

For Departmental Use Only



TAX RECOVERY OFFICERS' MANUAL

DIRECTORATE OF INCOME-TAX
(Public Relations, Printing, Publications and Official Language)
INCOME-TAX DEPARTMENT
NEW DELHI

For Departmental use only



Tax Recovery Officers' Manual

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AN OVERVIEW

The first manual on the work of recovery of Direct Taxes in the form of Tax Recovery Inspector Manual was published in 1972. It was later on revised in the year 1980. This Manual covered legal concepts on the area of work of Tax Recovery Inspectors.


2. Besides the above publication, there was no manual for the use of Tax Recovery Officers per se. On the other hand the law governing the work of recovery of Direct Taxes had undergone a substantial change, over the period of time, particularly since 01.04.1989. A need was, therefore felt to revise, enlarge & update the existing publication, to increase its scope to make it a practical guide for the Tax Recovery Officers. Thus resulted the first edition of the Tax Recovery Officers' Manual in June, 1999.

3. The present edition (Second edition) has been updated by Smt. Poonam Saxena, the Director of Income-Tax (Recovery) with the active involvement of officers of her Directorate. In revising and updating the present edition inputs in the form of latest circulars & Instructions issued by the C.B.D.T and the latest case laws on the subject have been provided. We hope these will enable the officers deputed on the work of recovery of direct taxes to discharge this complicated but important function smoothly & assertively.

4. We are grateful to Shri R. Prasad, Chairman, C.B.D.T for writing the "foreword" and to Shri Milap Jain, DGIT (Admn.) for writing the "preface" by sparing their valuable time in going through this manual. These words, we are sure, will act as morale- booster for the Tax Recovery Officers.

5. Suggestions for improvement of the manual shall be thankfully received & acknowledged.

December, 2007



(AMITABH KUMAR)
Director of Income-Tax
(PR,PP&OL), New Delhi

FOREWORD

The Law governing the work of Tax Recovery Officers is a self contained code which requires specific knowledge of the officers who are posted for recovery work. The majority of officers who deal with tax recovery have often little practical experience in the field. The work entrusted to them is very technical and needs to be handled with care and caution. It is therefore necessary that the relevant provisions of the Income Tax Act, and the rules governing Income Tax (Certificate Proceedings) Rules as well as the provisions of the Code of Civil Procedure are readily available for guidance of the Tax Recovery Officers, most of whom are newly promoted.

The efforts put in by the Directorate of Recovery under the inspiration and guidance of the Director General of Income Tax (Administration) are to be appreciated. I am sure that the book will serve its purpose particularly in the present context of the Government being concerned with *liquidation of arrears*, particularly those which are found to be *difficult to recover*.

My best wishes to the officers of the Department in their endeavors to target cash collections out of arrear outstanding with the active assistance of the Tax Recovery Officers.



(RATNESHWAR PRASAD)

Chairman
Central Board of Direct Taxes,
New Delhi,

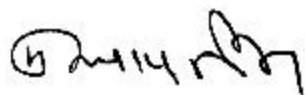
December 2007

PREFACE

In the light of the emphasis being placed on achieving of the target of cash collections out of arrear demands outstanding, it is more than essential that the TRO, who is specifically equipped for collection of taxes be geared up for this task and his attention be particularly drawn towards the powers under the Income Tax Act, Wealth Tax and Gift Tax Act, various instructions issued by CBDT from time to time in this regard, the relevant provisions of the Code of the Civil Procedure, and the IT (Certificate Proceedings) Rules 1962, besides the implications of sale of immovable properties keeping in view the Urban Land (Ceiling and Regulation) Act 1976. No doubt these provisions are largely contained in Schedule II to the Income Tax Act 1961, yet it is beneficial for the office of Tax Recovery if these are readily made available in the form of a book.

The earlier edition of 1999 required substantial updating which has been done by the Directorate of Recovery. I appreciate the efforts put in by the Director of Income Tax (Recovery) and her team of officers for the preparation of this fresh edition in a comprehensive yet simple manner.

This Manual will achieve its end if it helps the Tax Recovery Officers to expedite recovery proceedings and to reduce the outstanding arrears of demands and help the Department to liquidate the taxes in arrears.



(MILAP JAIN)

Director General of Income Tax (Administration)

Mayur Bhawan, New Delhi

December 2007

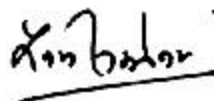
INTRODUCTION

The last edition of the Tax Recovery Officer's Manual was issued on 24.06.1999 by the DIT(RSP&PR) New Delhi with a view to make it a handy booklet and to enable the TROs to discharge effectively this important aspect of work.

During the course of my recent tours undertaken in the past few months, it has been brought to my knowledge that the Tax Recovery Officers Manual was not readily available. While making an attempt to obtain copies of the same, it was found from the contents that the Manual required immediate updating & editing. The headings of '*recent changes in law*' were found to be referring to amendments made w.e.f. 01.04.87 which were already over 2 decades old. The various amendments discussed at length in various sections of the Manual had been in force in the I.T. Act 1961 for that length of time and hence explaining their operation/requirement was no longer thought to be justified. Reference to the earlier provisions i.e. those before 01.07.87 was also no longer required since the Recovery Certificates with TRO's for the earlier periods would no longer be pending or be likely to be taken up for recovery at this late date. It was therefore decided to bring out a fresh edition of the TRO's Manual after deleting the unnecessary portions and after updating the relevant Circulars and Instructions and relevant case laws.

With the intention to give a concerted thrust to recovery work, this task was taken up in October 2007 and with the assistance of all the officers of the Directorate of Recovery, the present book is being brought out.

We trust that this volume will be found useful by all the officers of the Department and especially the TROs. Suggestions for further improvements would be welcomed.



(POONAM SAXENA)

Director of Income Tax (Recovery)

Mayur Bhawan, New Delhi

December 2007

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CHAPTER-I

INTRODUCTION

Chapter XVII of I.T. Act 1961 deals with “collection & recovery of taxes”. There, in part D, sections 222 to 232 of the I.T. Act 1961¹ and Schedules II² and III³ of the Act, and the Income Tax (Certificate Proceedings) Rules, 1962⁴ together constitute a self-contained code prescribing the various modes for the recovery of arrears of taxes under the Income Tax Act, 1961 (henceforth referred to as the Act). These provisions have also been made applicable to the recovery of arrears of Wealth-tax and Gift-tax by Sec. 32 of the Wealth-tax Act, 1957 and Sec. 33 of the Gift Tax Act 1958 respectively.

2. Defaulter defined- Clause (7) of Sec 2. of the Act defines the term, “assessee” which term also includes a ‘person deemed to be an assessee in default’. Recovery proceedings can be initiated under the provisions of the Act against an assessee only when he is in default or deemed to be in default u/s 220(4) of the Act (hereinafter referred to as “defaulter”). A person is said to be an assessee in default or deemed to be in default if he fails to pay the amount which he is required to pay in terms of a Demand Notice (DN) issued u/s. 156⁵ of the Act and validly served on him. Thus, a proper and valid service of the DN is a condition precedent to the initiation by the TRO of recovery proceedings u/s 222(1) of the Act against a defaulter for the recovery of arrears.^{6, 7}

3. Categories of T.R.Os- Earlier Sec. 2(44) provided three categories of TRO’s, namely, a Collector or an Additional Collector; an officer authorized by the State Government to exercise the powers of a T.R.O; and any Gazetted Officer authorized by the Central Government to exercise the powers of a T.R.O. The last category included an ITO designated as a TRO.

Presently, as per Section 2(44), “Tax Recovery Officer” means any Income Tax Officer who may be authorized by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer and also to exercise or perform such

¹ Appendix-1

² Appendix-2

³ Appendix-3

⁴ Appendix-4

⁵ Rule 15-Form No. 7 See Appendix-5

⁶ Bai Chandan Beh Jivan Lal Vs. L.D.Joshi, Collector Bhavnagar 1969 74 ITR 448 (Guj.)

⁷ Pranavi Ram Barua (No. 2) Vs. Asstt. Collector of Estate Duty Oibrugarh (1976) 102 ITR 580 Assam

powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed.

4. Jurisdiction of T.R.O. - how acquired – The jurisdiction of the TRO commences when an assessee is in default or is deemed to be in default in making payment of taxes. The T.R.O acquires jurisdiction or the authority to recover any arrears of taxes from a defaulter by virtue of a certificate, popularly known as the Tax Recovery Certificate (TRC)⁸, drawn by him under section 222(1) of the Act. The drawing of a TRC by the TRO under section 222(1) of the act is thus the mandatory requirement, which must be fulfilled before the TRO can assume jurisdiction and commence recovery proceedings against a defaulter.

5. Mode of recovery - The different modes of recovery available to the TRO are provided under sec. 222(1) of the Act and Rule 4 of the Second Schedule and are as under:

- (a) Attachment and sale of the defaulter's movable property (S.II, Part II).
- (b) Attachment and sale of the defaulter's immovable property (S.II Part III)
- (c) Appointment of a Receiver for the management of the defaulter's movable and immovable property (S.II, Part IV).
- (d) Arrest of the defaulter and his detention in Civil prison (S.II, Part V).

The Tax Recovery Officer may take recourse to any one or more of the above mentioned modes of recovery. He can either simultaneously or in any order, execute the above processes for recovery. The above four modes are not exhaustive and the Government can recover the dues by any other mode open to it under any other law e.g. by filing a civil suit in a Court of law.

6. Recovery through a Civil Suit – Sec. 232 of the Act provides for recovery by a Civil Suit. The limitation for filing a Civil Suit is 30 years under Article 112 of the Schedule to the Limitation Act, 1963.⁹

7. Tax Recovery Officer to exercise all powers himself – Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April, 1989, empowered the Tax Recovery Officer to take all actions himself instead of the earlier position where such actions could be taken by the Assessing Officer only and then intimation was sent to Tax Recovery Officer about granting time for payment of tax, stay proceedings for recovery during pendency

⁸ Rule 117B Form No. 57 – See Appendix-6

⁹ See Appendix-7

of appeals, and amending the certificate of recovery consequent to appeal effects etc. Under the amended provisions (Refer section 225 of the Act), the Tax Recovery Officer shall exercise, all or any of these powers.

8. Change in Law as per Income Tax Amendment Act dated 1.04.1987

– Major changes were incorporated in various sections for recovery under the Act w.e.f. 01.04.89. CBDT in their circular No.551 dt.23.1.1990 have explained the scope and effect of the aforesaid amendments.¹⁰

9. Time limit for sale of attached immovable property

The provisions relating to time limit for sale of attached immovable property are given in rule 68B of the Second Schedule to the Act.¹¹

10. Attachment to be made by TRO or by TRI if so authorized by TRO

–

Rule 1(e) of Schedule II defines the word “Officer” as a person authorized to make an attachment or sale thereunder. TROs can, however authorize the TRIs working under them to act in this behalf.

11. Important records and registers to be maintained by Tax Recovery Officers

11.1 The following is the list of important registers with which officials working in Tax Recovery offices should be thoroughly familiar :–

- (i) Cash Book: All monetary transactions are entered in this register viz. cash and cheques received from the defaulters.
- (ii) Register of Movable and Immovable properties attached and sold.
- (iii) Execution Register – This register gives the number of warrants issued to and executed by the TRO/TRI.
- (iv) Register of Daily Reduction/Collection of Certified Demand – This register is the source record for the collection and reduction figures to be furnished in the Monthly Progress Report.
- (v) Stay Register – contains details of cases in which stay has been granted.
- (vi) Installments Register – contains the schedule of installments granted to a defaulter.
- (vii) Disposal Register – This is meant for incorporating the details of final disposal of cases.
- (viii) Closed Certificates Register – This Register contains the details

¹⁰ See Appendix-8

¹¹ See Appendix-2

of cases where certificates were closed on account of appellate reductions/rectifications etc.

- (ix) Custody Register – Particulars of articles seized and in safe custody are entered in this Register.
- (x) Daily Diary – The work done by TRI from day to day is to be entered in the Daily Diary.
- (xi) Register of Recovery in case of Companies in liquidation, or before BIFR. (Board for Industrial & Financial Reconstruction) in case of 'Sick' companies under SICA Act.

11.2 The TRO should ensure that all these registers are maintained regularly and updated every month. The concerned officials should maintain the registers mentioned above regularly. As and when changes arise or action is taken, entries should be made in the registers. The updated registers should be put up to the TRO by the 10th of every month. The TRO should go through the registers and if there are any shortcomings he should point out the same to the officials. He should ensure the proper maintenance of the registers.

12. Reports

12.1 Before the reorganization of the department the jurisdiction of TROs generally overlapped with many Ranges. Therefore, the TROs were required to send the Monthly Progress Report directly to the Commissioner concerned. However, at present since invariably every Range is having a TRO, the Monthly Progress Report should be sent by the TRO to the Jurisdictional Additional CIT/JCIT.

13. TRO must display resourcefulness and tact –

The TRO has a pivotal role in the conduct of recovery proceedings. His duties entail more of field work rather than desk work, and go far beyond the scope of mere collection of taxes. He should always be alert, and refuse to fall a victim to machinations of unscrupulous and over smart assessee who may try to thwart the recovery proceedings by resorting to all kinds of tactics, fair and foul.

CHAPTER-II
PROCEDURE FOR DRAWING UP OF TAX RECOVERY
CERTIFICATE BY THE TAX RECOVERY OFFICER

1. **The detailed procedures** for drawing Tax Recovery Certificate u/s. 222 of the Act has been prescribed by C.B.D.T¹. They are as under:

(i) Time limit for drawing up certificate :

Earlier, Section 231 of the I.T. Act, 1961 had laid down maximum time limit of 3 years within which the Assessing Officer had to issue the recovery certificates to the TRO. This stands omitted by the Direct Tax Laws (Amendment) Act 1987, with effect from 1st April 1989. Now section 222 as amended by the Direct Tax Laws (Amendment) Act 1987 empowers the TRO to draw up a statement under his signature in the prescribed form (i.e. recovery certificate)² whenever an assessee is in default or is deemed to be in default in making a payment of tax.

(ii) However, taking notice of the facts that the relevant records and registers required for drawing up of this statement are available in the office of Assessing Officer, it was decided that the Assessing Officer will get these statements prepared, sign the same and then pass on these to the TRO for the latter's signature. The Assessing Officer will send the details to TRO for drawing up of Tax Recovery Certificates.

(iii) Steps are to be taken to verify demand by sending aid sheets to the assessee where demand is pending. The assessee may point out that their applications for rectifications are pending or effect to appellate order is yet to be given. Aid sheets should not be sent to the tax payers in a routine manner in every case where the demand is found outstanding in the Demand and Collection Register. The objection of the assessee in response to Aid sheets should be duly considered. Where, however, the tax payments claimed by the assessee cannot be verified due to the delay in receipt of challans, the Income-tax officer should clearly indicate to the Tax Recovery Officers while forwarding the proposal for issue of recovery certificates, the fact that the assessee has claimed to have made the payment but credit for such payment could

¹ (Refer extract of Minutes of Board meeting held on 01.12.1990 to discuss re-organization of the work of Tax Recovery Officer in view of change in law, received under Board's letter F.No. 396/3/90-ITCC dated 13.02.1990).

² Appendix-6

not be given due to the delay in the receipt of challans. Verification of demand must be made before drawing up of the Certificate:

- (iv) The statement should contain details of assets:

The Assessing Officer should send the statement under his signature in form No. 57³ and with his seal. The statement will be accompanied by details of both movable and immovable assets of the defaulters. Before doing so, actions u/s. 221 and 226 of the Act must be got completed

- (v) Permission of Higher Authorities:

As a matter of practice, after completion of one financial year subsequent to raising of demand, the assessing officer may draw up the recovery certificate after permission of JCIT/Addl. CIT.

- (vi) Quarterly Review:

As a matter of practice, it is advised that the Assessing Officers shall conduct quarterly review to decide which case shall require drawing up of statement u/s. 222 of the Act.

- (vii) There should be followed a procedure for entry in Demand and Collection Register of Assessing Officer in cases where Tax Recovery Certificate have been drawn.

(a) The Board desires that whenever the Tax Recovery Officer draws up a tax recovery certificate and enters the same in his register in Form ITNS 162, he should send intimation thereof to the concerned Assessing officer so that the assessing officer makes a note thereof against the corresponding entry in his Demand and Collection register.

(b) Once Tax Recovery Certificate is drawn, the Tax Recovery Officer alone can exercise power u/s. 226 of the Act and then Assessing Officer does not have any power of recovery under section 226.

2. Steps to be taken after the issue of recovery certificate

- A.** (i) The variation in demand on account of rectification, revisions, appeals etc., should be promptly intimated to the Tax Recovery Officers.
- (ii) Collections made by the Assessing Officers after drawing up of recovery certificate should be promptly intimated to the Tax Recovery Officers.

³ Appendix-6

- (iii) Adjustment of Refunds against arrears should be intimated.
 - (iv) After drawing up of Certificates for arrears of advance-tax, deletion of these arrears on completion of regular assessment should be intimated to Tax Recovery Officer.
 - (v) At regular intervals, the Assessing Officer and Tax Recovery Officer should periodically meet to reconcile the register of Recovery.
- B.** After issue of recovery certificate, the TRO is also competent to grant instalments u/s 225(1)⁴.

⁴ Appendix-10

CHAPTER- III

VERIFICATION AND RECONCILIATION OF ARREARS

Tax recovery officer for the purpose of verifying and making of reconciliation of arrears, needs to take the following measures:

I. ¹S. II, r.2: ITCPR-14. First step for recovery – Issue of Notice of Demand (NOD). FORM ITCP 1² - The NOD inter alia, incorporates the particulars given in the certificate drawn namely, the number and date of certificate and the amount to be recovered. The NOD also calls upon the defaulter to pay the amount specified therein within 15 days.

2. ¹S.II, r. 16(1). Disability of the defaulter to deal with his properties. – It is the issue of the NOD by the TRO to the defaulter which, in fact, sets in motion the recovery machinery. It is therefore, of utmost importance that the NOD is properly and validly served on the defaulter. Once the NOD has been served on the defaulter, even Civil Court is not competent thereafter to attach any property belonging to him.³

3. Second Step for recovery – Issue of attachment order. FORM ITCP-2⁴ – If, after the NOD has been served on him a defaulter neither disputes the demand shown therein nor requests for the time of the facility to pay the same in instalments the TRO would take the second step toward the recovery of the outstanding dues by issue of order of attachment of assets.

4. ¹S.II, r. 51 Attachment relates back to the date of the Service of NOD FORM ITCP.1.– Any transactions relating to the defaulter's property entered into by him during the intervening period i.e. between the date of service of the Notice and the date of the-attachment order would be void and the attachment would prevail.⁵

5. Setting aside of sale does not invalidate NOD. FORM ITCP.1 – It has also to be noted that where a sale made pursuant to an attachment order is set aside because of certain irregularities in the conduct of the sale, the attachment order as such does not get vacated.⁶

6. ¹S.II, r. 16 TRO's prior permission necessary to enable defaulter to transfer property after service of NOD. – Where a defaulter, after he

¹ See Appendix-2

² See form ITCP-1 of Appendix-11

³ Tax Recovery Officer, Coimbatore Vs. V.A. Ramaswamy and others 1978 114 ITR 408 (Mad.), Union of India Vs. Ganesh Lal Bajaj 1978 115 ITR 791 (Mad.)

⁴ See form ITCP-2 of Appendix-11

⁵ State Bank of Patiala Vs. Union of India & others (1976) 103 ITR 256 (P&H)

⁶ ITO Vs. Sheghu Buchaiah Setty 1964 52 ITR 538 (SC)

has been served with a NOD under S.II, r-2, chooses to transfer the properties standing in his name and there is no attachment at the time of transfer the transfer would normally be a good one. S.II, r.16 does not prohibit the transfer of property, but it declares that the defaulter shall be competent to do so only with the prior permission of the TRO. The TRO has, however, no power to issue an order prohibiting such a transfer.

7. ¹S. II, r. 4. TRO competent to deal with requests for time and instalments – After the NOD has been served on the defaulter, he may pay the demand specified within 15 days as stipulated, or he may request for time or the facility to pay it in instalments.

8. TRO must ascertain correct demand before taking coercive measures for Recovery – It is incumbent upon the TRO to ascertain the correct figure of demand outstanding against a defaulter before embarking on coercive steps to recover the same from the defaulter. In actual practice, discrepancies are often noticed between the outstanding dues specified in the certificates and the arrears shown to be outstanding dues as per ITO's report.

9. Method of verifying correctness of arrears. – All cases in which the correctness of the demand specified in the NOD is not accepted by the defaulter should be marked by the TRO to the TRI for verifying and ascertaining the correct amount to be recovered.

10. Consequential action when variation noticed in arrears demand as per ITO's record and as admitted by defaulter. – Where, on verification, the amount shown in the certificate as outstanding against the defaulter is found to be incorrect, the TRO should modify the certificate drawn by him u/s. 222 and substitute the correct demand to be recovered from the amount originally shown therein.

11. Modification of demand on giving effect to appellate orders, carrying out rectification etc. – In some cases, the defaulter may claim that the Notice is incorrect on the ground that appellate orders favorable to him have not been given effect to, or that the mistakes pointed out by him have not been rectified by the ITO. In such cases, TRO may request the ITO to finalize the pending matters or may do so at his own level.

12. ITO to intimate reduction in demand. – Care should be taken to issue fresh notice of demand where it stands varied. In ITO Vs. Seghu Buchiah Setty⁷ where a fresh demand notice was not issued consequent upon the demand having been reduced, it was held by the Supreme Court that the assessee could not be treated as a defaulter and that the recovery proceedings initiated against him on the basis of the original demand notice were to be quashed. However, it is not necessary to issue

⁷ ITO Vs. Seghu Buchiah Setty (1964) 52 ITR 538 (SC)

a fresh NOD to an assessee whose income and the tax thereon has been modified as a result of effect having been given to any appellate or revision order in his case.⁸⁻⁹

13. In the event of any reduction being effected in the certificated demand, it is incumbent upon the ITO to intimate to the TRO the reduced demand to enable the TRO to pursue its recovery.¹⁰⁻¹¹

14. Certificated arrears should be reconciled with ITO's records. – Instructions already exist to the effect that the TROs should reconcile the arrears, and that the ITO should periodically pass on to the TROs, information regarding each payment made by the defaulters and the variations, if any, in the certificated arrears.

15. Information relating to defaulter's assets to be collected during verification of arrears. – In fact, as per CBDT's Instructions, this information is supposed to be furnished by the ITO to the TRO in an annexure attached to the statements for drawing up of Recovery Certificates u/s. 222 of the Act by TRO.¹²

16. The nature of the arrears and the status of defaulters may be ascertained also before coercive steps are taken.

17. Recovery in the case of a firm can be made from its partners if the certificate mentions names of partners – Where the defaulter in question is a RF and where the certificate cites only the firm as the defaulter, no proceedings can be taken against the properties or person of the partners of the firm, for, in such a case, the defaulter being the firm and not its individual partners, no process of this nature could lie against them personally. It is only when the names of the partners are mentioned in the certificate drawn by the TRO that the TRO will be vested with the power to proceed against the partners for recovery of the taxes due from the firm.¹³

18. In the case of a URF also, no recovery can be made from the partners in respect of the demand outstanding against the firm, if the certificate fails to mention the names of the partners.¹³

19. Firm's tax may be realized only from the partners who are not insolvent. – If the defaulter is a firm, the liability of all the partners is co-extensive with that of the firm¹⁴. No solvent partner, should, however,

⁸ Union Saw Mills & others Vs. Jardine Hinderson Ltd. 118 ITR 112, Gopichand 102 ITR 707

⁹ Chulai Ram Vs. ITO (Collections) Varanasi (1974) 94 ITR 463 (Alld.)

¹⁰ Union of India Vs. Jardine Henderson Ltd. (1979) 118 ITR 112 (SC)

¹¹ Union of India Vs. Raj Kumari Narendra Kumari (1978) 113 ITR 299 (Cal.)

¹² Appendix-6

¹³ Kethmal Parikh Vs. TRO 87 ITR 101

¹⁴ Sahu Rajeshwar Nath Vs. ITO C-ward Meerut & another

be left out or exempted in the recovery proceedings as other wise the proceedings may get vitiated.¹⁵⁻¹⁶

20. Recovery of a partner's dues from the firm and co-partner's. – If the defaulter is a partner in a RF which has been dissolved, and tax levied on the defaulter in respect of his share income from the firm can not be recovered from him, the arrears, including any interest and penalty, can be recovered from any other partner of the firm u/s. 182(3) and 189(3) of the Act.¹⁷⁻¹⁸

21. When should the certificate be referred back to the ITO. – A TRC should, indicate the names of the persons from whom recovery can lawfully be made. All the statements for drawing up of the TRC which fail to supply this vital information for drawing up of the TRC must be returned to the Income-tax Officer asking them to furnish all the relevant information in the statement.

22. Obligation of liquidator where a company is the defaulter. – Section 178 of the Act enjoins on an official liquidator to set apart, before distributing the assets of the company to other secured creditors, funds to the extent of the entire income-tax liability of the company as notified by the ITO.¹⁹

23. Joint and several liability for the payment of the tax due in certain cases. –

Under the provisions of the Act, the liability to pay the tax does not always rest with a single person. There are instances where several persons are held responsible to pay the demand raised in a single assessment. The sections of the Income Tax Act 1961 dealing with this issue are :- Section 65, Section 171(6), Section 177(3), Section 179, Section 189(3).²⁰

Where a number of persons are made jointly and severally liable for the demand, the TRO has to draw as many certificates as there are persons who are jointly and severally liable.

24. Whenever the TRO collects any amounts towards the satisfaction of the certificated dues, he should send an intimation in this behalf to the ITO. While one copy of the said proforma is to be retained as the office copy, two copies thereof will be forwarded to the ITO.

¹⁵⁻¹⁶ ITO, Asst. II, Calicut and another Vs. C.V. George & others 105 ITR 144, Rajeshwarnath Vs. ITO 71 ITR 617

¹⁷ E.P.Eapen Vs. ITO 112 ITR 829

¹⁸ ITO Sitapur Vs. Khanjan Lal & others (1973) 89 ITR 120 (Alld.)

¹⁹ Imperial Chit fund ltd. (In liquidation) Vs. I.T.Deptt. 116 IR (176)

²⁰ E.P. Eapen Vs. ITO 112 ITR 829

CHAPTER-IV

SERVICE OF NOTICES

1. Mode of service. – The procedure relating to the service of notices issued by the TRO under Sch. II¹ is governed by the provision of Sec. 282(1) of the IT Act, 1961, which provides that a notice or requisition under the Act may be served on the person named therein either by post, or as if it were summons issued by the Court under the Code of Civil Procedure. These two modes of service are briefly described below.

2. Service by post. – Where a notice is served by post, it should be sent by Registered Post, Acknowledgement Due. U/s. 27 of the General Clauses Act, 1897, there is presumption of effective service only if the notice was properly addressed, postage was pre-paid, and it was dispatched by registered post. If a notice duly addressed and sent by registered post, comes back with the endorsement “refused” made by the Postal Authorities, proper service may be presumed, unless the assessee proves the contrary.

3. Service otherwise than by post. – This mode of service can be divided broadly under 3 heads, namely (i) service on person, (ii) service by affixture and (iii) substituted service.

4. Service on person. – Wherever practicable, a notice shall be served by the process server on the assessee in person, or on his agent authorized to accept the service of notices on his behalf. Service may be made on any adult member of the family, whether male or female, who is residing with him.

It is noteworthy that a servant is not regarded as a member of the assessee’s family.

When the serving officer delivers a copy of the notice to the assessee or any other person on his behalf, he shall obtain on the original notice the signature of the person to whom the copy of the notice is so delivered. In the alternative, the serving officer may take the signature of the person on tear off acknowledgment slip (ITNS 50)² in token of the service of the notice.

5. Service by affixture. – Rule 17, 18 & 19 of Order V of the CPC³ provide for the contingency when the assessee or his agent refuse to take the notice, or when the serving officer, after using all due and reasonable

¹ See Appendix-2

² See Appendix-12

³ See Appendix-13

diligence, cannot find assessee, and there is no agent or other person on whom the service can be made. In such circumstances, service can be made by affixture. The use of the words 'after using all due and reasonable diligence' is highly significant, and it is absolutely necessary that the serving officer should make a sincere effort to serve the notice on the person.

6. Substituted service. – There may be occasions when the assessee is keeping away for the purpose of avoiding service, and the notice cannot be served in the ordinary way on any other person. In such circumstances, the T.R.O. has to pass an order under rule 20 of Order V of the CPC³ to that effect and order substituted service of the notice by affixing a copy of the notice at some conspicuous place in the TRO's office and also upon some conspicuous part of the house (if any) in which the defaulter is known to have last resided, or carried on business, or personally worked for gain.

7. Where the person is not an "Individual", the service of the notice has to be made on the person(s) specified in sections 282(2), 283 and 284 of the Income-tax Act, 1961. This is explained in the Chart below:-

Status of the defaulter	The person on whom service is to be made is
(i) Hindu Undivided Family:	
(a) When the family is either in existence or partially partitioned or whose business is discontinued at the time of issuing the notice.	The Manager (Karta) or any adult (not necessarily a major) member (not necessarily male) of the family [S.282(2)(a) & 284]
(b) Where the family is totally partitioned and is not in existence.	The person who was the last manager(Karta) or if such person is dead, then all adults (not necessarily major) who were members of the family immediately before partition. [S.283(1)]
(ii) Firm	
(a) Where the firm is in existence	Any member of the firm [S. 282(2)(a)]
(b) Where the firm is dissolved	Any person who was partner of the firm immediately before its dissolution [S.283(2)]
(c) Where the firm disconti-	Any person who was member of the

nued its business firm at the time of its discontinuance
(Sec. 284)

**(iii) Other Association of
Persons(AOP) or Body of
Individual:**

- | | |
|---|---|
| (a) Where the AOP is in existence | The principal officer or other member thereof [S.282(2)(c)] |
| (b) Where the AOP is dissolved | Any person who was a member of the AOP immediately before dissolution [S.283(2)]. |
| (c) Where the AOP discontinued its business | Any person who was a member of the AOP at the time of its discontinuance (S.284) |

(iv) Company or local authority:

- | | |
|--|--|
| (a) Where the company or local authority is in existence | The principal officer thereof [S.282(2)(b)] |
| (b) Where the company discontinued its business
(This is not applicable to Limited Company) | The principal officer thereof a the time of its discontinuance (S.284) |
| (c) Where the company is in liquidation. | The official liquidator. |

- | | |
|---|--|
| (v) Any other person (not being an individual as in the case of an artificial juridical person e.g. a deity. | The person who manages or controls its affairs, say, a shebait or a Mutawalli [S.282(2)(d)]. |
|---|--|

(vi) Other cases

- | | |
|------------------------------|--|
| (a) Deceased person | Legal representative, which term includes an administrator or executor of the deceased. |
| (b) Insolvent person | Official Assignee or Official Receiver |
| (c) Minor, Lunatic or Idiot | Guardian or manager |
| (d) Beneficiaries of estates | Court of wards, or Administrator General or Official Trustees, or Receiver or Manager or Trustee, as the case may be |

8. The TRI should guard against any irregularity in the service of notices. They must scrupulously follow the rules of services, as the validity of

the recovery proceedings depends on the correct service of the initial demand notice under r.2, Sch. II.

9. The TROs would do well to study Board's Instructions on the matter contained in their letter dated 17th August, 1964. They may also bear in mind the excerpts from important judicial pronouncements referred to in Civil Court Manual Vol. and reproduced as Appendix-40 to this volume.

10. Effect of Non-issue of Notice. – The issue of a notice under Rule 2 is mandatory and can not be dispensed with. The Tax Recovery Officer has to issue a notice required by the Rule before he can assume jurisdiction, unless he is acting under the 1st proviso to Rule 3.⁴⁻⁵

The Supreme Court has held in the case of Baransi Devi Vs. Income-tax Officer⁶ that it is not sufficient that the notice should be only issued. It should also be served and served within the prescribed period, otherwise the notice is invalid. The fact that in some way or other the notice reached the person on whom it was to be served is not in itself sufficient compliance with the requirement of the service of the notice.⁷

11. Effect of Irregular Service of Notice. – Irregularity in the service of notice as distinguished from non-service is a material irregularity within the meaning of Order XXI, Rule 90 (corresponding to Rule 61 of the Schedule).³⁻⁸

12. Defaulter not being allowed the statutory period of fifteen days within which to pay the demand. – The Rule requires that the notice should give clear fifteen days time to the defaulter within which he is allowed to pay the arrears demand. If no time is given, or if the time given is less the notice is highly irregular unless there are circumstances present which justify such action under the first proviso to Rule 3.⁹

13. Limitation to Serve the Notice. – There is no time limit prescribed in the Rule within which the Tax Recovery Officer should issue a notice to the defaulter after he receives the certificate from the Income-tax Officer. Even so, it is incumbent upon the Tax Recovery Officer to issue notice to the defaulter within a reasonable time after he receives the certificate.¹⁰

⁴ Refer to Appendix-2

⁵ Qurban Hussain Ibrahimji Mithi Borwala Vs. CIT Gujarat 68 ITR (407)

⁶ Banarasi Devi Vs. ITO 53 ITR 100 SC

⁷ CIT Vs. Sheo Kumar Dev 157 ITR 13

³ See Appendix-13

⁸ Ram Lal Sahu Vs. Mst Ramia 1947 26 Pat. 340

⁹ Commissioner of Agricultural Income tax Vs. Ram Kunvar and other 141 ITR 85

¹⁰ Mohd. Ali Vs. ITO 46 ITR 452

CHAPTER-V
ATTACHMENT OF PROPERTY -
GENERAL, ISSUES AND CONCEPTS

With the service of a demand notice (ITCP-1)¹ on the defaulter, the stage is set for further action in recovery proceedings. Quite often, the service of the notice itself induces the defaulter to pay up the arrears, obviating the necessity to take further steps. TRIs have a crucial role to play at this stage of the proceedings and a clear understanding of the issues and concepts relating to attachment of property.

