three years (2014-15 to 2016-17)

⁹⁷ ADSRs – Alipore, Bagdogra, Barasat, Behala, Bidhannagar, Cossipore, Howrah, Rajarhat, Sealdah, ARA – I, II, III, & IV, DSR – Howrah, DSRs – II & III, North 24 Parganas and DSRs – I, II, III & IV, South 24 Parganas.

for checking of compliance issues. These RAs contributed around 46.02 *per cent* of the total revenue collection of the State from Stamp Duty and Registration Fees during 2016-17. Audit performed the following data analytics of the transaction data of the 20 selected audit units:

- Incorrect mapping of rate/ non-mapping of notified areas.
- Delayed / non-updation of mapping of municipal areas in the system.
- Excess allowance of depreciation of market value due to failure of validation checks.

Apart from the data dump, audit also received document data relating to the selected 20 audit units in the form of pdf documents. Audit utilised the transaction data to select the high-risk deeds to be audited based on risk parameters such as location, classification and market value of the property, classification of the transaction. The pdf version of the documents was studied by a central audit team to detect misclassification of instruments, incorrect determination of lease period/lease consideration and irregular allowance of remission of stamp duty and registration fees.

Short levy of stamp duty and registration fees due to deficiencies in the computerised system was analysed in respect of all the RAs. Manual records maintained by the IGR&CSR, three DIGRs and different Public Offices (POs)⁹⁸ were also scrutinised by Audit. Findings of transaction audit have also been suitably incorporated in the report.

The objectives of audit, scope, criteria and methodology were discussed at the Entry Conference with the Additional Inspector General of Registration and other representatives of the Directorate on 20th April 2018. Findings of the Performance Audit were forwarded to the Department in August 2018. The Department, however, did not hold the exit conference to discuss the findings of the Performance Audit despite being requested through letters and reminders⁹⁹.

4.4.7 Acknowledgement

Audit acknowledges the co-operation of DRSR in providing necessary records and information.

Audit Findings

4.4.8 Absence of a system to ensure that mandatory documents are presented and stamp duty and registration fees are paid correctly on all instruments

4.4.8.1 Inadequacies in implementation of provisions of Indian Stamp Act

Provisions of Indian Stamp (IS) Act were not implemented in Public Offices.

Sections 73 and 73A of the IS Act, 1899 provide that the Collector may, where

⁹⁸ Public Office is an office held by a Public Officer as defined in Section 2(17) of the Code of Civil Procedure, 1908.

⁹⁹ 31 October 2018, 14 November 2018 and 3 January 2019.

he has reason to believe that all/any of the instruments have not been charged/incorrectly charged with duty leviable under the said Act, authorise in writing, any officer to enter upon any premises where he has reason to believe that registers, books, records, papers, documents or proceedings relating to any such instrument are kept. Such authorised officer can inspect these records, and take notes/extracts as he deems necessary, seize them and impound them under Section 33 of the Act *ibid*. Every person having in his custody or maintaining such registers, books, records, papers, documents or proceedings shall produce them before the officer authorised by the Collector. He shall also permit such officer to inspect them whenever required.

As per Section 2 of the IS Act, Collector means, the Collector of Calcutta, the collector of a district and also includes the Deputy Commissioner and any officer whom the State Government may, by notification in the Official Gazette, appoint in this behalf.

It was observed that stamp duty and registration fees are assessed and collected by the RAs only in respect of the instruments presented before them for registration.

- (i) From the information furnished by five¹⁰⁰ Collectors (between August and November 2018) it was observed that the Collectors did not have any mechanism to detect the cases of instruments not having been duly stamped. Such cases were dealt with by the Collectors if and when those were either brought to the notice of the Collectors by the party or any impounded documents are received from Arbitrator, Debt Recovery Tribunal or from Hon'ble Court for the assessment of proper stamp duty.
- (ii) Under Section 33 of the IS Act, Public Officers¹⁰¹ in-charge of a PO had to ensure payment of correct amount of stamp duty on instruments produced before them and to impound those which are not duly stamped. Thus, awareness of the public officers in this area is very important to make them cognizant about their responsibilities under the IS Act. It was found in audit that the DRSR had not taken any initiative to sensitise the POs so that the provisions of Section 33 of the IS Act are complied with by them.
- (iii) During scrutiny of records of nine POs it was found that in 399 cases unstamped/inadequately stamped instruments were executed in those offices or produced before the POs. Those instruments were, however, not impounded by them. Audit also found that though the instruments were compulsorily registrable under Section 17 of the IR Act, those were also not presented before the RAs for registration. As POs were not being inspected by the Collectors, such unstamped and unregistered instruments remained undetected. As a result, Government was deprived of the stamp duty and registration fees of ₹ 114.17 crore as discussed in the succeeding paragraphs.

After this was pointed out, no reply has been received from the Department (December 2019).

¹⁰⁰ Collector Howrah, Kolkata, Purba Medinipur, North 24 Parganas and South 24 Parganas.

¹⁰¹ Public Officer as defined in Section 2(17) of the Code of Civil Procedure, 1908 *inter alia* includes every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty and every officer whose duty it is to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, authenticate or keep any document relating to the pecuniary interests of the Government.

4.4.8.2 Provisions of mandatory registration of deeds not complied with

Non-registration/non-execution of lease agreements of toll plazas and other immovable properties by different government authorities resulted in evasion of stamp duty and registration fees of ₹ 81.18 crore by lessees.

The documents prescribed under Section 17 of the IR Act, such as lease deeds/agreements are required to be registered compulsorily. As per Section 33 of the IS Act, instruments not duly stamped shall not be admitted or received as evidence. Non-registration of documents deprives the State Government of Stamp duty and Registration Fees payable on those documents.

a) Deeds not registered after execution

Audit test checked the records of seven POs to ascertain whether the agreements of leases granted by those offices were duly stamped and presented before the concerned RAs for registration. It found that the aforesaid POs granted leases in 217 cases to private parties at a consideration of ₹ 1,037.29 crore for different periods between December 2011 and March 2017. The lease agreements were found to have been executed on non-judicial stamp papers of ₹ 100 or ₹ 500. The documents were neither duly stamped nor presented before the RAs for registration. This resulted in evasion of stamp duty and registration fees of ₹ 62.37 crore by the lessees as detailed in the following table:

Table-4.3
Deeds not registered after execution

(₹ in crore)

Sl No.	Name of the POs	Nature of deed executed	Period of execution	No. of cases	Lease consideration	SD & RF payable	Remarks
1.	Project Implementation Units of National Highway Authority of India (NHAI)	Toll	Between March 2013 and August 2016	12	866.08	44.17	NHAI granted lease of three ¹⁰² toll plazas located in West Bengal to six private toll operators for the purpose of collection of user fee ¹⁰³ on behalf of NHAI for a period of one year in each case.
2.	Kolkata Metropolitan Development Authority (KMDA) Roads and Bridge sector	Toll	December 2012	1	2.73	0.14	KMDA granted lease of three ¹⁰⁴ toll plazas on Kalyani – Dum Dum Express Way ¹⁰⁵ to a private toll operator for a period of three years.

¹⁰² Dankuni, Palsit and Sonapetaya toll plazas in West Bengal.

¹⁰³ Toll fee paid by the users of the toll.

¹⁰⁴ Toll Gate No. 1 near Sodepur More, Gate No. 2 near Wireless More and Gate No. 3 near Kampa More.

¹⁰⁵ Presently renamed as Barrackpore Kalyani Express Way.

