

Chapter V

Stamp Duty and Registration Fees

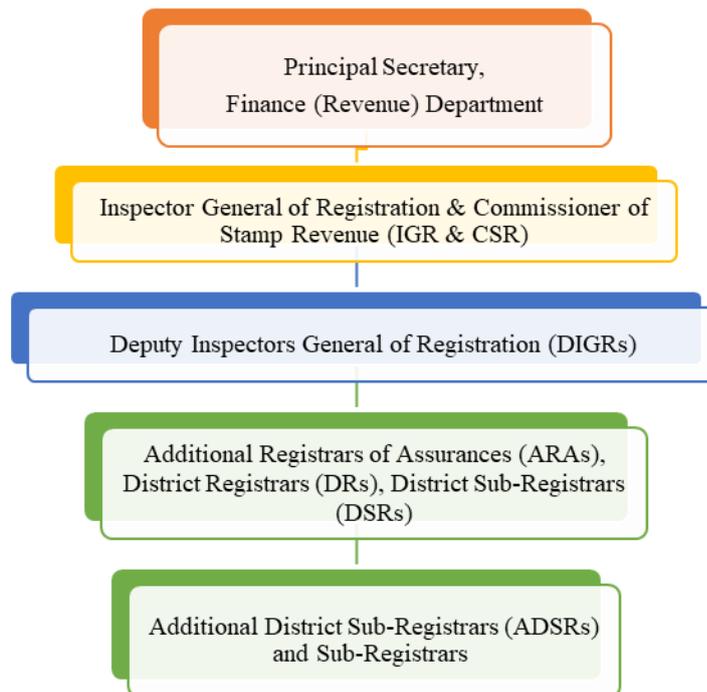
Chapter V

Stamp Duty and Registration Fees

5.1 Tax Administration

Receipts from stamp duty and registration fees are regulated under the Indian Stamp Act, 1899, (IS Act); Indian Registration Act, (IR Act) 1908 and the rules framed thereunder as applicable in West Bengal and are administered as detailed in the Chart below:

Chart 5.1: Tax Administration



5.2 Internal Audit

The Department, though requested (October 2020), failed to furnish details regarding their Internal Audit Wing (IAW). Therefore, the performance of internal audit conducted by the Department could not be analysed. The absence of IAW was also highlighted in paragraph 5.2 of the Audit Report- Government of West Bengal (Report No. 5 of the year 2016) wherein it was pointed out that the Directorate had an internal control mechanism at the district level where DIGRs monitor the determination of proper market value of the property for registration. The overall supervision and administrative control of the registering offices was under the District Registrars. Within the registering offices, there existed an internal checking system for preventing mistakes, frauds, misrepresentations and internal collusion, if any. Also, at the headquarters' level, the post of Joint Commissioner of Stamp Revenue (Audit), WB was manned by a Senior West Bengal Audit and Accounts Service (WBA&AS) Officer of the Finance (Audit) Department.

5.3 Results of audit

In 2018-19, test check of the records of 45 units of the Directorate of Registration and Stamp Revenue under the Finance (Revenue) Department, revealed non/

short levy of stamp duty and registration fee *etc.* and other irregularities amounting to ₹ 13.72 crore in 199 cases, which fall under the categories given in **Table 5.1**.

Table 5.1: 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	71	4.54
2.	Short levy of stamp duty due to incorrect particulars of amenities	4	0.01
3.	Short assessment/ realisation of stamp duty and registration fees due to incorrect consideration of lease period	21	7.53
4.	Others	103	1.64
Total		199	13.72

During 2018-19, the Department accepted non-realisation/ blockage of revenue and other deficiencies of ₹ 1.03 crore in 100 cases, of which 65 cases involving ₹ 99.65 lakh. An amount of ₹ 1.76 lakh was realised in 2018-19 in four cases.

Audit was conducted in 45 (16.91 *per cent*) out of 266 units administering stamp duty and registration fees during the period 2018-19. The cases mentioned in the succeeding paragraphs are those which came to notice in the course of test audit for the period 2018-19. The cases were examined to ascertain the extent of compliance of provisions of the Acts and Rules framed thereunder. The findings arising from audit involving ₹ 9.41 crore are discussed in the following paragraphs:

5.4 Incorrect determination of lease period

Short determination of lease period by the Registering Authorities resulted in short levy of stamp duty and registration fees of ₹ 6.96 crore.