2. What is Property?

‘Property’ defined. – Neither the IT Act, 1961 and its Schedules, nor the CPC, nor the General Clauses Act, 1897, nor even the Transfer of Property Act, 1882 contain a comprehensive definition of the term ‘Property’. They do however, contain definitions of certain types of properties which enable one to comprehend the connotations of the term ‘property’

3. Movable and immovable property. – There is in law a distinction between movable and immovable properties; and secondly, certain items of property fall under one category but not under the other. For the TRIs, the aforesaid distinction has not merely academic significance but, more importantly, operational significance as well. For, as has been shown elsewhere in the Manual, the mode and procedure of attachment of the two categories of properties differ in significant respect. Hence the need for a clear understanding of the distinction between the two categories of properties.

4. Criteria to judge whether property is immovable. – Generally speaking immovable property carries with it the implication that it is attached to the earth or permanently fastened to anything attached to the earth.

However, while the factum of the attachment to the earth is an important consideration, it is by no means the sole consideration. One should look to the degree and nature of the attachment as well. The question whether a particular item of property is immovable or not will have to be answered in the light of the facts and circumstances of each case.

5. Another important aspect of the concept of property is that, in law, property does not merely connote full ownership or proprietorship, but

¹ See Appendix-11

also includes any right or power in respect of the same, e.g. the right to occupation.

6. What is Attachment?

Attachment defined. – Neither the IT Act, 1961 and its Schedules, nor the I.T.C.P. Rules, nor the CPC defines the term 'attachment'.

In the context of recovery proceedings, and particularly in relation to attachment of property, 'attachment' would mean a seizure by legal process. The power of seizure and sale by legal process is invoked in order to force one to fulfil one's obligations. And the power of seizure by legal process is incorporated in the Second-Schedule to the I.T. Act, 1961, and it could be exercised by an officer specifically empowered in this behalf by the said Schedule.

7. While the coercive process has been incorporated into the statute obviously with a view to putting teeth in the tax-law, yet the power is not unlimited. Rule 10 of the Second Schedule² specifically exempts from attachment and sale for purposes of recovery of tax arrears all property that is exempted by the CPC from attachment and sale in execution of a decree of a civil court.

8. Property which can be attached. – Section 60 of the CPC lays down that the following properties are liable to attachment:³

- (i) Land
- (ii) Houses or other Buildings
- (iii) Goods
- (iv) Money
- (v) Bank Notes
- (vi) Cheques
- (vii) Bills of Exchange
- (viii) Hundies
- (ix) Government Securities
- (x) Bond or other security fix monies
- (xi) Debts
- (xii) Shares in corporation
- (xiii) All other 'saleable property' movable or immovable belonging to

² See Appendix-2

³ See Appendix-13

the defaulter, or over which or the profit of which he has disposing power.

It may here be noted that the term 'property' is used in a very wide sense. Even if a property does not belong to the defaulter, any right or power in respect of the same which the defaulter may have acquired for his benefit can be seized and sold.⁴

9. Meaning of the term 'saleable property'. – The expression 'saleable property' means saleable at a compulsory court sale and not merely transferable by acts of parties,⁵ e.g a partner's share in the partnership is saleable property.

10. Meaning of the term 'debts'. – The term 'debts' means actual money claim that has already become due though it may be payable on a future date⁶ and also includes a share of 'debts'.⁷ A debt in order to be attachable, however, need not become payable at once.⁸

11. Attachment of property claimed to belong to a third party. – Normally property found at the premises of the defaulter is presumed to belong to the defaulter himself. It is however, incumbent upon the TRO to decide the objections of the parties before continuing with the attachment of the property in question.⁹ However attachment of property of alleged benamidar of assessee to recover taxes, where TRO has not led evidence to prove benami nature of property, is invalid.¹⁰

12. Some more examples of properties which can be attached:

- (i) Equity of redemption
- (ii) Right to claim specific performance of a contract to sell land;
- (iii) Security deposits;
- (iv) Compensation for land acquisition;
- (v) Insurance policies which are not assigned
- (vi) Promissory notes
- (vii) Goods in the hands of an agent
- (viii) Money payable by a purchaser where a contract of sale has been executed;

⁴ Radharani Vs. Bidodamayer 45 CWN 245

⁵ Keshab Vs. Azahar 19 CWN 1182

⁶ Venkat Rama Vs. Valli 58 M 693 FB

⁷ Upendra Vs. Nalini A-1937 C-199

⁸ Bansi Vs. Hafiz Ahmed A 1939 P-77

⁹ Smt. Shakuntala Devi Bhartiya (1979) 117 ITR 255 US TRO (Alld.)

¹⁰ Bank of India Vs. Union of India (1987) 107 ITR 668 (Delhi)

- (ix) Utensils used for preparing sweet meats by a shop keeper;
- (x) Motor tractors;
- (xi) Engines, etc. for running flour mill and for drawing water;
- (xii) Priests' share in the offerings;
- (xiii) Money due from a managing agent;
- (xiv) Provident Fund amount after its payment to the defaulter;
- (xv) Compensation for jagirdari abolition;
- (xvi) Private pensions;
- (xvii) Arrears of salary but not future salary;
- (xviii) Allowances of government servants which are not specifically exempt:
- (xix) A vested remainder;
- (xx) The interest of a member in the undivided property of HUF;
- (xxi) A life interest taken by a Parsi widow under her husband's will in the income from immovable property;
- (xxii) A mortgagee's interest in a usufructory mortgage;
- (xxiii) Arrears of maintenance allowances;
- (xxiv) Goods hypothecated by a defaulter to another party but which after hypothecation continue to be in the possession of the defaulter can be attached by the TRO and the State will have priority over amounts due under the hypothecation deed.¹¹

13. Property which can not be attached. – Properties which are exempted from attachment are detailed in the proviso to Sec. 60 of the CPC¹². It has to be noted that the exemptions are mandatory. Such properties cannot be subjected to attachment even with the consent of the defaulter.

14. The following types of properties are not attachable

Immovable Properties

- (i) Houses and other buildings with the material and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment, and belonging to an agriculturist or a labourer domestic servant and occupied by him.

¹¹ Union of India and another Vs. C.T. Sentilanathan and another (1978) 114 ITR 213(Mad.)

¹² See Appendix-13

“Agriculturist” means a person who cultivates land personally and depends for his livelihood mainly on income from agricultural land.¹³ whether as owner, tenant, partner or agricultural labourer (Explanations V & VI to Sec 60 CPC)¹⁴. Labourer includes a skilled, unskilled, or semi skilled labourer (Explanation IV to sec 60CPC)¹⁵. The house or the building should be in physical possession of the person concerned and used for agricultural purposes. A dilapidated building can not be said to be in occupation.¹⁶ Only houses used by agriculturists for agricultural purposes are exempt. A house belonging to an agriculturist situated about 8 miles away from his agricultural land and not needed for keeping agricultural implements will not be so exempt.¹⁷ Buildings, however, include tiled house of agriculturist.¹⁸

- (ii) An expectancy of a succession by survivorship or other merely contingent or possible right or interest as in the case of an auction purchaser before the auction is confirmed.
- (iii) The interest of a lessee in respect of residential building to which rent control laws are applicable.

Movable Properties

- (i) Wearing Apparel, cooking vessels, bags and bedding of the defaulter, his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by any woman. Cooking vessels would include not only those in which food is actually cooked but also include items like thali, gagra. etc.¹⁹ The Mangalsutra or other ornaments on the person of the defaulter’s wife which constitute her stridhan cannot be attached.²⁰ It may be noted that all articles of personal use, whether or not actually brought into use, are exempt.²¹
- (ii) Tools of artisans: Implements of husbandry used by an agriculturist or tools of an artisan are exempt from attachment. The essential point to remember in such cases is, whether the defaulter necessarily requires the tools or implements in question

¹³ Apa Sahib Vs. Bhale Randra A-1961 SC 589

¹⁴ See Appendix-13

¹⁵ See Appendix-13

¹⁶ Channu Vs. Khem A-1961 A 566

¹⁷ Bachu Bhai Vs. Lallita A-1972 931

¹⁸ Komirineni Vs. Official receiver A 1960 AP 458

¹⁹ Bindeshri Vs. Banshi A 1932 A 344

²⁰ Tukaram Vs. Gunaji, 8 BHCR 129

²¹ Hiralal Vs. Hari Ram, A 1974 39

for actually earning his livelihood. If he does so need them, such tools or implements cannot be attached²² Cattle used in agriculture are not exempt, unless the court has declared that they were necessary for the agriculturist concerned to earn his living²³ A firm is not an artisan, though individual members thereof may be artisans.²⁴ A goldsmith is an artisan but a person employing a goldsmith is not.²⁵ A halwai is not an artisan and his utensils are not tools of an artisan.²⁶ It has been held that musical instruments²⁷ or a surgeon's or a doctor's instruments²⁸ are not tools and are, therefore, not exempt from attachment.

- (iii) Books of account.
- (iv) A mere right to sue for damage: 'This includes a right to sue for future profits which cannot be attached'²⁹ Insolvent's right to sue for contribution is not exempt.³⁰
- (v) Any right of personal service: Right of shebiat to perform service or right to receive offering at a temple is exempt.³¹ Money due to a firm of Managing Agents from the company does not, however, constitute a right of personal service.³²
- (vi) Stipends and gratuities allowed to pensioners of the Government or of a local authority, or of any other employer payable out of any service family pension funds notified in the Official Gazette by the Central Government, or State Government in this behalf, and political pensions.

Pension implies periodical payment of money by Government to pensioners³³ Privy-purse is political pension.³⁴ Annual fixed payment for commutation of service lands is, however, not political pension.³⁵ Money received by retired Government servants in commutation of pension is not exempt.³⁶

²² Arumugha Vs. K. Marappa, A 1973 39

²³ Bakhir Vs. Doorga 10C 39 & Churey Vs. Sanwala, 61 IC 777

²⁴ Chapak Lal Vs. Swastik, A 1960 B 276

²⁵ Punnavanam Vs. Muthswami, A 1962 M 444

²⁶ Kanya Lal Vs. Sunder Lal, A 1957 Raj 353 – Contra: Mahabir Vs. Raghunandan, A 1935 A 848

²⁷ Lokasikamani Vs. Thiagraja, 1947 MMN 420

²⁸ Karam Vs. Official receiver, A 1933 L 936

²⁹ Shayam Vs. L.M. Bank, 9 C 695

³⁰ Surnnamukhi Vs. Virupakshanna, A 1969 AP 23

³¹ Harparsad Vs Prem Singh, A 1952 PU 138

³² Purshottam Vs. Baijnath, A 1941 C 240

³³ Wasif Ali Vs. KI Bank, A 1931 PC 215

³⁴ Usmanali s. Sagar, A 1961 SC 1798

³⁵ Ram Vs. Vithal, A 1948 B 148

³⁶ Hassonnal Vs. Diaromal, A 1948 S 19

- (vii) Wages of labourers and domestic servants whether payable in money or kind:

Where the doing of personal manual labour by the jobber is a condition of his employment, he is said to be a labourer and the remuneration earned by him will be categorized as wages.³⁷ Labourers would include skilled, unskilled, or semi-skilled workers, and wages would include bonus. A weaver in a textile mill is a labourer.³⁸ Wages include gratuity paid to a workman on the termination of his employment."³⁹

- (viii) Salary to the extent of the first four hundred and two thirds of the remainder in execution of any decree other than a decree for maintenance (in the case of decree for maintenance only one third of the salary is exempt):

Salary of public servant is attachable both before and after it has become payable.⁴⁰ Salary means gross salary including any amounts which may be required for the payment of taxes or payments or repayments to the Provident Fund even though these may be deductible from the salary.⁴¹ Arrears of salary and allowances are not subject to exemption under this clause.⁴²

- (ix) Pay and allowance of a person to whom the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1950 or the Navy Act, 1957 applies.

- (x) All Compulsory Deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies, in so far as they are declared by the said Act not to be liable to attachment:

The words means subscriptions or deposits in a Provident Fund.⁴³ Even un-paid amounts after retirement would constitute Compulsory Deposits, Government being a trustee for such sums which are not liable to attachment and in regard to which no receiver can be appointed.⁴⁴ Provident Fund or Compulsory Deposit monies remain unattachable as long as they are in the custody of the Government but once such monies are paid out

³⁷ Kulkarni Vs. Ganpat A 1942 B 191

³⁸ Mansuri Vs. Shetti, A 1965 B 276

³⁹ Badlu Vs. Tirjuji, A 1965 MP 42

⁴⁰ Province Vs. Tara Chand , 1947 FCR 89

⁴¹ Umar Vs. Abdul, A 1943 L 60

⁴² Union Vs. Hira 1952 SCR 765

⁴³ Municipal Corporation Vs. Ram 1939 R 432

⁴⁴ Union Vs. Hira 1952 SCR 765

they can be attached.⁴⁵ Exemption, however, is not available to compulsory deductions like payment to cooperative Societies or re-payment by instalments of loans taken from the Provident Fund.⁴⁶

- (xi) All deposits and other sums in or derived from any funds to which the Public Provident Fund Act, 1968 for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment.
- (xii) All monies payable under policy of insurance on the life of the defaulter,
- (xiii) The interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply
- (xiv) Any allowance forming part of the emoluments of any servant of the Government or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;
This exemption is not available to persons in the service of private employers.⁴⁷
- (xv) An expectancy of succession by survivorship or other merely contingent or possible right or interest.

The interest of a reversioner expectant on the death of a Hindu is not attachable or saleable.⁴⁸ It is only a vested Interest as distinguished from a contingent interest which can be attached.⁴⁹ A Hindu Coparcener's interest in joint family property is not exempt.⁵⁰

- (xvi) A right to future maintenance;

The prohibition does not apply to arrears of maintenance but only to attachment of prospective right of maintenance.⁵¹ Rights of beneficiary under a wakf deed to receive certain amounts periodically for maintenance are not attachable.⁵² Maintenance

⁴⁵ Secy. Of State Vs. Raj Kumar 50 C 347

⁴⁶ Sher Behudoor Vs. Pasupathy A 1973 K 175

⁴⁷ Mani Lal Vs. Mohan, A 1946 B 102

⁴⁸ Ramaswami Vs. R. 30 M 255

⁴⁹ Rajesh Vs Shani, 1957 SCR 77

⁵⁰ Shanmugam Vs. Ayyar & Co. A 1942 M 97

⁵¹ Asad Vs. Haider 38 C 13

⁵² Zahiruddin Vs. Chokey, A 1952 A 662

allowance which has already fallen due is a debt and can be attached.⁵³ The exemption should be restricted to maintenance pure and simple and any amount in excess thereof can be attached.⁵⁴

- (xvii) Any allowance, declared by any Indian Law, to be exempt from liability to attachment or sale in execution of a decree; and
- (xviii) Where the defaulter is a person liable for the payment of land revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of any arrears of such revenue.

15. Other movables which are not attachable. – Right to workshop, right of residence, articles with the auctioneer, life policy assigned, future rent, future salary, money falling due on a future date, money due from purchaser before registering the documents defaulter's wife's stridhan, sewing machine of a tailor, paraphernalia of soap factory, reward for personal service, salary of MPs and MLAs are also not attachable.

16. Persons authorised to attach. – The powers conferred under the provisions of the Act and Schedule-II⁵⁵ thereto as well as the ITCP Rules, 1962⁵⁶ are meant to be exercised primarily by the TROs. However, the CBDT in their Instruction No. 41 issued under F.No. 16/302/68-ITCC, dated 22.04.1969⁵⁷ have permitted the TROs to authorize their Inspectors to carry out attachment property.

17. Objection to attachment or sale - when to be raised. – The defaulter or his representative can raise an objection that properties are exempt from attachment under Rule 10 at any time before the sale⁵⁸ But once the sale is confirmed it is not open for any body to raise objection.⁵⁹

18. Question to be decided by Tax Recovery Officer. – The TRO is ultimately to decide as to whether any item of property is or is not exempt from attachment or sale, and his decision in this regard shall be final.⁶⁰

19. Investigation by Tax Recovery Officer.⁶⁰ –

- (a) Where any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate,

⁵³ Haridas Vs. Baroda, 4 CWN 37

⁵⁴ Chittory Vs. Themmana, A 1954 M 946

⁵⁵ See Appendix-2

⁵⁶ See Appendix-4

⁵⁷ See Appendix-15

⁵⁸ Kannan Vs. Govindan 1960 2 Ker 234

⁵⁹ Smt. Shakuntala Devi Bhartya Vs. TRO 117 ITR 255

⁶⁰ Bijli Cotton Mills (Under Auhtorized Custodian) Vs. TRO 101 ITR 624

on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection.

- (b) Where the property to which the claim or objection applies has been advertised for sale the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.
- (c) The claimant or objector must adduce evidence to show that –
 - (i) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears or
 - (ii) (in the case of movable property) at the date of the attachment he had some interest in, or was possessed of the property in question.
- (d) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.
- (e) Where the Tax Recovery Officer is satisfied that the property, at the said date, in the possession of the defaulter was, his own property and not on account of any other person; or was in the possession of some other person in trust for him or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.
- (f) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but subject to the result of such suit (if any).

20. Frivolous Claims. – The proviso to sub-rule (1) of Rule 11⁶¹ of the Second Schedule is designed to put a stop to frivolous claims which are made with the ulterior motive of delaying the proceedings as also where the claim has the effect of unnecessarily delaying the proceedings.

21. Postponement of Sale. – When the Tax Recovery Officer decides to investigate the claim and the property in the meantime has been put up

⁶¹ See Appendix-2

for sale, he may postpone the sale pending the investigation, upon such terms of security or otherwise as the Tax Recovery Officer may deem fit.

Where a proclamation for the sale of a property has been made, the TRO may postpone it pending investigation of the claim.

But the discretion conferred on the TRO by Rule 11(2) to postpone the sale does not authorise him to reject the claim on ground that the terms to which he put the objector for postponing the auction have not been complied with.

CHAPTER-VI

ATTACHMENT OF MOVABLE PROPERTY

IT Act prescribes different procedures for attaching movable and immovable properties. This chapter deals with the procedure prescribed for the attachment of movable property.

1. Recovery by distraint.¹ – This is perhaps the most effective mode, because the comparative ease with which movable properties can be distrained, and the defaulter can be dispossessed, and the sense of deprivation which is instantly felt as a result, exerts enormous psychological pressure on the defaulter, rendering him ready to pay up the arrears immediately.

Rules 20 to 36 of the Second Schedule² to the Act lay down the procedures³ to be followed while attaching movable properties, depending on the nature of the property to be attached.

2. Cases Covered by Warrant Procedure

- (a) **Warrant of attachment : Form No. ITCP-2.**⁴ – The warrant of attachment of movable property should be issued in Form No. ITCP-2. The warrant
- should be in writing;
 - should be signed by the TRO;
 - should specify the name of the defaulter and the amount to be realized; and
 - should state the place where the movable property is located.

If the movables to be attached lie in different places, the addresses of all such places should be specified in the warrant. Clearly, then, a blanket warrant is invalid.

- (b) The next step is to serve the warrant on the defaulter. Service of the warrant is a condition precedent to the attachment of the properties in question. As far as possible, the warrant should be served on the defaulter himself. However, in case the defaulter is available but refuses to receive it, service by affixture as per Civil Procedure Code may be adopted. But if the defaulter is not present, it may not be advisable to effect service on any adult

¹ Appendix-1 (see sec 226(5)), Appendix-3 (procedure for Distraint)

² Appendix-2

³ See Appendix- 16

⁴ Appendix-11

male member, since coercive process is being taken and it is better that the warrant is served on the defaulter alone. However, if the adult male member is one who usually attends to the business of the defaulter, or is otherwise closely connected with him, the notice may be served on such member. But, on no account service by affixture should be resorted to at the very first instance.

3. 'Actual seizure' explained- The movable properties covered by warrant procedure are attached by 'actual seizure', which means taking physical possession i.e. dispossessing the defaulter of the movable property, and nothing more. It does not mean application of force or violence on either the defaulter's property or his person. Actual seizure includes constructive seizure also. Where a warrant of attachment⁵ is executed by affixing it to the outer door of the warehouse in which goods belonging to the defaulter are stored, a case of constructive seizure arises⁶.

Attachment of movable property (other than agricultural produce) covered by warrant procedure

4. When the stage is set for executing the warrant, the TRO should first tackle the cash in the till or elsewhere. Generally, the defaulter at this stage tenders the cash towards arrears of tax. If he tenders the cash available with him, the question of attachment of cash does not arise. A receipt for the amount must then be given to him, and the other movable property proceeded against for the recovery of the balance of arrears. If the cash is not tendered, the cash also should be attached.

5. At this stage, two important points must be borne in mind. Firstly, the attachment as such should be commenced after sun-rise and completed before sun-set. Any violation of this condition would result in the entire attachment being declared void. Secondly, the TRO may, in order to effect attachment, break open any inner or outer door, or window of any building, and enter any building to seize any movable property liable to seizure. He should however give sufficient opportunity to the women in the household to withdraw.

6. Before commencing the attachment, the TRO should call two witnesses and also the defaulter to his side and state that he is commencing the attachment. The preliminary portion of the Panchnama⁷ must then be got written up, preferably by one of the witnesses. Thus, the Panchnama will record the time at which the proceedings have been

⁵ Appendix-11(Form No. ITCP-2 &16)

⁶ Muttan Chand Vs. Bank of Madras 1904ILR 27-346(Mad)

⁷ Appendix-17

commenced. In making the actual attachment of the articles, the TRO should be careful not to attach the articles which are exempt under section 60 of the Civil Procedure Code.⁸

7. The powers of the TRO under Rule 23⁹ of the Second Schedule are only limited to actual seizure of movable properties, and he has no power to search. The powers conferred on the TRO are narrower than the powers conferred on an Assessing Officer or any other authority at the time of search and seizure under section 132 of the Income-tax Act, 1961. At the time of attachment, the objective of the TRO is limited and that is to attach the movable found in the premises, and that too only to the extent of the amount mentioned in the warrant, since under Rule 34¹⁰ of the Second Schedule the attachment by seizure should not be excessive.

8. The power conferred upon the TRO is limited to breaking open the doors and windows of the building, and does not extend to the doors of almirahs etc. found in the premises. If necessary, he may attach a locked almirah, but he cannot break open its doors. Should this become necessary, he should request the higher authorities to act under section 132 for this purpose.

9. Next, an inventory of the articles attached by actual seizure is to be prepared. Certain precautions should be taken in this connection. As far as possible, a complete description of the articles must be given in the inventory. A copy of the inventory should be delivered to the defaulter, and another copy sent to the Tax Recovery Officer — vide Rule 33¹¹ of the Second Schedule. There is no specific provision under the rules for a proforma of the inventory. However, a proforma is prepared and given as Appendix 18¹², which may be used. It is advisable to make the inventory an integral part of the Panchnama.

Where valuables like diamond and gold jewellery and silver articles are attached, it is necessary to get them valued by a reputed goldsmith or a jeweller.

10. The attached articles have then to be removed either to the office of the TRO, or to the place where they have to be deposited. The expenses incurred on the removal of the articles to the place aforesaid are to be defrayed by the defaulter himself. If he refuses to do so, the cash attached, if any, may be utilized for defraying the expenses. The third alternative

⁸ Appendix-13

⁹ Appendix-2

¹⁰ Appendix-2

¹¹ Appendix-2

¹² Appendix-18

is, of course, that the Department defrays the expenses, and recovers them from the defaulter by adjustment from out of the monies realised on sale of the attached articles.

11. Where heavy articles such as iron safes, steel-almirahs are attached, it may not be economical to transport them to the office. In such cases the TRI may, with the permission of the TRO, leave the attached articles in the custody of the defaulter till they are sold. For this purpose, a duly stamped bond (Supurdnama) must be got executed by the defaulter – vide Rule 26 of the ITCP Rules, 1962, and Form No. ITCP 23¹³. The stamp duty to be paid varies according to the value of the property, the minimum being Rs. 250. In cases where the articles are very valuable, it will be advisable to require the defaulter to also furnish a surety bond executed by two solvent persons.

Once the articles are left in the custody of the defaulter on his executing a Supurdnama, the TRO has no power to lock up the doors of the room in which the articles are deposited.

12. The TRO, as the attaching official, is personally responsible for the safe custody of the articles attached by him¹⁴. He should, therefore, personally ensure that the articles are safely brought to the TRO's office or to the place where the Department has made arrangements for their safe keeping. (Articles subject to speedy and natural decay, e.g. milk, eggs, vegetables, etc. should be sold at once).

13. Some times, the TRO as the attaching official, may come across certain practical difficulties in the course of attachment. For example, the defaulter may refuse to receive a copy of the warrant or, to evade service of the warrant, he may run away from the premises. No hard and fast rule can be laid down as to what should be done in such cases. Normally, in such cases it is better to affix a copy of the warrant on a conspicuous part of the house of the defaulter, or the business premises as the case may be, and to proceed with the attachment.

14. Not infrequently, the TRO may meet with resistance when he tries to remove the attached articles from the premises of the defaulter. Whenever the TRO apprehends danger, he should seek Police assistance. In all such cases, a panchnama should be got drawn by two respectable witnesses of the locality. In cases of physical resistance, the written consent of the Commissioner of Income Tax should be obtained for lodging a complaint with the Police.

¹³ Appendix-11

¹⁴ Bachraj Dugar Vs. Lalchand Todi 1962 AIR 23 (Assam) New Hindustan Bank Ltd. Vs. Amritsar Pathankot Transport Ltd. 1958 AIR 348 (Punj.)

15. Normally, there is a presumption that all the articles found inside the premises where the defaulter lives belong to him, and hence they can be attached. Even here, if a defaulter is a male member, only articles which would belong to a male person can be seized. There is also a legal presumption that jewels found in the premises belong to the women folk and not to the male members, unless there is evidence to the contrary. Hence as far as possible, unless the defaulter is a lady, attachment of jewellery should be avoided.

16. At times, a person other than the defaulter may claim to be the owner of the articles attached. The TRO has no authority to decide such claims, and no discretion to release the article. He should record the fact that such a claim was made, and direct the claimant to file an objection petition before the TRO. The Panchnama should invariably reflect the above development.

17. Attachment of agricultural produce and growing crops. – Rules 24 and 25¹⁵ of the Second Schedule deal with the attachment of agricultural produce. Movable property includes growing crops as per rule 1(d) of the Second Schedule. This definition must be limited to the Second Schedule, for under Section 3(26) of the General Clauses Act, 1897, standing crops are immovable property. The procedure relating to actual seizure of movable property cannot be applied in its entirety to growing crops, because considerable injury would be caused to both the parties i.e. the defaulter and the Department, if such crops were to be removed on attachment like other movable property. With a view to preventing such injury and to securing to both parties the fullest value for the property attached, it is enacted that, where agricultural produce is attached, the Tax Recovery Officer should make such arrangements for the safe custody thereof as he may deem sufficient, and that the defaulter should be allowed to continue to perform the acts of husbandry, subject to such conditions as the TRO may impose. While a defaulter whose standing crops have been attached has a right to cut, gather, or store the produce, he has no right to remove them, as they pass into the possession of the Tax Recovery Officer by virtue of the attachment.¹⁶

18. Procedure of attachment of agricultural produce. – A copy of the warrant of attachment should be affixed on the land on which the crop stands. Where the produce has been cut or gathered, the warrant should be affixed on the threshing floor or fodder stock where the crop is deposited. Another copy of the warrant should be affixed on the outer door, or on some other conspicuous part of the house in which the defaulter ordinarily resides or, with the permission of the Tax Recovery

¹⁵ Appendix-2

¹⁶ Mahabir Sah Vs. Emperor 1941 AIR 139 (Patna)

Officer, on the outer door, or on some other conspicuous part of the house in which he carried on business or personally worked for gain, or in which he is known to have last resided, or carried on business or personally worked for gain.

19. Attachment of movable property by issuing prohibitory order. – Rule 26¹⁷ details the procedure for attachment of (i) a debt not secured by Negotiable instrument; (ii) shares in a corporation, and (iii) other movable property not in the possession of the defaulter, excepting property in the custody of any court. Attachment is effected in these cases by issue of prohibitory orders.

20. Attachment of debt not secured by a negotiable instrument. – A debt may be defined as a certain sum due from one person to another under a speciality or deed, or under simple contract, written or oral¹⁸. The essential requisites of a debt¹⁹ are:

- (i) an ascertained or readily calculable amount;
- (ii) an absolute, unqualified and present liability in regard to the amount with the obligation to pay forthwith or in future within a certain time; and
- (iii) the obligation must have accrued and must be subsisting and should not be that which is merely accruing.

The situation of the debt will be where the debtor resides, or, if the debt had been contracted to be paid elsewhere, then the place of payment – If the situation of the debt is outside the jurisdiction of the TRO attaching the debt, the prohibitory order (ITCP No.3)²⁰ should not be served on the debtor by the said TRO. After issuing the prohibitory order to the defaulter, the TRO must transfer the certificate proceedings to the TRO having jurisdiction over the situation of the debt.

The attachment of a debt does not prevent the defaulter from suing his debtor, or from taking any other steps necessary for the recovery of the debt. But he is not entitled to receive a payment from his debtor, unless the tax for which attachment was made is first cleared.²¹ The debt due to the defaulter jointly with one or more persons cannot be attached under this rule²². It has to be dealt with u/r 26²³.

¹⁷ Appendix-2

¹⁸ CWT Vs. Ahmed Tea Co. Pvt. Ltd. 48 ITR 943 (Assam)

¹⁹ CWT Vs. Pierce Leslie Co. Ltd. 48 ITR (1005) Madras

²⁰ Appendix-11

²¹ Sahib Singh Vs. Sita Ram 1891 ILR 13.76(All), Beti Vs. Collector of Etawah 1895 ILR 17.198 (All)

²² Moideen Batha Rowther Vs. Sulaiman Saheb 1956 AIR 163 (Madras)

²³ Appendix-2

Salaries of employees (other than employees of Government or local authority) will also come under the term 'debt due', and will have to be dealt with u/r 26(1)(a).²⁴ The attachment should be made as and when salaries become due, whether it be from month to month or otherwise. The non-attachable portion of the salary is laid down in rule 10²⁵. The exemption contemplated by rule 10 does not apply to arrears of salary. Dearness allowance is part of the salary, and it should be taken into account in calculating the amount which is attachable u/r 26(1)(a) read with rule 10, provided there is no statutory provision specifically exempting the Dearness Allowance from attachment. The deductions to be made on account of Provident Fund and Income-tax should be made from the non-attachable portion of the salary. The sum standing to the credit of a subscriber to P.F. is not a debt which can be attached. But once the P.F. money is paid out by the employer to the employee, it loses the character of compulsory deposit and it may be attached.

The Government Securities, Annuity Deposits of the defaulter held by the Reserve Bank of India should be attached in the manner prescribed by Instruction No 400 dated 1.4.1972 of the Board.

21. Attachment of shares in Corporations. — In the case of shares held by the defaulter in a company, an order in ITCP 4²⁶ should be issued both to the defaulter and the Principal-Officer of the company prohibiting them from making any transfer of the shares. A copy of the prohibitory order shall also be affixed on the notice board of the Tax Recovery Officer.

It is not necessary that the corporation or the company in which the defaulter holds shares must be located within the jurisdiction of the TRO issuing the prohibitory order. What is essential is that, at the time of the attachment, the share should stand in the name of the defaulter in the books of the company. A deed of transfer executed by a defaulter will have no effect on the attachment, if the deed is defective in that it does not comply with the formalities prescribed in that regard by the Indian Companies Act and the Articles of Association of the company.²⁷

22. Attachment of movable property not in possession of the defaulter. – In the case of movable property not in the possession of the defaulter e.g. pledged articles etc., an order in ITCP 5²⁸ should be issued to the person who is in immediate possession of the property prohibiting him from delivering the said property to any person. A copy of the order

²⁴ Ram Gopal Vs, Misrilal 1953 AIR 127 (Mysore)

²⁵ Appendix-2

²⁶ Appendix-11

²⁷ Nagbushnam Vs. Ramchandra 1923 AIR 241(Madras)

²⁸ Appendix-11

should also be served on the defaulter, prohibiting him from receiving the property. Another copy of the order shall also be affixed on the notice board of the Tax Recovery Officer.