(₹ in crore)

Sl No.	Name of the POs	Nature of deed executed	Period of execution	No. of cases	Lease consideration	SD & RF payable	Remarks
3.	West Bengal Highway Development Corporation Limited (WBHDCL)	Toll	December 2016	1	9.17	0.47	WBHDCL granted lease of three ¹⁰⁶ toll plazas on Kalyani – Dum Dum Express Way ¹⁰⁷ to a private toll operator for a period of three years.
4.	Hooghly River Bridge Commissioner (HRBC)	Toll	January 2014	1	52.20	7.88	HRBC granted the toll on Vidyasagar Setu to a private toll operator for a period of five years.
5.	West Bengal Industrial Infrastructure Development Corporation (WBIIDC)	Lease	Between December 2011 and August 2015	7	2.75	0.20	WBIIDC granted lease of land to seven private parties each for a period of 99 years.
6.	Haldia Development Authority (HDA)	Lease	March 2010	1	63.00	5.10	HDA granted lease of 385 acres of land to West Bengal Industrial Development Corporation (WBIDCL) which in turn sub-leased the entire land to a private party.
		Lease	December 2013	1	36.00	4.13	HDA granted lease of land to a private party for long term lease of 90 years.
7.	Digha Shankarpur Development Authority (DSDA)	Lease	Between July 2012 and March 2017	193	5.36	0.28	DSDA granted lease of 158 stalls of seven ¹⁰⁸ market complex for a period of 3 years in each case and 35 Lavotory, Hotel, Park etc. for a period of 1 year in each case in favour of different private parties.
Total				217	1,037.29	62.37	

Audit found that the documents were executed by the POs but were not got stamped and registered to make them legally effective. Further, none of these offices were inspected by the Collectors. As a result, the evasion remained undetected until pointed out by audit.

After this was pointed out, the Vice-Chairman HRBC accepted the audit observation and stated (June 2018) that according to the practice of HRBC, the

¹⁰⁶ Toll Gate No. 1 near Sodepur More, Gate No. 2 near Wireless More and Gate No. 3 near Kampa More.

¹⁰⁷ Presently renamed as Barrackpore Kalyani Express Way.

¹⁰⁸ Dishari Market Complex, Dishari Math, New Cottage Complex, NOS-1 Ghat, Kshanika Market, Jagannath Ghat, Aparajita Cottage Complex situated in Old Digha.

toll agreement of Vidyasagar Setu was executed on non-judicial stamp paper and was not registered. He also assured to obtain the views of the IGR&CSR in this regard. HRBC being a PO was required to comply with the provisions of the IS/IR Act. Reply of the Department was awaited (December 2019).

The above audit observation is based on test audit. Department should review all its units to ensure compliance with the provisions of sections 33, 73 and 73A of the IS Act.

b) Deeds not executed for registration

Audit also test checked the records of two other POs between March and April 2018. It found that these offices granted lease of lands and ferry ghats in 141 cases to private lessees. The lessees were required to execute lease deeds as per the provisions of the West Bengal Land Reforms Manual (WBLRM), 1991 or as per the conditions of offer letters of leases issued in their favour. It was observed, however, that in all these cases leases were granted to the lessees without execution of lease deeds. Neither the POs nor the DRSR ensured compliance with the extant provisions. This resulted in non-payment of stamp duty and registration fees of ₹ 18.81 crore as detailed in the following table:

Table-4.4
Deeds not executed for registration

(₹ in crore)

Sl No	Name of the POs	Nature of deed executed	Period of execution	No of cases	Lease consideration			SD & RF payable	Nature of irregularities
					Premium	Lease rent	Security Deposit		
1.	Kolkata Port Trust (KOPT)	Lease of land	Between January 2008 and November 2017	53 ¹⁰⁹	173.40	16.03	30.78	18.63	KOPT granted leases to 29 private parties for different periods ranging between 14 and 30 years without execution of the lease deeds. The lessees were required to execute lease deeds as per the conditions of offer letters of leases.
2.	District Land and Land Reforms Officer (DL&LRO), Murshidabad	Lease of ferries	Between 2012 and 2017	88	0	4.47	0	0.18	DL&LRO, Murshidabad granted lease of 21 ferry ghats ¹¹⁰ for a period of one year in each case without execution of lease deeds. The lessees were required to execute lease deed in Appendix IV of the WBLRM, 1991.
Total				141	173.40	20.50	30.78	18.81	

¹⁰⁹ 10 cases of KOPT, Kolkata office and 43 cases of KOPT, Haldia office.

¹¹⁰ Amaniganj, Bhattpara, Chak Islampur, Chatra, Dakshin Ghoshpara, Farajipara, Farasdanga, Goaljan, Khagra Goaljan, Khodaiganj, Jiaganj Azimganj Sadar, Lalbag Sadar, Mahajantuli, Muradpur, Nashipur, Neallispara, Radharghat, Sadekbag, Sahanagar Saikuly, Shibtala and Taltali.

No reply was furnished by the Department in this regard (December 2019).

Recommendation-I

DIGRs may take up periodical inspection of public offices to ensure mandatory registration of deeds and detection of evasion of stamp duty and registration fees.

4.4.8.3 Evasion of stamp duty on issue of debentures

Stamp duty of ₹ 18.28 crore was evaded by 16 companies on issue of debentures due to the absence of a proper mechanism for assessment of stamp duty on debentures.

Stamp duty on issue of debentures is chargeable at the rate¹¹¹ prescribed under Article 27 of Schedule IA of the IS Act. Any incorporated company or other body corporate in the state is required to apply to the Finance Department for payment of consolidated stamp duty on issue of debentures. They are also obliged to pay the required duty before such issue in accordance with the procedures prescribed under Rule 23 of the West Bengal Stamp Rules, 1994.

Audit obtained information from the Registrar of Companies (ROC), Kolkata, in respect of 102 companies having registered offices in West Bengal that had submitted returns on debentures to the ROC during the period from April 2012 to March 2017. From test check of the Annual Reports of 16 out of the 102 companies, it was observed that debentures aggregating ₹ 12,451.55 crore were issued by those companies. The maturity period of these debentures ranged between one to 11 years. The information from the annual reports of the companies was then cross-verified with the records of the DRSR relating to payment of consolidated stamp duty on debentures. Audit found that those 16 companies did not pay any stamp duty on issue of debentures. The DRSR was assessing and collecting the consolidated stamp duty only if a company chose to apply for payment of the duty. DRSR did not have any mechanism to obtain information on issue of debentures from ROC or other sources and to assess the amount of stamp duty payable thereon by the companies. Thus, in the absence of such mechanism, the companies evaded payment of stamp duty of ₹ 18.28 crore on issue of debentures and no action was taken by the DRSR to realise stamp duty from the companies.

After this was pointed out, no reply has been received from the Department (December 2019).

Recommendation-II

Developing a proper mechanism to obtain information on issue of debentures by companies from ROC or other sources for assessment and collection of proper amount of stamp duty thereon.

¹¹¹ 0.05 per cent per year of the face value of the debenture, subject to the maximum of 0.025 per cent or ₹ 25 lakh whichever is lower.

4.4.8.4 Non/incorrect disclosure of lease consideration/ facts affecting chargeability of stamp duty in deeds

Due to non/incorrect disclosure of lease consideration and facts affecting chargeability of stamp duty and registration fees in the registered deeds by KOPT and HDA, there was evasion of stamp duty and registration fees of ₹ 8.14 crore by lessees.

Stamp duty on lease deed is charged in accordance with the rates prescribed under Article 35 of Schedule – IA of the IS Act, 1899. Further, as per explanation-I below Article 35, when a lessee undertakes to pay any recurring charges, which are by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent. Section 27¹¹² of the IS Act also provides that the consideration and all other facts and circumstances affecting the chargeability of duty on any instrument shall be fully and truly set forth therein.

