

Chapter IV: Stamp Duty and Registration Fees

4.1. Results of Audit

Test-check of records of Stamp duty and Registration fees, conducted in audit during the year 2002-2003, revealed non-levy/short levy of Stamp duty and Registration fees amounting to Rs.3.10 crore in 92 cases which broadly fall under the following categories:

(In crore of rupees)			
Sr. No	Category	Number of cases	Amount
1	Non/Short levy of stamp duty and registration fees	89	1.50
2	Evasion of stamp duty and registration fees due to misclassification of deeds	2	0.08
3	Short levy of stamp duty/registration fees on lease deed	1	1.52
	Total	92	3.10

During the year 2002-2003, the Department recovered Rs.0.13 crore in 68 cases relating to audit findings of earlier years.

A few illustrative cases highlighting important irregularities involving financial effect of Rs.2.58 crore are given in the following paragraphs:

4.2. Short levy of stamp duty and registration fees on lease deed

Under Article 35 (vi) of the Indian Stamp Act, 1899, as applicable to the State of Punjab, on an instrument where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years, the duty is chargeable for a consideration equal to four times the value of the average annual rent reserved.

During test check of records of Sub-Registrar (SR), Patiala, it was noticed that an instrument of lease for 99 years at an annual rent of Rs.one lakh with a condition of 10 *per cent* annual increase was registered in November 2001. However, this periodical increase in the rent reserved had not been taken into account while determining the value of average annual rent reserved for levy of the stamp duty on the instrument. This resulted in short levy of stamp duty and registration fee amounting to Rs.1.52 crore.

On this being pointed out, SR, Patiala admitted and stated in June 2003 that land owners had withdrawn the condition of 10 *per cent* increase every year in annual rent reserved vide lease deed in November 2002. The reply was not tenable as the stamp duty was payable as per terms and conditions of the document executed at the time of registration.

The matter was brought to the notice of the Department and referred to the Government in January 2003; no reply was received (November 2003).

4.3. Inadmissible remission of stamp duty

Under article 40(b) of Schedule I-A to the Indian Stamp Act 1899, a mortgage deed in respect of a specified property for securing loan, when possession is neither given nor agreed to be given, is chargeable to stamp duty at the rate of two *per cent* of the amount of loan.

4.3.1. Punjab Government, however, vide order issued in February 1973, remitted stamp duty on deeds of mortgage without possession executed by certain State owned Corporations for securing loans from commercial and banking institutions to implement developmental schemes falling within their purview.

During test check of records of SR, Amritsar II, it was noticed that a deed of mortgage without possession was executed by Punjab Health System Corporation, Chandigarh (a State owned Corporation) not included in the aforesaid order, in favour of Punjab and Sind Bank, Chandigarh for securing loan of Rs.40 crore during the year 2001-2002. However, no stamp duty was charged thereon. Inadmissible remission resulted in non-levy of stamp and registration fee of Rs.80.10 lakh.

On this being pointed out, SR, Amritsar-II while accepting the audit observation, stated in May 2003 that efforts were being made to recover the amount.

The matter was brought to the notice of the Department and referred to the Government in October 2002; no reply was received (November 2003).

4.3.2. Punjab Government remitted in July 1973 payment of stamp duty leviable on mortgage deeds without possession executed by industrial concerns in favour of the Punjab Financial Corporation.

During test check of records of the SR, Phagwara, it was noticed that a company engaged in the development of housing, farmhouses and commercial complexes executed in June 2001 a mortgage deed without possession in favour of the Corporation for securing loan of Rs.1.65 crore for setting up a unit consisting of air conditioned farm palace/banquet halls for marriages, air conditioned restaurant, pub, mini amusement park etc. without payment of stamp duty. As the deed was not executed by an industrial unit falling within the meaning of 'industrial concern' under the State Financial Corporation Act 1951, the remission of stamp duty was not admissible. This inadmissible remission has resulted in loss of stamp duty and registration fee of Rs.3.40 lakh.

On this being pointed out SR, Phagwara stated in January 2003 that the case has been sent to Collector for taking necessary action. Further reply was awaited.