23. In all the three types of attachments detailed above, affixing of a copy of the prohibitory order on the notice board of the Tax Recovery Officer is a mandatory requirement which should be strictly complied with. It has been held that there is no attachment if there is a failure to affix a copy of the order in the court house – the TRO's office here.

24. Attachment of decree. – Rule 27²⁹ of the Second Schedule deals with the attachment of court decrees. A decree of a Civil Court for the payment of money, or for sale in enforcement of a mortgage or charge can be attached by the issue of a notice of attachment in ITCP 6³⁰ to the Civil Court requesting it to stay the execution of the decree. Thereupon, the Income-tax Officer will be requested to apply to the Court to execute the decree³¹ so that the proceeds of the decree can be realised and adjusted towards tax arrears. Sub-rule 3 of Rule 27 declares that the Income-tax Officer is the representative of the decree-holder. Where the decree is attached, it can only be realised by execution but it cannot be sold in execution.³²

25. Attachment of share in movable property. – Rule 28³³ of the Second Schedule provides for the attachment of share or interest in movable property belonging to the defaulter and others in co-ownership³⁴. Such a share or interest cannot obviously be attached by actual seizure. A provision has, therefore, been made for the issue to the defaulter of a notice in form ITCP 7³⁵ prohibiting him from transferring his share or interest or charging it in any way. A copy of this prohibitory order should be served on the defaulter.

26. Attachment of salary of employees of Government and Local authorities. – Rule 29³⁶ of the Second Schedule applies to salary of employees of Government or a local authority. A Member of a Legislature is not a Public Officer holding Office of Profit under the President and his salary cannot be attached under this rule. The attachment of salary will be effected by issue of an order in ITCP 8³⁷ to the disbursing Officer

²⁹ Appendix-2

³⁰ Appendix-11

³¹ Soorayya Vs. Mallaya 28 ITR 362 (AP)

³² Radhakrishnan Chamaria Vs. Durga Prashad Chamaria 1940 AIR 167 (Privy Council) Rama Rao Vs. Ranganayakalu 1963.2 Andhra Weekly Report 205 (AP)

³³ Appendix-2

³⁴ Mohamad Fakhruddin Vs. Narayan Dass 1955 ILR 461 (Mysore)

³⁵ Appendix-11

³⁶ Appendix-2

³⁷ Appendix-11

requiring him to withhold the salary subject to a specific limit, and remit the amount to the Tax Recovery Officer in pursuance of the attachment order. A copy of this order shall be served on the disbursing Officer. A copy of this order may also be served on the Government servant concerned so that he can also know that his salary is kept under attachment.

27. Attachment of negotiable instruments- Rule 30³⁸ of the Second Schedule lays down that negotiable instruments shall be attached by actual seizure. A negotiable instrument means a promissory note, or a bill of exchange including Hundi, or cheque payable either to order or bearer. The holder of the instrument can claim payment on it. It is passed on from one person to another by endorsement or delivery. A deposit receipt is not a negotiable instrument. It is only a document evidencing the debt due to the defaulter.³⁹

28. The order of attachment shall be issued in Form No. ITCP 9⁴⁰ to the TRI who will seize the negotiable instruments and prepare an inventory. A copy of the inventory should be handed over to the defaulter. Panchnama must also be drawn up.

A copy of the order of attachment should be served on the defaulter and also on the concerned debtors, so that they may not pay the amount to the promisee to anyone else excepting the TRO.

29. Attachment of property in the custody of a Court or a Public Officer.
– Property in the custody of a court or a Public Officer has to be attached u/r 31⁴¹, by issuing a notice in Form No. ITCP 10⁴² to the Court or, as the case may be, to the Public Officer. The term Public Officer has been defined in Sec 2(17)⁴³ of the Civil Procedure Code. The court or the Public Officer need not necessarily be within the jurisdiction of the TRO attaching the property. It is essential that, at the time of the attachment, the defaulters' property must be in the custody of the court or the Public Officer.⁴⁴ Where the Court has already passed a rateable distribution order, it cannot be attached.⁴⁵ Under Rule 31, once a notice is sent to Court, attachment of the property of defaulter in custody of Court takes effect and Court is required to hold property subject to further order

³⁸ Appendix-2

³⁹ Bhagwan Dass Naryan Dass 98 ITR 204 (Gujarat)

⁴⁰ Appendix-11

⁴¹ Appendix-2

⁴² Appendix-11

⁴³ Appendix-13

⁴⁴ Saydekhaja Vs. Raghavendra Rao 103 ITR 294 (AP)

⁴⁵ Rangabhashyam Vs. Sambandan 1952 AIR 540 (Madras), Srinivas Pandit Vs. Jagjeet Singh Sawhney 104 ITR 20(Del)

from TRO.⁴⁶ An anticipatory attachment made before the money has reached the Public Officer is invalid. Money deposited by a contractor with Public Works Department as security for due performance of the contract and sums due for work done but retained till completion of contract are debts due to the contractor and may, therefore, be attached under this rule.⁴⁷ Attachment of property in the hands of a Receiver or Official Assignee cannot be done without the leave of the court. Where, however, the defaulter is entitled to receive dividends from the Receiver/ Official Assignee, the same can be attached u/r. 31, as such an attachment does not in any way interfere with the administration of the insolvent's estate.

30. Not infrequently, attachment u/r 31 gives rise to the question of priorities among the creditors including the Government. As between the unsecured creditors and Government debts, the latter takes precedence over the former.⁴⁸ There is no difference in this respect between Income tax and any other tax due to a State such as Sales Tax.⁴⁹ It is not necessary that the state should have obtained a decree on its claim, because its claim rests on the well established principle that Crown debts are entitled to priority.⁵⁰ Arrears of Income tax are recoverable in preference to other debts even without effecting an attachment of the defaulter's property.⁵¹ Under the Constitution, Income tax dues have priority over debts due to unsecured creditors.⁵² The State has priority not only over the debts already due before the insolvency of the defaulter but also over those debts which might become due after the defaulter is declared insolvent. An Income tax demand created after the adjudication order will also have priority.⁵³ But this priority exists only so long as the assets remain the property of the judgement debtor. Where an order for rateable distribution is made, the title of the judgement debtor to the fund in court is extinguished and with that the right of the Government to proceed against it must cease.⁵⁴

⁴⁶ TRO Vs. Bansaben (1982) 135 ITR 572 (Karnataka)

⁴⁷ Menraj Ganga Ram Vs. Waman Rao 1954 ILR 378 (Madhya Bharat)

⁴⁸ Srinivas Pandit Vs. Jagjeet Singh Sawhney 104 ITR 20(DEL) Union of India Vs. Tata Mills Ltd. 110 ITR 135 (Cal.)

⁴⁹ State of U.P. Vs. Santlal 1963 AIR 495(All.)

⁵⁰ Manickam Chettiar 6 ITR 180 (Madras Full Bench)

⁵¹ Governor General – in – Council Vs. Chotalal Shivdas 7 ITR 411 (Bombay)

⁵² Builders Supply Corpn. Vs. Union of India 56 ITR 91(SC), R.K. Gaghavan Vs. Union of India (1983) 140 ITR 864 (Mad.)

⁵³ The Secretary of State for India Vs. Official Assignee 5 ITR 677 (Sindh)

⁵⁴ Basant Kumar Vs. Panchu Gopa 1956 AIR 23 (Cal.) Somasundaram mills (P.) Ltd. Vs. Union of India 74 ITR 668 (Madras) See Contra: Punj. & Sind Bank Ltd. Rajaram Srinarain & Others 75 ITR 402(All.)

31. Attachment of defaulter's partnership property. – Rule 32⁵⁵ of the Second Schedule deals with the attachment of partnership property. The interest of a partner in partnership business is moveable property, although part of the partnership property may consist of immovable property.

Interest in partnership can be attached by issue of ITCP 11⁵⁶ to the firm ordering that the share of the defaulter partner in the partnership property and profits are charged with the payment of the arrears under the certificate. A copy of this order of attachment should be served on the firm. It is also necessary to serve a copy of this order on the defaulter-partner so that he can know that his share in the partnership property and profits has been attached.

Rules 33 to 36⁵⁷ lay down the procedure for attachment. The procedure prescribed must be strictly followed; otherwise, the entire attachment and subsequent sale are liable to be quashed.

32. Expenses on attachment. – All expenses connected with attachment, maintenance and custody of movable property are recoverable from the defaulter - vide Rule 35⁵⁸ of the ITCP Rules 1962.

⁵⁵ Appendix-2

⁵⁶ Appendix-11

⁵⁷ Appendix-2

⁵⁸ Appendix-4

CHAPTER-VII

ATTACHMENT OF IMMOVABLE PROPERTY

1. Attachment of immovable property-how made. – Part III of Second Schedule¹ deals with attachments of immovable property and attachment is made by an order in ITCP 16,² as per rule 48 of Second Schedule which orders for –

- prohibiting the defaulter from either transferring the property, or charging it in any way, and
- prohibiting all persons from taking any benefit under such transfer or charge.

To achieve the above twin-objective

- a copy of the order of attachment must be served on the defaulter; and
- the fact of attachment proclaimed; and
- a copy of the order must be affixed on a conspicuous part of the property, as well as on the notice board of the Office of the T.R.O:

2. Effect of attachment. – It may be recalled that, immediately on drawing up of certificate u/s. 222 of the I.T. Act by T.R.O. he is statutorily bound to issue to the defaulter a notice of demand in Form No. ITCP 1.² An order of attachment under rule 48 can be issued only thereafter, and that too, when the defaulter has failed to pay the arrears. Rule 51 makes it clear that the attachment of immovable property shall relate back, i.e. take effect from, the date of service of the notice of demand in Form No. ITCP 1.²

3. Attachment procedure. – There should be a proper order of attachment prohibiting the defaulter from transferring the property sought to be attached. The question whether a valid order of attachment was made is one of fact.³ The object of the rules in prescribing a particular way of notifying the attachment is to give notice to the defaulter not to alienate his property, and to the public not to accept any alienation from him.⁴ A mere prohibitory order will not constitute a sufficient attachment,

¹ Appendix-2

² Appendix-11

³ Sahul Hameed Vs. Arunachalam 1956 AIR 120

⁴ Narayanappa Vs Akkulappa 1965 AIR 215 (AP)

unless the proclamation prescribed in rule 50 is carried out.⁵ A proclamation of attachment should be made by beat of drum at some place on or adjacent to the property attached. The omission to have the drum beaten is a material irregularity⁶. Likewise, failure to affix a copy of the order of attachment on a conspicuous part of the property is a material irregularity⁷ where several properties are ordered to be attached, a copy of the order must be affixed on each of the properties⁸. But where the property is in several plots contiguous or otherwise, the copy of the order need not be affixed on each separate plot.⁹ However, in a case where the properties are sought to be attached under one order, affixture of the copy of the order of attachment on one or some of the properties would not be sufficient to effect a valid attachment of all the properties. In such a case, a copy of the order should be affixed on each property¹⁰ separately. The omission to affix a copy of the attachment order on the notice board of the TRO is also a material irregularity.¹¹ The attachment will not be complete without the copy of attachment order being affixed on the notice board of the TRO, even though all the other formalities might have been observed.¹²

4. It is essential that the attachment order should show the correct amount of arrears. Otherwise it would be invalid.¹³ In a case where the arrears of tax were reduced in appeal after the attachment and the attachment notice showed the arrears before appeal, the Andhra Pradesh High Court has held that it is only an irregularity which can be corrected by the authorities and that it does not vitiate the sale¹⁴.

5. An attachment under these rules prohibits alienation or transfer of the immovable property by the defaulter, and such alienation becomes void under Rule 16 of Second Schedule. Attachment is a notice to all concerned, so that any person who accepts a private transfer of the property by the defaulter after an attachment cannot plead that he had no knowledge of the attachment.¹⁵ Attachment does not create any title,

⁵ Thakur Vs. Bagwat Prasad 1963 AIR 286 (Patna) Jagannath Prasad Vs. Mahabir Ram 1955 AIR 231 (Patna)

⁶ Rajendra Vs GulZari 1933 AIR 747 (All), Narayanappa Vs. Akkulappa 1965 AIR 215 (AP)

⁷ Wishnath Vs. Rahmatullah 1923 AIR 671 (Lah)

⁸ Murugappa Chettiar Vs. Thirumalai 1948 AIR 191 (Mad.)

⁹ Sahul hammed Vs. Arunachalan 1956 AIR 120(JQC)

¹⁰ Rukminiamma Vs. Ramayya 1943 712 (Mad.)

¹¹ Attar Singh Vs. Gulam Mohammed 1920 AIR 24(Lah)

¹² Govinda Prasad Vs. Brindaban 1937 AIR 7 (Cal.)

¹³ Vimalben Khimji Vs. H.S.Manvikar 51 ITR 29 (Bom)

¹⁴ Chittori Ramachandra Rao, 1001 ITR 591 (AP)

¹⁵ Sheoraj Singh Vs. Gajodhar Prasad 1942 AIR 465 (Oudh) , Dhian Singh Vs. Secretary Of state, 1945 AIR 97 (Nagpur)

and so it does not confer any title or interest on the ITO, who is holder of the certificate.¹⁶ It prevents private alienation but does not prevent alienation by the process of law.¹⁷

6. A receiver appointed by a court is an officer of the court. He cannot be termed as the legal representative of the defaulter.¹⁸ For attaching immovable property in the hands of a receiver, the leave of the court which appointed the receiver should first be obtained. If the court grants leave, then the property is attached by the procedure prescribed under this Rule as if no receiver has been appointed. The court instead of granting leave may make a “charging order”.¹⁹

7. Under Rule 51, the attachment takes effect from the date of service of Form No. ITCP 1 and not from the date of attachment.²⁰ Any charge created before the attachment, but after the service of Form No. ITCP 1²¹ will have to give precedence to the attachment.

8. When a property is attached, in the absence of evidence to the contrary, it must be inferred that the required formalities had been duly complied with.²²

9. The Government of India has accepted the recommendation of the Public Accounts Committee that the Income tax Department should take possession of title deeds in respect of immovable properties attached by Tax Recovery Officer, so that surreptitious sales or transfers otherwise, of such immovable properties subsequent to attachment are forestalled. Therefore, wherever possible, all possible efforts should be made to obtain the title deeds of the attached property from the assessee.

10. The duties and responsibilities of a TRO/T.R.I.

First of all, he must find out from the Income-tax Officer whether the property has been shown by the defaulter in his Income tax returns, unless the property is agricultural. (If he is a Wealth-tax assessee, this return may be referred to regarding his agricultural holding).

Secondly, he must obtain complete description of the property with all the boundaries etc., if necessary, by personal visit to the site.

In case the property is standing in the name of another person, say, the defaulter's wife, he must make sure that there may not be any

¹⁶ Manickan Cheltiar Vs. ITO 1938 AIR 180 (Mad Bench)

¹⁷ Raghunath Vs. Sunderdas, 1914 AIR 129 (Privy Council)

¹⁸ K. Iswara Wariyar Vs. Commissioner of Agricultural I T, 72 ITR 722 (Kerala)

¹⁹ Pratapmal Vs. Chumilal, 1933 AIR 417 (Cal.)

²⁰ Tax Recovery Commissioner Vs. K. Basavarajappa (1992) 97 ITR 398 (Kar.)

²¹ Appendix-11

²² State Bank of Patiala Vs. Union of India 103 ITR 256 (P&H)

objection from the wife of the defaulter. The TRO/Inspector must incorporate all these particulars in ITCP 16.²¹

11. The actual attachment of immovable property is done in the following manner :

- (a) The order in Form No. ITCP 16²¹ is first served on the defaulter.
- (b) Next, a copy of the order is to be affixed on a conspicuous portion of the property. In the case of house property, the copy may be affixed on the front door; and in the case of land, it may be affixed on any tree or pole on it, or on the land itself. The affixture must be witnessed by at least two witnesses.
- (c) Thereafter, the TRO/Inspector has to get the drum beaten, proclaiming the attachment of the immovable property. The proclamation by oral announcement must be in the language of the district. It may be made additionally in English, if necessary. The proclamation has also to be witnessed by two witnesses.
- (d) A panchnama evidencing the proceedings is prepared next. The panchnama should specifically highlight the fact that a copy of the order of attachment was served on the defaulter, and that a copy thereof was affixed on the property, and that drum was beaten; and that the proclamation was made in the language of the district.
- (e) The TRO/Inspector has then to return to the office, affix a copy of the order of Attachment on the notice board, and record an endorsement to that effect.

12. There is no express prohibition against attaching the property before sun-rise and after sun-set, or on holidays.

13. When the task is done by the TRI, he has to make a report to the Tax Recovery Officer. The panchnama should be attached to the report without fail.

²¹ Appendix-11

CHAPTER-VIII

PROCLAMATION OF SALE OF MOVABLE AND IMMOVABLE PROPERTIES

With the attachment of the movable or immovable properties of the defaulter, the stage is set for issuing a proclamation of sale. This Chapter deals with the procedure to be followed in the matter of issuing a proclamation of sale of both movable and immovable properties.

General Provisions governing both movable and immovable

2. Issue of warrant. – On coming to the conclusion that a particular property is to be sold, the TRO should pass an order to that effect, by recording suitable entries on the Order Sheet. Immediately thereafter, a warrant of sale of property in Form No. ITCP 12¹ must be issued to the TRI authorising him to sell the property by public auction. In case it is decided to appoint a private person like a Government auctioneer to conduct the auction, the warrant is to be issued in the name of the said auctioneer indicating the time before which the auction must be completed.

3. Issue of proclamation of sale. – A proclamation of sale in Form No. ITCP 13¹ is issued next. A proclamation of sale is a notice to the public that certain properties will be sold by public auction on a certain day.

4. Ingredients of a valid proclamation. – Proclamation and sale of property is a legal process, and hence the ingredients of a valid proclamation merit special mention. These are:

- (a) A proclamation should be made in the local language.
- (b) The time and place of sale should be clearly and precisely indicated in the proclamation. If the date mentioned is vague, ambiguous or not legible, sale held under such a proclamation would be void.² The date fixed should not be a holiday recognized or notified by the State Government to be a local holiday in the area in which the sale is to take place.

The sale by auction may be conducted at any place. Even as respects immovable property, the sale can be held at a place other than the site of the property.

- (c) The proclamation should state whether the sale is subject to

¹ Appendix-11

² *Jatia Estates (Pvt.) Ltd.* 95 ITR 343 (Cal), *Krishenchand Aggarwal* 100 ITR 496 (P&H-F.B.)

confirmation or not. In the case of movable properties, it is generally not necessary to subject the sale to confirmation but in the case of valuable articles such as diamonds, gold jewellery etc. the sale must be subject to confirmation.

- (d) Exact description of the property must be given as fairly and accurately as possible.

4.1 Where a proclamation of sale gave no details of the property or the details given are vague and silent about material particulars of the property, the TRO would be justified in setting aside the sale held under such proclamation.³ In the case of immovable property, encumbrances on the property to be sold should be specified to enable the prospective purchasers to assess the proper value of the interest that is being sold.⁴ Rule 53⁵ provides that a proclamation of sale of immovable property shall also specify the reserve price, if any, below which the property may not be sold. As per Rule 56⁵ no sale shall be made if the amount bid by the highest bidder is less than the specified reserve price.

- (e) The order in which the properties are to be sold must be indicated in the proclamation and, at the time of conducting the auction, the order should be faithfully followed.
- (f) The amount of arrears, including interest, costs and expenses, for the recovery of which the sale is ordered, must be specified.
- (g) The name of the TRI authorized to conduct the auction must also be indicated.

5. Proclamation how made. – The proclamation shall be made by beat of drum or other customary mode. Customary mode includes announcements through loudspeaker in public places, advertisements in the local newspapers, and the like. A copy of the proclamation should invariably be affixed on the notice board of the Office of the TRO.

6. Legal representative to be brought on record if defaulter dies. – If, before the issue of the proclamation, the defaulter dies, his legal representative(s) must be brought on record. Indeed, whenever the defaulter dies in the course of the recovery proceedings, his legal representative(s) must immediately be brought on record. This is done by issuing to the legal representative(s) a notice in Form No. ITCP 29.⁶

³ Kishenchand Aggarwal 100 ITR 496 (P&H)

⁴ State Bank of Patiala Vs. Union of India & ors. 91 ITR 630 (Pun)

⁵ Appendix-2

⁵ Appendix-2

⁶ Appendix-11

7. Provisions applicable to movable property only –

- (a) The TRO has the discretion to decide whether the value of the movable property is to be exhibited in the proclamation or not. However, if there are any arrears of tax, outstanding in the case of the property, the liabilities must also be shown in the proclamation.
- (b) The proclamation of sale of movable property shall be made by beat of drum or other customary mode. In the case of property attached by actual seizure
 - (i) In the village in which the property was seized, or if the property was seized in a town or city, in the locality in which it was seized; and
 - (ii) at such other places as the TRO may direct; andIn the case of property attached otherwise than by actual seizure, in such places as the TRO may direct.
- (c) The date of sale of movables should be so fixed that there is an interval of 15 days between the date of affixture of a copy of the proclamation and the date of sale. The time-interval can be shortened in a case where
 - the defaulter gives his consent thereof in writing, or
 - the property is subject to speedy and natural decay (e.g. perishables); or
 - the expenses of keeping the property in custody is likely to exceed its value (e.g. livestock).
- (d) There is no restriction as to the place where the auction should be held in respect of movable property other than agricultural produce. In the case of growing crop, the sale may be held at or near the land on which such crop has been grown; and in the case of crop that has been cut, at or near the threshing floor or fodder stack on which the grain is deposited. The Tax Recovery Officer, instead of conducting the sale at the above places, may direct the sale to be held at the nearest place of public resort, viz., the village fair, if he is of opinion that the produce is likely to be sold at a higher price. If a fair price is not offered when it is put to sale and the owner of the produce applies for postponement of the sale to the next market date, the sale should be postponed accordingly so that a fair price can be got for the produce. In the case of growing crops also, if the owner applies for postponement of sale till the crop is cut, the sale should be

held only after the crop is cut. Crop may be sold before it is cut, if it may not fetch a higher price when sold after it is cut.

8. Provisions applicable to immovable property only -

- (a) For immovable properties, a proclamation in ITCP 136 can be issued only after giving notice to the defaulter in ITCP 17⁶. Firstly, it puts the defaulter on notice of the fact that the sale of the properties has been ordered. Secondly, it calls upon him to disclose to the TRO the encumbrances, charges, claims or liabilities attaching to the properties.
- (b) The fact whether the claims, charges etc. attaching to the property has been allowed by the TRO or not, must be clearly mentioned in the proclamation.
- (c) After the proclamation of sale of immovable property is made by beat of drum or other customary mode, a copy of the proclamation should be affixed :
 - on a conspicuous part of the property and, where several properties are put up for sale, on each property separately; and
 - on the notice board of the Office of the TRO.

It is not statutorily necessary to give a copy of the proclamation to the defaulter

- (d) The time interval between the date of affixture of proclamation and the date of sale is 30 days in the case of immovable property. The sale can be held earlier only when the defaulter agrees to it in writing

9. Steps to be taken by TRIs while actually making a proclamation.

- First, the drum must be beat or announcement made through a loudspeaker, and then the proclamation of sale read out. Thereafter, in the case of immovable properties, a copy of the proclamation must be affixed on a conspicuous part of the property. This done, a panchanama, evidencing the fact that the proclamation has been duly made, must be recorded with the help of the witnesses. The Panchnama should show that :-

- a copy of the proclamation (in the local language) was served on the defaulter;
- drum was beat or announcement made through loud-speaker;
- the contents of the proclamation form were read; and

⁶ Appendix-11

- a copy of the proclamation form was affixed on a conspicuous part of the property.

The Panchanama should also record all significant incidents that took place during the proclamation.

10. A copy of the proclamation should be affixed on the notice board, of the TRO.

CHAPTER-IX

HOW TO CONDUCT AUCTIONS

1. What is auction. – Rules 43 and 44 of the Second Schedule¹ deal with auctions. A public auction has been described as “the proceeding at which people are invited to compete for the purchase of property by successive offers of advancing sums”. Where bids are not invited there cannot be a sale by public auction.

2. Who is to hold auction. – Rule 13 of the Second Schedule empowers the TRO to direct any officer to attach and sell movable or immovable property in the course of recovery proceedings. The person conducting the sale must submit a report of the sale to the T.R.O. He should also remit the money collected from the auction purchaser into the government treasury.

4. Advertisement through newspapers etc. – The first step is to advertise the auction. The Tax Recovery Officer may, in his discretion, get an auction notice published in the official gazette or a local newspaper, or both. The nature and extent of advertisement coverage will depend upon the nature and value of the property put up for sale. If the property is petty and remotely situated, local distribution of hand bills announcing the sale by public auction will suffice. If the property is fairly big, but is likely to attract only local purchasers, then an insertion in the local dailies will do. If, on the contrary, the property is valuable, the demand for which may emanate from all parts of India, it will certainly be advisable to get the auction advertised in all the national dailies. The aim and objective of advertising a sale by public auction is to attract as many bidders as possible.

5. Nature of particulars required. –

- (i) **Movable property.** – The next step is to ensure that all the required particulars of the property are collected and kept ready. If the property to be sold is, say, a motor car, the inspector must have with him the registration certificate, the insurance policy, a letter from the Road Transport Authority regarding the arrears due, and any other information necessary. Wherever possible, the estimate of the value of the properties may be obtained in writing from the persons who deal in them. The Inspector must prepare a list of all the articles with the approximate value thereof and keep it ready at the time of the action.

¹ Appendix-2

(ii) **Immovable Property.** –

- (a) **land.** – In the case of land the following documents will have to be collected
- The title deed of the property or, if the title deed is not available a copy of the patta certified by the Tahsildar;
 - A nil encumbrance certificate from the Sub-Registrar;
 - A letter from the municipality regarding the arrears of municipal taxes;
 - A similar letter regarding the arrears of land revenue;
 - A plan of the entire property;
 - Details of the area of the property certified by the surveyor;
 - A certificate from the Collector for land acquisition that the property has not been notified for acquisition.
- (b) In the case of **agricultural land**, particulars of the nature of the soil, the crops grown and the type of tenancy will also have to be gathered.
- (c) **House Property.** – In the case of buildings, the requisite data will include the plinth area of the building, the number of rooms contained in it, the age of the building, the type of construction, the names of the tenants and the amount of rent paid by them, and the dates of commencement of the tenancies.
- (d) **Machinery.** – In respect of machinery, the manufacturer's name, the year of manufacture, the year of purchase, the probable market value and other technical data must be attached.

Terms & conditions of the auction —must be prepared.²

6. Fixation of Reserve Price and its importance. – The TRO should ascertain the reserve price to be fixed in respect of the property, which is the minimum stipulated price below which no bid will be accepted. The reserve price fixed should be kept confidential.

The TRO is competent to order auction without fixing a reserve price in cases where, on the earlier occasions when the property was put up for sale by public auction, there were no bidders, or the bids made were less than the reserve price.

² Appendix-19

7. Venue of auction. – The choice of the venue must obviously be dictated by considerations of convenience and the availability of space. Where it is decided to hold the auction in a big hall, seating and lighting arrangements must be made and a public address system installed in advance.

Adequate arrangements should be made for proper display of the movable properties coming up for sale. Drinking water should be supplied. Where the auction is expected to last the whole day or a greater part of the day, tea, coffee, or cold drinks may be served. The cost of the beverages will of course be treated as auction expenses, and recovered from the defaulter.

Boldly printed notices and banners may be displayed at the auction venue, supplemented, on the date of the auction, by the beating of drum and announcements over the public address system.

8. Who may participate in the auction. – The auction has to be commenced at the exact time indicated in the proclamation of sale. If there is any delay, the reasons for the delay must be announced on the spot. Anyone can participate in the public auction, but where the T.R.O. is of the opinion that the presence of any person would hinder the progress of the auction, he has the power to prevent such person from participating in the auction. He can also expel those who create trouble when the auction is in progress.

9. Assessing Officer can bid at the auction if the following conditions are satisfied:

- (i) An earlier sale where reserve price had been specified in the proclamation under Rule 53(cc)³ had been postponed for want of bids equal to or more than the reserve price; and
- (ii) The Chief Commissioner authorises the ITO to bid on behalf of the Central Government.

In such cases the authorization issued by the Chief CIT should be deposited with the TRO.

10. Identification of the real bidder. – ³Rule 59(2) aims at identifying the real bidder. All bidders are required to declare if they are bidding on their own behalf, or on behalf of their principals. Where a bidder is acting only as an agent, he has to deposit with the TRO the authority from his principal. If he fails to do so, he should not be allowed to bid and, if he bids, his bid should be rejected. The TRO should also insist on some initial deposits from all persons who intend to bid in the auction.

³ Appendix-2

11. Inspection of property by bidders and the mode of conducting auction. – As the auction commences, the Inspector must read out the full description of the property as given in the proclamation of sale, and also mention the value of the property, its encumbrances, etc. If the bidders desire to inspect the property, movable or immovable, the Inspector must permit the inspection.

The TRO should then fix the rate at which each bid should be increased.

12. The bidding sheet and bidders list. – Preparation of – A bidders list indicates the names of the bidders, their age and profession, and the amounts deposited by them. The bidder's signatures are obtained on the list. The particulars of the public auction are stated at the top of the list. A specimen list is attached to the Manual.⁴

A bidding sheet incorporates the names of actual bidders, and the amounts bid by each of them right from the beginning. At the commencement of the auction the bidders' list is prepared and, as the auction progresses, the bidding sheet is filled in.

13. Announcement regarding bidders and the amount of bid. – In the course of the auction, the name of the bidder and the amount of bid must be loudly and clearly announced.

14. Adjournment of bidding. – If the biddings do not cease before the close of the day, the auction can be continued the next day. There is no limit to the continuance of the auction. Should it however become necessary to adjourn the auction to another day for any other reason, an endorsement to that effect must be made on the bidding sheet and the signature of at least 2 bidders obtained. The date, time and place of the postponed auction must be very clearly stated. Failure to do so is a material irregularity. Rule 15 of the Second Schedule⁵ provides the manner in which adjournment can be made. No adjournment can be made for a period beyond 30 days.

15. Knocking down of property. – A property is knocked down in favour of the highest bidder and this is indicated by the fall of the auctioneer's hammer. When the property is knocked down, the inspector must announce openly that the property has been knocked down in favour of the successful bidder. Then he should make endorsement on the bidding sheet, sign it and obtain the signatures of the auction purchaser and two witnesses, preferably two of the unsuccessful bidders.

16. Procedure for payment of price. – Movable property. – Where movable property is sold by public auction, the entire price bid by the

⁴ Appendix-20

⁵ Appendix-2

highest bidder is to be paid on the spot, together with what is called poundage. Poundage is the commission or fee collected upon the money realised by an execution.

On the payment of the bid amount plus poundage by the successful bidder, the movable property must be delivered to him, together with a cash receipt and a sale certificate in Form No. ITCP 14.⁶ An acknowledgement in token of having received the property must be obtained from him.

Though ordinarily on the spot payment must be insisted upon, the officer conducting the sale may, in his discretion, allow the bidder some time for the payment of the bid amount including poundage.

16.1 Immovable property. – In the case of immovable property, the successful bidder is required to make a down payment together with poundage within 15 days from the date of the auction. These requirements are mandatory and, unless these are fulfilled, there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.⁷ The TRO has no power to extend the time limit for payments. The TRO has however the discretion not to forfeit the deposit for failure to pay the balance of the purchase price. But he is bound to put up the property for resale, as resale in such cases is obligatory.⁸

17. In the cases where the balance of amount is paid within the stipulated 15 days' time, the sale can be confirmed by the TRO, only if no petitions for setting aside the sale under rules 11, 60, 61 or 62⁹ are filed. Even here, inasmuch as petitions for setting aside the sale can be filed any time within 30 days from the date of sale, the sale can be confirmed only after the 30 day period is over. In cases where petitions are filed under the said rules, the sale cannot be confirmed unless the petitions are considered and rejected. Whenever the sale is confirmed, an order of confirmation must be issued in Form No I.T.C.P. 18,⁶ followed by a certificate of sale in Form No. I.T.C.P. 20.⁶ The sale becomes absolute only on such confirmation.

18. Default of payment and its repercussions. – When the highest bidder fails to make the 25% initial deposit or, after having made the initial deposit, defaults in paying the balance of amount within the prescribed period, the property will have to be re-sold by public auction. Where the highest bid at the second auction exceeds the payments made by the

⁶ Appendix-11

⁷ Manila Vs Smt. Syed Ahmed, 1954 AIR 349 (S.C.)

⁸ Hiralal vs. Smt. Champs, 1955 AIR 2256 (All.)

⁹ Appendix-2

highest bidder in the first, it is open to the Tax Recovery Officer under Rule 58 of the Second Schedule to forfeit the payments made by the highest bidder in the first auction, if he has not already done so prior to the holding of the second auction.