Audit test checked records of the¹¹³ KOPT and HDA between March and May 2018. It found that lease consideration in 17 cases and fact of assignment of leases in two cases were not disclosed/incorrectly disclosed at the time of registration. This resulted in evasion of stamp duty and registration fees as discussed in succeeding paragraphs:

a) KOPT in 16 cases and HDA in one case had granted long-term¹¹⁴ lease of properties in favour of different private lessees between February 2008 and June 2016. Of these, in 15 cases, in addition to lease rent, KOPT and HDA received premium/ structure value/development cost/construction cost/ rehabilitation & resettlement charge/ security deposit aggregating ₹ 68.83 crore from the lessees. Lease deeds of those properties were registered under five¹¹⁵ RAs between November 2012 and October 2017. The information in respect of leases as per records of the KOPT and HDA was cross-verified with that of the registered deeds. It was found that KOPT and HDA disclosed rent as the only lease consideration in these deeds. The premium/ structure value/ development cost/ construction cost/ rehabilitation & resettlement charge/ security deposit paid by the lessees was not disclosed in the deeds. As a result, the undisclosed consideration of ₹ 68.83 crore escaped assessment resulting in non-realisation of stamp duty and registration fees of ₹ 5.27 crore.

In two other cases of KOPT, it was found that premium of ₹ 9.33 crore received by KOPT from one lessee was incorrectly disclosed as first year rent in the lease deeds registered under ADSR, Alipore. Thus, lease consideration by RA stood at ₹ 0.82 crore instead of ₹ 9.78 crore. As a result, the consideration for the two leases were under assessed by the RA to the extent of ₹ 8.96 crore with consequent evasion of stamp duty and registration fees of ₹ 72.43 lakh.

This resulted in evasion of stamp duty and registration fees of ₹ 5.99 crore by the lessees in all the 17 cases.

¹¹² As amended by West Bengal Act No.17 of 1990.

¹¹³ Kolkata and Haldia Dock Complex Office.

¹¹⁴ Thirty years in each case.

¹¹⁵ ADSR Alipore, Sutahata, Howrah, DSRs – I & V and South 24 Parganas.

b) Article 35 and 63 of Schedule 1A of IS Act provides that in case of lease deed, stamp duty is chargeable on the lease consideration paid by the lessee to the lessor in the form of lease rent and or premium. In case of assignment of lease, however, stamp duty is chargeable on the market value of the property if such value is greater than the lease consideration. Therefore, stamp duty on deed of assignment generally attracts higher stamp duty than that of a lease deed.

From the records of KOPT Audit found that it had granted lease of a piece of land in favour a lessee, in March 2011, for a period of 15 years. The lessee applied to KOPT (January 2014) for assignment of its lease held rights, title and interest on the property in favour of two other companies (assignees). The board of trustees of KOPT approved the prayer of the lessee in February 2015 on the condition that the assignees would pay transfer fee ₹ 30.20 lakh and 50 *per cent* of the premium paid by them to the lessee. This was in addition to payment of annual rent of ₹ 15.38 lakh. The two deeds were registered under the ADSR, Alipore between November 2015 and March 2016 by KOPT as lease deeds instead of assignment of lease. The market value of the properties was assessed by the ADSR at ₹ 26.97 crore. As the fact of assignment from the lessee to the assignees was not disclosed in the deeds, stamp duty and registration fees of ₹ 0.03 crore was, however, charged by the RA on average annual rent instead of ₹ 2.18 crore leviable on market value of the properties. By omission of facts KOPT unduly favoured the assignees that resulted in evasion of stamp duty of ₹ 2.15 crore.

The cases detected by Audit are illustrative in nature based on test check of records of KOPT/ HDA and therefore, occurrence of similar irregularities in other cases could not be ruled out. Audit further observed that due to non-conduct of inspection of these offices by the Collectors, such evasion could not be detected by the Department.

After this was pointed out, no reply has been received from the Department (December 2019).

4.4.8.5 Inadequately stamped instruments of assignment of trademark not impounded

Inadequately stamped instruments of assignment of trademarks were not impounded by the trademark registering authority resulting in short levy of stamp duty of ₹ 6.57 crore.

Sections 3 (aa) and 3 (bb) of the IS Act, 1899 as applicable in West Bengal provide that every instrument mentioned as chargeable with duty under in Schedule – IA, if executed in West Bengal or out of West Bengal and relates to any property situated, or to any matter or thing done or to be done in West Bengal and if received in West Bengal, shall be chargeable with the proper amount of duty as specified in that Schedule. Further, as per Section 19A of the IS Act as applicable in West Bengal, where any instrument has become chargeable in any part of India other than West Bengal with duty under the said Act, and becomes chargeable with higher rate of duty in West Bengal as per Section 3(bb) of the Act, the differential duty is chargeable on the instrument.

Audit test checked records of assignment of trademarks in the office of the Deputy Registrar of Trademarks, Kolkata in February 2018. It found that in six cases, the assignors had assigned their registered trademarks in favour of assignees between October 2012 and July 2015 at a consideration of aggregate value of ₹ 164.15 crore. All these deeds were presented to the trademark registry office Kolkata, for changing the records of ownership of the trademarks. From the scrutiny of the deeds of assignment, it was found that three deeds were executed in West Bengal on payment of less stamp duty while the remaining three deeds were executed outside West Bengal on payment of stamp duty at lower rates. In all these cases, stamp duty of ₹ 11.49 crore was chargeable on the instruments. The executants however paid stamp duty of ₹ 4.92 crore only. The public officer of the trademark office while finalising the assignment applications did not impound the instruments on grounds of less payment of stamp duty for their submission to the Collector of Stamps for taking necessary action for realisation of deficit stamp duty. This resulted in short levy of stamp duty of ₹ 6.57 crore.

After this was pointed out, no reply has been received from the Department (December 2019).

The aforesaid evasion, non/short collection was the result of the following deficiencies:

- Absence of a system within the Department to ensure that all the registrable documents are presented before the RAs on payment of proper stamp duty and registration fees;
- Inaction on the part of POs relating to their responsibilities under the IS Act, and
- Conducting no inspection under section 73 and 73 A of the IS Act by the Collectors.

In the previous Performance Audit featured in the C&AG's Audit Report No. 1 of 2014, it was recommended that the system of regular inspection of the POs by the Collectors be implemented to ensure collection of proper stamp duty and registration fees. It was however, observed during the present Performance Audit, that the recommendation was not implemented by the department. As a result, the Department could not realise potential revenue to the extent of ₹ 114.17 crore as pointed out in the previous paras.

4.4.9 Deficiencies in the computerised system

The 'e-Nathikaran' system replaced the erstwhile CORD system from December 2014. The 'e-Nathikaran' system is an advanced version of CORD system. It was a switch over from stand alone system to the centralised system in order to remove the difficulties faced in the decentralised CORD system. In the e-Nathikaran system, market values of all the properties of the State are fed in the central server which caters both to the Registration offices as well as the website accessible by the citizens for the purpose of market value generation.

During the analysis of transaction data of 'e-Nathikaran', Audit found several deficiencies in the system which resulted in under assessment of market value of properties and short levy of stamp duty and registration fees which are discussed in the succeeding paragraphs:

4.4.9.1 Incorrect mapping of rate/ non-mapping of notified areas¹¹⁶ in the computerised system

Incorrect mapping of rate of stamp duty/ non-mapping of notified areas in the e-Nathikaran software resulted in loss of stamp duty of ₹ 40.82 crore.

Under Article 23 of Schedule-IA of the IS Act the rate of stamp duty on deed of conveyance is as follows:

Table-4.5
Rate of stamp duty

Property situated in	Market Value of the Property (₹)	Rate of stamp duty
(a) areas to which Kolkata Improvement Act, 1911 or Howrah Improvement Act, 1956 extend	>40,00,000	7 per cent
	≤ 40,00,000	6 per cent
(b) areas under any Municipal Corporation/ Municipality/ Notified Area other than those included in (a) above	>40,00,000	7 per cent
	≤ 40,00,000	6 per cent
(c) areas other than those included in (a) or (b) above	>40,00,000	6 per cent
	≤ 40,00,000	5 per cent

From the table it is evident that the rate of stamp duty on sale deeds in respect of properties situated under the areas covered by the Howrah Improvement Act 1956 (HIA)/Kolkata Improvement Act, 1911 (KIA) /Municipal Corporations/ Municipalities/Notified areas is one *per cent* higher than those not covered by such authorities. The same rates of stamp duty are applicable in respect of assignment of lease as per Article 63 of Schedule –IA of the IS Act. Moreover, no rates for stamp duty have been prescribed exclusively for panchayat areas.