Under Article 35 of Schedule-IA of the Indian Stamp (IS) Act, 1899 as amended under Notification 42L dated 8 January 2013, lease deeds for a term exceeding 30 years are chargeable to stamp duty at the same rate as applicable for conveyance deed on the market value of the property. Further, explanation-II below the Article 35 of Schedule-IA of the IS Act, 1899 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. However, stamp duty on lease 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.

Out of 34,933 deeds registered during the year 2016-18 in two Registration Offices (ROs), Audit test checked 3,726 deeds and made observations against 156 number of deeds. Of these, in five lease deeds in two ROs registered between July 2017 and February 2018, it observed that Registering Authorities (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 nine years and 30 years as specified in the lease deeds. From scrutiny of recitals of the deeds, audit observed that in four cases the current leases were renewal of previous leases, without any break in period between the earlier and present leases. In the remaining one case, it was found that the tenure of the leases was automatically renewable for further period mentioned in the deed on the same rents, covenants, conditions and agreements, including the present covenant for renewal. 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 in all five cases. Lease period was more than 30 years in three of the five cases. Therefore, in these instruments, stamp duty was leviable at the same rate as applicable for conveyance deed on the market value of the property and not on lease rent/premium. However, the RAs while determining the lease periods, did not 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 ₹ 7.90 lakh was levied instead of ₹ 7.04 crore. This resulted in short levy of stamp duty and registration fees of ₹ 6.96 crore due to incorrect determination of lease period.

After this was pointed out, the ADSR, Cossipore, while accepting (January 2019) the Audit observation in one case involving ₹ 1.40 crore, stated that action would be taken in due course. In another case, the ARA-III contested (March 2019) the observation and stated that further renewal of deed of lease would be registered by fresh deed. The renewed lease deed was treated as a fresh lease deed and independent of the original lease deed and hence, the two agreements would be chargeable to stamp duty independently.

The reply is not tenable as the recital of deed shows that the lease period was automatically renewable and therefore, the two lease periods should have been added as per the Act. The Additional Registrar of Assurances (ARAs)-II and III, Kolkata in other three cases did not furnish any specific reply.

The matter was reported to the Government in July 2019 followed by a reminder in October 2020; reply has not been received (December 2020).

5.5 Short levy of stamp duty and registration fees due to misclassification of instruments

The Registering Authorities misclassified deeds of conveyance as lease deeds resulting in short levy of stamp duty and registration fees of ₹ 1.41 crore.

Stamp duty chargeable on an instrument depends on the nature of the instrument. The rate of stamp duty chargeable on an instrument is prescribed under Schedule IA of the Indian Stamp (IS) Act, 1899.

1. Article 35 of Schedule IA of the IS Act, 1899 prescribes the stamp duty and registration fees leviable on transfer of property by way of lease. Article 23 of Schedule IA of the IS Act prescribes that stamp duty and registration fees shall be chargeable on the market value of property in case of deed of conveyance.

Out of 5,618 number of lease deeds registered during the year 2017-18 in Additional District Sub Registrar (ADSR), Sealdah, Kolkata, Audit test checked

250 lease deeds and has made observations on 10 deeds. Of these, in two lease deeds executed and registered between July and December 2017, it was observed that the lessees were to build new buildings for commercial use on the leasehold property. Each of the deeds entitled the lessee to enter into any agreement and/or conveyance and/or transfer the flats with/ to the intending purchaser without involving the lessor as a party to any such transaction. The lessor should have no claim on the title, proceeds or profit of the demised land/ flats build thereon and the consent of the lessor was not necessary for any transfer/ other disposal of the demised land/ flats.

Thus, the entire property along with its right, title and interest was actually conveyed by the lessor to the lessee for the lease consideration by the two instruments. Therefore, the instruments should have been classified by the ADSR as deeds of conveyance and stamp duty and registration fees of ₹ 1.28 crore charged on the instruments, based on the market value of the properties. However, the ADSR classified the instruments as lease deeds and realised stamp duty and registration fees of ₹ 0.84 lakh. Thus, due to misclassification of deeds of conveyance as lease deeds, there was short levy of stamp duty and registration fees of ₹ 1.27 crore.

After this was pointed out (October 2018), the ADSR stated that reply would be furnished shortly after scrutiny of cases; further information is awaited (December 2020).