19. Co-owner of property gets preference. – A co-owner of the property that is put to auction sale gets preference as a purchaser where he bids along with other purchasers. If the co-owner bids the same sum as the highest bidder, the co-owner's bid should be accepted, (Vide Rule 44 (3) and 68 of Second Schedule).¹⁰

¹⁰ Appendix-2

CHAPTER-X

SALE OF MOVABLE AND IMMOVABLE PROPERTIES

A. Sale of movable property:

1. The Rule 37 of Second Schedule¹ deals with sale of movable property which is as under:

Rule 37 : Sale. – The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold. This Rule corresponds to Rule 64, Order XXI, of the C.P.C.

2. The TRO may direct sale of ‘any’ movable property attached. – TRO can direct sale of only that property which falls in his jurisdiction,² whether attached by him i.e. in respect of his assessee or in respect of attachment made by another TRO, and RC transferred thereafter.³

3. Omission to attach property before sale. – Section 222 of the act, as also Rule 4 of the Schedule1 do not make any mention about a sale, independent of attachment. Consequently, the TRO cannot hold a sale of the defaulter’s property without first attaching it. If any sale is so held then the same is vitiated and is *ab initio* void.

4. Extent of property that may be sold. – The TRO has the discretion in a proper case, to order the sale of only a portion of the attached property,⁴ if in his opinion the sale proceeds of such portion will be sufficient to satisfy the amount mentioned in the certificate, together with the costs incidental thereto.

5. Warrant of sale of property is issued in Form No. ITCP. 12⁵

6. Time of sale. – The intended sale shall not take place until after the expiry of at least fifteen days from the date on which it was proclaimed under Rule 38.

A sale can however, be held even before the expiry of the said period in the following circumstances, namely –

- (a) If the property is such that it is subject to speedy and natural decay; or

¹ Appendix-2

² Ambika Vs. Manikagen, Loan Office (1929), 126IC 43

³ Manikkar Vs. Loganatha (1929) AM 852

⁴ Badri Narain Vs.Chandra Mauleshwar (42) 197 IC 361

⁵ Appendix-11

- (b) If the expenses of keeping the property is likely to exceed its value; or
- (c) If the defaulter himself consents for holding the sale even before the expiry of the statutory period.

7. Non Compliance of the Provisions of the Rule. – Rule 45 of the second schedule⁶ provides that non-compliance of the provisions while conducting sale of the property/irregularity committed shall not vitiate the sale. (see further discussion under rule 45 later given in this chapter)

8. Sale of agricultural produce.

Relevant rules are elaborated as under –

(i) **Rule 41.** –

“(1) Where the property to be sold is agricultural produce, the sale shall be held:-

- (a) if such produce is a growing crop — on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered — at or near the threshing — floor or place for treading out grain or the like, or fodder-stack, in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of the opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale, -

- (a) A fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) The owner of the produce; or a person authorized to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.”

(ii) **Place of Sale:**

The sale of agricultural produce, according to sub-rule (1) has to be held at any of the under-mentioned places –

⁶ Appendix-2

- (a) Growing crop has to be sold on or near the land on which such crop is standing;
- (b) Harvested crop has to be sold, -
 - (i) at or near the threshing floor, or
 - (ii) at or near the place for treading the grain, or
 - (iii) at or near the fodder-stack where the grain is deposited.

A part from the places mentioned above, the TRO may direct that the sale may be held at the nearest place of public resort, if in his opinion, the produce is likely to sell at a greater advantage at such place.

(iii) Postponement of Sale:

Sub-rule (2) mentions the circumstances under which a sale of agricultural produce may be postponed to some other date. The expression “whatever price may be offered for the produce” indicates that the postponement of the sale can be made only once.

(iv) Rule 42:

Special Provisions Relating to Growing Crops: Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(v) Sale - when to be held?

Growing crops, from their very nature, require to be given a special treatment. Sub-rules (3), (4) of Rule 25 prescribe the special procedure to be adopted for attachment of growing crops. The present Rule specifies the manner in which such crops are to be sold, depending on the fact whether such crop is capable of being stored (after harvesting) or not.

Where the crop is such that it can be stored after its harvest, it has to be sold in the manner laid down in sub rule (1).

9. Mode of Sale. – Rule 43 prescribes that the property (movable) shall be sold by public auction. The officer conducting the sale is given the discretion to sell the property in one or more lots. The TRO may direct that the bidders at an auction shall be restricted to a particular class of persons.

10. Sale by whom conducted. – The TRO may authorise any of the following persons to conduct the sale of the defaulter's property –

- (a) Under Rule 13, any person (including his sub-ordinate in office),
- (b) Under Rule 17 of the I.T.C P. Rules, 1962 any person (other than an official subordinate to the TRO), if in the TRO's opinion it is advantageous to get the sale conducted through such person in such a case, as also in the case of (c) below, the remuneration payable to such person shall be fixed by the TRO and the same shall be deemed to be the costs of the sale;
- (c) Under Rule 46, a broker for selling negotiable instruments or shares in companies.

11. Acceptance of bid. – Under Rule 38, when movable property is to be sold, the TRO has to issue a proclamation, specifying therein *inter alia* whether the sale is subject to confirmation or not. There is nothing in the Second Schedule to require a bid to be accepted by the TRO before a contract of sale can be held to be complete. On the contrary, Rule 18 of the I.T.C.P. Rules⁷, 1962, empowers the TRO to fix a reserve price in respect of any property, other than agricultural produce, to be sold, and to order that any bid shall be accepted only on the condition that it is not less than the said reserve price. In conformity with this provision, the proclamation of sale (Form No. I.T.C.P. 13)⁸ also makes it clear that the highest bidder shall be declared to be the purchaser of any lot only in the following circumstances, namely:–

- (i) The highest bidder should be legally competent to bid; and
- (ii) The TRO in his discretion has not rejected the bid on the ground that —
 - (a) such bid is less than the reserve price, if any; or
 - (b) it is clearly apparent that the price offered is so inadequate that it is advisable to reject the bid.

12. Stoppage of Sale. – When the sale is made by lots, if the amount to be realised by sale is satisfied by selling only a part of the property then the sale of the remaining lots should be stopped immediately.

13. Payment of Price. – Where the property is sold by public auction in lots, the price of each lot has to be paid at the time of sale. The expression “or as soon after”, however, gives a discretion to the officer holding the sale to allow the price to be paid within a reasonable time after the sale.⁹

⁷ Appendix-4

⁸ Appendix-11

⁹ Shah Fareed Vs. Sheo Charun (1872) 4 NWPHC37

If the purchaser does not pay the price, then the property shall be re-sold forthwith. If the loss arises on account of such re-sale the defaulting purchaser shall be answerable for the loss under Rule 14.¹⁰

14. Confirmation of Sale. – When the purchaser pays the purchase money, the officer conducting the sale shall grant him a receipt for the same. The sale becomes absolute thereafter.

15. Right of pre-emption. – If two or more persons bid the same price for the property of which one of them is such co-owner, then the bid of the co-owner shall have preference over the other bids (see further Rule 68).

16. Report of Sale. – Under Rule 19 of the I.T.C.P. Rules¹¹, 1962 the officer conducting the sale shall forthwith pay the entire amount, received by him from the purchaser, into the Government Treasury and shall submit a full report of the proceedings to the TRO.

17. Delivery of movable Property, Debts and Shares. —Rule 36 of the I.T.C.P.¹¹ Rules, 1962, which materially corresponds to Rule 79, Order XXI of the C.P.C. lays down the following procedure, namely:-

- (1) Where movable property (attached by actual seizure, other than negotiable instruments) is sold, it shall be delivered to the purchaser;
- (2) Where such property is in the possession of a third person, delivery shall be made by prohibiting such third person from delivering possession to any person other than the purchaser; he should also be required to deliver such possession to the purchaser within a specified time. If the third party disobeys the TRO's order, the property will be seized (as provided in Rules 35 and 36 of the Schedules) from such third party and delivered to the purchaser ;
- (3) Where such property is a debt (not secured by a negotiable instrument), the TRO shall make an order prohibiting the creditor (defaulter) from receiving any payment in pursuance of such debt, and the debtor (garnishee) from making the payment on the debt to any one except the purchaser, and further shall order that such payment must be made within a specified time. If the debtor fails to pay it in time as specified, the TRO shall recover the same from the debtor as if he were a defaulter for that amount within the meaning of Sec. 222 of the Act.

¹⁰ Ramdhani Vs. Rajrani (1881) 5 Cal 337

¹¹ Appendix-11

18. Transfer of Negotiable Instruments and Shares. – Rule 37 of the ITCP Rules¹¹, 1962, which corresponds to Rule 80, Order XXI of the C.P.C, prescribes the manner in which the transfer of a negotiable instrument or share in a company has to be effected in case the person, in whose favour or in whose name such instrument or share happens to be, defaults in effecting the transfer as ordered by TRO under rule 36(4) of the I.T.C.P Rules 1962¹¹.

19. Vesting order in case of other movable property. – In the case of any other movable property, for which no specific provision has been made by the I.T.C.P. Rules, 1962¹¹, the TRO has to pass an order vesting such property in the purchaser or in any one as the purchaser may direct, and the property vests accordingly (Rule 38 of I.T.C.P. Rules 1962¹¹, corresponding to Rule 80, Order XXI of the C.P.C.).

20. Certificate of sale of movable property is given in Form No. I.T.C.P. 14¹¹

21. Irregularity not to vitiate sale, but any person injured may sue. –

The relevant rule is given as under:-

Rule 45. –

“No irregularity in publishing or conducting the sale of movable property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.”

- (i) The provisions of this Rule correspond in pari materia to those of Rule 78, Order XXI of the C.P.C.
- (ii) This Rule applies to any irregularities in publishing and conducting the sale of movable property and not of immovable property.
- (iii) Irregularity in Publishing or Conducting the Sale. – Where a sale of movable property is conducted by public auction without giving notice to the defaulter, the same is without jurisdiction, and is liable to be set aside under this Rule.¹² Similarly, if the sale proclamation warrants a title which fails or which is non-existing, the injured party may apply to set aside the sale, because, it is not a case of irregularity.¹³

¹¹ Appendix-11

¹² Manichand Vs. Dhansukh Das 1953 Raj. 288

¹³ Framji Vs. Hormasji (1878) 2 Bom 258

- (iv) At the hands of any other person. — Where the movable property not belonging to the defaulter is sold, the real owner may sue the ITO/TRO under this Rule.¹⁴

B. Sale of immovable Property:

1. Mode of sale. – Rule 56 of Schedule II provides that every sale shall be made by public auction.

2. Report of sale. – Rule 19 of the I.T.C.P. Rules 1962¹⁵, ordains that the Officer conducting the sale shall forthwith pay the entire amount received by him into the Government treasury and shall submit a full report of the sale to the TRO.

3. Payment of purchase money on or before the fifteenth day - Sub-rule (2) of Rule 57. – It is essential for the auction purchaser to ensure that the full purchase money reaches the TRO within the prescribed period of fifteen days. It is not enough if he merely posts (by MO.) in time, because the post office is not the TRO's agent.¹⁶ Similarly, if the purchaser gives a cheque for the amount of the sales, it is not tantamount to payment within the meaning of this Rule.¹⁷ On the other hand, where the purchaser applied within time to the TRO for challan, and due to inaction on the TRO's part the money could not be deposited in time, the TRO cannot later, turn round and say that the payment is not made in time.

4. Whether TRO can extend the time. – The provision regarding payment within fifteen days is mandatory, and if there is default in payment within the prescribed time, it is not a case of 'material irregularity' but of 'no sale at all'.¹⁸ The TRO has, therefore, no power to extend the time for payment.¹⁹

5. Fifteenth day, if a closed holiday. – According to section 10 of the General Clauses Act, 1897, if the fifteenth day happens to be a closed holiday, the payment can be made on the next day on which the TRO's office is open.

6. Forfeiture of deposit. – The TRO under Rule 58, is given the discretion to forfeit the deposit in fit cases. If the defaulting purchaser could satisfy him that he made the bid under a misapprehension, then alone he might be allowed to withdraw the deposit.²⁰ It should however, be noted that

¹⁴ Mohanund Vs. Akial, (1868) 9 WR 118

¹⁵ Appendix-11

¹⁶ Ramchandra Vs. Belya (1898) 22 Bom 415

¹⁷ Hiralal Vs. Mst. Champa (1955) AA 226

¹⁸ Manilal Mohanlal Vs. Sayed Ahmed (SC)

¹⁹ Uttamchand Vs. Balkrishna 1961 Bom 471

²⁰ Radhey Lal Vs Mst. Janki (1935) 155 IC 477

even though the TRO has the discretion to refund the deposit either in whole or in part, he has no such discretion as regards the re-sale of the property, which is obligatory.²¹ Where no re-sale is ordered, the deposit, however, cannot be forfeited.²²

7. Application to set aside sale:

(i) Who may apply to set aside sale?

Under Rule 60, an application to set aside a sale, of immovable property, held in execution of a certificate, may be made by:-

(a) The defaulter; or

(b) Any other person whose interests are affected by the sale.

Under Rule 60 of Schedule II application by intending purchaser of property of defaulter which is under attachment is not maintainable.

Where two applications are made, one by the defaulter and another by a person whose interest is affected, and each applicant deposits a portion of the aggregate amount required by this rule, the deposits and the applications may be treated as made within this rule.²³

(ii) Conditions requisite for setting aside sale:

For a sale to be set aside under this Rule, the following conditions have to be fulfilled:

(a) The defaulter or other affected person must make an application; and

(b) The applicant must deposit :-

for paying to the ITO, the amount specified in the sale proclamation, together with interest at nine per cent per annum from the date of proclamation to the date of sale; and for paying to the purchaser, as penalty, a sum equal to 5 per cent of the purchase money subject to a minimum of Re. 1.

It is very important to note that both these conditions at (a) and (b) are cumulative. If there is only an application without deposit,²⁴ or vice versa it is not enough.²⁵

²¹ Manilal Mohanlal Vs. Sayed Ahmed (SC)

²² Ashraji Lal Vs. Ramshankar (1934) 151 IC 289

²³ Madhuri Sarain Vs. Bishambhar Dhar 102 IC 471

²⁴ Munna Lal Vs. Radha kishan (1915) 30 IC 186

²⁵ Dhari Jana Vs. Gauranga Charan Sahu (40) AP 87

(iii) *Limitation for making an application:*

An application under this Rule must be made within thirty days from the date of the sale. The TRO has no power to extend this period.²⁶ The words 'date of sale' mean the date on which the property is knocked down to the highest bidder and not the date on which the sale is confirmed by the TRO under Rule 63.²⁷ If the bid remains to be accepted for any reason, the limitation should be counted from the date on which the bid is finally accepted.²⁸ An application filled beyond time is not maintainable.²⁹

(iv) *Bar of applications [Sub-Rule (2)]*

Sub-rule (2) prohibits a person from making an application under this Rule where he has also made an application under Rule 61 to set aside the sale on grounds of material irregularity. This prohibition applies even to a purchaser or other interested person where the defaulter has on his own account made an application under Rule 61. It is for the defaulter or other interested person to choose among the two remedies, (namely under R.60 or R.61).

(v) *Who may apply to set aside the sale?*

The persons who are entitled to apply to set aside a sale under this Rule are –

- (i) The Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner of income tax in his behalf or;
- (ii) Any person whose interests are affected by the sale.

Under this rule, the ITO is also given an opportunity to file an application before the TRO for setting aside the sale. It is to save any monetary loss to revenue which might be occasioned if the property is sold at the auction sale at an inadequate price as a result of material irregularity in publishing or conducting the sale. In order to enable the ITO to take timely action under this rule, in the absence of any provision under these rules, instructions have been issued to all the State Governments that when the Tax Recovery Officer issues a proclamation for sale of property in form ITCP 13, a copy of the same should be sent to the concerned ITO for the follow up action on the part of the latter.

²⁶ Chaudhry Rameshwar Vs Chaudhary Sureshwar (1917) 39 IC 664

²⁷ Chowdhry Kesri Vs. Giani Roy (1902) 29 Cal 626

²⁸ Iqbal Narain Vs. Raj Kumar (1934) 147 IC 1077

²⁹ Chunni Lal Vs Santoo Lal, AIR 1984 (All)

(vi) Conditions requisite for setting aside sale:

In order to set aside a sale of immovable property under this Rule, the following conditions have to be satisfied, namely –

- (a) The defaulter must not have been served with a notice under Rule 2 to pay the arrears of tax; or
- (b) There must be a 'material irregularity' in publishing or conducting the sale;
- (c) The applicant must have sustained substantial injury as a result of such non-service of notice or irregularity; and
- (d) In case the applicant happens to be the defaulter, he should have deposited the amount recoverable from him in execution of the certificate.

The TRO's satisfaction is also necessary in respect of the conditions above.

(vii) Sale, whether can be set aside in part:

The general rule is that an execution sale should normally be confirmed or set aside in its entirety. This is, however, subject to certain qualifications. In a Full Bench case, their Lordships of the Kerala High Court observed that a Court sale may be set aside in part if it is held in lots with separate particulars and proceeds. When a court sale is composite, i.e. of an entire property, comprising undivided though distinct interests belonging to various persons and what is proclaimed for sale is the entire property, as though it belonged to a single owner without discriminating the separate interests with their particulars, a piece-meal setting aside is not possible and the party entitled to relief, though his interest may be fractional, cannot be denied his rights on account of the accident of the existence of a simultaneous sale of another fractional part or parts regarding which the sale may be good.

(viii) Scope of the Rule 61:

While deciding an application under this Rule, the TRO is not competent to decide any of the following questions, namely —

- (a) whether the certificate of the ITO was obtained by fraud,³⁰ or
- (b) whether the TRO had jurisdiction to sell the property,³¹ or
- (c) whether the sale is a nullity³² or

³⁰ Khagendra Vs. Pram Nath (1902) 29 Cal. 395

³¹ Shirin Vs. Agha Ali (1896) 18 All 141

³² Balwant Rai Vs. Amrit Kaur (1960)(1) Punj. 83

(d) whether the sale is bad because it had been held after the property had vested in the State under a statute³³.

(ix) *Limitation:*

The limitation to file an application under this Rule is 30 days from the date of sale. Where an application to set aside sale is filed in time, a subsequent application purporting to give further particulars can be entertained, though it is presented beyond time.³⁴

A person who has entered into an agreement to purchase an immovable property which has been attached under the provisions of the Second Schedule to the Act is not a person competent to invoke Rule 61 of the said Rules.³⁵

8. Setting aside sale where defaulter has no saleable interest:

(i) *Scope of the Rule 62:*

Rule 62 enables the purchaser who innocently and ignorantly has purchased valueless property to get the sale set aside on the ground that the defaulter has no saleable interest in the property.

9. Sale – when becomes absolute [Sub-rule (1) of Rule 63]. – A sale of immovable property, made in execution of certificate, becomes absolute when the TRO makes an order confirming the sale. It is mandatory upon the TRO to make an order confirming the sale when the following conditions are fulfilled, namely –

- (i) When no application is made for setting aside the sale under Rule 60, 61 or 62 of the Schedule; or
- (ii) (a) When such an application has been made and the same is disallowed by the TRO, and
- (b) the full amount of the purchase-money has been paid.

Confirmation of sale under this rule does not require any application by the auction purchaser. It is a statutory duty of the TRO. Without an order confirming the sale, the sale is not absolute.³⁶

An order confirming the sale made within thirty days from the date of sale (i.e. from the time the bid is accepted) is illegal.³⁷ Similarly, an order confirming the sale while an application under Rule 60 is pending, is illegal and void.³⁸

³³ Virendra Kishore Vs. Kesarinandan Prasad (1962) AP 410

³⁴ Ram Saran Das Vs. Girdhari Lal (1926) 48 All 286

³⁵ D.V. Satyanarayana Vs. TRO (1992) 197 ITR 467 (Kar)

³⁶ Balkishan Dass Vs. Addiitonal Collector (1977) 106 ITR 77 (Bom)

³⁷ Siddha Veerappa Vs. Jalal Khan (1953) A. Mys. 87

³⁸ Ramkrishna Vs. Parameshwara (1961) A. Mys. 59

The order of confirmation of sale of immovable property under Rule 63(1) shall be in Form I.T.C.P. 18.³⁹

The notice to interested parties under Rule 63(2) to show cause why sale should not be set aside shall be in Form I.T.C.P. 19.⁴⁰

10. Return of purchase money in certain cases [Rule 64]. – A suit for refund of purchase money, on the ground that there is no saleable interest of the defaulter in the property does not lie at the instance of the purchaser. He has to get the sale set aside under Rule 62 before becoming eligible for refund under this rule.⁴¹

11. Sale Certificate [Rule 65]. – Where the sale of immovable property has become absolute, the TRO shall grant a certificate, in which are specified the property sold, the name of the person declared as purchaser under Rule 57(1), and the date on which the sale had become absolute.

12. Procedure for obtaining delivery. – Procedure for obtaining delivery of immovable property is prescribed under Rule 39.

13. Procedure for obtaining delivery of property which is in the occupancy of a tenant is prescribed under Rule 40. – Rule 40 of the I.T.C.P. Rules, 1962 lays down the procedure for obtaining delivery of property which is in the occupancy of a tenant or other entitled to occupy the same.

14. Resistance or obstruction to possession of immovable property (Rule 41, I.T.C.P. Rules, 1962). – Where the purchaser of immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Tax Recovery Officer complaining of such resistance or obstruction within thirty days of the date of such resistance or obstruction.

The Tax Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

15. Resistance on obstruction by defaulter (Rule 42, I.T.C.P. Rules, 1962). – “Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the defaulter or by some other person at his instigation, he shall direct that the applicant be put in possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Tax Recovery Officer may also, at the instance of the applicant, take steps to put the applicant in to possession of the property by removing the defaulter or any person acting at his instigation.”

³⁹ Appendix-11

⁴⁰ Appendix-11

⁴¹ ITR (1938) 1 Cal 512

CHAPTER-XI

ARREST AND DETENTION OF DEFAULTER

TRO has power of execution against defaulter in three different stages:

(i) Issue of show cause notice (ii) Arrest and (iii) Detention

1. Notice to show cause. – Before going for arrest and detention, show cause is a must. TRO can issue notice to show cause as per rule 73 of Second Schedule after considering all the legal provisions if the assessee has concealed and removed or refused to pay the arrears.

Rule 73:– No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer for reasons to be recorded in writing is satisfied: –

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or
- (b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

Where appearance is not made in obedience to a notice issued and served under sub rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

2. Condition to be satisfied before a Warrant can be issued. – If the debtor does not appear in response to notice, the TRO shall, following all provisions of rule 73 of Second Schedule, issue a warrant of arrest.

3. Show Cause Notice. – TRO can issue and serve a notice on the defaulter requiring his appearance, to show cause why he should not be committed to a civil prison. Warrant can be issued beyond the jurisdiction, even if defaulter comes temporarily. The notice is to be given in the form No. ITCP 25.¹ Warrant is illegal without show cause notice. If defaulter does not attend on prescribed date of show cause notice, TRO can simultaneously issue a show cause & warrant. If assessee appears

¹ Appendix-11

before TRO according to rule 73(1),² the assessee will not be arrested unless declared defaulter as per rule 74.³

4. When Notice under Rule 73(1)⁴ can be dispensed with – rule 73(2)⁵ provides for the contingency for the issue of notice under rule 73(1) to be dispensed with. If the TRO is satisfied, (By affidavit or otherwise) that –

- (a) the defaulter is likely to abscond, or
- (b) the defaulter is likely to leave the local limits of the TRO's jurisdiction, and
- (c) such likelihood is with the object or has the effect of delaying execution of the certificate, then the TRO may dispense with the notice under sub-rule(1), and proceed to issue a warrant of arrest straightway.

5. Warrant of Arrest & who could be arrested. – Under this rule, arrest is normally possible only if the defaulter is a natural person, i.e. a human being. But by virtue of rule 81⁶, women, minors and persons of unsound mind are exempted from arrest. If the defaulters happen to be entities other than individuals as defined in section 2(31) of the Act and unless the individuals who comprise or manage the affairs of such entities are held personally responsible under the I.T. Act for discharging tax liability, they are immune from arrest. To get over difficulty, an explanation had been added to the rule by Taxation Laws (Amendment) Act, 1975 which states that for the purpose of this rule, where a defaulter is an HUF, a Karta thereof shall be deemed to be a defaulter. According to rule 1(b) of the Second Schedule, defaulter means person mentioned in the certificate and in as much as the name of the partner does not appear in the certificate issued under section 222 he will not be subject to the proceedings initiated by the TRO. CBDT instruction 517 dated 28.02.1973⁷ has stated that the ITO while sending the statement to drawing up of certificate under section 222 in the name of firm, should also mention the names of the partners of the firm.

If the individual defaulter has died after the commencement of the recovery proceedings, then his legal representatives cannot be arrested as per rule 85⁸. Similarly in the case of dissolved firm, discontinuance of business by a firm or disruption of HUF, the I.T. act fixes the tax liability

² Appendix-2

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⁷ Appendix-22

⁸ Appendix-2

on the partners of the firm and members of HUF and as such if they are in default they can be arrested. Likewise in the case of liquidation of companies, the liquidators (Sec. 178) and Directors of Private Companies in liquidation (Sec. 179), to the extent they are made personally liable for payment if there are in arrears they also can be arrested.

Warrant of arrest issued by Tax Recovery Officer under rule 73(2) or 73(3)⁹ may also be executed by any other Tax Recovery Officer within whose jurisdiction a defaulter may for the time being is found as per rule 73(3A).¹⁰

If the defaulter does not appear in obedience to the show-cause notice, the TRO may issue a warrant of arrest. Under sub-rule(2), R 37, Order XXI,¹¹ (CPC) “the Court shall, if the decree-holder so requires” issue a warrant of arrest. There might be circumstances in which the TRO should have discretion to grant reasonable time, e.g. in the case of illness of the defaulter.

The warrant of arrest under the sub rule shall be issued in form no. I.T.C.P. 26.¹² It has to bear the appropriate seal and signature. A warrant must clearly identify the person to be arrested. It must also specify the offence charged. It must indicate the authority of the person issuing the warrant. Similarly, blank warrants are illegal; warrant which contains the name of the defaulter in the margin and not in its body is illegal. A warrant containing a wrong description of the defaulter cannot be executed.

6. To whom a warrant of arrest be addressed? – A warrant of arrest must show the name and designation of the person to whom it is issued for execution. If this is not shown, the same is defective, and the rescue of a person arrested on such defective warrant is not an offence u/s 225B of IPC.¹³ The liability under the Act being of a civil nature, the TRO can address the warrant of arrest to any person, not necessarily a police officer. It is however, desirable that such warrants are addressed to the Inspector of Income tax working in his office. The expression “any officer authorised to arrest the defaultermay apply to the officer in charge of the nearest police station for such assistance as may be necessary” occurring in Rule 19¹⁴ of CPC clearly indicates that officer entrusted with the execution of a warrant of an arrest under the Schedule need not be police officer. Where the judgment-debtor is to be arrested

⁹ Appendix-2

¹⁰ Appendix-2

¹¹ Appendix-13

¹² Appendix-11

¹³ Appendix-23

¹⁴ Appendix-13

under Rule 37¹⁵, Order (CPC), the warrant is addressed to be executed by the bailiff of the court.

7. Person executing must have warrant in possession. – The officer executing the warrant must have the warrant in his possession at the time of arrest. The warrant is the justification of arrest by the officer and should not be parted with.

8. Person executing must notify the substance of warrant. – Section 80 of the CPC lays down that a person executing a warrant of arrest shall notify the substance thereof to the person arrested, and, if so required, shall show him the warrant. A public servant executing a warrant of arrest, who does not notify as required by this section will not be discharging his functions in a manner authorised.

9. Arrest, how made? – If in response to the show cause notice issued under sub-rule (1) the defaulter does not appear before the TRO, the TRO shall issue a warrant for the arrest of the defaulter under rule 73(1)¹⁶. For the purposes of this Rule, 'appear' means in person and not appear through an authorised representative. When, after making a valid arrest, the person arrested is produced before the TRO under rule 73(3)¹⁷, the warrant gets automatically exhausted.

The Schedule has not prescribed the procedure for making an arrest under this sub-rule in the absence of specific provisions in that behalf the procedure as laid down in the Criminal Procedure Code should be followed.

When, after making a valid arrest, the person arrested is produced before the TRO under rule 73(4)¹⁸, the warrant gets automatically exhausted. A warrant cancelled cannot be re-issued.

According to Section 82 of the Cr. P.C. a Warrant of arrest may be executed at any place in India.

10. All means necessary to effect the arrest - violence how far justifiable? – (Sec 46(2)CPC) Where the person to be arrested offers resistance, the law authorises the arresting officer to "use all means necessary to effect an arrest."

11. Punishment for resisting arrest. – Resistance or obstruction to the lawful arrest of a person is an offence punishable under secs. 224, 225 and 225B¹⁹ of the I.P.C.

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¹⁶ Appendix-2

¹⁷ Appendix-2

¹⁸ Appendix-2

¹⁹ Appendix-23

12. Proclamation for person absconding. – ‘To abscond’ does not necessarily mean ‘to change place’; ordinarily it means ‘to hide’. Absconding to avoid service of process is an offence under section 172 of the Indian Penal code.

If the TRO is satisfied that the defaulter is absconding, he should publish a written proclamation under section 87²⁰ of the Criminal Procedure Code, requiring the defaulter to appear before him at a specified time and place. The time given for appearance should not be less than thirty days from the date of publishing the proclamation; otherwise the proclamation would be illegal.

After publishing the proclamation, the TRO has to record a statement in writing to the effect that the proclamation was duly published on a specified day.

13. Illegality of arrest - effect of. – An illegal or irregular arrest can be resisted by the person (if necessary, by using violence) to be arrested.

14. Persons exempt from arrest. – Under Rule 81, no woman or any person who in the TRO’s opinion is a minor or of unsound mind, shall be arrested. Apart from these persons, under section 135 of the C.P.C. (i) no judge, Magistrate or other judicial officer shall be arrested under civil process while going to, presiding in, or returning from, his court; and (ii) no person who is going to and returning from any tribunal in connection with any litigation (with which such person is connected) pending before such tribunal, shall be arrested. This exemption is, however, not available, under section 135(3) of the C.P.C.

15. ‘Shall be brought as soon as practicable’: [rule 73(4)²¹] – The provisions of this rule correspond to those of Rule 38, Order XXI of the C.P.C.²² Under these provisions, the person arrested shall be brought before the TRO, as soon as practicable, and in any case within twenty four hours from the time of arrest. The provisions of the rule are imperative, and the TRO is duty bound to see to their strict compliance.

16. Release from arrest : [proviso to rule 73(4)] – If the defaulter pays the amount shown as payable in the arrest warrant, together with the costs of arrests, the arresting officer shall at once release him from custody. A mistake in the amount shown as payable under the arrest warrant does not render the warrant illegal.

17. Notice to show-cause why a warrant of arrest should not be is to be

²⁰ Appendix-23

²¹ Appendix-2

²² Appendix-13

issued in Form No. I.T.C.P. 25.²³ Warrant of arrest under rules 73(2) & 73 (3) is issued in Form No. I.T.C.P.26.²⁴

18. Hearing. – Rule 74²⁵ has to be read along with Rule 73(1), (2). Under this Rule, when the defaulter appears in pursuance of a notice under Rule 73(1), or is brought before the TRO under Rule 73(3), the TRO is under an obligation to hold a formal enquiry, in which the Income-tax Officer has to lead the evidence in the first instance in support of execution by arrest. It is then, when a prima facie case is made out by the ITO that the TRO must give the defaulter an opportunity of showing cause as to why he should not be committed to the civil prison. The obligation to hold the hearing does not depend on whether the defaulter has or has not shown cause in response to the notice under Rule 73(1).²⁶ But no order for commitment can be made unless the TRO is satisfied, on any of the grounds set forth in Rule 73(1) or (2), that the commitment of the defaulter to civil prison is necessary. The burden of proving this will be obviously on the ITO and not on the defaulter.

19. Custody pending hearing. – Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of Tax Recovery Officer for his appearance when required.

20. Detention. – When the inquiry contemplated under Rule 75²⁷ is concluded, the TRO may make an order for the detention of the defaulter in the civil prison. The TRO has no power to order detention under this Rule unless he is satisfied on evidence on record that the defaulter has present means to pay the amount in arrears and that the circumstances mentioned in Rule 73(1) & (2) exist.

Where the TRO orders detention of the defaulter in civil prison, the warrant of detentions shall be in Form No. I.T.C.P. 27.²⁸

21. Days of grace prior to detention. – Rule 76(1)²⁹ gives a further and last chance to the defaulter to pay the arrears before he is sent to prison. The defaulter may pay the amount within a period not exceeding fifteen days. If not, the TRO will pass an order for detention of the defaulter, on the expiry of the said period.

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²⁴ Appendix-11

²⁵ Appendix-2

²⁶ Appendix-2

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²⁸ Appendix-11

²⁹ Appendix-2

22. Release. – Rule 76(2)³⁰ provides that if the TRO in his discretion, does not make an order of detention under Rule 76(1), he shall release the defaulter if he is already under arrest.