Audit found from the analysis of data of ‘e-Nathikaran’ and ‘CORD’ software that the areas covered by the HIA, the notified areas of HDA and Burdwan Development Authority (BDA) had not been correctly mapped in the computerised system. As a result, stamp duty of ₹ 40.82 crore was levied short in 95,942 cases as detailed in the following table:

Table-4.6
Incorrect mapping of rate/ non-mapping of notified areas in the computerised system

(₹ in crore)

Sl. No.	Name of the areas not correctly mapped	Nature of deeds	Period of execution	No of RAs involved	No of cases	Market value of the properties	Short levy of stamp duty	Nature of irregularities
1.	Areas of Howrah Improvement Act (HIA), 1956	Sale/ deeds of assignment	Between May 2015 and June 2017	11 ¹¹⁷	41,402	2,875.39	28.75	Howrah Improvement Act (HIA), 1956 extends to the whole district of Howrah, irrespective of

¹¹⁶ Notified area is an area declared by way of issue of notification under the West Bengal Town and Country (Planning and Development) Act, 1979 for planned development.

¹¹⁷ ADSRs Amta, Bagnan, Bargachia, Domjur, Howrah, Pancharul, Ranihati, Shyampur, Uluberia, ARA-I and DSR Howrah.

(₹ in crore)

Sl. No.	Name of the areas not correctly mapped	Nature of deeds	Period of execution	No of RAs involved	No of cases	Market value of the properties	Short levy of stamp duty	Nature of irregularities
								jurisdiction of local bodies. Therefore, stamp duty is leviable as per Article 23(a) of the Schedule – IA of the IS Act. However, Stamp duty was levied short by one <i>per cent</i> in each case due to incorrect application of rates under Article 23 (c) instead of 23 (a).
2.	HDA	Sale deeds	Between March 2012 and June 2017	22 ¹¹⁸	54,286	1132.69	11.33	Panchayat areas (Appendix-III) were notified for inclusion in the planning area of Haldia Development Authority, as per the West Bengal Town and Country Planning Act, 1979. Therefore, stamp duty was leviable as per Article 23(b) of the Schedule – IA of the IS Act. However, stamp duty was levied short by one <i>per cent</i> in each case as the rate of stamp duty had been mapped as per Article 23(c) instead of Article 23(b).
3.	BDA	Deeds of assignment	Between July 2013 and May 2015	1 ¹¹⁹	254	73.69	0.74	Stamp duty was levied short by one <i>per cent</i> in each case for the areas covered under the BDA, a notified area ¹²⁰ as the rate of stamp duty was mapped as per Article 23(c) instead of Article 23(b) of Schedule – IA of the IS Act.
Total				34	95,942	4,081.77	40.82	

¹¹⁸ ADSRs Bagnan, Balichak, Bhagwanpur, Bhupatinagar, Contai – I, Hanschara, Khanchi, Khejuri, Kolaghat, Mahishadal, Moyna, Nandigram, Panskura, Patashpur, Pathar Pratima, Pingla, Rudranagar, Sabang, Tamluk, ARA – III, DSR – I, Paschim Midnapore and DSR – I, Purba Midnapore.

¹¹⁹ ADSR, Burdwan.

¹²⁰ Notification No.1489/ T&CP/0-10/87 (II) dated 18 April, 2002.

Moreover, Department could not provide to Audit any documentation regarding any laid down process for obtaining data from other Departments required for updating the software to ensure correct levy of stamp duty.

After this was pointed out, ADSR Burdwan stated (October 2017) that the details of mouzas under the BDA was not available with the RA. The fact however, remains that the DRSR ought to have collected the notified mouzas from the Urban Development Department for their mapping in the system. Reply of the Department is awaited (December 2019).

Audit highlighted similar deficiency relating to incorrect/non-mapping of areas in the erstwhile CORD system in Para 5.6.7.1 of the C&AG’s Audit Report for the year ended March 2013. This deficiency, however, still persists in the newly developed “e-Nathikaran” software and the Government is losing revenue on a recurring basis.

4.4.9.2 Mapping of municipal areas in the system delayed/not updated

Delayed/non-updating of municipal areas in the e-Nathikaran software resulted in short levy of stamp duty of ₹ 1.25 crore.

As per Article 23(b) of Schedule – IA of the IS Act, 1899, the rate of stamp duty on conveyance deed of properties situated in a municipality/notified area is one *per cent* higher than those not covered by such areas.

The Department of Municipal Affairs, Government of West Bengal constituted Haringhata, Buniyadpur and Domkal municipalities in the districts of Nadia, Dakshin Dinajpur and Murshidabad respectively between January 2014 and May 2015. Audit collected the respective Notifications relating to constitution of the aforesaid municipalities from the Department of Municipal Affairs and found that the following panchayat areas had been included in those municipal areas:

Table-4.7

Details of conversion of panchayat areas into municipalities

Sl. No.	Name of Municipality	Notification of constitution of the municipality	Name of the mouzas (JL No ¹²¹) included in the municipality	Remarks
		Date of constitution		
		Month of mapping in e-Nathikaran		
1.	Haringhata Municipality	01/MA/O/C-4/1M-20/2010 dated 02.01.2014	Balindi (7), Murugacha (8), Ganguria (44), Laupala (43), Subarnapur (42), Simhat (45), Mobarakpur (57), Santoshpur (56), Kapileshwar (54), Dakshin Brahamapur (60), Jaguli (53), Digha (55), Khorda Manpur (52), Sirajanpara (51), Hatikanda (49), Manpur (50), Haringhata Farm (90)	Full Mouzas had been included in the Municipal area
		02.01.2014		
2.	Buniyadpur Municipality	98/MA/O/C-4/1M-16/2011 dated 26.02.2015	Khushipur (253), Sherpur (254), Buniyadpur (263), Narayanpur (205), Selimabad (203), Thingur (264), Amai (265), Kharkha (270), Shibpur (259), Koil (261), Barail (255),	
		01.03.2015		

¹²¹ Jurisdiction List (JL) is a list maintained by every District Land and Land Reforms Officer showing the jurisdiction of every village under a police station and identified by a separate jurisdiction number.

Sl. No.	Name of Municipality	Notification of constitution of the municipality	Name of the mouzas (JL No) included in the municipality	Remarks
		Date of constitution		
		Month of mapping in e-Nathikaran		
		Not mapped	Rashidpur (256), Aligara (262), Haldi (258), Joydebpur (260), Mirjatpur (257), Math Khidirpur (252), Rangapukur (206), Sarai (195), Malam (200), Chaksadulla (266)	
3.	Domkal Municipality	278/MA/O/C-4/1M- 8/2001 dated 18.05.2015	Shambhunagar (13), Meheubnagar (14), Jitpur (15), P. T. Rasulpur (25), Domkal (42), Laxminathpur (43), Baganpur Ramna (11), Bajitpur (12), Hitanpur (10), Mosimpur (9), Sekhalipara (27), Mamudpur (32), Gobindapur (34), Chak Vikari (33), Dakshinnagar (75), Jhouberia (76), Juginda (74), Aminabad (77)	
		18.05.2015		

During the course of audit, data of 'e-Nathikaran' were analysed. It was found that:

- mouzas under the Buniyadpur Municipality were not yet mapped as municipal areas in the system.
- mouzas under Domkal and Haringhata Municipalities were mapped in the system as municipal areas after a delay of 14 and 32 months, respectively.