2. 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 as applicable for sale deeds. If an assignor assigns any government leasehold property to a family member as defined under Article 33 of the IS Act, stamp duty as applicable for gift to family members is leviable. Such lower rate of stamp duty as applicable for gift to family members 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 in these types of cases has been allowed as remission by the Government of West Bengal in terms of Notification¹³⁹ issued in June 2010.

Out of 13,177 lease deeds registered during the year 2017-18 in Additional Registrar of Assurance (ARA), Kolkata, Audit test checked 2,636 lease deeds and made observations on 155 deeds of different nature of irregularities. Of these, in two gift deeds registered in 2017, it observed that in one case involving ₹ 80.69 lakh, the property was leased by the lessor to the lessee in December 2002. The lessee sub-leased the same property in August 2017. The sub lessee (donor) gifted the property to one of his family (donee) members. In the other case, involving market value of ₹ 126.03 lakh, the owner of the property was the West Bengal Housing Board (WBHB). The property was subsequently leased out by WBHB in favour of Purbachal Town House Owners Cooperative Society Limited (lessee). One of the members of the society (sub lessee) gifted the property in favour of his family member. However, no permission for such transfer was obtained by the sub-lessees in either of the cases from the concerned Department.

¹³⁹ Notification no.884-FT/FT/0/2E-22/10 Stamp dated 15 June 2010.

On further scrutiny of the gift deeds it was found that the donor was not the absolute owner of the property in either case and was holding the property on leasehold rights. A property can be gifted only by the owner of property and the lessee can only transfer his leasehold right to others. Therefore, the instruments should have been classified by the RAs as deeds of assignment of lease and stamp duty of ₹ 14.46 lakh was chargeable on the instruments. However, the RAs classified the instruments as gift deeds to family members and realised only ₹ 1.03 lakh as stamp duty. Thus, due to misclassification of deeds of assignment as gift deeds to family members, there was short levy of stamp duty of ₹ 13.43 lakh.

After this was pointed out in audit, the ARA-I accepted (March 2019) the observation and stated that the matter has been referred to the Deputy Inspector General of Registration for realisation of short levy of stamp duty. In the remaining case, ARA-IV stated that the property belongs to Purbachal Town House Owners Co-Operative Housing Society Limited and for transfer of such property prior permission of Government was not required. The reply is not tenable because the donor gifted a government lease hold property and therefore he was required to take prior permission from the concerned Department for being eligible for the remission. Alternatively, the donor could have transferred his leasehold rights to the donee through a deed of assignment.

The matter was reported to Government in July 2019 followed by a reminder in October 2020; their reply has not been received (December 2020).

5.6 Short levy of stamp duty due to misclassification of deeds of settlement as gift deed to family members

The RAs misclassified deeds of settlement as gift deed to family members. This resulted in short levy of stamp duty of ₹ 0.84 crore.

Under Section 2(24) (b) of the Indian Stamp (IS) Act, 1899, “settlement” means any non-testamentary disposition, in writing, of movable or immovable property made for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him. Under Article 58 of the Schedule-IA of the IS Act, the same rate of stamp duty as applicable for conveyance is applicable for the deed of settlement. As per Section 122 of the Transfer of Properties (TP) Act 1882, “gift” is transfer of certain existing movable or immovable property made voluntarily and without consideration, by donor to a donee, and accepted by or on behalf of the donee. Under Article 33 of Schedule-IA of the IS Act, gift to family members attracts levy of stamp duty at the rate of half *per cent* on the market value of the property. Further, Section 6 of the IS Act provides that if an instrument is so framed as to come within two or more of the descriptions in Schedule-I where duties chargeable thereunder are different, it shall be chargeable only with the highest of such duties.

Out of 49,797 number of gift deeds registered during the years from 2014-2015 to 2017-18 in three Registration offices (ROs), Audit test checked 6,179 number of gift deeds and made observations of different nature against 189 deeds. Of these, in 23 gift deeds registered between April 2015 and July 2018 in favour of

family members involving market value of ₹ 14.15 crore, it observed that the properties were transferred by the donors to the donees without any consideration. However, scrutiny showed that the deeds contained clauses which rendered them classifiable in the nature of settlement. As the stamp duty on settlement is higher than that on gift deed, such higher rate of stamp duty was liable to be charged on those deeds. The RAs, however, misclassified the instruments as gift deeds and levied stamp duty of ₹ 7.08 lakh instead of ₹ 90.98 lakh leviable on settlement deeds. This resulted in short levy of stamp duty of ₹ 83.90 lakh as detailed in the following table:

Table 5.2: Nature of deeds which rendered them classifiable as settlement

(₹ in lakh)

Sl. No.	Nature of the deeds	Name of the Registration Offices	No. of cases	Market value of Property	Stamp Duty leviable	Stamp Duty levied	Short levy of Stamp Duty
1.	For avoiding future disputes.	ADSR Alipurduar, ARA-I, ARA-III	15	863.86	53.88	4.32	49.56
2.	For reserving life interest on property by the donors	ARA-I, ARA-III, ARA-IV, ADSR Uttarpara	8	550.88	37.10	2.76	34.34
Total:			23	1,414.74	90.98	7.08	83.90

After this was pointed out, the ARA-I while accepting the observation in one case stated that the case had been referred to DIGR for realisation of stamp duty. In 21 cases, the three ROs stated that in each of the cases, the donor has transferred the property to the donee for love and affection as per Transfer of Property Act. Mere insertion of a single line does not make the entire deed a settlement deed. All the cases are gift deeds and there is no short levy of stamp duty. The reply is not acceptable as in six out of 21 cases, the donors had reserved their life interest on the gifted property. In the remaining 15 cases, gifts were made for avoiding future disputes among family members. All of these come under definition of settlement as per Section 2(24) (b) of the IS Act. Therefore, those deeds were required to be classified as settlement. In remaining one case, the ARA-III did not furnish any specific reply.

The matter was reported to the Government in July 2019 followed by a reminder in October 2020; their reply has not been received (December 2020).

5.7 Incorrect determination of lease consideration

The RAs incorrectly short determined the lease consideration. This resulted in short levy of stamp duty and registration fees of ₹ 0.20 crore.

As per Article 35 (c) (i) of Schedule IA of the Indian Stamp (IS) Act, 1899, where lease is granted for a fine or premium, or for money advanced, or for development charges advanced, or for security charge advanced, in addition to rent reserved for a term not exceeding 30 years, the same duty as a conveyance is payable for a consideration equal to the amount or value of such fine or premium or advance as set forth in such lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered. Further, when a lessee undertakes to pay any recurring charges, such as Government revenue, the landlord's share of cesses or the owner's share

of municipal rates or taxes, which is 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. Registration Fees is chargeable as per the Table of Registration Fees.

Out of 36,200 number of deeds registered in two ROs, Audit test checked 5,467 deeds and made observations on 186 deeds. Of these, in seven lease deeds executed and registered between March 2015 and December 2017, it was observed that the RAs did not consider the premium/ average annual rent/ municipal taxes paid by the lessee for lease consideration. As a result, lease consideration was determined short by ₹ 4.25 crore. The RAs levied stamp duty and registration fees of ₹ 11.82 lakh instead of ₹ 31.46 lakh due to incorrect determination of lease consideration. This resulted in short levy of stamp duty and registration fees of ₹ 19.64 lakh as detailed in the following table:

Table 5.3: Incorrect determination of lease consideration

(₹ in lakh)

Sl. No.	Nature of irregularity	Name of Registration office	No. of cases	Lease consideration determined short	SD&RF payable	SD&RF paid	Short levy of SD&RF
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8) = (6-7)
1.	Premium paid against lease was not considered as lease consideration.	ADSR, Alipurduar, ARA-IV	4	416.38	20.02	3.48	16.54
2.	Annual rent payable by lessee was not considered as lease consideration.	ADSR, Alipurduar, ARA-II	2	7.31	9.67	8.00	1.67
3.	Municipal taxes paid by lessee was not considered for lease consideration and average annual rent determined short.	ARA-I	1	0.86	1.77	0.34	1.43
Total			7	424.54	31.46	11.82	19.64

After this was pointed out, the Additional Registrar of Assurance (ARA)-I, Kolkata while accepting the audit observation in one case involving ₹ 1.43 lakh stated that the document had been referred to the DIGR for necessary action. In one case, ARA-IV stated that money given by the lessee was adjustable against the rent and amount could not be treated as premium. The reply is not tenable as any advance payment shall be treated as premium under the IS Act. In another case, ARA-II stated that all rents were paid in advance and did not require any stamp duty upon average annual rent. The reply is not tenable as rent for the first 10 years of the lease period was taken into account as consideration amount for the purpose of levying stamp duty against rent for entire lease period of 20 years.

In the remaining four cases, RAs did not furnish any specific reply.

The matter was reported to the Government in July 2019 followed by a reminder in October 2020; reply has not been received (December 2020).