23. Detention in Prison. – The defaulter who is committed to prison shall be detained therein, –

- (a) for a period of six months if the amount of demand in the certificate exceeds Rs. 250 (Rs. 50 under C.P.C.); and
- (b) for a period of six weeks in any other case.

The TRO has no power to fix shorter periods than those prescribed in the Rule.

24. Release from prison. – The proviso to Rule 77(1)³¹ provides for the release (from detention in prison) of the defaulter in the following circumstances, namely:-

- (a) Where the amount mentioned in the warrant of arrest has been paid to the officer-in-charge of the prison;
- (b) Where ITO who issued the certificate requests for the release on any ground other than those mentioned in Rules 78 and 79, in such an event, the specific order of the TRO also has to be obtained before the defaulter is so released.

25. Release does not discharge liability. – Rule 77³² provides that a defaulter who has been released from prison shall not be discharged from his liability for the arrears merely because he has been so released.

26. Immunity from re-arrest. – A defaulter who has been released shall not be re-arrested under the certificate in execution of which he was detained in the civil prison.

27. Release [Rule 78(1)] – TRO may release the arrested defaulter if he is satisfied that the defaulter has disclosed his property and the defaulter has placed the property so disclosed, at the disposal of the TRO and has not committed any act of bad faith. The order of release is issued in Form no. ITCP 28.³³

28. Re-arrest [Rule 78] – If the TRO has any ground to believe that the disclosure made by the defaulter under Rule 78(1) is untrue, he may order for the re-arrest of the defaulter in execution of the same certificate.

29. Release on ground of illness. – Under Rule 79(1) the TRO may cancel the warrant of arrest before actual arrest where the defaulter is

³⁰ Appendix-2

³¹ Appendix-2

³² Appendix-2

³³ Appendix-11

suffering from serious illness. The TRO can release the defaulter if he is not in a fit state of health to be detained in the civil prison.

30. Entry into dwelling house. [Rule 80] – For the purpose of making an arrest under the Second Schedule, rules regarding entry into dwelling houses are given in Rule 80 of the Second Schedule.

31. Prohibition against arrest of woman, or minors etc. [Rule 81] – “The Tax Recovery Officer shall not order the arrest and detention in the civil prison of –

- (a) a women, or
- (b) any person who, in his opinion is a minor or of unsound mind.”

This means that in the above cases the TRO is prohibited from issuing even a show cause notice prescribed under Rule 73.

CHAPTER-XII

APPOINTMENT OF RECEIVER

1. Rule 4 provides that when the defaulter does not pay the amount mentioned in the certificate within the time specified under Rule 2, the TRO shall proceed to realise the same, *inter alia*, by appointing a receiver for the management of the defaulter's movable and immovable properties. Rules 69 to 72 of the Second Schedule¹ and rules 48 to 52 of the I.T.C.P. Rules, 1962², contain relevant provisions for appointment of, and management through a Receiver.

2. Rule 69³ – Appointment of Receiver for Business. –

(1) “Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.”

(2) “Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule.”

3. The provisions of the above Rule to some extent correspond to those of Rule 1, Order XL of the C.P.C.⁴

4. Attachment of Business. – Rule 69⁵ further provides that TRO may attach the business of the defaulter, and appoint a person as receiver to manage the same.

5. To Appoint a Person as a Receiver. – After the defaulter's business is attached, the TRO may appoint a person as a receiver to manage the business. The order of such appointment shall be in Form No. I.T.C.P. 24.⁶

The TRO may not ordinarily appoint a receiver when the estate of the deceased defaulter is in the hands of the executor.

6. Appointment of receiver without prior attachment. – The TRO, under Rule 69⁷ has to first attach the business of the defaulter before he

¹ Appendix-2

² Appendix-4

³ Appendix-2

⁴ Appendix-13

⁵ Appendix-2

⁶ Appendix-11

⁷ Appendix-2

can proceed to appoint a receiver for the same. Appointment of receiver before the business is attached is illegal. Order of attaching business is issued in Form No. ITCP 22.⁸

7. When can a Receiver be appointed? – Where the partnership property has been attached, the TRO may appoint a receiver under Rule 32(1)⁹ for the share of the defaulter-partner. The appointment of receiver whether under Rules 32(1), 69 or 70 is at the discretion of the TRO.

8. Who can be appointed as a receiver? – The TRO can appoint any person as a receiver. Appointment of a receiver is made in Form No. ITCP 24¹⁰.

9. Is Receiver an Officer under the Schedule? – Unlike under the Code of Civil Procedure the receiver is not an officer of the Court. He is merely a person appointed by the TRO to manage the business of the defaulter. For this purpose he is given considerable powers under rule 48 of the I.T.C.P. Rules, 1962.

10. Appointment of Receiver for Immovable Property. – Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

11. Rule 71¹¹ - Powers of the Receiver. –

(1) “Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property shall, after defraying the expenses of management be adjusted towards discharge of the arrears, and the balance if any, shall be paid to the defaulter.”

12. Duties of the Receiver. –

- (i) A receiver empowered by the TRO to raise a loan on mortgage of property in his possession can himself execute the mortgage bond.¹² A receiver on whom the TRO confers the powers mentioned in Rule 48 (I.T.C.P. Rule 1962, analogous to Rule XL of the C.P.C.¹³) specifies such duties

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⁹ Appendix-2

¹⁰ Appendix-11

¹¹ Appendix-2

¹² Bhadrabhai Delhi Vs. Jiban Mull Babu (1941) 194 IC 650

¹³ Appendix-13

- (ii) Enforcement of Receiver's duties – Rule 51 of the I.T.C.P. Rules, 1962 (analogous to Rule 4, Order XL, C.P.C.)¹⁴ prescribes the manner in which the duties of the receiver can be enforced.

13. Receiver's Remuneration: Rule 49 of the I.T.C.P. Rules, 1962 (corresponding to Rule 2, Order XL, of the C.P.C.)¹⁵, empowers the TRO to fix the remuneration payable to the receiver for the services rendered by him.

14. Order of Distribution of Profits, Rents etc. [Rule 71(2)]¹⁶ – This prescribes the manner in which the proceeds realised by the receiver have to be defrayed. In the first place, all the expenses for management have to be deducted; then the arrears of tax dues have to be adjusted; and the balance if any, is to be paid to the defaulter.

15. Withdrawal of Management. [Rule 72]¹⁷ – “The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents as are otherwise paid.”

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¹⁵ Appendix-13

¹⁶ Appendix-2

¹⁷ Appendix-2

CHAPTER-XIII
OTHER DUTIES OF THE TAX RECOVERY OFFICER AND
TAX RECOVERY INSPECTOR

1. Besides the attachment and sale of property by public auction, the TRI may be called upon to **perform other statutory and non-statutory functions**. These include:

- (i) Delivery of possession of property to the auction purchaser;
- (ii) Executing warrants of arrest and generally assisting in the arrest proceedings; and
- (iii) To undertake miscellaneous enquiries relating to identification and recovery of certificated tax arrears.

(i) Delivery of possession of property :

- (a)** Delivery of possession of the movable property attached by actual seizure is complete when it is physically handed over to the auction purchaser.
- (b) Power of the TRO to eject the defaulter or occupant of property.**
- Rule 39 to 45 of the ITCP Rules, 1962¹ contain the relevant provisions in this regard.
- (c) Procedure for delivery of possession.** – For effecting delivery of possession in a case where the occupant refuses to vacate property, the TRO will issue a warrant in the name of the Inspector, touching on the circumstances of the case and ordering the delivery of the immovable property to the auction purchaser by ejecting the occupant who refuses to vacate the property.
- (d) Physical removal of the occupant and his samans.** – Should the occupant of the property refuse to vacate it, the Inspector has the authority to remove him physically from the property.
- (e)** At times, the auction purchaser himself proceeds to take possession of the property, and is resisted. In such cases, on an application by the auction purchaser, the TRO may, after giving an opportunity to the occupiers of the premises, issue a warrant in the name of the Inspector to remove the persons who are resisting the auction purchaser.
- (f) Symbolic delivery – procedure regarding.** – Rule 40 of the ITCP

¹ Appendix-4

Rules, 1962² deals with delivery of the property, which is occupied by a tenant who cannot be removed, Under this rule, a symbolic, and not actual delivery, is given.

In such cases also, a warrant is issued in the name of Inspector for handing over symbolic possession of the property.

(ii) Arrest and detention of the defaulter

- (a) Arrest of the defaulter and his detention in civil prison is one of the prescribed modes of recovery of arrears. Here action is directed against the person of the defaulter.
- (b) When he considers that it is necessary to arrest and detain the defaulter, the TRO issues a warrant of arrest in Form No. ITCF 26³ in the name of the TRI.

(iii) Conducting Enquires

- (a) **By far the most significant of the tasks entrusted to Income.** – Tax Inspectors is enquiry work. It demands the bulk of their prime time and attention.
- (b) **Enquiry relating to properties of the defaulter.** – Attachment and sale of the properties, movable and immovable, of the defaulter is essential to recovery proceedings. Naturally, therefore, the TRO must have a correct and complete picture of the properties owned by the defaulter.
- (c) **Enquires about absconding defaulter.** – At times, the defaulter facing recovery proceedings performs the vanishing trick, and the TRI is asked to make enquiries about the whereabouts of the absconding defaulter.
- (d) **Enquiries relating to write off of arrears.** – Enquiries made in the context of a proposal to write off the arrears must essentially be directed towards the objective of ascertaining the capacity of the defaulter to pay the arrears.
- (e) It is common knowledge that arrears of tax can be recovered not only from the defaulting assessee but, in certain circumstances from others too. For example, any sum due from an assessee may, on his death, be recovered from his legal representatives.
- (f) Recovery can also be made from :-
 - (1) sureties

² Appendix-4

³ Appendix-11

- (2) the defaulter's interest in the properties of the HUF on which he is a member (43 ITR 174)
- (3) the shares allotted to the member on the partition of a defaulting HUF (105 ITR 109)
- (4) benamidars of the defaulter
- (5) the properties transferred by the defaulter, directly or indirectly, to his spouse, minor child etc. (Vide Explanation to sec. 222, I.T. Act 1961)
- (6) in certain circumstances, the directors of the defaulting company which is a private limited company, and so on.

CHAPTER-XIV
OTHER IMPORTANT PROVISIONS OF THE
SECOND SCHEDULE TO INCOME-TAX ACT, 1961 AND
INCOME TAX CERTIFICATE PROCEEDINGS RULES, 1962

1. Issue of notice. – Rule 2¹ enjoins upon the TRO to issue a notice to the defaulter mentioned in the certificate, requesting him to pay the arrears as certified within 15 days from date of service, and intimating him that, in default, steps would be taken to realize the arrears under the second schedule.

2. When certificate may be executed. – Rule 3² prohibits taking of any coercive measures before the expiry of 15 days from the date of service, with the one exception contained in the proviso to this rule. Premature attachment can only be made if the TRO for reasons to be recorded by him, is satisfied that the defaulter is likely to eliminate or conceal his movable assets with the intent to obstruct or delay recovery. Vague allegations to that effect would not be sufficient to invoke the proviso.

3. Mode of recovery. – In case the defaulter does not pay the arrears within the time specified in the notice or further time, if any, granted by the TRO in his discretion, Rule 4 of the second schedule specifies the following modes of recovery:

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by arrest of the defaulter and his detention in prison;
- (d) by appointing a receiver for the management of the defaulter's movable and immovable properties

4. Interest, costs and charges recoverable. – Rule 5³ provides that, in addition to the certificated demand, a further amount by way of interest thereon for the period commencing immediately after the date of the issue of the certificate and ending with the date of realization of the certificated amount shall be recovered from the defaulter along with the costs of execution of the certificate.

5. Process fees. – The following scale of fees shall be charged for service and execution of the process issued during the recovery proceeding :

¹ Appendix-2

² Appendix-2

³ Appendix-2

	Where the amount mentioned in the certificate	
	Exceeds Rs.1,000	Is Rs. 1,000 or under
1. Notice of demand	1.50	1.00
2. Warrant of attachment	3.00	2.00
3. Warrant of arrest	3.00	2.00
4. Warrant of delivery	3.00	2.00
5. Proclamation of sale	5.00	3.00
6. Any process not provided for herein above	1.50	1.00

6. Poundage fees.

(1) In respect of any sale made in the execution of a certificate, there shall be levied a fee by way of poundage on the gross amount realised by the sale, calculated at the rate of 2 per cent on such gross amount upto Rs. 1,000 and at the rate of 1 per cent on the excess of such gross amount over Rs. 1,000.

(2) The poundage fee leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 50 paise shall be levied for every Rs.25, or part of Rs.25, realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 25 paise for every Rs.25 or part thereof on the excess of such amount over Rs.1,000, shall be levied.

(3) Where the sale is in more than one lot, the poundage fee shall be calculated with reference to the sale proceeds of each lot separately.

(4) The poundage fee under sub-rule (1) shall be paid by the purchaser of the property as soon as the sale is completed.

(5) When a sale of immovable property is set aside under sub-rule (2) of rule 63 of the principal rules, the Tax Recovery Officer may make an order for payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fees paid by the purchaser of the property under sub-rule (1) read with sub-rule (4).

7. Copying fee

(1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document at the rate of Re. 1 for each page of such document.

(2) Copying fees shall be payable in advance.

(3) The fees to be charged for the supply of a copy of any document urgently shall be Rs.4 for each document, in addition to the fees payable under sub-rule (1).

8. Inspection fees

(1) Fees for inspecting records of proceedings before the Chief Commissioner or Commissioner or Tax Recovery Officer under the Second Schedule shall, where such inspection is permitted, be charged as follows:

- | | |
|---|----------|
| (a) for the first hour or part thereof | Rs. 2 |
| (b) for every additional hour or part thereof | 50 Paise |

(2) Fees for inspection shall be payable in advance.

9. Purchaser's title. – Rule 6⁴ provides that the purchaser's interest, right or title shall be the same as was vested in the defaulter.

10. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff. – Rule 7⁵ is intended to protect the certified purchaser at an auction sale from any claim that the purchase was made by the auction purchaser on behalf of the plaintiff.

11. Disposal of proceeds of execution. – Rule 8⁶ lays down the manner in which the amounts realized by sale or otherwise in execution of a certificate shall be disposed off.

12. General bar to jurisdiction of Civil Court case where fraud alleged. – Rule 9⁷ empowers the TRO to determine all disputes arising between the A.O. and the defaulter and/or his representatives relating to execution, discharge, or satisfaction or a certificate, or relating to confirmation, or setting aside of an execution sale. Unless fraud is alleged, a civil suit cannot be filed in respect of these matters.

13. Property exempt from attachment. – Rule 10⁸ exempts from attachment all such property as is by the Code of Civil Procedure, 1908, exempted from attachment and sale in execution of a decree of a civil court. The tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

14. Investigation by Tax Recovery Officer. – As discussed above, if any objection is preferred by the AO or the defaulter, or their representatives, such objection has to be taken under rule 9 of the second schedule. All

⁴ Appendix-2

⁵ Appendix-2

⁶ Appendix-2

⁷ Appendix-2

⁸ Appendix-2

objections to attachment or sale raised by a third party are covered by Rule 11.⁹

15. The distinction between Rule 9 and Rule 11 is very material for two reasons, namely:-

Where a question arises between the A.O. and the defaulter or their representatives, the objector should apply to the TRO under Rule 9 and a separate suit for the purpose is barred unless fraud is alleged. But where an objection is made by a third party, the objector may file an application before the TRO under Rule 11.

An order passed by the TRO under Rule 9, not being itself final and conclusive, is appealable to the Tax Recovery Commissioner under Rule 86¹⁰ of the Second Schedule, but the orders passed by the TRO under Rule 11 are not so appealable, and as such they are conclusive, unless they are challenged and upset in a regular civil suit.

16. Removal of attachment on satisfaction or conciliation of certificate.

– Rule 12¹¹ of the Second Schedule provides that, if he is satisfied about the claim of the objector, the TRO shall order that the property in question shall be released from attachment or sale. Rule 15¹² of ITCP rules, 1962 may also be referred to.

17. Defaulting purchaser answerable for loss on resale. – Rule 14¹³ fixes the responsibility for loss on resale arising out of an auction-purchaser's defaults in payment of the following amounts :

- the purchase money under rule 44¹⁴,
- the deposit money under rule 57(1)¹⁵,
- the full amount of purchase money under rule 57(2)¹⁶.

18. Officers deemed to be acting judicially. – According to rule 82¹⁷, the provisions of the Judicial Officer's Protection Act are applicable to Tax Recovery Commissioners, TROs and other acting under the Second Schedule.

19. Power to take evidence. – Rule 83¹⁸ empowers the TRO, Tax Recovery Commissioner and any other officer acting under Second Schedule to

⁹ Appendix-2

¹⁰ Appendix-2

¹¹ Appendix-2

¹² Appendix-4

¹³ Appendix-2

¹⁴ Appendix-2

¹⁵ Appendix-2

¹⁶ Appendix-2

¹⁷ Appendix-2

¹⁸ Appendix-2

receive evidence, administer oath, enforce the attendance of witnesses, and compel the production of documents. The powers vested in them in this regard are the same as those vested in a civil court. If a witness does not comply with the summons under rule 83, the TRO may :

- Issue a warrant of arrest;
- attach and sell his property;
- Impose a fine not exceeding Rs.500, and
- Order him to furnish security for his appearance, and in default, commit him to the civil prison.

20. Continuance of certificate. – Rule 84¹⁹ and 85²⁰ of the Second Schedule and rule 60²¹ of ITCP Rules, 1962 authorise the TRO to continue the proceedings in respect of a certificate received against a person who dies subsequently. AO cannot issue a certificate against a person who is already dead.

21. Appeals. – Under Rule 86²², all original orders of the TRO appointed under S2(44)(iii), which are not conclusive in terms of provisions of the Second Schedule, are appealable before the Chief Commissioner or Commissioner.

Order not appealable. – The following orders passed by the TRO have been entirely made conclusive and no appeal shall, therefore, lie to the Chief Commissioner or Commissioner against these orders :

- (i) An order passed determining the attachability or otherwise of any property under rule 10²³, and
- (ii) An order under Rule 11(6)²⁴ dismissing or allowing the petition of the claimant under Rule 11(1);²⁵

22. Recovery from surety. – Rule 88²⁶ of the Second Schedule provides for recovery from any person who stands surety for the defaulter. Before any steps for recovery are taken against the surety, it is necessary to serve a notice on the surety under rule 61²⁷ of ITCP Rules, 1962 in Form No. ITCP 30²⁸.

¹⁹ Appendix-2

²⁰ Appendix-2

²¹ Appendix-4

²² Appendix-2

²³ Appendix-2

²⁴ Appendix-2

²⁵ Appendix-2

²⁶ Appendix-2

²⁷ Appendix-4

²⁸ Appendix-11

CHAPTER-XV
REGISTERS TO BE MAINTAINED BY
TAX RECOVERY OFFICERS

Following is **the list of important registers** with which the TRI should be familiar:

1. Cash Book
2. Register of movable and immovable property attached and sold
3. Execution Register
4. Register of Daily Reduction/collection of certified demand
5. Stay Register
6. Installments Register
7. Disposal Register for certificates finally disposed off
8. Closed Certificates Register
9. Custody Register
10. Daily Diary
11. Register of Recovery in case of Companies in liquidation, BIFR & Sick companies.

1. Cash Book. – The TRO/TRIs are authorised to collect cash from defaulters while effecting recovery of the tax in the course of attachment of properties etc. (Rules 22, 47, 61 and 73 of the Second Schedule)¹ The cash so collected should be remitted into the nearest Treasury within 24 hours of its collection. Some of the salient points are given below :

- (i) Each officer receiving money on behalf of the Government of India should maintain a Cash Book in Form T.R. 4.
- (ii) Where the amount is collected in cash, the Officer concerned must issue a receipt in machine-numbered Form T.R. 5 to the party, quoting therein the number and date of Recovery Certificate against which the amount has been realised.
- (iii) All monetary transactions should be entered in the Cash Book as soon as they occur and in any case before the close of the day and, in the case of a touring officer, on the very day the TRO/TRI returns from tour. The Cash Book should be closed daily.
- (iv) Where cheques have been accepted, temporary acknowledgement of the receipt of the cheque should be given as prescribed under this Office Letter No. 16.05.69 ITCC dated 10/11th February,

¹ Appendix-2

1969. (refer to Appendix 24 for detailed procedure regarding cheques)

- (v) For verification and checking of the Cash Book by the TRO every month, the Inspector should place all the challans chronologically in a Loose Leaf Binder.
- (vi) The Officers should be very careful while handling cash. Where amounts are collected in mofussil stations, they should ensure that the amounts are remitted in the Treasury then and there. Otherwise, there is the risk of losing the money in which case they will be held personally liable to the extent of the loss. They must therefore make it a point to remit the amount into the treasury within 24 hours.

2. Register of Movable and Immovable Properties. – The attaching officer, i.e. the TRO or Inspector, is solely responsible for the safe custody of the articles attached and brought to the office-vide rule 23 of the Second Schedule.² The proformas of the moveable and immovable properties registers are given in Appendix 29 & 30.

In regard to moveable articles kept in the strong Room, it is also necessary that slips are pasted on each article giving Sr. No., name of the defaulter, the date of attachment and serial No. of the register.

3. Executive Register. – This register gives the number of warrants issued to and executed by the TRO/TRI. The proforma of the Register is given in Appendix 25.

4. Register of Daily Reduction/Collection of Certified Demand. – This register³ is the source record for the collection and reduction figures to be furnished in the monthly Progress Report.

5. Stay Register. – This register⁴, which contains the details of the cases in which stay has been granted, enables the TRO to monitor the cases properly.

6. Installments Register. – This register⁵ enables the TRO to see whether the defaulters adhere to the time schedule of payments in cases where instalment facility has been granted.

7. Disposal Register for certificates finally disposed of. – The Register⁶ is meant for incorporating the details of the final disposal of cases, where

² Appendix-2

³ See Appendix-26

⁴ See Appendix-10

⁵ See Appendix-28

⁶ See Appendix-31

ITCP 1⁷ had been issued. The details of the cases where the certificate is closed on account of appellate reduction rectifications, etc. may be made not in this register but in a separate register which is already in use.⁸

8. Custody Register. – The Articles attached by actual seizure are brought to the office of the TRO and handed over to the official incharge of the Strong Room after obtaining his acknowledgement. The strong room incharge enters the particulars of the articles in the custody register. It is pertinent to mention here that as per Board Instruction No. 1866 (F.No. 404/173/90-ITCC dated 21st Nov. 1990) the TROs are directed to obtain the title deeds of the attached property from the assessee. The TRO should maintain proper record of such attached title deeds in custody register and the same be kept in Strong Room.

9. Daily Diary. – The work done by the TRI day to day is to be entered in the Daily Diary to be maintained by each Inspector.

10. Register of Recovery in case of Companies in liquidation, BIFR & Sick Companies – A Register of Recovery in case of companies in liquidation⁹, in BIFR & Sick companies should be maintained by TRO in order to ensure that the claim of recovery of taxes has been lodged with the official liquidator within prescribed time and to monitor that proper steps have been taken to recover outstanding demand. The proforma of this register is given in Appendix-27.

⁷ Appendix-11

⁸ See Appendix-32

⁹ See Appendix-27

CHAPTER-XVI
ORGANISATION OF WORK IN THE OFFICE OF
THE TAX RECOVERY OFFICER

1. As soon as the statement to draw certificate is received from Assessing Officer in the TRO's office, it is entered in a separate Inward Register for certificates. The register is maintained in separate parts for each Circle/Wards. An inward number is assigned to each statement which are then passed on to the TRO who will draw Recovery Certificates. After drawing up of certificate the TRO then passes it on to the clerk maintaining recovery files. The clerk enters the particulars of each certificate in TRO's Register in a consecutive order . Separate serial number is given by each clerk according to the area allotted to him, and an index is maintained with a view to locating the number of certificates pending against each assessee. This also enables the clubbing of the certificates relating to the same defaulter, but received at different points of time.
2. The clerk then prepares the notice of demand (ITCP 1)¹ for each certificate, and puts it up to the TRO. Simultaneously, on the duplicate copy of the certificate, the TRO's Register No. and date of preparation of the ITCP-I are indicated. The duplicates are then despatched to the concerned ITOs for their information.
3. The notices of demand (ITCP-1), duly signed by the TRO are then handed over to Notice servers.
4. Recovery work is then allocated to the TRIs. The files given to the Tax Recovery Inspectors should be duly entered in the control register maintained by the TRI for this purpose.
5. The details of movable and immovable properties attached by the TRO/TRIs from time to time are entered in the register maintained for the purpose.
6. When the time is ripe for selling the properties attached, the TRO assigns to the TRIs the task of issuing proclamation for sale and holding of auction. When the sale is complete, the TRIs report the fact to the TROs.
7. The cash collected by the TROs/TRIs is either directly remitted by them into the Treasury, or handed over to the official authorised to deal with cash.

¹ Appendix-11

8. When the certificated amount is fully collected, the certificate is closed and the fact recorded in the register of Closed Certificates. The relevant file is then lodged.
9. The work of a TRO is conveniently classified under two heads, viz work relating to certificates in arrears and that relating to current certificates.

APPENDIX-1

SECTIONS 222 TO 232 OF THE INCOME-TAX ACT, 1961

222. Certificate to Tax Recovery Officer.

(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form 1 specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—

- (a) attachment and sale of the assessee's movable property;
- (b) attachment and sale of the assessee's immovable property
- (c) arrest of the assessee and his detention in prison
- (c) appointing a receiver for the management of the assessee's movable and immovable properties.

Explanation: For the purposes of this sub-section, the assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly on or after the 1st day of June, 1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid ; and so far as the move or immovable property so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable .or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.

(2) The Tax Recovery Officer may take action under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

223. Tax Recovery Officer by whom recovery is to be effected

(1) The Tax Recovery Officer competent to take action under section 222 shall be –

- (a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate, or
- (b) the Tax Recovery Officer within whose jurisdiction the assessee

resides or any movable or immovable property of the assessee is situate, the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorized in this behalf by the Board in pursuance of section 120.

(2) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up —

- (a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction, or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do, he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner¹ and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.

224. Validity of certificate and cancellation or amendment thereof.

It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

225. Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.

(1) It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

(2) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(3) Where a certificate has been drawn up and subsequently the amount

of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

226. Other modes of recovery.

(1) Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(IA) Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.

(2) If any assessee is in receipt of any income chargeable under the head "Salaries", the Assessing Officer or Tax Recovery Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs:

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 6001 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any requisition made under this sub-section.

- (3) (i) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Assessing Officer or Tax Recovery Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.
- (ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

- (iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer, and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.
- (iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section, shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- (v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.
- (vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.
- (vii) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.
- (viii) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.
- (ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the

Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

- (x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Assessing Officer or Tax Recovery Officer may, if so authorized by the Chief Commissioner or Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.

227. Recovery through State Government.

If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258* of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

228. Recovery of Indian tax in Pakistan and Pakistan tax in India.

[Omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1st April, 1989.]

228A. Recovery of tax in pursuance of agreements with foreign Countries.

(1) Where an agreement is entered into by the Central Government with the Government of any country outside India for recovery of income-tax

* Article 258: Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a state, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement sends to the Board a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board may forward such certificate to any Tax Recovery Officer within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer shall—

- (a) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222 and
- (b) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

(2) Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

229. Recovery of penalties, fine, interest and other sums.

Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

230. Tax clearance certificate.

¹[(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf no person, –

¹ Substituted for sub-section (1) by the Finance-Act, 2009, with effect from 1st June, 2003, Prior to substitution, sub-section (1) stood as under:

‘(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person—

- (a) Who is not domiciled in India; or
- (b) Who is domiciled in India at the time of his departure, but-
 - (i) intends to leave India as an emigrant; or
 - (ii) intends to proceed to another country on a work permit with the object of taking up any employment or other occupation in that country; or
 - (iii) in respect of whom circumstances exist which, in the opinion of an income-tax authority, render it necessary for him to obtain a

Contd.

- (a) who is not domiciled in India;
- (b) who has come to India in connection with business, profession or employment; and
- (c) who has income derived from any source in India,

shall leave the territory of India by land, sea or air unless he furnishes to such authority as may be prescribed²–

- (i) an undertaking in the prescribed³ from his employer; or
- (ii) through whom such person is in receipt of the income, to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer referred to in clause (i) or the person referred to in clause (ii), and the prescribed¹ authority shall, on receipt of the undertaking, taking immediately given to such person a no objection certificate,⁴ for leaving India.

Provided that nothing contained in sub-section(1) shall apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

(1A) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, every person, who is domiciled in India at the time of his departure, shall furnish, in prescribed⁵ form to the income-tax authority or such other authority as may be prescribed⁶–

certificate under this section, shall leave the territory of India by land, sea, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the “competent authority”) a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth –tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that in the case of a person not domiciled in India the competent authority may, if it is satisfied that such person intends to return to India, issue an exemption certificate either in respect of a single journey to be undertaken by that person within such period as may be specified in the certificate;

² See rule 42(1)

³ See rule 43(1) and Form No.30 A. For analysis, see Mashbra’s Income-tax Rules.

⁴ See rule 43(2) and Form No.30 B. For analysis, see Mashbra’s Income-tax Rules.

⁵ See rule 43(3) and Form No.30 C. For analysis, see Mashbra’s Income-tax Rules.

⁶ See rule 42(2).

- (a) the permanent account number allotted to him under section 139A :

Provided that in case no such permanent account number has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a permanent account number under this Act, such person shall furnish a certificate in the prescribed⁷ form ;

- (b) the purpose of his visit outside India ;
(c) the estimated period of his stay outside India:

Provided that no person —

- (i) who is domiciled in India at the time of his departure; and
(ii) in respect of whom circumstances exist which, in the opinion of an income-tax authority render it necessary for such person to obtain a certificate under this section,

shall leave the territory of India by land, sea or air unless he obtains a certificate⁸ from the income-tax authority⁹ stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Expenditure-tax Act, 1987 (35 of 1987), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that no income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons there for and obtains the prior approval of the Chief Commissioner of Income-tax.}

- (2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) ¹⁰[or the first proviso to sub-section (1A)] applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Assessing Officer may, having regard to the circumstances of the case, determine.

⁷ See rule 43(3) and Form No.30 C. For analysis, see Mashbra's Income-tax Rules.

⁸ See rule 43(4) and 43(5) and Form Nos. 31 and 33. For analysis, see Mashbra's Income Tax Rules.

⁹ See rule 42(2).

¹⁰ Inserted by the Taxation Laws (Amendment) Act 2003, with retrospective effect from 1st June 2003.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

¹¹(4) The Board may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation : For the purposes of this section, the expressions “owner” and “charterer” include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

230A. Restrictions on registration of transfers of immovable property in certain cases.

¹²[Omitted by the Finance Act) 2001, with effect from 1st June, 2001.]

¹¹ See rules 42,43 and 44 and Form Nos.30A, 30B, 30C, 31 and 33. For analysis, see Mashbra's Income tax Rules.

¹² Prior to omission, section 230A, stood as under:

‘230A. Restrictions on registration of transfers of immovable property in certain cases.— (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub section (1) of section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than five lakh rupees, no registering officer appointed under that Act shall register any such documents, unless the Assessing Officer certifies that—

(a) Such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profit Tax act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act 1957(27 of 1957), the Expenditure-tax Act, 1957(29 of 1957), the gift-tax Act, 1958(18 of 1958), the Super Profits Tax Act, 1963 (14 of 1963), and the Companies (Profits) Surtax Act, 1964 (7 of 1964), or

(b) The registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts.

(2) The application for the certificate required under sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed.

(3) The provisions of sub-section (1) shall not apply in a case where the person referred to in that sub-section is any such institution, association or body, or belongs to any such class of institutions, associations or bodies, as the Board may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.’

231. Period for commencing recovery proceedings.

[Omitted I the Direct Tax Laws (Amendment) Acts 1987, with effect from 1st April, 1989.]

232. Recovery by suit or under other law not affected.

The several modes of recovery specified in this Chapter shall not affect in any way –

- (a) any other law for the time being in Force relating to the recovery of debts due to Government or
- (b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee, and it shall be lawful for the Assessing Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding, that the tax due is being recovered from the assessee by any mode specified in this Chapter.

APPENDIX-2
THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX
[See sections 222 and 276]

PART I
GENERAL PROVISIONS

1. Definition.

In this Schedule, unless the context otherwise requires, –

- (a) ‘certificate’, except in rules 7, 44, 65 and sub-rule (2) of rule 66, means the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section;
- (b) ‘defaulter’ means the assessee mentioned in the certificate;
- (c) “execution”, in relation to a certificate, means recovery of arrears in pursuance of the certificate;
- (d) “movable property” includes growing crops;
- (e) “officer” means a person authorised to make an attachment or sale under, this schedule;
- (h) “rule” means a rule contained in this Schedule; and
- (g) “share in a corporation” includes stock, debenture-stock, debentures or bonds. –

2. Issue of notice.

When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

3. When certificate may be executed.

No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule:

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the

certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

4. Mode of recovery.

If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes:

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by arrest of the defaulter and his detention in prison;
- (d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

5. Interest, costs and charges recoverable.

There shall be recoverable, in the proceedings in execution of every certificate, –

- (a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220, and
- (b) all charges incurred in respect of -
 - (i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and
 - (ii) all other proceedings taken for realising the arrears.