In 4,324 cases, deeds of properties of the aforesaid municipalities involving market value of ₹ 125.24 crore were executed and registered under nine¹²² RAs between April 2015 and June 2017. While furnishing details for assessment of market value of the properties, the registrants had declared that the properties fall under panchayats, instead of municipalities. Due to delayed/non-updating of the mouzas as municipal areas in the system, it was observed that based on incorrect information the system was calculating stamp duty at panchayat rates instead of the applicable municipal rates.

Due to such deficiencies in the system, stamp duty was levied short by one *per cent* in these cases considering the properties to be situated in panchayat areas. This resulted in short levy of stamp duty of ₹ 1.25 crore.

After this was pointed out, no reply has been received from the Department (December 2019).

Recommendation-III

Government may consider to take action for ensuring that the master data of municipal areas, notified areas, rates of stamp duty are correctly mapped/timely updated in the e-Nathikaran system and proper validation control in place to ensure correct levy of stamp duty.

4.4.9.3 Excess allowance of depreciation of market value due to failure of validation checks

Due to absence of proper validation controls in the e-Nathikaran software, excess depreciation of market value of properties was allowed by the system, resulting in short levy of stamp duty and registration fees of ₹ 65.54 lakh.

¹²² ADSRs Buniyadpur, Domkal, Haringhata, Kalyani, ARA-II, IV Kolkata, DSRs Dakshin Dinajpur, Murshidabad and Nadia.

As per Rule 3B 10(b) of the West Bengal Stamp (Prevention of Under- Valuation of Instruments) Rules, 2001 as amended in December 2015¹²³, for the purpose of assessment of market value of any newly built flat or building or apartment in any municipal area, having a height more than 7 metres (22.96 feet), approach road lesser than 2.40 metre (7.87 feet) shall not be accepted by the e-Nathikaran software. Further, as per Para 2.2.1 of the Business Rules of the e-Nathikaran software, if the flat or building or apartment was located on a by-lane, depreciation on property was allowed as per the rates mentioned in the **Table 4.8**.

Table-4.8
Rate of depreciation

Width of road (in feet)	Rate of depreciation
Less than 8	20%
=8 but <16	15%
=16 but <25	10%
=25 but <40	5%
>=40	No depreciation

It was observed that the market value of flats/apartments were generated through the system on the basis of information provided by registrants. For that purpose, the registrants were required to declare the floor number (Field Name: “Flat Floor”) on which the flat was located. Further, the registrants were mandatorily required to declare whether the building in which the flat was located had more than two floors or not (“Yes/ No” option). If a building had more than two floors (i.e. “Yes” option is chosen), the system did not allow entering approach road as less than 8 feet in accordance with Rule 10(b) of the WBPUVI Rules. If the number of floors in the building had been declared to be less than or equal to two floors (i.e. “No” option is chosen) by the registrants, the system allowed entering of approach road of less than 8 feet in the system. In the latter case, the system allowed 20 *per cent* as the rate of depreciation of market value.

Audit found that the width of approach road has been mapped with the “Yes/ No option” regarding the building having/not having more than two floors and not with the “Flat Floor”. Now, if the “Flat Floor” was declared to be two and above, the next field i.e. whether the number of floors in the building is more than two, should by default take the value as “Yes” and should not allow entering of approach road of less than eight feet in the system. Audit, however, found that the said validation control did not exist in the system, owing to which the registrants could declare that the building did not have more than two floors while their flats existed at a floor above second floor.

From the analysis of data of e-Nathikaran software Audit found that, in 706 cases, sale deeds of flats involving assessed market value of ₹ 143.77 crore were registered between April 2015 and June 2017 under 51 RAs. As per declaration made in the deeds, the flats were located on the second floor and above, but due to absence of validation controls in the system, registrants could declare that the buildings did not have more than two floors, which was illogical. System accepted the approach road to be of less than 8 feet in those cases. As a result, depreciation of market value at 20 *per cent* (₹ 35.94 crore) was allowed by the system in these cases against the maximum allowable limit of 15 *per cent*

¹²³ Notification No. 2052-F.T. dated 7 December 2015, Department of Finance, Government of West Bengal.

(₹ 26.96 crore). This resulted in excess allowance of depreciation of market value by ₹ 8.98 crore and consequent short levy of stamp duty and registration fees of ₹ 65.54 lakh.

No reply has been received from the Department (December 2019).

4.4.10 Compliance deficiencies by the RAs

During the Performance Audit it was found that the provisions of the Acts / Rules, departmental instructions were not complied with properly by the RAs. This resulted in under assessment of market value of properties, short levy of revenue and irregular remission of stamp duty and registration fees. A few illustrative cases are discussed in the following paragraphs:

4.4.10.1 Misclassification of instruments

Due to misclassification of instruments, stamp duty and registration fees of ₹ 44.72 crore was levied short by the RAs.

Rate of stamp duty depends on the nature of instrument. The recitals¹²⁴ of an instrument play pivotal role in determining its actual nature. Misclassification of an instrument into a different category often leads to short levy of stamp duty and registration fees. Thus, the instruments are required to be scrutinised properly by the RAs to avoid any misclassification. During the course of audit, misclassification of instruments were noticed in a number of cases resulting in short levy of stamp duty and registration fees. A few illustrative cases of larger values are indicated in the following table:

Table-4.9

Cases of misclassification of instruments

No.	Registering Authority	No. of cases	Instruments classified	SD & RF levied	Instruments actually classifiable	SD & RF leviable	Short/Non levy of SD and RF
1.	ADSR Alipore, Behala, Burdwan and ARA - I, Kolkata.	four	Mortgage Deeds	₹ 4 lakh SD + ₹ 1.65 lakh RF	Mortgage (with possession) Deeds	₹ 33.98 crore	₹ 33.92 crore
After this was pointed out, two RAs stated that possession of the mortgaged properties had not been transferred by the mortgagor and that the power of attorneys were given for securing repayment of the loan amount. But the fact is that irrevocable power of attorneys were given or agreed to be given by the mortgagors to the mortgagees which should have been considered by RAs as giving possession of the properties and stamp duty as conveyance should have been charged. In the remaining two cases, RAs did not furnish any specific reply.							
2.	21 ¹²⁵ RAs	99	Gift Deeds	₹ 53 lakh	Settlement Deeds	₹ 7.37 crore	₹ 6.84 crore
Five RAs stated that 20 cases involving ₹ 21.48 lakh had been forwarded to the concerned DIGRs under section 47A of the IS Act for adjudication. In 31 cases, involving ₹ 1.67 crore, seven RAs stated that the gifts were made voluntarily and without any consideration. Therefore, the instruments were classified as gift deeds. Out of the 31 cases, in three cases the donees had reserved their right on the gifted property till their life time. In remaining 28 cases the gifts were made either for making provisions for the donees or for the purpose of distribution of properties for avoiding future disputes among the family members. These come under the definition of settlement as per Section 2 (24) (b) of IS Act. In the remaining 48 cases, RAs did not furnish any specific reply.							

¹²⁴ Narration of facts and events.

¹²⁵ ADSRs –Alipore, Bagdogara, Barasat, Cossipore, Dakshin Barasat, Diamond Harbour, Falta, Ghateswar, Howrah, Mathurapur, Rajarhat Sealdah, Serampore, Siliguri, Usthi, ARA - I and IV, Kolkata, DSR-I, II, III and IV, South 24 Parganas.