The matter was brought to the notice of the Department and referred to the Government in November 2002; no reply was received (November 2003).

4.3.3. Punjab Government issued a notification in December 2001 remitting stamp duty chargeable in case of transaction of transfer by an owner of agricultural land and rural residential property to Class-I heirs (as defined in schedule under Section 8 of Hindu Succession Act, 1956) during his lifetime. However, the provisions of the notification was not applicable in cases of transactions of transfer made by a husband to his wife (wife not being Class I heir) as well as to the transaction of transfer made by Muslims.

During test check of records of five* SRs, it was noticed that eleven instruments were registered without levy of stamp duty claiming benefit under the above notification. In eight cases the transaction of transfer was made by the husband in favour of wife, in two cases the transaction was made by Muslims and in one case transaction was made by a grandfather in favour of his grandson. As grandson whose father was alive and the wife were not Class-I heir and Muslims were not covered by the notification; the remission of duty in these cases was not admissible. This inadmissible remission of duty resulted in loss of revenue of Rs.6.12 lakh.

On this being pointed out, SR, Dera Bassi stated in June 2003 that the recovery of Rs.0.82 lakh had been effected, where as SR, Patiala stated that individual could make transaction of his rural property in favour of his wife during his life time. The reply was not tenable as the remission under the notification were admissible in case of transfer to class-I heirs and as per

* **Dera Bassi, Malerkotla, Nabha, Patiala, Rampura Phul.**

Hindu Succession Act 1956, wife was not a class-I heir. Other registering authorities did not furnish the final reply.

The matter was brought to the notice of the Department and referred to the Government between November 2002 and February 2003; no reply was received (November 2003).

4.4. Short levy of stamp duty and registration fees

Under the Indian Stamp Act, 1899, a conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided by Schedule-I-A of the Act. In July 1961, Government clarified that documents containing essential ingredients of conveyance would amount to sale and duty as leviable in the case of conveyance be leviable. Further amendment in December 2001 in Schedule I-A of the Act provides that in case of agreement to sell followed by possession of or evidencing delivery of immovable property agreed to be sold, the same duty is leviable as leviable in the case of conveyance deed

During the course of audit of the records of SR, Malerkotla, it was noticed that in 24 cases, agreements to sell immovable property for consideration of Rs.79.47 lakh were entered into between parties with mention of consideration as well as of passing of possession of property to the purchasers. Though description of title of each document read as 'agreement to sell', the substance of the document clearly indicated the handing over of possession of the property to the purchaser after receiving the consideration. As such stamp duty as applicable under the aforesaid provisions was leviable whereas stamp duty as applicable to "agreement to sell" of immovable property was levied. This resulted in short levy of stamp duty amounting to Rs.5.48 lakh including registration fee of Rs.0.10 lakh.

On this being brought to the notice of the Department, the Inspector General of Registration, Punjab stated in November 2002 that comments of the concerned registering officer were being obtained and reply would be sent in due course. Further reply was awaited (November 2003).

The matter was referred to the Government in November 2002; no reply was received (November 2003).

4.5. Misclassification of instrument

Under the provisions of Indian Stamp Act, 1899, every instrument is chargeable with duty at prescribed rates. A 'mortgage deed' includes every instrument whereby, for the purpose of securing money advanced by way of loan or for an existing or future debt, one person transfers or creates in favour of another, a right over or in respect of specified property.

During test check of records of SRs, Faridkot and Phillaur, it was noticed that two instruments for securing loan of Rs.6 crore from scheduled banks were

registered in April 2001 either as a 'collateral security' or as 'security bond'. As these instruments were executed for securing loans/cash credit limits against the security of immovable properties; these should have been classified as 'mortgage deed without possession' subject to levy of stamp duty as per aforesaid provisions. The misclassification of instruments resulted in short levy of stamp duty and registration fees of Rs.11.42 lakh.

On this being pointed out, SR, Phillaur stated in January 2003 that notice for recovery had been issued whereas SR, Faridkot stated in June 2003 that action would be taken.

The matter was brought to the notice of the Department and referred to the Government in February 2003; no reply was received (November 2003).