6. Purchaser's title. –

(1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

7. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.

(1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

8. Disposal of proceeds of execution.

(1) Whenever assets are realised by sale or otherwise in execution of a certificate, the proceeds shall be disposed of in the following manner, namely:

- (a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;
- (b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised ; and
- (c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (b) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.

9. General bar to jurisdiction of civil courts, save where fraud alleged.

Except as otherwise expressly provided in this Act, every question arising between the Tax Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

10. Property exempt from attachment.

(1) All such property as is by the Code of Civil Procedure, 1908(5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

11. Investigation by Tax Recovery Officer.

(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that –
(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or
(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale,

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of or in trust for any other person, or was in the possession of some

other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

12. Removal of attachment on satisfaction or cancellation of certificate.

Where –

- (a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or
- (b) the certificate is cancelled, the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

13. Officer entitled to attach and sell.

The attachment and sale of movable property and the attachment and sale of immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct.

14. Defaulting purchaser answerable for loss on resale.

Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the Tax Recovery Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule :

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

15. Adjournment or stoppage of sale.

(I) The Tax Recovery Officer may, in his discretion, adjourn sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of,

the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (J) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

16. Private alienation to be void in certain cases.

(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in' execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

17. Prohibition against bidding or purchase by officer.

No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

18. Prohibition against sale on holidays.

No sale under this Schedule shall take place on a Sunday or other general holiday recognized by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

19. Assistance by police. –

Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

19A. Entrustment of certain functions by Tax Recovery Officer.

A Tax Recovery Officer may, with the previous approval of the [Joint Commissioner], entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.

PART II**ATTACHMENT AND SALE OF MOVABLE PROPERTY****Attachment****20. Warrant.**

Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in-writing and signed with his name specifying the name of the defaulter and the amount to be realised.

21. Service of copy of warrant.

The officer shall cause a copy of the warrant to be served on the defaulter.

22. Attachment.

If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

23. Property in defaulter's possession.

Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

24. Agricultural produce.

Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment–

- (a) where such produce is growing crop, – on the land on which such crop has grown, or

- (b) where such produce has been cut or gathered, – on the threshing floor or place for treading out grain or the like, or fodder-stack, on Or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. Provisions as to agricultural produce under attachment.

(1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient ; and he shall have power to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in' his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

26. Debts and shares, etc.

- (1) In the case of –
 - (a) a debt not secured by a negotiable instrument,

- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting, –
 - (i) in the case of the debt – the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;
 - (ii) in the case of the share – the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
 - (iii) in the case of the other movable property (except as aforesaid) – the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (r) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. Attachment of decree.

(1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until –

- (i) the Tax Recovery Officer cancels the notice, or
- (ii) the Tax Recovery Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the Tax Recovery Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The Tax Recovery Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Share in movable property.

Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

29. Salary of Government servants.

Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of order 21 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

30. Attachment of negotiable instrument.

Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.

31. Attachment to property in custody of court or public officer.

Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Tax Recovery Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

32. Attachment of partnership property.

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and

make an order for the sale of such interest or such other order as the circumstances the case may require.

(2) The other persons shall, be at liberty at any time to redeem the interest charged or, in case of a sale being directed, to purchase the same.

33. Inventory.

In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

34. Attachment not to be excessive.

The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

35. Seizure between sunrise and sunset.

Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

36. Power to break open doors, etc.

The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable, opportunity to women to withdraw.

Sale

37. Sale.

The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

38. Issue of proclamation.

When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

39. Proclamation how made.

(1) Such proclamation shall be made by beat of drum or other customary mode,

- (a) in the case of property attached by actual seizure—
 - (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
 - (ii) at such other places as the Tax Recovery Officer may direct;
- (b) in the case of property attached otherwise than by actual seizure, in places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part office of the Tax Recovery Officer.

40. Sale after fifteen days.

Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.

41. Sale of agricultural produce.

(1) Where the property to be sold is agricultural produce, the sales shall be held-

- (a) if such produce is a growing crop-on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered- at or near threshing floor or place for treading out grain or the like, or fodder stack on or in which it is deposited.

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,-

- (a) a fair price in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or a person authorised to act applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day, the sale shall be postponed accordingly, and shall be then completed, in the price may be offered for the produce.

42. Special provisions relating to growing crops.

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored by has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g., as green wheat), it maybe sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

43. Sale to be by auction.

The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

44. Sale by public auction.

(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase money, the officer holding the sale shall grant certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

45. Irregularity not to vitiate sale, but any person injured may sue.

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

46. Negotiable instruments and shares in a corporation.

Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation,

the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

47. Order for payment of coin or currency notes to the Assessing Officer.

Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8.

PART III

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

Attachment

48. Attachment.

Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transferrer charge.

49. Service of notice of attachment.

A copy of the order of attachment shall be served on the defaulter.

50. Proclamation of attachment.

The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

51. Attachment to relate back from the date of service of notice.

Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale

52. Sale and proclamation of sale.

(1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

53. Contents of proclamation.

A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,–

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof
- (c) the amount for the recovery of which the sale is ordered;
- (cc) the reserve price, if any, below which the property may not be sold ; and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

54. Mode of making proclamation.

(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and, the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

55. Time of sale.

No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

56. Sale to be by auction.

The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer:

Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53.

57. Deposit by purchaser and resale in default.

(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

58. Procedure in default of payment.

In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

59. Authority to bid.

(1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Assessing Officer, if so authorised by the Chief Commissioner or Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale.

(2) All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

(3) Where the Assessing Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.

60. Application to set aside sale of immovable property on deposit.

(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing —

- (a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of 2[fifteen per cent per annum], calculated from the date of the proclamation Of sale to the date when the deposit is made and
- (b) for payment to the purchaser, as penalty, a sum equal five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time, within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale

Provided that—

- (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity ; and
- (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

62. Setting aside sale where defaulter has no saleable interest.

At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

63. Confirmation of sale.

(1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

64. Return of purchase money in certain cases.

Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

65. Sale certificate.

(1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

66. Postponement of sale to enable defaulter to raise amount due under certificate.

(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and

notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

67. Fresh proclamation before re-sale.

Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.

68. Bid of co-shearer to have preference.

Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-shearer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-shearer.

68A. Acceptance of property in satisfaction of amount due from the defaulter.

(1) Without prejudice to the provisions contained in this part, an Assessing Officer, duly authorised by the Chief Commissioner or Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (I) of rule 59, at such price as may be agreed upon between the Assessing Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Assessing Officer and on the date the possession of the property is delivered to the Assessing Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1), exceeds the amount due from the defaulter, such excess shall be paid by the Assessing Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the Assessing Officer fails to pay such excess within the period aforesaid, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount

remaining unpaid, pay simple interest at ¹[²[six per cent] per annum] to the defaulter on such amount.

68B. Time limit for sale of attached immovable property.

(1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period—

- (i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court or
- (ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court or
- (iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided, shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the

said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.

PART IV

APPOINTMENT OF RECEIVER

69. Appointment of receiver for business.

(1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

70. Appointment of receiver for immovable property.

Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

71. Powers of receiver.

(1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realization of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

72. Withdrawal of management.

The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V**ARREST AND DETENTION OF THE DEFAULTER****73. Notice to show cause**

(1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied—

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property, or
- (b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.

(4) Every person arrested in pursuance of a warrant of arrest under this rule shall be brought before the Tax Recovery Officer issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Explanation: For the purposes of this rule, where the defaulter is a

Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

74. Hearing.

When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, the Tax Recovery Officer shall give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

75. Custody pending hearing.

Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

76. Order of detention.

(1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

77. Detention in and release from prison.

(1) Every person detained in the civil prison in execution of a certificate may be so detained,-

- (a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees - for a period of six months, and
- (b) in any other case — for a period of six weeks:

Provided that he shall be released from such detention—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

- (ii) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears but he shall not be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

78. Release.

(1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

79. Release on ground of illness.

(1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer, may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released there from by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

80. Entry into dwelling house.

For the purpose of making an arrest under this Schedule—

- (a) no dwelling house shall be entered after sunset and before sunrise;
- (b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or

in any way prevents access thereto but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

- (c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

81. Prohibition against arrest of women or minors, etc.

The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

PART VI

MISCELLANEOUS

82. Officers deemed to be acting judicially.

Every Chief Commissioner or Commissioner, Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850(18 of 1850).

83. Power to take evidence.

Every Chief Commissioner or Commissioner, Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

84. Continuance of certificate.

No certificate shall cease to be in force by reason of the death of the defaulter. 85. Procedure on death of defaulter,—

If at any time after the certificate is drawn up by the Tax Recovery Officer the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

86. Appeals.

- (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner.
- (2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.
- (3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.
- (4) Notwithstanding anything contained in sub-rule (1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.

87. Review.

Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Chief Commissioner or Commissioner, Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

88. Recovery from surety.

Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

89. Penalties.

[Omitted fry the Direct Tax Laws (Amendment) Act, 1987, with effect from 1st April, 1989.]

90. Subsistence allowance.

- (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Tax Recovery Officer.
- (2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment.-debtors arrested in execution of a decree of a civil court.
- (3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

91. Forms.

The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

92. Power to make rules.

(1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by Chief Commissioners, Commissioners, Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely:—

- (a) the area within which Chief Commissioners, Commissioners or Tax Recovery Officers may exercise jurisdiction;
- (b) the manner in which any property sold under this Schedule may be delivered;
- (c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;
- (d) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;
- (e) the fees to be charged for any process issued under this Schedule;
- (f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;
- (g) recovery of poundage fee;
- (h) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;
- (i) the mode of attachment of business.

93. Saving regarding charge.

Nothing in this Schedule shall affect any provision of this Act where under the tax is a first charge upon any asset.

94. Continuance of certain pending proceedings and power to remove difficulties.

All proceedings for the recovery of tax pending immediately before

the coming into force of the amendments to this Schedule by the Direct Tax Laws (Amendment) Act, 1987(4 of 1988) shall be continued under this Schedule as amended by that Act from the stage they had reached, and, for this purpose, every certificate issued by the Assessing Officer under section 222 before such amendment shall be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment, and, if any difficulty arises in continuing the said proceedings, the Board may issue (whether by way of modification, not affecting the substance, of any rule in this Schedule or otherwise) general or special orders which appear to it to be necessary or expedient for the purpose of removing the difficulty.

APPENDIX-3
THE THIRD SCHEDULE
PROCEDURE FOR DISTRAINT BY ASSESSING OFFICER OR
TAX RECOVERY OFFICER

[See section 226(5)]

Distraint and sale.

Where any distraint and sale of movable property are to be effected by any Assessing Officer or Tax Recovery Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.

APPENDIX-4**INCOME – TAX (CERTIFICATE PROCEEDINGS) RULES, 1962****[SO 955, DATED 26.3.1962]**

In exercise of the powers conferred by sub-section (1) of section 295 of the Income- tax Act, 1961 (43 of 1961), and rules 91 and 92 of the Second Schedule to that Act, the Central Board of Revenue hereby makes the following rules, namely:

PART-I**PRELIMINARY****1. Short title and commencement.**

- (1) These rules may be called the Income-tax (Certificate Proceedings) Rules, 1962.
- (2) They shall come into force on the 1st day of April. 1962.

2. Definitions.

In these rules, unless the context otherwise requires:-

- (1) “Act” means the Income-tax Act. 1961 (43 of 1961);
- (1A) “authorised bank” shall have the same meaning as in clause (aa) of sub-rule (1) of rule 2 of the Income-tax Rules, 1962;
- (2) “public officer” shall have the same meaning as in the Code of Civil Procedure, 1908 (5 of 1908);
- (3) “principal rules” means the rules contained in the Second Schedule to the Act; and
- (4) “section” and “Schedule” means respectively section of and Schedule to the Act

3. Forms.

All references to “Forms” in these rules shall be construed as references to the forms set out in the Appendix hereto.

4. Tax Recovery Commissioners appointed by the Central Government.

[Omitted by Income-tax (Certificate Proceedings) (Amendment) Rules, 1971, w.e.f. 1.1. 1972]

5. Jurisdiction of Tax Recovery Commissioners.

[Omitted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990]

6. Jurisdiction of Tax Recovery Officers authorised to function as such by the Central Government.

[Omitted by the Income-tax (Certificate Proceedings) (Third Amendment) Rules, 1990 w.e.f. 12.9.1990]

7. Jurisdiction of other Tax Recovery Officers.

[Omitted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990]

8. Transfer of proceedings from one Tax Recovery Officer to another.

Where any proceeding for execution of a certificate pending before a Tax Recovery Officer stands transferred or is transferred to any other Tax Recovery Officer. The Tax Recovery Officer to whom the proceeding stands transferred or is transferred may continue to proceedings from the stage at which it stood immediately before such transfer and such transfer shall not render necessary the re-issue of any notice, warrant, proclamation, order, or certificate already issued.

PART-II

GENERAL PROCEDURE

9. Procedure to be followed while sending certificate to another Tax Recovery Officer.

When a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, he shall –

- (i) keep a copy of the certificate in his office; and
- (ii) inform the Assessing Officer of his having sent the certificate.

9A. Procedure to be followed while sending a certified copy of certificate to another Tax Recovery Officer.

(1) Where only apart of the amount in respect of which certificate has been drawn up by a Tax Recovery Officer is to be recovered by any other Tax Recovery Officer under sub-section (2) of section 223, the Tax Recovery Officer shall, before sending a copy of the certificate to the other Tax Recovery Officer, endorse on such copy a certificate in the following form:

FORM OF CERTIFICATE
I, _____ Tax Recovery Officer _____ do name hereby certify that the document bearing this endorsement is a true copy of certificate No. _____ dated _____ [drawn up by the Tax Recovery] Officer

against _____ (name of defaulter) for the recovery of an amount of Rs. _____.	
I do hereby specify that out of the aforesaid amount, an amount of Rs. _____ as noted below, Es to be recovered from the defaulter, by the Tax Recovery Officer _____.	
	Rs. P.
Part of certificate amount
Costs and charges
Interest
Total	_____

(2) When a copy of the certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, he shall,–

- (i) keep the certificate in his office; and
- (ii) inform the Assessing Officer of his having sent a copy of the certificate.

10. Procedure to be followed on receipt of a certificate from a Tax Recovery Officer.

When a certificate or the certified copy of a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, such other Tax Recovery Officers shall follow the same procedure as is laid down in the principal rules and these rules including the issue of the notice under rule 2 of the principal rules.

11. Intimation by the first Tax Recovery Officer.

The Tax Recovery Officer shall intimate the details of all amounts recovered in respect of a certificate, from time to time to the Assessing Officer, and, also, to any Tax Recovery Officer to whom the certificate or a certified copy of the Certificate has been sent by him under sub-section (2) of section 223.

12. Intimation by the other Tax Recovery Officer.

When a certificate or the certified copy of a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223, such other Tax Recovery Officer shall communicate to the first mentioned Tax Recovery Officer and to the Assessing Officer the details of all amounts recovered by him in respect of such certificate from time to time.

13. Intimation by the income-tax Officer.

[Omitted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990]

14. Form of notice of demand

The notice of demand under rule 2 of the principal rules shall be issued in Form No. 1. T.C.P. I [which shall be in Form No. 57 of the Income-tax Rules, 1962] which may be so varied as the circumstances of each case may require.

PART - III**ATTACHMENT AND SALE OF PROPERTY****15. Continuance of attachment subject to claim of encumbrance.**

Where, in the course of investigation made under rule 11 of the principal rules, the Tax Recovery Officer is satisfied that the property is subject to a mortgage or charge (other than a mortgage or charge referred to in section 281 or rule 16 of the said rules) in favour of some person not in possession, and thinks fit to continue the attachment, he may do so, subject to such mortgage or charge.

16. Proclamation of sale.

For the purpose of ascertaining the matters to be specified in a proclamation of sale, the Tax Recovery Officer may summon any person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the proclamation and require him to produce any document in his possession or power relating thereto.

17. Sale to be held by whom and his remuneration.

If the Tax Recovery Officer is of the opinion that it will be more advantageous to appoint a person other than, an official subordinate to him to sell a property, he may appoint a fit person for the purpose and fix the remuneration to be allowed to him for rendering such services; and the remuneration payable to such person shall be deemed to be costs of the sale.

18. Reserve price.

It shall be competent for the Tax Recovery Officer to fix a reserve price in respect of any property, other than agricultural produce, to be sold and order that any bid shall be accepted only on condition that it is not less than the said reserve price.

19. Report of sale.

The officer conducting a sale shall forthwith pay the entire amount received by him from the purchaser of the property into the Government treasury and shall submit a full report of the sale to the Tax Recovery Officer.

20. Sale proceeds nor to be disbursed till sale confirmed.

The proceeds of the sale of immovable property shall not be disbursed until the sale is confirmed by the Tax Recovery Officer or, where an appeal has been filed against the order confirming the sale, until the disposal of the appeal.

21. Registration of sale.

Every Tax Recovery Officer granting a certificate of sale to the purchaser of immovable property sold under the Second Schedule shall send a copy of such certificate to the registering officer concerned under the Indian Registration Act, 1908 (16 of 1908), within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate.

22. Forms.

The following forms, which may be so varied as the circumstances of each case may require, shall be used for the purpose mentioned against each:-

- (i) Form No. I. T.C. R.2, for issuing a warrant of attachment of movable property under rule 20 of the principal rules;
- (ii) Form No. I. T.C. P.3, for issuing a prohibitory order in the case of a debt not secured by a negotiable instrument under rule 26(1)(i) of the Principal rules;
- (iii) Form No. I. T.C. P.4, for issuing a prohibitory order in the case of a Share in a corporation under rule 26(1) (ii) of the principal rules;
- (iv) Form No. I. T C. P. 5, for issuing a prohibitory order in the case of other movable property under rule 26(1) (iii) of the principal rules;
- (v) Form No. I. T.C. P.6, for issuing a notice of attachment of a decree of a civil court under rule 27 of the principal rules;
- (vi) Form No. L T C. P. 7, for issuing a notice of attachment where the property consists of a share or interest in movable property under rule 28 of the principal rules;

- (vii) Form No. L T.C. P.8, for issuing an order of attachment of salary or allowance under rule 29 of the principal rules;
- (viii) Form No. I. T C. P.9, for issuing an order of attachment of a negotiable instrument under rule 30 of the principal rules;
- (ix) Form No. I. T.C. P.10, for issuing a notice of attachment of movable property in the custody of any court or public officer under rule 31 of the principal rules;
- (x) Form No. I.T.C.P.11, for issuing an order of attachment of property consisting of an interest in partnership property under rule 32 of the principal rules;
- (xi) Form No. I. T.CP. 12, for issuing a warrant of sale of property under rule 37 or rule 52(1) of the principal rules;
- (xii) Form No. I. T.C.P. 13, for issuing a proclamation of sale of movable or immovable property under rule 38 or rule 52(2) of the principal rules;
- (xiii) Form No. I. T.C.P. 14, for issuing a certificate of sale of movable property under sub-rule (2) of rule 44 of the principal rules.
- (xiv) Form No. I.T.C.P.15, for issuing an order for payment under rule 47 of the principal rules;
- (xv) Form No. I. T.C.P. 16, for issuing an order of attachment of immovable property under rule 48 of the principal rules;
- (xvi,) Form No. I. T. C.P. 17, for issuing a notice to the defaulter for settling a proclamation of sale under rule 53 of the principal rules;
- (xvii,) Form No. 1. T.C.P. 18, for making an order of confirmation of sale of immovable property under sub-rule (1.) of rule 63 of the principal rules;
- (xviii) Form No. I. T. C.P. 19, for issuing a notice to interested parties under the proviso to sub-rule (2) of rule 63 of the principal rules;
- (xix) Form No. I. T.C.P. 20, for issuing a certificate of sale of immovable property under rule 65 of the principal rules;
- (xx) Form No. I. T C.P. 21, for issuing a certificate to defaulter authorizing him to mortgage, lease or sell immovable property under sub- rule (2) of rule 66 of the principal rules;
- (xxi) Form No. I. T.C. P. 22, for issuing an order of attachment of a business under rule 69 of the principal rules.

PART- IV**MAINTENANCE AND CUSTODY, WHILE UNDER
ATTACHMENT, OF LIVESTOCK OR OTHER MOVABLE
PROPERTY, FEES FOR SUCH MAINTENANCE AND CUSTODY,
SALE THEREOF AND DISPOSAL OF SALE PROCEEDS****23. Property to which rules apply.**

The rules in this part relates to movable property (other than agricultural produce,) attached by actual seizure under the Second Schedule.

24. Custody at place of attachment.

(1) Where the property attached is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of the property, the attaching officer shall, subject to any directions which the Tax Recovery Officer may issue in this behalf, arrange for the proper maintenance and custody of the property at the place of attachment. The attaching officer shall forthwith send a report of having done so to the Tax Recovery Officer.

(2) On receipt of a report from the attaching officer under sub-rule (I), the Tax Recovery Officer may either order the removal of the property to a place which he shall specify or sanction its maintenance and custody at the place of attachment under such conditions as he may think fit.

25. Removal and custody of property in other cases.

Where the attached property is not kept at the place of attachment, it shall be kept in the custody of an officer (hereinafter in this part referred to as the "custody officer") subordinate to the Tax Recovery Officer and authorized by the Tax Recovery Officer for this purpose. The custody officer may remove the property to the office of the Tax Recovery Officer for custody under his own supervision or, with the approval of the Tax Recovery Officer, may make such arrangements as may be convenient and economical for its safe custody with any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person.

26. Property may be handed over to the defaulter.

Notwithstanding anything contained in rule 24 or rule 25, the attaching officer or the custody officer may, with the previous approval of the Tax Recovery Officer, entrust, subject to his right of supervision, the attached property to the defaulter on his executing a duly stamped bond (sapurdnama) in Form No. I. T.C.P. 23 which may be so varied as the circumstances of each case may require.

Explanation: Where the Tax Recovery Officer proceeds to recover any arrears due from the defaulter by attachment and sale of, or by appointing a receiver for the management of, any movable or immovable property which is held by or stands in the name of, any of the persons referred to in the Explanation to sub-section (1) of section 222 and which is included in the defaulter's movable or immovable property by virtue of that Explanation, the reference to "defaulter" in this rule and in rules 28 to 32 (both inclusive) rules 39 and 40 and rules 42 to 47 (both inclusive), shall, in relation to such movable or immovable property, be construed as a reference to the person referred to in the said Explanation.

27. Custody of attached cash, securities, etc.

If the property attached consists of cash, Government or other securities, bullion, jewellery or other valuables, the attaching officer shall send them for safe custody to the nearest Government treasury or a branch of the Reserve Bank of India or State Bank of India or of its subsidiaries or of any authorized bank.

28. Claim of any person other than the defaulter to the property under attachment.

When the property remains at the place where it is attached in the custody of the attaching officer, and any person other than the defaulter claims the same, or any part thereof the officer shall nevertheless remain in possession and shall direct the claimant to prefer his claim to the Tax Recovery Officer.

29. Return of property on cancellation or withdrawal of attachment.

(1) If in consequence of withdrawal or cancellation of the attachment, the defaulter becomes entitled to receive back the movable property attached, the possession thereof shall be given to him on payment of costs, charges and expense due, if any, in respect of the execution of the certificate against such property.

(2) For the purpose of giving possession under sub-rule (1), the attaching officers, inform the defaulter that the property is at his disposal.

(3) In the absence of any person to take charge of the property the officer shall, If the property has been moved from the premises in which it was seized, replace it where was found at the time of seizure.

30. Property may be sold if costs, etc. not paid.

In default of the payment of costs, charges and expenses referred to in sub-rule of rule 29, the movable property or such portion thereof as may be necessary shall sold by auction and after defraying the expenses of such sale and the costs, charge and expenses aforesaid, the balance,

if any, of the movable property as has not been sold shall be handed over to the defaulter.

31. Feeding and tending of livestock under attachment.

Whenever livestock is kept at the place where it has been attached, the defaulter shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer.

32. Removal of livestock.

In the event of the defaulter failing to feed attached livestock, the livestock may be placed in the custody of the custody officer or in the circumstances mentioned in rule 33 may be placed in a pound maintained by the Government or a local authority.

33. Custody of livestock in pound.

If there be any such pound near the office of the Tax Recovery Officer, the attaching officer or the custody officer may place in it such attached livestock as can properly be kept there in which case the pound-keeper shall be responsible for the livestock and shall receive the same rates for accommodation and maintenance thereof as are payable in respect of impounded cattle of the same description.

34. Custody with a person other than custody Officer.

Notwithstanding anything contained in rule 33, the custody officer may, with the approval of the Tax Recovery Officer, entrust the attached livestock to any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person after taking into account the local circumstances and the charges which such person may have to incur for the maintenance and custody of such livestock.

35. Expenses of custody, maintenance, etc.

The expenses of maintenance and custody of movable property including the remuneration payable to the person concerned under rule 25 or rule 34 shall be deemed to be costs of the sale.

PART- V

**DELIVERY OF PROPERTY SOLD AND EXECUTION OF
DOCUMENT OR ENDORSEMENT OF NEGOTIABLE
INSTRUMENT OR SHARE IN A CORPORATION**

36. Delivery of movable property, debts and shares.

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

- (2) (a) Where the property sold is movable property in the possession of some person other than the defaulter, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser and requiring him to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer.
- (b) Where such person in possession of the property fails without reasonable cause to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer shall cause the property to be seized and delivered to the purchaser and the provisions of rules 35 and 36 of the principal rules shall, as far as may be, apply to such seizure.
- (3) (a) Where the property sold is a debt not secured by a negotiable instrument, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the creditor from receiving the debt or any interest thereon and the debtor from making payment thereof to any person except the purchaser and requiring the debtor to make payment thereof to the purchaser within the time stipulated by the Tax Recovery Officer.
- (b) Where the debtor fails to make such payment to the purchaser within the time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer may take further proceedings to recover the amount due from the debtor as if the debtor were a defaulter in respect of whom the Tax Recovery Officer had drawn up a certificate under section 222 for the recovery of arrears of tax equal to the amount of the debt.
- (4) (a) Where the property sold is a share in a corporation, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon and requiring him to deliver the share certificate or other document of title along with the instrument of transfer duly completed by him to the Tax Recovery Officer within the time stipulated by the Tax Recovery Officer and prohibiting the manager, secretary or other proper officer of the corporation

from permitting any such transfer or making any such payment to any person except the purchaser.

- (b) Where the person in whose name the share may be standing fails to deliver the share certificate or other document of title to the Tax Recovery Officer within the time stipulated by him, or within such further time as may be allowed by him, the Tax Recovery Officer may take steps to obtain a duplicate of the share certificate or other document of title as if the share certificate or other document of title had been lost or destroyed.

37. Transfer of negotiable instruments and shares.

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under the Second Schedule, the Tax Recovery Officer may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:-

“_____ by _____ Tax Recovery Officer _____
in the proceedings for the recovery of arrears under the Income-tax Act, 1961, against _____”

(3) The Tax Recovery Officer may cause the document to be executed on proper stamp paper and to be registered if its registration is required by any law for the time being in force and the expenses of such execution and registration shall be borne by the purchaser.

(4) Until the transfer of such negotiable instrument or share, the Tax Recovery Officer may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself

38. Vesting order in case of other property.

In the case of any movable property not hereinbefore provided for, the Tax Recovery Officer may make an order vesting such property in the purchaser or as the purchaser may direct; and such property shall vest accordingly.

39. Delivery of immovable property in occupancy of defaulter.

(1) Where the immovable property sold is in the occupancy of the defaulter or some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the attachment of

such property and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser on any person whom the purchaser may appoint to receive delivery on his behalf in possession of the property, and if need be, by removing any person who refuses to vacate the same.

(2) For the purpose of sub-rule (1), if the person in possession does not afford free access, the Tax Recovery Officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession.

40. Delivery of immovable property in occupancy of tenant.

Where the immovable property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been issued under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the defaulter has been transferred to the purchaser.

PART- VI

**RESISTANCE OR OBSTRUCTION TO DELIVERY OF
POSSESSION TO PURCHASER**

41. Resistance or obstruction to possession of immovable property.

(1) Where the purchaser of immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Tax Recovery Officer complaining of such resistance or obstruction within thirty days of the date of such resistance or obstruction.

(2) The Tax Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

42. Resistance or obstruction by defaulter.

Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the defaulter or by some other person at his instigation, he shall direct that the applicant be put into possession of the property, and where the applicant is still

resisted or obstructed in obtaining possession, the Tax Recovery Officer may also, at the instance of the applicant, take steps to put the applicant into possession of the property by removing the defaulter or any person acting at his instigation.

43. Resistance or obstruction by bona fide claimant.

Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned by any person (other than the defaulter) claiming in good faith to be in possession of the property on his own account or on account of some person other than the defaulter, the Tax Recovery Officer shall make an order dismissing the application.

44. Dispossession by purchaser.

(1) Where any person other than the defaulter is dispossessed of immovable property sold in execution of a certificate by the purchaser thereof, he may make an application to the Tax Recovery Officer complaining of such dispossession within thirty days of such dispossession.

(2) The Tax Recover Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

45. Bona fide claimant to be restored to possession.

Where the Tax Recovery Officer is satisfied that the applicant was in possession of property of the property on his own account or on account of some person other than the defaulter, he shall direct that the applicant be put into possession of the property

46. Rules not applicable to transferee lite pendente.

Nothing in rules 43 and 45 shall apply to resistance or obstruction by a person to whom the defaulter has transferred the property after the service of a notice under rule 2 of the principal rules or to the dispossession of any such person.

47. Right to file a suit.

Any party not being a defaulter against whom an order is made under rule 42 or rule 43 or rule 45 may institute a suit in a civil court to establish the right which he claims to the present possession of the property.

PART- VII

APPOINTMENT, POWERS AND DUTIES OF A RECEIVER

48. Powers of a receiver.

A receiver appointed under the Second Schedule shall have all such

powers as to bringing in and defending suits and for the realisation, management, protection and preservation of the property, the collection of the rents and profits thereof the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tax Recovery Officer thinks fit.

49. Remuneration of a receiver.

The Tax Recovery Officer may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

50. Duties of a receiver.

- (1) Every receiver so appointed shall—
 - (a) furnish such security (if any) as the Tax Recovery Officer thinks fit, duly to account for what he shall receive in respect of the property.
 - (b) submit his accounts at such periods and in such form as the Tax Recovery Officer directs;
 - (c) pay the amount due from him as the Tax Recovery Officer directs; and
 - (d) be responsible for any loss occasioned to the property by his willful default or gross negligence.
- (2) The receiver shall maintain true and regular accounts of the receivership and shall in particular maintain a cash book in which shall be entered from day to day all receipts and payments and also a ledger. He shall also maintain a counterfoil receipt book with the, leaves numbered serially in print, from which shall be given, as far as possible, all receipts for payments made to the receiver.
- (3) Unless the Tax Recovery Officer otherwise directs, the receiver shall, as soon as may be after his appointment, open an account in the name of the receivership in such bank as the Tax Recovery Officer may direct and shall deposit therein all moneys received in the course of the receivership immediately on receipt thereof save any minimum sums that may be required for meeting day to day current expenses All payments by the receiver shall, as far as possible, be made by cheques drawn on the bank account
- (4) Unless otherwise ordered a receiver shall submit his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months therefrom shall be submitted within fifteen days of the expiry of the said period of three months and the subsequent accounts brought down to the end of each succeeding period of three months, within fifteen days of the expiry of each such period of three months.

51. Enforcement of receiver's duties.

(1) Where a receiver fails to submit his accounts at such periods and in such form as the Tax Recovery Officer directs, the Tax Recovery Officer may direct his property to be attached until such time as such accounts are submitted to him.

(2) The Tax Recovery Officer may at any time make an enquiry as to the amount, any, due from the receiver, as shown by his accounts or otherwise, or an enquiry as to any loss to the property occasioned by his willful default or gross negligence and may order the amount found due, if not already paid by the receiver under rule 50, or the amount of the loss so occasioned, to be paid by the receiver within a period to be fixed by the Tax Recovery Officer.

(3) Where the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) within the period specific the Tax Recovery Officer may direct such amount to be recovered from the security (if any) furnished by the receiver or by attachment and sale of his property or, this property has been attached under sub- rule (1), by the sale of such property, and may direct the sale proceeds to be applied in making good and amount found due from the receiver or any such loss occasioned by him and the balance (if any) of the sale proceeds shall be paid to the receiver.

(4) If a receiver fails to submit his accounts at such periods and in such form as directed by the Tax Recovery Officer without reasonable cause or improperly retains any cash in his hands, the Tax Recovery Officer may disallow the whole or any portion of the remuneration due to him for the period of the accounts with reference to which the default is committed and may also charge interest at a rate not exceeding 12 per cent per annum on the moneys improperly retained by him for the period of such retention without prejudice to any other proceedings which might, be taken against the receiver.