No.	Registering Authority	No. of cases	Instruments classified	SD & RF levied	Instruments actually classifiable	SD & RF leviable	Short/Non levy of SD and RF
3.	nine ¹²⁶ RAs	39	Gift Deeds	₹ 5.72 lakh	Conveyance Deed	₹ 65.43 lakh	₹ 59.71 lakh
<p>After this was pointed out by Audit, four RAs in 11 cases involving ₹ 12.97 lakh stated that the cases were forwarded to the respective DIGRs for taking necessary action. In one case involving ₹ 16.23 lakh, it was stated that the lessor had gifted his lease hold right of the property in favour of family member without any consideration and therefore was rightly classified as gift. Since the donor had transferred his property on the condition that the donee shall repay all the dues in respect of the loan taken by the donor, it comes under the definition of consideration.</p> <p>In 24 cases involving ₹ 23.90 lakh, it was stated (January 2018) that the donors had merely wished that the donees will take care of them and make expenses for their livelihood and medical expenses till their death. In all these cases, however, the donees had also accepted the conditions of the donors and as such, it cannot be stated to be mere wish of the donors. In the remaining three cases involving ₹ 6.61 lakh, no reply has been received.</p>							
4.	ARA-I, Kolkata	6	Lease/sub-lease agreements	₹ 4 lakh	Assignment of lease	₹ 1.57 crore	₹ 1.53 crore
<p>ARA-I, Kolkata did not furnish any reply.</p>							
5.	ARA - I, II, III and IV, Kolkata and DSR – III, South 24 Parganas.	21	Gift Deeds	₹ 4 lakh	Assignment of lease	₹ 1.97 crore	₹ 1.83 crore
<p>Two¹²⁷ RAs accepted the audit observations in 11 cases involving ₹ 1.02 crore and stated that the cases were referred to the concerned DIGRs for taking necessary action.</p> <p>In five cases involving ₹ 28.34 lakh RAs stated that the properties were transferred between family members without any consideration and therefore were correctly classified as gift deeds. But transfer of lease hold right on property to family members is classifiable as assignment and liable to be charged stamp duty at higher rate. In the remaining five cases the RAs did not furnish any specific reply (December 2019).</p>							
Total							₹ 44.72 crore

Hence, misclassification of deeds of (i) mortgage (with possession) as simple mortgage (without possession), (ii) settlement/conveyance as gift, (iii) assignment of lease as lease/sub-lease/gift resulted in short levy of stamp duty and registration fees amounting to ₹ 44.72 crore.

Matter was brought to the notice of the Government in August 2018. Reply was awaited (December 2019)

Recommendation-IV

Issuance of proper guidelines to all the RAs for correct classification of instruments and for correct allowance of remissions.

4.4.10.2 Incorrect determination of lease period/lease consideration

Due to incorrect determination of lease period and lease consideration stamp duty and registration fees of ₹ 3.91 crore levied short.

The rate of stamp duty on lease deed depends on the period for which the lease is granted and also on the consideration paid for the lease. Stamp duty on lease

¹²⁶ ADSRs Dakshin Barasat, Diamond Harbour, Falta, Ghateswar, Jamalpur, Mankar, Mograhat, Howrah and ARA – II, Kolkata.

¹²⁷ ARA – IV and DSR – III, South 24 Parganas.

deeds up to 30 years depends on the period of lease and is chargeable on the average annual rent and or premium paid for the lease. In these cases, different slab rates of stamp duty have been prescribed for different periods of lease. In case of lease deed of properties for a period exceeding 30 years, however, stamp duty is charged on the market value of the property and not on the consideration value. Thus, correct determination of lease period and lease consideration are important factors for ensuring levy of correct amount of stamp duty. During the course of audit, several cases of incorrect determination of lease period and lease consideration resulting in short levy of stamp duty and registration fees were noticed. These are discussed in the following paragraphs:

a) Incorrect determination of lease period

Explanation-II below the Article 35 of Schedule – IA of the IS Act provides that, apart from the lease period stated in the lease document, any prior/ subsequent period in continuation of the present lease shall also be added with the present lease period for the purpose of determination of the lease period, provided that the lessor and lessee for both the periods are same.

Audit test checked lease deeds under seven¹²⁸ RAs between August 2017 and May 2018. It found that 13 lease deeds were registered in those offices between October 2013 and June 2017. These RAs levied stamp duty and registration fees on average annual rent and or premium paid for the leases. In all these cases, the RAs considered the lease period ranging between six years and 30 years as specified in the lease deeds. From scrutiny of recitals of five deeds, it was observed that the present leases were renewal of the previous leases without any break in period between the earlier and present leases. In the remaining eight cases, it was found that the tenure of the leases was renewable for further period mentioned in those deeds. Therefore, the previous/subsequent lease periods were required to be added to the lease periods stated in the instant deeds for determination of the lease period of the present leases. The RAs while determining the lease periods, did not, however, consider the previous/subsequent lease periods. As a result, the lease periods were determined short by the RAs and consequently stamp duty and registration fees of ₹ 0.13 crore only was levied at lower rates instead of ₹ 2.89 crore leviable on higher slab rate/market value of properties. This resulted in short levy of stamp duty and registration fees of ₹ 2.76 crore.

After this was pointed out, in one case involving ₹ 1.76 lakh, ARA – III stated (December 2017) that the present lease deed was not an extension of the previous lease but a fresh lease. As the present lease was granted in continuation of the previous period and therefore the previous period was required to be added with the present lease period. In the remaining cases, the RAs did not furnish any specific reply.

b) Incorrect determination of lease consideration

As per Explanation-I below the Article 35 of Schedule IA of the IS Act, 1899, where lessee undertakes to pay any recurring charges, such as Government revenue which is by law recoverable from the lessor, the amount so agreed shall be deemed to be part of the rent for assessing the stamp duty. Again, in terms of

¹²⁸ ADSRs – Alipore, Bagdogra, Behala, Bishnupur, Siliguri, ARA – I and III, Kolkata.

a Notification¹²⁹ of August 2015 issued by the Finance Department, Government of West Bengal, if an assignor makes a joint venture with the Government and assigns the leasehold government land to a private entity, stamp duty and registration fee are to be charged on the consideration paid for the assignment instead of the market value of the property. This is subject to the condition that the consideration value was approved by the Government.

Audit test checked lease deeds in nine¹³⁰ RAs between March 2017 and May 2018. It found that one deed of assignment and 27 lease deeds were registered in those offices between September 2014 and March 2017. In each of these cases, stamp duty and registration fees were paid by the individual registrant on the basis of assessment slips generated through the e-Nathikaran software. The consideration value for determination of stamp duty and registration fees was disclosed by the registrants at the time of generation of assessment slips.

As per the recitals of deed of assignment in one case, the assignee paid assignment fee of ₹ 1.42 crore to the L&LR Department for lease assignment on behalf of the assignor. The transfer fee amounting to ₹ 1.42 crore, which was a part of consideration was, however, not disclosed by the registrant at the time of generation of assessment slip.

In the remaining 27 cases, the average annual rent, different taxes¹³¹, facility charges¹³² and refundable security deposits paid by the lessors to lessees were not correctly disclosed by the registrants as consideration at the time of generation of assessment slips.

The RAs were required to cross check the consideration amount disclosed in the deeds with that of the assessment slips to ensure the correctness of payment of stamp duty and registration fees in these cases. Audit however found that the RAs did not cross-check the information; consequently, the lease consideration was determined short and stamp duty and registration fees of ₹ 2.80 crore was levied instead of ₹ 3.95 crore chargeable for these 27 cases. This resulted in short levy of stamp duty and registration fees of ₹ 1.15 crore.

After this was pointed out, four¹³³ RAs accepted the audit observation (between September 2017 and April 2018) in 18 cases involving ₹ 64.57 lakh and stated that the matters were forwarded to the concerned DIGRs under section 47A of the IS Act. ADSR Bidhannagar, stated in one case involving ₹ 4.08 lakh, that there was no short levy of stamp duty and registration fees while in the other two cases involving ₹ 2.33 lakh stated that actual short levy was ₹ 1.19 lakh, which would be referred to the concerned DIGR. As per explanation I below Article 33 of Schedule –IA of the IS Act, if a lessee undertakes to pay recurring charges to the lessor it will form a part of the consideration; however, the recurring payment of different facility charges by the lessees were not taken as consideration by the RA while calculating leviable stamp duty and registration fees. In the remaining seven cases involving ₹ 43.88 lakh, RAs did not furnish any/ specific reply (December 2019).

¹²⁹ Notification No .1348-FT dated 5 August 2015.

¹³⁰ ADSRs Alipore, Bidhannagar, Cossipore, Dakshin Barasat, Howrah, Siliguri, ARA – I, DSRs I and V, South 24 Parganas.Kolkata

¹³¹ Municipal taxes, service taxes and cesses.

¹³² Maintenance charges, AC facility charges etc.

¹³³ ADSRs – Dakshin Barasat, Howrah, DSRs I and V, South 24 Parganas.

4.4.10.3 Irregular allowance of remission of stamp duty and registration fees

There was irregular allowance of remission of stamp duty and registration fees of ₹ 1.92 crore in registration of 45 deeds of conveyance executed between cooperative housing societies and its members and 14 deeds of assignment of Government.

The State Government is empowered to remit stamp duty and registration fees under Section 9 of the IS Act and Section 78 of the IR Act, respectively. State Government may remit stamp duty and registration fees either generally or specifically by way of issue of notification in the official gazette. The RAs are required to examine remission cases with prudence and exercise their power judiciously before allowing any remission to ensure that they are in conformity with the Government orders. During the course of audit, following instances of irregular allowance of remission were found:

a) Irregular remission to members of cooperative housing societies

In terms of Notification No. 1117-F.T. dated 1 July 2015, in case of execution and registration of deed of conveyance of house/ flat between a cooperative society and its members, the difference of stamp duty and registration fees applicable on the market value and construction cost of the house/ flat would be remitted. The remission was allowable subject to the condition that the member had built such flat/ house through the Cooperative Housing Society and not through a promoter and the registration was done on or before 31 December 2015. Further, the remission was not allowable in case of second or subsequent transfer of the property by a member of any cooperative society. Thus, the remission was allowable only to the original/founder member of a cooperative society.

Audit test checked records of four¹³⁴ out of 20 RAs sampled between December 2017 and May 2018. It found that in 45 cases, the RAs allowed remission of stamp duty and registration fees of ₹ 1.51 crore on deeds involving transfer of properties. The deeds were executed between 10 cooperative housing societies and their members. The market value of the properties involved in such deeds stood at ₹ 22.96 crore. Audit found from scrutiny of recitals of these deeds that (i) the members were not the founder members of the society or (ii) had built the flats at their own cost or (iii) had purchased ready built flats from promoters or (iv) had registered their property after the due date fixed for availing of the remission. Thus, they were not eligible for remission of stamp duty and registration fees. The stamp duty and registration fees leviable on the market value of the properties stood at ₹ 1.79 crore. The RAs levied stamp duty and registration fees of ₹ 0.28 crore only on the construction cost of the properties. This resulted in irregular allowance of remission of stamp duty and registration fees of ₹ 1.51 crore as shown in the following table:

¹³⁴ ADSR Kalyani, Rajarhat, ARA – I, Kolkata and DSR – I, South 24 Parganas.

Table-4.10
Irregular allowance of remission

(₹ in lakh)

Name of the RA	Nature of irregularity	Number of cases	Market value of the properties	SDRF leviable	SDRF levied	Irregular allowance of remission
(1)	(2)	(3)	(4)	(5)	(6)	(7) (5-6)
ARA-I, Kolkata	The flats were built by the members at their own cost and not by the cooperative housing society.	4	488.14	39.54	1.02	38.52
ARA-I, Kolkata	The housing project was completed between January and March 2014 and the registration was required to be done by December 2015; however, execution and registration of the deeds were done between February and March 2016.	22	1296.17	101.90	20.77	81.13
ADSR Rajarhat						
ADSR Kalyani	The member's remissions were not the founder members and as such remission was not allowable to them.	11	327.48	24.72	6.43	18.29
ADSR Rajarhat						
DSR – I, South 24 Parganas	The members of the society purchased ready built flats from promoters instead of building the flats through the cooperative society.	8	183.78	13.05	0.16	12.89
Total		45	2,295.57	179.21	28.38	150.83

After this was pointed out, two RAs¹³⁵ stated (between December 2017 and March 2018) that remissions of ₹ 26.86 lakh were allowed in 10 cases to the individuals as they were the members of the society. The reply is not tenable as the members to whom the remissions were allowed were not founder members of the societies and therefore not eligible to get remission.

In eight cases involving ₹ 12.89 lakh, DSR – I, South 24 Parganas stated (March 2018) that the remissions were allowed by the e-Nathikaran software. The system makes assessment on the basis of the information furnished by the registrants and therefore the RAs were required to scrutinise individual deeds to ensure correctness of the information before registering the instruments. In these cases, the members purchased ready built flats from a promoter for which remissions was not allowable. In the remaining 27 cases involving ₹ 1.11 crore, no reply has been received (December 2019).

b) Irregular remission allowed on deeds of assignment

Article 63 of Schedule-IA of the IS Act, 1899 provides that any instrument of transfer of lease by way of assignment is chargeable with stamp duty on the market value of the property at the same rate applicable for sale deeds. If an assignor assigns any government lease hold property to a family member as defined under Article 33 of the IS Act, stamp duty as applicable for gift to

¹³⁵ ADSR Kalyani and ARA – I, Kolkata.

family members is leviable. Such lower rate of stamp duty is applicable if the assignment was done with the prior permission of the Government of West Bengal. The differential stamp duty on assignment and gift to family members in these types of cases has been allowed as remission by the Government of West Bengal in terms of a Notification¹³⁶ issued in June 2010.

Audit test checked records of three RAs¹³⁷ between December 2017 and May 2018. It found that 14 instruments of assignment of Government land involving market value of ₹ 6.90 crore were registered in those offices between March 2016 and June 2017.

In nine deeds registered under two RAs¹³⁸, it was observed that permission from the Government was not obtained before making assignments. In the remaining five deeds registered in one RA, land was assigned to persons¹³⁹ not falling within the definition of family members as per Article 33 of the IS Act. Thus, the assignors were not eligible for remission. Based on the market value of the properties, Stamp duty leviable in these cases stood at ₹ 44.47 lakh. The RAs levied stamp duty of ₹ 3.46 lakh only at the rate applicable to gift to family members. The differential stamp duty was allowed as remission. This resulted in irregular allowance of remission of ₹ 41.02 lakh.

After this was pointed out, in one case involving ₹ 9.52 lakh, ARA – IV stated (December 2017) that the transferor and transferee got the ownership of the government lease hold property as per will of the original lessee and therefore they were eligible for the remission. The reply is not tenable because the transferor and transferee had defined shares on the property and therefore the transferor was required to take permission of the government for transferring his share in order to be eligible for the remission, which was not done. In eight cases involving ₹ 14.62 lakh, District Sub-Registrar (DSR) – II, South 24 Parganas stated (March 2018) that the assignments were made after taking permission from the government. However, the fact remains that neither any copy of such permission was available on records nor any mention about such permission was found recited in the deeds. No reply has been received in the remaining five cases involving ₹ 16.88 lakh.

4.4.11 Internal control

Internal control is an integral component of an organisation's management processes to provide reasonable assurance that the organisation's operations are carried out effectively, economically and efficiently. Deficiencies in the internal control mechanism are discussed in the following table:

¹³⁶ Notification No.884-FT/FT/0/2E-22/10 Stamp dated 15 June 2010.

¹³⁷ ADSR Bagdogra, ARA – IV, Kolkata and DSR – II, South 24 Parganas.

¹³⁸ ARA – IV, Kolkata and DSR – II, South 24 Parganas.

¹³⁹ Father-in-Law and Grandfather.