52. Form of order of appointment of a receiver.

An order of appointment of a receiver under rule 69 or rule 70 of the principal rules, shall be made in Form No. I. T. C. P. 24 which may be so varied as the circumstances of each case may require.

PART- VIII**ARREST AND DETENTION****53. Prison in which defaulter maybe detained.**

A person against whom an order of detention has been passed under Part V of the Second Schedule may he detained in the civil prison

of the district in which the office of the Tax Recovery Officer ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the civil courts of such district to be detained.

54. Subsistence allowance.

- (1) The subsistence allowance shall be supplied by the Tax Recovery Officer by monthly instalments in advance before the first day of each month.
- (2) The first payment shall be made to the Tax Recovery Officer for such portion of the current month as remains unexpired before the defaulter is committed to the civil prison, and the subsequent payment (if any) shall be made to the officer in charge of the civil prison.

55. Forms.

The following forms, which may be so varied as the circumstances of each case may require, shall be used for the purpose mentioned against each:

- (i) Form No. I. T C P. 25, for issuing a notice to show cause why a warrant of arrest should not issue under rule 73 of the principal rules;
- (ii) Form No I.T.C.P. 26, for issuing a warrant of arrest under Part V of the principal rules;
- (iii) Form No. I. T. C.P. 27, for issuing a warrant of detention under Part V of the principal rules;
- (iv) Form No. I. TC.P. 28, for issuing an order of release under rule 77 or rule 78 or rule 79 of the principal rules.

PART- VIIIA

APPEALS TO A CHIEF COMMISSIONER OR COMMISSIONER

55A. Form of appeal.

- (1) Every appeal under sub- rule (1) of rule 86 of the principal rules shall be made in Form No. I.T.C.P. 29A which shall be verified in the manner indicated therein and shall be accompanied by a copy of the order appealed against.
- (2) The form of appeal prescribed by sub-rule (1), the growth of appeal and the form of verification appended thereto shall be signed:-
 - (a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by

some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

- (b) in the case of Hindu undivided family, by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.
- (c) In the case of a company or local authority, by the principal officer thereof;
- (d) In the case of a firm, by any partner thereof, not being a minor;
- (e) In the case of any other association, by any member of the association or the principal officer thereof ; and
- (f) In the case of any other person, by that person, or by some person competent to act on his behalf.

55B. Procedure in appeal.

- (1) The Chief Commissioner or Commissioner shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the Chief Commissioner or Commissioner against whose order the appeal is preferred.
- (2) The following shall have the right to be heard at the time of appeal:-
 - (a) the appellant, either in person or by an authorised representative referred to in rule 62 of these rules;
 - (b) the Tax Recovery Officer, either in person or by a representative.
- (3) The Chief Commissioner or Commissioner may, if sufficient cause is shown, at any stage of the appeal, grant time to the parties or to any of them, and may, for reason to be recorded in writing, adjourn from time to time to hearing of the appeal.
- (4) The Chief Commissioner or Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Tax Recovery Officer to make further inquiry and report the result of the same to the Chief Commissioner or Commissioner.
- (5) The Chief Commissioner or Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Chief Commissioner or Commissioner is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.
- (6) The order of the Chief Commissioner or Commissioner disposing of

the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(7) On the disposal of the appeal, the Chief Commissioner of Commissioner shall communicate the order passed by him to the appellant, the defaulter (if he is not the appellant) and the Tax Recovery Officer.

(8) Every appeal shall be disposed of by the Chief Commissioner of Commissioner as expeditiously as possible and endeavor shall be made to dispose of the appeal within six months from the date on which it is presented.

PART- IX

SCALE OF FEES FOR PROCESSES, CHARGES FOR OTHER PROCEEDINGS AND POUNDAGE FEES, ETC.

56. Process fees.

The following scale of fees shall be charged for service and execution of processes issued under the Second Schedule and these rules:

		Where the amount mentioned in the certificate	
		Exceeds Rs.1,000	Is Rs.1,000 or under
(a)	Notice of demand	1.50	1.00
(b)	Warrant of attachment	3.00	2.00
(c)	Warrant of arrest	3.00	2.00
(d)	Warrant of delivery	3.00	2.00
(e)	Proclamation of sale	5.00	3.00
(f)	Any process not provided for hereinabove	1.50	1.00

57. Levy and scale of poundage fees.

57. (1) In respect of any sale made in the execution of a certificate, there shall be levied a fee by way of poundage on the gross amount realised by the sale, calculated at the rate of 2 per cent on such gross amount upto Rs. 1,000 and at the rate of 1 per cent on the excess of such gross amount over Rs. 1,000.

(2) The poundage fee leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 50 paise shall be

levied for every Rs.25, or part of Rs.25, realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 25 paise for every Rs.25 or part thereof on the excess of such amount over Rs.1,000, shall be levied.

(3) Where the sale is in more than one lot, the poundage fee shall be calculated with reference to the sale proceeds of each lot separately.

(4) The poundage fee under sub-rule (1) shall be paid by the purchaser of the property as soon as the sale is completed.

(5) When a sale of immovable property is set aside under sub-rule (2) of rule 63 of the principal rules, the Tax Recovery Officer may make an order for payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fees paid by the purchaser of the property under sub-rule (1) read with sub-rule (4).

58. Copying fees.

(1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document at the rate of Re. 1 for each page of such document.

(2) Copying fees shall be payable in advance.

(3) The fees to be charged for the supply of a copy of any document urgently shall be Rs.4 for each document, in addition to the fees payable under sub-rule (1)

59. Inspection fees.

(1) Fees for inspecting records of proceedings before the Chief Commissioner or Commissioner or Tax Recovery Officer under the Second Schedule shall, where such inspection is permitted, be charged as follows:

- | | |
|---|----------|
| (a) for the first hour or part thereof | Rs. 2 |
| (b) for every additional hour or part thereof | 50 Paise |

(2) Fees for inspection shall be payable in advance.

PART-X

MISCELLANEOUS

60. Proceedings against legal representative of a deceased defaulter.

A notice to the legal representative of a deceased defaulter under rule 65 of the principal rules read with rule 2 of those rules shall be issued in Form No. I.T.C.P. 29 which may be so varied as the circumstances of each case may require.

61. Recovery from surety.

A notice to a surety under rule 88 of the principal rules read with rule 2 of those rules shall be issued in Form No.I.T.C.P. 30 which may be so varied as the circumstances of each case may require.

62. Appearance before Tax Recovery Officer.

(1) Any person who is entitled or required to attend before any Chief Commissioner or Commissioner or Tax Recovery Officer in connection with any proceeding under the Second Schedule or these rules, otherwise than when required under rule 83 of the principal rules to attend personally for examination on oath or affirmation, may attend either in person or by an authorised representative.

Explanation: For the purpose of this sub-rule “authorised representative” shall have the meaning assigned to it in clause (iii) to (vii) of sub-section (2) of section 288.

(2) In any proceeding before the Tax Recovery Officer, referred to in sub-rule (1), the Assessing Officer concerned shall have the right to be heard either in person or by a representative.

APPENDIX-5**(Rule 15)****I.T.N.S.-7****NOTICE OF DEMAND UNDER SECTION 156 OF
THE INCOME-TAX ACT, 1961**

Status _____

PAN/GIR No. _____

To

1. This is to give you notice that for the assessment year _____ a sum of Rs. _____ details of which are given below/ reverse has been determined to be payable by you.
2. The amount should be paid to the Manager, authorized bank/ State Bank of India/ Reserve Bank of India at _____ within _____ days of the service of this notice. The previous approval of the Deputy Commissioner of Income Tax has been obtained for allowing a period of less than 30 days for the payment of the above sum. A Challan is enclosed for the purpose of payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one half percent for every month or part of a month from the date commencing after end of the period aforesaid in accordance with Section 220(2).
4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving a reasonable opportunity of being heard in accordance with Section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with Section 222 to 229, 231 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment/fine/penalty, you may present an appeal under Part A of Chapter XX on the Income-tax Act, 1961, to the Deputy Commissioner of Income Tax (Appeals)/

Commissioner of Income Tax (Appeals) _____
within thirty days of the receipt of this notice, Form No. 35, duly
stamped and verified as laid down in that form.

7. The amount has become due as a result of the order of the Deputy
Commissioner of Income Tax (Appeals)/ Deputy Commissioner of Income
Tax/ Commissioner of Income Tax (Appeals)/ Chief Commissioner or
Commissioner of Income Tax _____ under
section _____ of the Income-tax Act, 1961.

If you intend to Appeal against the aforesaid order, you may present
an appeal under part B of Chapter XX of the said act to the Income Tax
Appellate Tribunal _____ within sixty days of the receipt of
that order in Form No. 36, duly stamped and verified as laid down, in
that form.

Assessing Officer

Address _____

Place: _____

Date: _____

Notes:

- (1) Delete in appropriate paragraphs and words
- (2) If you wish to pay the amount by cheques. The cheques should be drawn in favour of the manager, authorized bank/State Bank of India/ Reserve Bank of India.
- (3) If you intend to seek extension of time for payment of the amount or propose to make the payment by installments, the application for such extension, or as the case may be, permission to pay by installments, should be made to the Assessing Officer before the expiry of the period specified in paragraph 2 Any request after the expiry of the said period will not be entertained in view of the specific provisions of Section 220(3).

APPENDIX-6**FORM NO. 57**

[See Rule 117B]

Certificate under section 222 or 223 of the Income-tax Act, 1961**NOTICE OF DEMAND UNDER RULE 2 OF THE
SECOND SCHEDULE TO THE INCOME-TAX ACT, 1961**

Office of the TRO _____

Dated the _____

To:

_____ (GIR/PAN)

1. *This is to certify that a sum of Rs. _____ has become due from you on _____ in the status of _____ details of which are given on the reverse. Whereas a certificate bearing Serial Number _____ dated _____ had been forwarded by the Tax Recovery Officer, _____ for the recovery of the sum of

[name of the place]

Rs. _____ details of which are given on the reverse [and the said Tax Recovery Officer has sent a certified copy of the said certificate to the undersigned under section 223(2) of the Income-tax Act, 1961], specifying a sum of Rs. _____ which is to be recovered from you.

2. You are hereby directed to pay the above sum within 15 days of the receipt of this notice failing which the recovery shall be made in accordance with the provisions of section 222 to section 232 of the income-tax Act, 1961, and the Second Schedule to the said Act and the rules made thereunder.

3. In addition to the sums aforesaid, you will also be liable for, –
- such interest as is payable in accordance with section 220(2) of the said Act for the period commencing immediately after the issue of this notice;
 - all costs, charges and expenses incurred in respect of the services of this notice and of warrants and other processes and all other proceedings taken for realising the arrears.

SEAL

Tax Recovery Officer

* Score out whichever paragraph is not applicable

DETAILS OF AMOUNT IN ARREARS

	Rupees			Assess- ment Year
	Regular	Advance	Provisional	
1. Income Tax				
2. Surcharge				
3. Additional tax u/s 143				
4. Penalty u/s _____				
5. Interest u/s _____				
6. Fine u/s 131_____				
7. Any other sum (give details)				
8. Interest u/s 220(2) from the day when amount become due;				
9. Total:				

APPENDIX-7**Rule-112, Schedule to the Limitation Act, 1963**

Description of suit	Period of limitation	Time from which period begins to run
Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

APPENDIX-8**CBDT Circular No.551 dt.23rd January, 1990**

The C.B.DT. in their Circular bearing No. 551 dt. 23rd Jan , 1990 explained the scope and effect of the aforesaid amendments as under -

Collection and recovery of tax [The Direct Tax Laws (Amendment) Act. 1987 and the Direct Tax Laws (Amendment) Act, 1989]

- (a) Streamlining the procedure for recovery to make it more effective- The Amending Act, 1987, has made a number of changes in sections 220 to 231 dealing with the procedure for collection and recovery of tax to make the provisions of these sections more effective for quicker recovery of tax. Thus, the Tax Recovery (hereinafter referred to as TRO) will now be authorized by the Chief Commissioner or Commissioner of Income-tax to act as such and will work under the administrative control of the Commission of Income Tax. The tax recovery officer shall now have concurrent jurisdiction with the Assessing Officer and the requirement of issue of the recovery certificate by the Assessing Officer to the Tax recovery officer to enable later to assume jurisdiction over recovery in a particular case has been dispensed with. Certain other amendments have also been made in the aforesaid sections to streamline their provision. These amendments are discussed in detail in the following paras.
- (b) Amendments of the provisions regarding issue of recovery certificate to the Tax Recovery Officer (section 222) - Under the old provisions of section 222, the income-tax Officer was required to forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee and only then the tax Recovery Officer assumed jurisdiction for recovering the said arrears of tax in that case. This unnecessarily delayed the commencement of recovery proceedings by the Tax Recovery Officer as recovery certificates were generally issued by the income-tax Officer, after a lapse of more than three years when the time limit for issue of such certificates, mentioned in section 231, was to expire. To enable the Tax Recovery Officer to function more efficiently, the Amending Act, 1987, has made amendments in section 222 to dispense with the requirement of issue of recovery certificate by the Income-tax Officer. Under the amended provisions, where the assessee' is in default, the Tax Recovery Officer shall assume jurisdiction by drawing up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee. Such "statement" shall continue to be called as a "certificate".

- (c) Pursuant to the amendments in section 222, according to which the Tax Recovery Officer shall now assume jurisdiction by drawing the recovery certificate himself all the three old sections 223, 224 and 225 have been substituted by new sections, which empower the Tax Recovery Officer to take all these actions himself instead of the earlier position where such actions could be taken by the Assessing Officer and then intimation sent to the Tax Recovery Officer. Thus, the new sections provide as follows:
- (i) Section 223 now specifies the Tax Recovery Officer or the Tax Recovery Officers by whom the recovery is to be effected.
 - (ii) Section 224 now provides that the assessee cannot dispute the validity of the certificate drawn by the Tax Recovery Officer, but if necessary, the Tax Recovery Officer may himself cancel the certificate or correct any clerical or arithmetical mistake therein.
 - (iii) Section 225 now provides for grant of time for payment of a demand under a certificate by the Tax Recovery Officer himself. Similarly, the Tax Recovery Officer can himself cancel or amend a recovery certificate pursuant to the modification of demand in appeal or other proceedings under the Act,
- (d) Thus, instead of waiting for the Assessing Officer to amend or cancel the recovery certificate as a result of any appeal or other proceedings under the Act, the Tax Recovery Officer shall now take action himself in this respect. This will quicken the recovery work as well as save the assessee the bothration of going to more than one officer, i.e, the Assessing Officer as well as the Tax Recovery Officer for settling his recovery matters. Also, the Tax Recovery Officer can himself grant time for payment of demand covered by the recovery certificate drawn by him. This power of the Tax Recovery Officer to grant time will, however, run concurrent with the power of the Assessing Officer to grant time for payment of demand under the provisions of sub-sections (3) and (6) of section 220."
- (e) Amendments of the provisions relating to other modes of recovery (section 226) — Section 226 provides for various coercive modes that can be adopted for recovery of outstanding demand, like attachment of salary, attachment of monies due from other persons (including banks) or by distraint and sale of movable property in the manner laid down in the Schedule. Under the old provisions of this section, these modes of recovery could be adopted by the Assessing Officer only. The Amending Act, 1987, has, however, amended this section to provide that all the modes of recovery mentioned in this section can now be resorted to:-

- (i) by the Assessing Officer where no certificate of recovery has been drawn up by the Tax Recovery Officer under section 222;
- (ii) by the Tax Recovery Officer, where a certificate of recovery has been drawn up by the Tax Recovery Officer under section 222.

Thus, after the Tax Recovery Officer draws up a certificate under section 222 in a case, he assumes exclusive jurisdiction to take action under the provisions of section 226 in that case.

- (g) Omission of section 228 relating to recovery of Indian tax in Pakistan and Pakistan tax in India – The Amending Act, 1987, has omitted section 228 which provided for reciprocal arrangements for recovery of tax due in either country from the assets of an assessee in the other country.
- (h) Consequential amendments in section 228A relating to recovery of tax in pursuance of agreements with foreign countries – Section 228A provides for reciprocal arrangements for recovery of tax due in India and in a country with which there is an agreement for recovery of income-tax. The Amending Act, 1987, has made consequential amendments to section 228A pursuant to the amendments made to section 222 whereby the recovery certificate is now to be drawn by the Tax Recovery Officer and not by the Assessing Officer.
- (i) Amendments to sections 222 to 226, 228 and 228A by the Amending Act, 1989— The Amending Act, 1989, has further amended sections 222, 223, 224, 225, 226, 228 and 228 A and provisions of Amending Act, 1987, to secure that the words “Income-tax Officer” occurring in these sections, as they stood immediately before their amendment by the Amending Act, 1987, are substituted by the words ‘Assessing Officer’ retrospectively with effect from 1 April, 1988. This was to enable the Assessing Officer (including Assistant Commissioners and Deputy Commissioners) to issue recovery certificates on 31 March, 1989, under the provisions. However, in section 226 the amendments, which empower the Tax Recovery Officer take action under the section after he has drawn up a Certificate of recovery under the section, after he has drawn up a certificate of recovery under section 222 (as discussed in para 12.12, ante) shall take effect from 1st April, 1989 only.

[Source: Excerpts from Departmental Circular No.551, dt. 23rd January, 1990]

APPENDIX-9**CHART INDICATING ANALOGOUS PROVISIONS OF THE
SECOND SCHEDULE OF INCOME-TAX ACT, 1961 AND CIVIL
PROCEDURE CODE**

Rule of 2nd provisions Schedule	Subject-matter	Analogous rule/ section of the CP.C.
(1)	(2)	(3)
PART-I		
General provisions		
r.1(d)	Definition of "movable property"	s.2(13)
r.1(g)	Definition of "share in a corporation"	s.2(19)
r. 4	Modes of recovery	s.51
r.6	Purchaser's title	s.65
r. 7	Suit against purchaser — not maintainable on ground of purchase being made on behalf of plaintiff (sic.)	s.66
r.10	Property exempt from attachment	s.60
r.11(1)	Investigation by Tax Recovery Officer	r.58(1) of Order 21
r.11(2)	Postponement/stay	r.59 of Order 21
r.11(3)	Release of property from attachment	r.58(3) of Order 21
r.11(4)	Disallowance of claim to property attachment	r.58(3) of Order 21
r.11(5)	Saving of suits to establish right to attached property.	r.58(5) of Order 21
r.12	Removal of attachment on satisfaction or cancellation of certificate.	r.55 of Order 55
r.13	Officer entitled to attach and sell	r.65 of Order 21
r.14	Defaulting purchaser answerable for loss . on resale	r.71 of Order 21
r.15	Adjournment or stoppage of sale	r.69 of Order 21
r.16(2)	Private alienation of property after attachment to be void	s.64
r.17	Prohibition against bidding or purchase by officer	r.73 of Order 21

(1)	(2)	(3)
	<p style="text-align: center;">PART- II</p> <p style="text-align: center;">Attachment and sale of movable property</p> <p style="text-align: center;">Attachment</p> <p>r.23 Property in defaulter 's possession</p> <p>r.24 Agricultural produce</p> <p>r.25 Provisions as to agricultural produce under attachment.</p> <p>r.26 Attachment of debt, share and other moveable property not in possession of the defaulter</p> <p>r.27 Attachment of decree</p> <p>r.28 Attachment of share in movables</p> <p>r.29 Attachment of salary or allowances of servant of the Government or railway company or local authority.</p> <p>r.30 Attachment of negotiable instruments</p> <p>r.31 Attachment of property in custody of Court or Public Officer.</p> <p>r.32 Attachment of partnership property</p> <p style="text-align: center;">Sale</p> <p>r.37 Sale</p> <p>r.38 Issue of proclamation</p> <p>r.39 Proclamation how made</p> <p>r.40 Sale after fifteen days</p> <p>r.41 Sale of agricultural produce</p> <p>r.42 Special provisions relating to growing crops</p> <p>r.44 Sale by public auction</p> <p>r.45 Irregularity not to vitiate sale, but any person injured may sue.</p> <p>r.46 Negotiable instruments and shares in corporation.</p> <p>r.47 Order for payment of coin or currency to the Income-tax Officer.</p>	<p>r.43 of Order 21</p> <p>r.44 of Order 21</p> <p>r.45 of Order 21</p> <p>r.46 of Order 21</p> <p>r.53 of Order 21</p> <p>r.47 of Order 21</p> <p>r.48 of Order 21</p> <p>r.51 of Order 21</p> <p>r.52 of Order 21</p> <p>r 49 of Order 21</p> <p>r.64 of Order 21</p> <p>r.66 of Order 21</p> <p>r.67 of Order 21</p> <p>r.68 of Order 21</p> <p>r.74 of Order 21</p> <p>r.75 of Order 21</p> <p>r.77 of Order 21</p> <p>r.78 of Order 21</p> <p>r.76 of Order 21</p> <p>r.56 of Order 21</p>

(1)	(2)	(3)
	PART- III Attachment and sale of immovable property Attachment	
r.48	Attachment	r.54(l) of Order 21
r.50	Proclamation of attachment	r.54(2) of Order 21
	Sale	
r.52(1)	Sale	r.64 of Order 21
r.52(2)	Proclamation of sale	r.66(1) of Order 21
r.53	Contents of proclamation	r.66(2) of Order 21
r.54	Mode of making proclamation	r.67 of Order 21
r.55	Time of sale	r.68 of Order 21
r.57(1)	Deposit by purchaser and resale in default	r.84(1) of Order 21
r.57(2)	Time for payment in full of purchase-money	r.85 of Order 21
r.58	Procedure in default of payment	r.86 of Order 21
r.60	Application to set aside sale of immovable property on deposit.	r.89 of Order 21
r.61	Application to set aside sale of immovable Property on ground of non-service of Notice or irregularity.	r.90 of Order 21
r.62	Application by purchaser to set aside sale on ground of defaulter having no saleable interest.	r.91 of Order 21
r.63	Confirmation of sale	r.92 of Order 21
r.64	Return of purchase-money in certain cases	r.93 of Order 21
r.65	Sale certificate of purchaser	r.94 of Order 21
r.66	Postponement of sale to enable defaulter to raise amount due under certificate.	r.83 of Order 21
r.67	Fresh proclamation before resale	r.87 of Order 21
r.68	Bid of co-sharer to have preference	r. 88 of Order 21
	PART - IV Appointment of receiver	
	PART- V Arrest and detention of defaulter	
r.73	Notice of show cause	IT.37 & 38 of Order 21. ss. 51 and 55

(1)	(2)	(3)
r.74	Hearing	r.37(1) of Order 21
r.77	Detention in and release from prison	s.58
r.79	Release on ground of illness	s.59
r.80	Entry into dwelling house	s.55
r.81	Prohibition against arrest of women or minors, etc.	s.56
	PART- VI	
	MISCELLANEOUS	
r.90	Subsistence allowance	s.57

APPENDIX-10
STAY REGISTER

Sl. No.	File No.	Name and address of the defaulter	Amount of arrear	Authority granting stay	Particulars of stay	Remarks

APPENDIX-11**'FORM NO. I.T.C.P. 1**

[See rule 2 of Second Schedule to the Income-tax Act, 1961]

Notice of demand to the defaulter

Office of the TRO

Dated the _____

To

_____ (GIR/PAN)

1. *This is to certify that a sum of Rs. _____ has become due from you on _____ in the status of _____ details of which are given on the reverse. Whereas a certificate bearing serial number _____ dated _____ has been forwarded by the Tax Recovery Officer _____ for the

(name of the place)

recovery of the sum of Rs. _____ details of which are given on the reverse [and the said Tax Recovery Officer has sent a certified copy of the said certificate to the undersigned under sub-section (2) of section 223 of the Income-tax Act, 1961] specifying a sum of Rs. _____ which is to be recovered from you.

2. You are hereby directed to pay the above sum within 15 days of the receipt of this notice failing which the recovery shall be made in accordance with the provisions of section 222 to section 232 of the Income-tax Act, 1961 and the Second Schedule to the said Act and the rules made thereunder.

3. In addition to the sums aforesaid, you will also be liable for,–

- (a) such interest as is payable in accordance with sub-section (2) of section 220 of the said Act for the period commencing immediately after the issue of this notice.
- (b) all costs, charges, and expenses incurred in respect of the services of this notice and of warrants and other processes and all other proceedings taken for realising the arrears.

SEAL

Tax Recovery Officer

*Score out whichever paragraph is not applicable.

DETAILS OF AMOUNT IN ARREARS

	Rupees			Assess- ment Year
	Regular	Advance	Provisional	
1. Income Tax				
2. Surcharge				
3. Additional tax u/s 143				
4. Penalty u/s _____				
5. Interest u/s _____				
6. Fine u/s 131_____				
7. Any other sum (give details)				
8. Interest u/s 220(2) from the day when amount become due;				
9. Total:				

FORM NO. I.T.C.P. 2

[See rule 20 of the Second Schedule to the Income-tax Act, 1961]

Warrant of attachment of movable property

Office of the Tax Recovery Officer,

To

*Whereas certificate No. _____ dated _____ has been
[drawn up by the undersigned], _____ against
_____ and the sum of Rs. _____ as noted

[defaulter]

below, is due from him in respect of the said certificate;

*Whereas certificate No. _____ dated _____
had been forwarded by the [Tax Recovery] Officer _____
to the [undersigned] _____ against
_____ for the recovery of an amount of Rs. _____

[defaulter]

and the said Tax Recovery Officer has sent to the undersigned a certified
copy of the said certificate under section 223(2) of the Income-tax Act,
1961, specifying that an amount of Rs. _____ is to be recovered
from the defaulter and the sum of Rs. _____ as noted below, is
due from him in respect of the said certificate;

Rs. P.

+Certificate amount/specified amount —

Cost and charges —

Interest —

Total

And whereas the said sum of Rs. _____ has not been paid in
satisfaction of the
said certificate;

This is to direct you to serve a copy of this warrant on the defaulter
and, unless after such service the said defaulter pays forthwith the said
sum of Rs. _____ together with interest at [the rate of one and one-
half per cent, for every month or part of a month] on Rs. _____ from
the date of the issue of this warrant and Rs. _____ for the cost of executing
this process, to proceed to attach the movable property of the said
defaulter [and where necessary, the movable property which is included

in the defaulter's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961] and to hold the same until further orders from the undersigned.

You are further directed to return this warrant on or before the ____day of ____19 ____ with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.

+ Delete inappropriate words.

FORM NO. I.T.C.P. 3

[See rule 26(1)(i) of the Second Schedule to the Income-tax act, 1961]

**Prohibitory order where the property consists of
debts not secured by negotiable Instruments**

Office of the Tax Recovery Officer,

To

*Whereas _____ has failed to pay the arrears due from
[defaulter]
him in respect of certificate No. _____ dated ____ [drawn up
by the undersigned], _____ amounting to Rs. _____
and the interest payable under section 220(2) of the Income-tax Act,
1961, for the period commencing immediately after the said date;

*Whereas _____ has failed to pay the arrears due from
[defaulter]
him in respect of certificate No. dated _____ forwarded by the [Tax
Recovery] Officer, _____ to the (undersigned), _____
amounting to Rs. _____ and the interest payable under section 220(2)
of the Income-tax Act, 1961; and whereas the said Tax Recovery Officer
has sent to the undersigned a certified copy of the said certificate under
section 223(2) of the said Act specifying that an amount of Rs. _____ is
to be recovered from the defaulter;

It is ordered that + _____ be, and is
[name of creditor]
hereby prohibited and restrained, until the further order of the undersigned,
from receiving from you a certain debt alleged now to be due from you
to + _____
[name of creditor]

And that you, the said _____ be, and you are hereby,
prohibited and restrained, until the further order of the undersigned, from
making payment of the said debt or any part thereof, to any person,
whomsoever or otherwise than to the undersigned.

Given under my hand and seal at _____ this _____ day
of _____

(SEAL)

Tax Recovery Officer

*score out whichever paragraph is not applicable.

+Fill in the name of the defaulter, and where the property consisting of the debt is included in the defaulter's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that Explanation.

FORM NO. I.T.C.P. 4

[See rule 26(1)(ii) of the Second Schedule to the Income-tax Act, 1961]

**Prohibitory order where the property
consists of shares in a corporation**

Office of the Tax Recovery Officer,

To

(1) _____

(2) _____

[Principal Officer]

[Name of corporation]

*Whereas _____ has failed to pay
[defaulter]
the arrears due from him in respect of certificate No. _____
dated _____ [drawn up by the undersigned],
_____ amounting to Rs. _____ and the interest
payable under section 220(2) of the Income-tax Act, 1961, for the period
commencing immediately after the said date;

*Whereas _____ had failed to pay
[defaulter]
the arrears due from him in respect of certificate No. _____
dated _____ forwarded by the [Tax Recovery] Officer
_____ to the [undersigned], amounting to Rs. _____ and
the interest payable under section 220(2) of the Income-tax act, 1961
and whereas the said Tax Recovery Officer has sent to the undersigned
a certified copy of the said certificate under section 223(2) of the said
act specifying that an amount of Rs. _____ is to be recovered from
the defaulter;

It is ordered that you, No. (1) above mentioned, be, and you are hereby, prohibited and restrained, until the further order of the undersigned, from making any transfer of the shares in the aforesaid corporation standing in your name or from receiving payment of any dividends thereon.+ *It may be noted that the property consisting of shares is included in the defaulter 's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961.*

And, that you, No.(2) above mentioned, are hereby prohibited and restrained, until the further order of the undersigned, from permitting any such transfer or making any such payment.

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.

+ Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 5

[See rule 26(l)(iii) of the Second Schedule to the Income-tax Act, 1961]

Prohibitory order where the property to be attached consists of movable property to which the defaulter is entitled subject to a lien or right of some other person to the immediate possession thereof

Office of the Tax Recovery Officer,

To

*Whereas _____ has
[defaulter]
failed to pay the arrears due from him in respect of certificate No. _____ dated _____ [drawn up by the undersigned] _____ amounting to Rs. _____ and the interest payable under section 220(2) of the Income-tax Act, 1961, for the period commencing immediately after the said date;

*Whereas _____ had failed to pay
[defaulter]
the arrears due from him in respect of certificate No. _____ dated _____ forwarded by the [Tax Recovery] Officer _____ to the [undersigned] _____ amounting to Rs. _____ and the interest payable under section 220(2) of the Income-tax Act, 1961; and whereas the said Tax Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 223(2) of the said act specifying that an amount of Rs. _____ is to be recovered from the defaulter;

It is ordered that + _____
[name of person entitled to property]
prohibited and restrained, until the further order of the undersigned, from receiving from you namely _____ the following property in the possession of the said + _____ that is to say: to which the said + _____ is entitled, subject to your claim of immediate possession thereof,

And that you are hereby prohibited and restrained, until the further order of the undersigned, from delivering the said property to any person or persons whomsoever.

Given under my hand and seal at _____ this ____ day of

(SEAL)

Tax Recovery Officer.

* Score out whichever paragraph is not applicable.

+Fill in the name of the defaulter, and where the movable property is included in the defaulter's property by virtue of the *Explanation to* subsection (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that *Explanation*.

FORM NO. I.T.C.P. 6

[See rule 27 of the Second Schedule to the Income-tax Act, 1961]

Notice of attachment of a decree of a civil courtOffice of the Tax Recovery Officer,

Dated _____

To

The Judge of the Court of _____

Sir,

*Whereas _____ has failed to pay the
[defaulter]
arrears due from him in respect of certificate
No. _____ dated _____ [drawn up by the
undersigned] _____ amounting to Rs. _____ and
the interest payable under section 220(2) of the Income-tax Act, 1961,
for the period commencing immediately after the said date;

*Whereas _____ had failed to pay
[defaulter]
the arrears due from him in respect of certificate No. _____
dated _____ forwarded by the [Tax Recovery] Officer
_____ to the [undersigned] _____ amounting to
Rs. _____ and the interest payable under section 220(2) of the Income-tax
Act, 1961; and whereas the said Tax Recovery Officer has sent to the
undersigned a certified copy of the said certificate under section 223(2)
of the said Act specifying that an amount of Rs. _____ is to be
recovered from the defaulter;

And whereas the undersigned in exercise of his powers under the
Second Schedule to the said Act, desires to proceed with attachment of
a decree of _____ Court dated the _____ day of
_____, made in suit No. _____ of _____ wherein
_____ was the plaintiff and + _____ was the defendant
and which decree is pending execution in your Court;

You are therefore requested to stay the execution of the said decree
unless and until:-

- (i) the undersigned cancels this notice; or

- (ii) the Income-tax Officer_____or the above mentioned defaulter applies to your to execute the decree.

Yours faithfully,

(SEAL)

Tax Recovery Officer.

* Score out whichever paragraph is not applicable.

+Fill in the name of the defaulter, and where the movable property is included in the defaulter's property by virtue of the *Explanation to* sub-section (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that *Explanation*.