Table-4.11

Deficiencies in the internal control mechanism

Nature of control weakness	Audit Criteria	Audit Observations	Impact of control weakness
Absence of MIS Reports of cases referred for adjudication	All processes relating to registration of documents were computerised by the Department. A centralised database and MIS reporting was therefore necessary for proper monitoring of functions and for taking appropriate decision at different levels of hierarchy.	<ul style="list-style-type: none"> No register has been prescribed in the WBPUVI Rules, 2001 to be maintained by the DIGRs to monitor receipt and disposal of cases referred to them for adjudication . No MIS reports had been designed to monitor receipt, disposal and pendency of cases referred to DIGRs for adjudication in the e-Nathikaran software even though such cases are processed electronically. 	In the absence of such MIS, DIGRs were not in a position to ascertain the total number of cases referred to them, amount involved therein, number of cases disposed of by them and the number of cases pending at a particular time period. As a result, the realisable amount of stamp duty and registration fees remained indeterminate and the Department also could not furnish such information to Audit.

Recommendation-V

To build proper MIS reports in the computerised system for effective monitoring of the referred cases.

Absence of coordination between DIGRs and RAs	<p>In case of manual registration of document, If any registrant wants to pay the deficit amount of stamp duty and registration fees in respect of a document referred to DIGR for adjudication, the concerned RA who referred the case shall accept such payment and register the document. The RA was required to intimate such registration to DIGR as per Rule 4 of the WBPUVI Rules, 2001 and in such case the referred case deemed to have been withdrawn.</p> <p>However, the said rule is not applicable for deeds registered through the computerised system.</p>	<ul style="list-style-type: none"> Audit found that intimation regarding payment of deficit stamp duty in respect of referred cases was not communicated by the RAs to the DIGRs for withdrawal of such case. The computerised system also did not automatically send payment information to the DIGRs in such cases. 	In the absence of such coordination between the RAs and DIGRs, number of referred cases settled at the end of the RAs could not be ascertained by the DIGRs and those cases remained pending at the DIGRs level.
---	--	---	--

Nature of control weakness	Audit Criteria	Audit Observations	Impact of control weakness
Absence of target for inspection of Registration Offices	Rule 5A of the WBPUVI Rules, 2001, provides for inspection of Registration Offices by DIGRs and to check electronically registered documents to ensure correctness of assessment of market value by the computerised system. If any document is found incorrectly assessed by the system during such inspection, DIGRs shall re-assess the market value and stamp duty payable on such document.	<ul style="list-style-type: none"> • Department did not prescribe any norms /target/ periodicity of inspection of ROs by the DIGRs. • The methodology of selection of the documents for checking was also not prescribed. • The inspection conducted by the DIGRs was also not monitored at the Directorate level. • From the records of three DIGRs Audit found that none of the ROs were inspected by those DIGRs during the period of audit. 	The Directorate lacking oversight on the RAs.
Absence of prescribed forms and time limit for issue of notices by the DIGRs	In case of manually registered documents, the DIGRs were required to issue hearing notices in Form-VIII for adjudication within 30 days from the date of receipt of any case from concerned RA and to issue demand notices in Form-IX as per Rule 5 of the WBPUVI Rules, 2001.	<ul style="list-style-type: none"> • Rule 5 of the WBPUVI Rules, 2001 are not applicable for documents registered through computerised system in terms of a notification issued in October 2010. Therefore, the forms of notices prescribed under such rules are also not applicable in such cases. • The Rule also does not prescribe any time limit for issuance of hearing notices. • Rule 5A of the WBPUVI Rules, 2001 is applicable for electronically registered deeds. The Rule provides for inspection of Registration Offices by the DIGRs and to check documents to ascertain correctness of assessment of market value by the computerised system and re-assess those cases which were not correctly assessed by the system owing to furnishing of incorrect property details. However, this Rule does not prescribe the form for hearing/demand notices. 	Notices prescribed under Rule 5 of the WBPUVI Rules, 2001 are being issued by the DIGRs to the concerned parties for adjudication of cases registered electronically even though Rule 5 is not applicable in such cases. The situation may give rise to unwanted litigations which may hinder the adjudication process.

Recommendation-VI

Prescribing new forms for hearing/demand notice and time limit for issue of notices by the DIGRs to the concerned parties.

Nature of control weakness	Audit Criteria	Audit Observations	Impact of control weakness																		
<p>Pendency in disposal of referred cases</p>	<p>Rule 5A of the WBPUVI Rules, 2001, provides for inspection of Registration Offices by DIGRs and to check electronically registered documents to ensure correctness of assessment of market value by the computerised system. If any document is found incorrectly assessed by the system during such inspection, DIGRs shall re-assess the market value and stamp duty payable on such document.</p>	<ul style="list-style-type: none"> No time limit had been prescribed in the WBPUVI Rules, 2001, for disposal of referred cases by the DIGRs. The electronic process of adjudication by the DIGRs was found to be cumbersome which caused hindrance in the efficiency of disposal of referred cases. DIGRs were not given full access to all the modules of the computerised system such as deed view, query view which were required for their proper functioning. As a result, there was sluggish disposal of pending cases at the DIGRs level. 	<p>From the records of three DIGRs, it was found by Audit that 5,718 cases were forwarded to the DIGRs by the RAs between September 2000 and January 2017 for determination of market value of properties. From the test check of the referred cases it was found by Audit that 943 out of the 5,718 cases were pending for final disposal at the DIGR level involving deficit stamp duty and registration fees of ₹ 4.58 crore assessed by the RAs as shown in the following table:</p> <p style="text-align: right;">(₹ in lakh)</p> <table border="1" data-bbox="948 779 1345 1144"> <thead> <tr> <th>Range of pendency (Year)</th> <th>No of cases</th> <th>SDRF involved</th> </tr> </thead> <tbody> <tr> <td>Upto 5 years</td> <td>638</td> <td>283.79</td> </tr> <tr> <td>>5 years and upto 10 years</td> <td>212</td> <td>162.18</td> </tr> <tr> <td>>10 years and upto 15 years</td> <td>68</td> <td>9.90</td> </tr> <tr> <td>>15 years</td> <td>25</td> <td>2.57</td> </tr> <tr> <td>Total</td> <td>943</td> <td>458.44</td> </tr> </tbody> </table> <p>Of these, hearing notices were not issued to the concerned parties in 740 cases involving deficit stamp duty and registration fees of ₹ 2.55 crore.</p>	Range of pendency (Year)	No of cases	SDRF involved	Upto 5 years	638	283.79	>5 years and upto 10 years	212	162.18	>10 years and upto 15 years	68	9.90	>15 years	25	2.57	Total	943	458.44
Range of pendency (Year)	No of cases	SDRF involved																			
Upto 5 years	638	283.79																			
>5 years and upto 10 years	212	162.18																			
>10 years and upto 15 years	68	9.90																			
>15 years	25	2.57																			
Total	943	458.44																			
<p>Absence of centralised data analysis wing</p>	<p>The whole process of registration was an automated process in which enormous data was captured in the centralised server of the Directorate.</p>	<ul style="list-style-type: none"> Analysis of the centralised data would provide the Directorate important insights about various trends and also to highlight any abrupt deviations from usual trends. The analysis of the data would also help the Directorate to identify cases of probable evasion or short levy of duty/fee due to furnishing of incorrect property details by the executants and send those cases to the concerned DIGRs for adjudication as is done in the Commercial Tax Directorate. No data analysis wing had been established by the Directorate. 	<p>As a result, the enormous data captured remained unutilised.</p>																		

Recommendation-VII

Establishing a centralised data analysis wing for better utilisation of the electronic data to check revenue loss.

4.4.12 Status of implementation of recommendation of previous Performance Audit

A Performance Audit on the similar topic was featured in Paragraph No. 5.6 of the Audit Report No. 1 of 2014 of the Comptroller and Auditor General of India (Revenue Sector), Government of West Bengal for the year ended 31 March 2013. The present Performance Audit revealed that the recommendations made in Audit Report No. 1 of 2014 was not implemented by the Department. Though similar nature of irregularities/ deficiencies in the software was pointed out in our earlier Audit Report they were not rectified and therefore such type of irregularities are still persisting.