FORM NO. I.T.C.P. 7

[See rule 28 of the Second Schedule to the Income-tax Act, 1961]

**Notice of attachment where the property consists of
a share or interest in movable property**Office of the Tax Recovery Officer,
_____To:

*Whereas you have not paid the arrears amounting to Rs. _____ payable by you in respect of certificate No. _____ dated _____ [drawn up by the undersigned] _____ and the interest payable under section 220(2) of the Income-tax Act, 1961, for the period commencing immediately after the said date;

*Whereas _____ has not paid [defaulter] the arrears amounting to Rs. _____ payable by him in respect of certificate No. _____ dated _____ forwarded by the [Tax Recovery] Officer _____ to the [undersigned], _____ and the interest payable under section 220(2) of the Income-tax Act, 1961; and whereas the said Tax Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 223(2) of the said act specifying that an amount of Rs. _____ is to be recovered from the defaulter.

It is hereby ordered that you + _____ be, and are hereby, prohibited and restrained, until the further order of the undersigned, from transferring or charging in any way your share or interest in the undermentioned items of movable property, belonging to you and _____ and _____ as co-owners.

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.

+ Fill in the name of the defaulter, and where the movable property is included in the defaulter's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that Explanation.

FORM NO. I.T.C.P. 8

[See rule 29 of the Second Schedule to the Income-tax Act, 1961]

**Order to attach salary or allowances of servants of
Government or local authority**Office of the Tax Recovery Officer
_____To

*Whereas _____ has not paid
[defaulter]
the arrears amounting to Rs. _____ in respect of certificate No.
_____ dated _____ [drawn up by the undersigned]
_____ and the interest payable under section 220(2) of
the Income-tax Act, 1961;

Whereas _____ has not paid
[defaulter]
the arrears amounting to Rs. _____ payable by him in respect of
certificate No. _____ dated _____ forwarded by the [Tax
Recovery] Officer _____ to the [undersigned], _____ and
the interest payable under section 220(2) of the Income-tax Act, 1961;
and whereas the said Tax Recovery Officer has sent to the undersigned
a certified copy of the said certificate under section 223(2) of the said
act specifying that an amount of Rs. _____ is to be recovered
from the defaulter

And whereas the said _____ is a _____
[office held by defaulter]
receiving his salary and allowances at your hands;

You are hereby required to withhold the sum of Rs. _____
from the salary of the said _____ in monthly instalments of
_____ and to remit the said sum in monthly instalments to
the undersigned.

Given under my hand and seal at this _____ day of

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.

FORM NO. I.T.C.P. 9

[See rule 30 of the Second Schedule to the Income-tax Act, 1961]

Order of attachment of negotiable instrumentOffice of the Tax Recovery Officer

To

(Attaching Officer) _____

Whereas the undersigned has passed on the _____ day of 20____
 _____ an order for the attachment of the undermentioned property.
 *which is included in the property of _____

[defaulter]

by virtue of the Explanation to sub-section (1) of section 222 of the
 Income-tax Act, 1961, in the course of proceedings for the recovery of
 arrears due from _____ in respect

[defaulter]

of certificate No. _____ dated _____ [drawn up by
 the undersigned] the Tax Recovery Officer to the undersigned under
 section 223(2) of the Income-tax Act, 1961;

You are hereby directed to seize the said property, and bring the
 same before me and hold the same subject to my orders.

DETAILS OF PROPERTY

Given under my hand and seal at _____ this _____ day
 of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 10

[See rule 31 of the Second Schedule to the Income-tax Act, 1961]

Notice of attachment of movable property in the custody of a court or public officer

Office of the Tax Recovery Officer

Dated _____

To

Sir,

Whereas _____ has not paid
[defaulter]

the arrears amounting to Rs. _____ in respect of certificate No. _____ dated _____ [drawn up by the undersigned/ *forwarded by the Tax Recovery Officer] _____ and the interest payable under section 220(2) of the Income-tax Act, 1961 and the said Tax Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 223(2) of the Income-tax Act, 1961, specifying that an amount of Rs. _____ is to be recovered by the undersigned from the defaulter; and the undersigned desires to attach sums of moneys or other property, *which is included in the defaulters, property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, now in your custody +;

I request that you will hold the said money or property and any interest or dividend becoming payable thereon subject to the further order of the undersigned.

Yours faithfully,

Tax Recovery Officer

Notes:

* Score out portion in italics, if not applicable.

+ Here state how the money or property is understood to be in the hands of the Court or the public officer addressed, on what account and other available details.

FORM NO. I.T.C.P. 11

[See rule 32 of the Second Schedule to the Income-tax Act, 1961]

**Order of attachment of property consisting of an
interest in partnership property**

Office of the Tax Recovery Officer

To

Whereas _____ has not paid arrears amounting to Rs _____ in respect of a certificate No. _____ dated _____ [drawn up by the undersigned/*forwarded by the Tax Recovery Officer] _____ and the interest payable under section 220(2) of the Income-tax Act, 1961 *and the said Tax Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 223(2) of the Income-tax Act, 1961, specifying that an amount of Rs. _____ is to be recovered by the undersigned from the defaulter; and whereas the said _____ is a partner in the firm known as Messrs _____;

It is hereby ordered:

- (i) that the share of the said _____ in the partnership property and profits of the said firm be and is hereby charged with the payment of the amount aforesaid due under the said certificate; and
- (ii) +that _____

Given under my hand and seal at _____ this _____ day
of _____

(SEAL)

Tax Recovery Officer

Notes:

* Score out portion in italics, if not applicable.

+ Here incorporate any other order that may be considered necessary in the circumstances.

FORM NO. I.T.C.P. 12

[See rule 37 and rule 52(1) of the Second Schedule
to the Income-tax Act, 1961]

Warrant of sale of property

Office of the Tax Recovery Officer

To

There are to command you to sell by public auction, after giving _____ days' previous notice by affixing the same in the office of the undersigned, and after making due proclamation, the undermentioned property attached in execution of certificate No. _____ dated _____ [drawn up by the undersigned/*forwarded by the Tax Recovery Officer] _____ against _____

[defaulter]

*to the said Tax Recovery Officer, _____ and whereas a certified copy of the said certificate has been sent by the said Tax Recovery Officer to the undersigned under section 223(2) of the Income-tax Act, 1961, or so much of the said property as shall realise (i) the sum of Rs. _____ being the sum of the +amount of the said certificate/specified amount and costs still remaining unsatisfied, and (ii) interest payable on Rs. _____ under section 220(2) of the Income-tax Act, 1961, for the period commencing immediately after ²[the date of issue of this order].

2. You are further commanded to return this warrant on or before the _____ day of _____ 20 _____ with an endorsement certifying the manner in which it has been executed or the reason why it has not been executed.

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

Note :

* Score out portion in italics, if not applicable.

+ Delete inappropriate words.

FORM NO. I.T.C.P. 13

[See rule 38 and rule 52(2) of the
Second Schedule to the Income-tax Act, 1961]

Proclamation of sale

Office of the Tax Recovery Officer,

*Whereas the [undersigned has drawn up] the certificate No. _____
dated _____ for the recovery of the sum of Rs. _____ from
_____ which sum is recoverable
[defaulter]

together with interest in accordance with section 220(2) of the Income-
tax Act, 1961 and the costs, charges and expenses of the proceedings
for the recovery thereof;

*Whereas the [Tax Recovery Officer] _____ had
forwarded the certificate No. _____ dated _____ to the
[undersigned], _____ for the recovery of the sum of Rs. _____
from _____ and whereas the
[defaulter]

said Tax Recovery Officer has sent to the undersigned on the _____
day of _____ 20 _____ a certified copy of the certificate under
section 223(2) of the Income-tax act, 1961, specifying that an amount of
Rs. _____ is to be recovered from the defaulter, which sum is
recoverable together with interest in accordance with section 220(2) of
the said Act and the costs, charges and expenses of the proceedings for
the recovery thereof;

And whereas the undersigned has ordered the sale of the attached
property mentioned in the annexed schedule in satisfaction of the said
certificate;

And whereas on the _____ day of _____ 20 _____
(the date fixed for the sale) there will be due thereunder a sum of
Rs. _____ including costs and interest;

Notice is hereby given that, in the absence of any order of
postponement, the said property shall be sold by _____
by public auction at _____ A.M./P.M. on the said
_____ day of 20_____ at _____
[place]

The sale will be of the property of the defaulter above named/+property
which is included in the property of the defaulter by virtue of the
Explanation to sub-section (1) of section 222 of the Income-tax Act,

1961, as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

The property will be put up for sale in the lots specified in the schedule. If the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said certificate, interest payable under section 220(2) of the Income-tax Act, 1961, and costs (including the costs of the sale) are tendered to the officer conducting the sale or proof is given to his satisfaction that the amount of such arrears, interest and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorised agent. No officer or other person, having any duty to perform in connection with this sale shall, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed in the Second Schedule to the Income-tax Act, 1961, and the rules made thereunder and to the following further conditions:-

- (i) The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.
- #(ii) The reserve price below which the property shall not be sold is Rs. _____
- (iii) The amounts by which biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.
- (iv) The highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that *the amount bid by him is not less than the reserve price *it shall be in the discretion of the undersigned to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.
- (v) For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of the Second Schedule to the Income-tax Act, 1961.

- (vi) In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and resold.
- (vii) In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day from the date of the sale of the property, exclusive of such day, or if the 15th day be a Sunday or other holiday, then on the first office day after the 15th day. In default of payment within the period mentioned above, the property shall be resold, after the issue of fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

SCHEDULE OF PROPERTY

No. of lots	Description of Property to be sold with the names of the other co-owners where the property belongs to the defaulter and any other persons as co-owners	Revenue assessed upon the property or any part thereof	Details of any encumbrances to which the property is liable	Claims, if any, been put forward to the property, and any other known particulars bearing on its nature and value
1	2	3	4	5

Given under my hand and seal at_____ this _____ day of

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph/portion is not applicable.

+ Score out the portion in italics, if not applicable.

Applies only in the case of auction of immovable property where a reserve price is fixed.

FORM NO. I.T.C.P. 14

[See rule 44(2) of the Second Schedule to the Income-tax Act, 1961]

Certificate of sale of movable property

This is to certify that Shri _____
purchased for Rs. _____ the undermentioned movable property.* which
is included in the property of _____ by
virtue of the Explanation to sub-section (1) of section 222 of the Income-
tax Act, 1961, at a sale by public auction on the _____ day of _____
in execution of certificate No. _____ dated _____
[drawn up by the undersigned for recovery of arrears from _____ or
drawn up by the Tax Recovery Officer], _____, a certified
copy of which certificate has been sent by the said Tax Recovery Officer
to the undersigned under section 223(2) of the said Act specifying that
an amount of Rs. _____ remains to be recovered from

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Officer holding the sale

* Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 15

[See rule 47 of the Second Schedule to the Income-tax Act, 1961]

**Order for payment to the [Assessing] Officer of
current coins and currency notes attached**Office of the Tax Recovery Officer
-----To

Whereas the execution of certificate No. dated _____ [drawn up by the undersigned], Tax Recovery Officer and whereas the said Tax Recovery Officer has sent a certified copy of the certificate to the undersigned under section 223(2) of the Income-tax Act, 1961, the following property consisting of current coins/currency notes has been attached:

(1) Current Coins

(2) Currency notes

It is hereby ordered that out of the property so attached Rs. _____ in current coins and Rs. _____ in currency notes [shall be credited to the Central Government].

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 16

[See rule 48 of the Second Schedule to the Income-tax Act, 1961]

Order of attachment of immovable property

Office of the Tax Recovery Officer

To

*Whereas you/_____ have/has failed
[defaulter]
to pay the sum of Rs._____ payable by *you/him in respect of
certificate No. _____ dated _____ [drawn up by the
undersigned] _____, and the interest payable under section
220(2) of the Income-tax Act, 1961,;

*Whereas you/_____ have/has
failed to pay the sum of Rs._____ payable by *you/him in
respect of certificate No. _____ dated _____
[forwarded by the Tax Recovery Officer, _____ to the undersigned],
_____ and the interest payable under section 220(2) of the
Income-tax act, 1961; and whereas the said Tax Recovery Officer has
sent to the undersigned a certified copy of the said certificate under
section 223(2) of the said Act specifying that an amount of
Rs._____ is to be recovered from you/the defaulter;

It is ordered that you, the said _____ be, and you are hereby,
prohibited and restrained, until the further order of the undersigned, from
transferring or charging the under mentioned property +which is included
in the property of the defaulter by virtue of the Explanation to sub-
section (1) of section 222 of the Income-tax Act, 1961, in any way and
that all persons be, and that they are hereby prohibited from taking any
benefit under such transfer or charge.

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph/portion is not applicable.

+ Score out portion in italics, if not applicable.

FORM NO.I.T.C.P. 17

[See rule 53 of the Second Schedule to the Income-tax Act, 1961]

Notice for settling a sale proclamationOffice of the Tax Recovery Officer,
_____To

*Whereas in execution of certificate No. _____ dated _____ [drawn up by the undersigned], _____ + to the Tax Recovery Officer _____, a certified copy of which has been sent by the said Tax Recovery Officer to the undersigned, the undersigned has ordered the sale of the undermentioned immovable property;

*Whereas in execution of certificate No. _____ dated _____ [forwarded by the Tax Recovery Officer, _____ to the undersigned] _____ a certified copy of which has been sent by the said Tax Recovery Officer to the undersigned under section 223(2) of the Income-tax Act, 1961, the undersigned has ordered the sale of the undermentioned immovable property which is included in the property of the defaulter by virtue of the Explanation to sub-section (1) of section 222 of the said Act;

You are hereby informed that the _____ day of _____ 20_____ ha been fixed for drawing up the proclamation of sale and settling the terms thereof. You are requested to bring to the notice of the undersigned any encumbrances, charges, claims or liabilities attaching to the said properties or any portion thereof.

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.

+ Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 18

[See rule 63(1) of the Second Schedule to the Income-tax Act, 1961]

Order of confirmation of sale of immovable property

Office of the Tax Recovery Officer

_____ purchased for Rs. _____ the immovable property specified below, which is included in the property of _____ by virtue of [defaulter] the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, at a sale held by public auction on the _____ day of _____ 20 _____ in execution of certificate No. _____ dated _____ [drawn up by the undersigned*/Tax Recovery Officer], _____ a certified copy of which had been sent by the said Tax Recovery Officer to the undersigned under section 223(2) of the said Act, for recovery of arrears from _____. The full amount of the purchase money has been paid on _____

+No application under rule 60/rule 61/rule 62 of the Second Schedule to the Income- tax Act, 1961, has been received for setting aside the sale.

+Application under rule 60/ rule 61/ rule 62 of the Second Schedule to the said act made by _____ for setting aside the sale has been disallowed by the undersigned.

Accordingly, the said sale is hereby confirmed.

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

+ Delete the inappropriate words.

FORM NO. I.T.C.P. 19

[See rule 63(2) of the Second Schedule to the Income-tax Act, 1961]

**Notice to interested parties to show cause
why sale should not be set aside**

Office of the Tax Recovery Officer,

To

Whereas the undermentioned property, *which is included in the property of _____ by virtue of the Explanation to sub-section (1) of section 222

[defaulter]

of the Income-tax Act, 1961, was sold on the _____ day of _____ in execution of certificate No. _____ dated _____ [drawn up by the undersigned */Tax Recovery Officer], _____ a-certified copy of which had been sent by the said Tax Recovery Officer to the undersigned under section 223(2) of the said Act, for recovery of arrears from _____ and whereas _____

[defaulter]

has applied to the undersigned to set aside the sale under rule 60/rule 61/rule 62 of the Second Schedule to the Income-tax act, 1961;

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs before the undersigned on _____ when the said application will be heard and determined.

DESCRIPTION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 20

[See rule 65 of the Second Schedule to the Income-tax Act, 1961]

Certificate of sale of immovable propertyOffice of the Tax Recovery Officer,

This is to certify that Shri _____ has been declared the purchaser at a sale by public auction on the _____ day of _____ of the undermentioned immovable property, _____ *which is included in the property of _____ by virtue of the Explanation to sub-section (1) of section 222 of [defaulter] the Income-tax Act, 1961, in execution of certificate No. _____ dated _____ [drawn up by the undersigned*/Tax Recovery Officer], _____ a certified copy of which had been sent by the said Tax Recovery Officer to the undersigned under section 223(2) of the said Act, for recovery of arrears from _____ and that the said sale has been duly confirmed by the undersigned and became absolute on the _____ day of _____.

SPECIFICATION OF PROPERTY

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

FORM NO. I T.C.P. 21

[See rule 66(2) of the Second Schedule to the Income-tax Act, 1961]

**Certificate to defaulter authorising him to
mortgage, lease or sell property**Office of the Tax Recovery Officer,

*Whereas in execution of certificate No. _____ dated
_____ [drawn up by the undersigned] _____ for
recovery of arrears from _____
[defaulter]

an order was made on the _____ day of _____ for
the sale of the undermentioned property of _____;

*Whereas in execution of certificate No. _____ dated
_____ [forwarded by the Tax Recovery Officer
_____ to the undersigned] _____ a
certified copy of which has been forwarded by the said Tax Recovery
Officer to the undersigned under section 223(2) of the Income-tax Act,
1961, for recovery of arrears from _____
[defaulter]

an order was made on the _____ day of _____ for the
sale of the undermentioned property of + _____;

And the undersigned is satisfied that there is reason to believe that
if the sale is postponed the amount of the said certificate may be raised
by the said + by mortgage/lease/private sale of the said property or any
part thereof and the sale of the undermentioned property has been
postponed till the _____ day of _____ subject to the terms as
mentioned in the order passed by the undersigned on the _____ day of
_____;

This is to certify that the said + _____ is hereby
authorised to make the proposed mortgage/lease/sale within a period of
_____ from the date of this certificate: provided
that all moneys payable under such mortgage/lease/sale shall be paid,
not to the said + _____ but to the undersigned
and provided also that no such mortgage/lease/sale shall become
absolute until it has been confirmed by the undersigned.

DESCRIPTION OF PROPERTY

Given under my hand and seal at _____ this _____ day of

(SEAL)

Tax Recovery Officer

* Score out whichever paragraph is not applicable.
+ Fill in the name of the defaulter, and where the property is included in the defaulter's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that Explanation.

FORM NO. I.T.C.P. 22

[See rule 69 of the Second Schedule to the Income-tax Act, 1961]

Order attaching a businessOffice of the Tax Recovery Officer

To

*

Whereas certificate No. _____ dated _____ for recovery of arrears amounting to Rs. _____ from you/*
_____ has been [drawn up by the

[defaulter]
undersigned*/Tax Recovery Officer], _____ and the said Tax Recovery Officer has sent to the undersigned a certified copy of the said certificate under section 223(2) of the Income-tax Act, 1961;

It is hereby ordered that the business carried on by you under the name and style of _____ at _____ +which is included in the defaulter's property by virtue of the Explanation to sub-section (1.) of section 222 of the Income-tax Act, 1961, be and is hereby attached and you are informed accordingly.

It is hereby further ordered that you, the abovesaid * _____ be, and are hereby, prohibited and restrained from transferring or charging the said business in any way and that all persons whosoever are hereby prohibited and restrained from taking any benefit under such transfer or charge.

Given under my hand and seal at ____ this ____ day of _____

(SEAL)

Tax Recovery Officer

* Fill in the name of the defaulter and where the business is included in the defaulter's property by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that Explanation

+ Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 23

[See rule 26 of the Income-tax (Certificate Proceedings) Rules, 1962]

Bond (Sapurdnama)

Statement of Shri _____ aged _____ son of Shri _____ residing at _____ I have received notice in Form No. I T.C.P. 1 [(Form No. 57 of the Income-tax Rules)] that arrears amounting to Rs. _____ are due from me in respect of certificate No. _____ dated _____ [drawn up by the undersigned*/Tax Recovery Officer], _____ a certified copy of which has been forwarded by the said Tax Recovery Officer to 'the Tax Recovery Officer _____ under section 223(2) of the income-tax Act, 1961, I offer herewith a sum of Rs. _____ towards the said arrears. Regarding the balance of Rs. _____ of the arrears as well as costs, expenses and charges amounting to Rs. _____ I undertake to pay the same in monthly instalments of Rs. _____ each payable not later than the _____ day of each month commencing from _____. Along with each instalment I also undertake to pay the interest payable under section 220(2) of the Income-tax Act, 1961. I undertake not to commit any default in the payment of the instalments. I agree that if I commit any default in paying any one of the instalments within the time aforesaid, the entire amount due from me on the date of the default may be recovered in entirety by such measures as the Tax Recovery Officer _____ considers necessary. I specify herein my assets as on this day and I agree not to sell, give away, transfer, mortgage, or otherwise alienate or encumber these assets in any way, until the entire amount due from me is paid to the Tax Recovery Officer, _____ in full. I agree that in the meanwhile, these assets may continue to remain attached if considered necessary. I also agree to furnish two solvent sureties who will execute a surety bond in the form approved by the Tax Recovery Officer _____, for the due payment by me of the aforesaid dues in instalments as agreed to herein.

DETAILS OF ASSETS AS ON THIS DAY**Before me**

_____ (Signature)

_____ (Signature)

_____ (Name)

_____ (Name)

_____ (Designation)

_____ (Designation)

Date : _____

Date: _____

(SEAL)

* Score out portion in Italics, if not applicable.

FORM NO. I.T.C.P. 24

[See rule 69 or rule 70 of the Second Schedule
to the Income-tax Act, 1961]

Appointment of a receiver

Office of the Tax Recovery Officer

To

Whereas _____*which is included in the property of _____ by virtue of the Explanation to sub-section (1) of section 222 of the Income-tax Act, 1961, has attached under an order passed by the undersigned under rule 69/rule 70 of the Second Schedule to the Income-tax Act, 1961, in the course of execution of certificate No. _____ dated _____ forwarded by the Income-tax Officer _____ a certified copy of which had been sent by the said Tax Recovery 223(2) of the said Act, for recovery of arrears from _____,

You are hereby appointed receiver of the said business/property.

Subject to any orders which may be passed by the undersigned in this behalf, you shall have all the powers necessary for the management of the said business/property in accordance with the said Schedule and the rules made thereunder.

You are required to render a due and proper account of your receipts and disbursements in respect of the said business/property in accordance with Part VII of the Income-tax (Certificate Proceeding) Rules, 1962.

You will be entitled to remuneration at the rate of _____

Your appointment as receiver of the said business/property shall continue in force until further orders of the undersigned and may be cancelled or withdrawn at any time at the discretion of the undersigned.

Given under my hand and seal at _____ this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

FORM NO. I.T.C.P. 25

[See rule 73 of the Second Schedule to the Income-tax Act, 1961]

Notice to show cause why a warrant of arrest should not be issued

Office of the Tax Recovery Officer,

To

Whereas you have failed to pay the amount of arrears specified in certificate No. _____ dated _____ [drawn up by the undersigned/* the Tax Recovery Officer], _____ a certified copy of which has been forwarded by the said Tax Recovery Officer to the undersigned under section 223(2) of the Income-tax Act, 1961, for recovery of arrears from you and the interest payable under section 220(2) of the Income-tax Act, 1961 and it is proposed to execute the above certificate by arrest and imprisonment of your person;

You are hereby required to appear before the undersigned on the _____ day of _____ at _____ A.M./P.M. and to show cause why you should not be committed to the civil prison in execution of the said certificate.

Given under my hand and seal at this _____ day of _____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

the Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found for executing this warrant.

Given under my hand and seal at _____ this day of ____

(SEAL)

Tax Recovery Officer

* Score out portion in italics, if not applicable.

+ Delete inappropriate words.

FORM NO. I.T.C.P. 27

[See Part V of the Second Schedule to the Income-tax Act, 1961]

Warrant of detention in civil prisonOffice of the Tax Recovery Officer,

To

The Officer-in-charge of the Civil Prison of

*Whereas _____ has been brought before the undersigned under a warrant in execution of certificate No. _____ dated _____ [drawn up by the undersigned] for recovery of arrears from him;

*Whereas _____ has been brought before the undersigned under a warrant in execution of certificate No. _____ dated _____ [forwarded by the Tax Recovery Officer to the undersigned], for recovery of arrears from him, a certified copy of which has been forwarded to the undersigned under section 223(2) of the Income-tax Act, 1961, specifying that an amount of Rs. _____ is to be recovered from him;

And whereas he has not satisfied that undersigned that he is entitled to be discharged from custody and has not paid the amount due from him as detailed below:

	Rs.	P.
+ Certificate amount/Specified amount	—	
Cost and charges	—	
Interest up to the date of issue of this warrant	—	
	Total	_____

And whereas the undersigned is satisfied that the said _____ should be committed to the civil prison and an order to that effect has been passed by the undersigned on the _____ day of _____.

You are hereby commanded and required to take and receive the said _____ into the civil prison and to keep him imprisoned therein for a period of _____ or until the amount aforesaid together with further interest on Rs. _____ [at the rate of one and one-half per cent per month or part of a month] for the period commencing immediately after

the date of issue of this warrant payable under section 220(2) of the Income-tax Act, 1961, is paid to you or until you receive an order of release from the undersigned. The undersigned does hereby fix Rs. _____ P _____ per diem (calculated under rule 90(2) of the Second Schedule to the said act as the rate for subsistence allowance of the said _____ during his confinement under this warrant.

Given under my hand and seal at _____ this day of ____

(SEAL)

Tax Recovery Officer

*Score out whichever paragraph is not applicable.

+ Delete inappropriate words.

FORM NO. I.T.C.P. 28

[See rules 77, 78 and 79 of the Second Schedule to
the Income-tax Act, 1961]

Order of release

Office of the Tax Recovery Officer,

To:

The Officer-in-charge of the Civil Prison of

Under orders passed this day, you are hereby directed to forthwith
set free _____ who is now in your custody as a result of the warrant
of detention issued by the undersigned on the _____ day
of _____

Given under my hand and seal at _____ this _____ day of _____.

(SEAL)

Tax Recovery Officer

FORM NO. I.T.C.P. 29

[See rule 85 of the Second Schedule to the Income-tax Act, 1961]

Notice to legal representativeOffice of the Tax Recovery Officer,
_____To

*Whereas certificate No. _____ dated _____ has been [drawn up by the undersigned] for the recovery of arrears amounting to Rs. _____ from _____ [defaulter]

*Whereas certificate No. _____ dated _____ has been forwarded by the [Tax Recovery Officer _____ to the undersigned] for the _____ recovery of arrears amounting to Rs. _____ from _____ [defaulter] and the said Tax Recovery Officer has sent to the undersigned on the _____ day of _____ 20 _____ a certified copy of the said certificate under section 223(2) of the Income-tax Act, 1961, specifying that an amount of Rs. _____ is to be recovered from the defaulter;

And whereas the said _____ has since died.

You are hereby given notice that steps will be taken under all or any of the provisions of the Second Schedule to the Income-tax Act, 1961 to recover the said amount from you together with the interest payable under section 220(2) of that Act and the costs, charges and expenses incurred in respect of warrants and other processes issued and all other proceedings taken for realising the +arrears/specified amount, unless the amount of Rs. _____ in respect of the certificate together with costs, charges and expenses incurred so far amounting to Rs. _____ and the interest aforesaid is paid by you within fifteen days from the date of service of this notice.

(SEAL)

Tax Recovery Officer

NB- Attention is invited to rule 16 of the Second Schedule to the Income-tax Act, 1961, which is reproduced below:

“16(l) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging

to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

* Score out whichever paragraph is not applicable.

+ Delete inappropriate words.

FORM NO. I.T.C.P. 29A

[See rule 86(1) of the Second Schedule to the Income-tax Act, 1961]

Appeal to the [Chief Commissioner or Commissioner]

 [Designation of the
 [Chief Commissioner or Commissioner]]

No. _____ of _____ 20 _____ 20 _____

[To be filled in the office of the [Chief Commissioner or Commissioner]]

- I. Name and address of the appellant _____
2. G.I.R. No. _____
3. Certificate No. _____
4. Assessment year in connection with which the
 appeal is preferred [See footnote 4] _____
5. Tax Recovery Officer passing the Order
 appealed against _____
6. Rule and sub-rule of the Second Schedule
 to the Income-tax Act, 1961, under which the
 Tax Recovery Officer passed the order
 appealed against _____
7. Date of the order appealed against _____
8. Relief claimed in appeal _____
9. Address to which notice may be sent to
 the appellant _____

Signed
 (Appellant)

STATEMENT OF FACTS
 GROUNDS OF APPEAL

Signed
 (Appellant)

Form of verification

I, _____ the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Place: _____ Signature _____

Date: _____ Status of appellant _____

Notes:

1. The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 55A(2) of the I.T.C.P. Rules.
2. The form of appeal, statement of facts and the grounds of appeal must be in duplicate.
3. +If the space provided herein for the statement of facts and grounds of appeal is insufficient, separate enclosures may be used for the purpose.
4. Item 4 not to be filled in if the appeal relates to certificate proceedings for the realisation of tax required to be deducted/paid under section 195(1).

FORM NO. I.T.C.P. 30

[See rule 88 of the Second Schedule to the Income-tax Act, 1961]

Notice to surveyOffice of the Tax Recovery Officer,

Date _____

To

Whereas you are a surety for the arrears amounting to Rs. _____ due from _____ in respect of certificate No. _____ dated _____ [drawn up by the undersigned/* the Tax Recovery Officer] _____, a certified copy of which has been forwarded to the undersigned under section 223(2) of the Income-tax Act, 1961; and whereas it has become necessary to recover the said arrears from you, you are hereby given notice that steps will be taken under all or any of the provisions of the Second Schedule to the Income-tax Act, 1961, to recover the said amount from you together with the interest payable under section 220(2) of that Act and the costs, charges and expenses incurred in respect of warrants and other processes issued and all other proceedings taken for realising the arrears unless the outstanding amount of Rs. _____ in respect of the certificate together with costs charges and expenses incurred so far amounting to Rs. _____ and the interest aforesaid is paid by you within fifteen days from the date of service of this notice.

(SEAL)

Tax Recovery Officer

NB.-Attention is invited to rule 16 of the second Schedule to the Income-tax Act, 1961, which is reproduced below:

“16(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.”

* Score out portion in italics, if not applicable.

APPENDIX-12**I.T.N.S. 50****TEAR OFF ACKNOWLEDGEMENT SLIP**

P.A. No. _____

G.I.R. No. _____

Name _____

Address _____

Letter No. _____

Received *Notice u/s. _____
 *Letter No.

Relating to the Assessment Year _____

From _____

Served by _____

Signature of Addressee

Date: _____

* Delete whichever is inappropriate.

APPENDIX-13**RELEVANT RULES OF THE CODE OF CIVIL PROCEDURE, 1908****Order V Rule 17**

17. Procedure when defendant refuses to accept service, or cannot be found.— Where the defendant or his agent or such other person as aforesaid I refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, ¹[who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time], and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

HIGH COURT AMENDMENTS

Calcutta—In Order V. for rule 17, substitute the following rule, namely:—

“17. Procedure when defendant refuses to accept service, or cannot be found:— Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is absent from his residence at the time when service is sought to be effected on him there at and there is no likelihood of his being found there at within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person upon whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued with a report ordered thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.” (w.e.f. 25-7-1928)

¹ *Ins, by Act 104 of 1976, sec. 55 (wet 1.2-1977).*

Gauhati. – Same as in Calcutta.

Karnataka.– In Order V, for rule 17, substitute the following rule, namely:–

“17. Procedure when defendant refuses to accept service, or cannot be found. – Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the defendant is not present at the house in which he ordinarily resides or carries on business or personally works for gain at the time when service is sought to be effected on him thereat and there is no likelihood of his being found thereat within a reasonable time and there is no agent empowered to accept service of the summons on his behalf nor any other person upon whom service can be made under rule 15, the serving officer shall affix a copy of the summons on the outer door of or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was to affixed.” (w.e.f. 30-3-1967)

Madhya Pradesh. – In Order V. in rule 17, insert the following proviso, namely:–

“Provided that where a special service has been issued and the defendant refuses to sign the acknowledgment it shall not be necessary to affix a copy as directed hereinafter.” (w.e.f. 16-9-1960)

COMMENTS

Alleged service of summons by affirmation just after 2 days of filing the suit. Return of service not proved by affidavit nor the serving officer was examined. This resulted into passing of an ex parte order. Application for setting aside the order on ground of non- service of summons cannot be rejected; Sushil Kumar Saha v. Juran Chandra Saha, AIR 1993 Gau 48.

18. Endorsement of time and manner of service.– The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to, be endorsed or annexed, on or to the original summons, a - return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

HIGH COURT AMENDMENTS

Andhra Pradesh. – In Order V, after rule 18, insert the following rule, namely:–

“18A. Chief Ministerial Officer, District Courts, may be empowered to order issue of fresh Summons. – A District Judge, within the meaning of the Madras Civil Courts Act, 1873, may delegate to the Chief Ministerial Officer of the District Court the power to order the issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within seven days after the return has been notified on the notice board.”

Karnataka. – In Order V, after rule 18, insert the following rule, namely:–

“18A. The Presiding Officer of a Civil Court may delegate to the Chief Ministerial Officer of the Court, the power to order issue of fresh summons to a defendant when the return on the previous summons is to the effect that the defendant was not served and the plaintiff does not object to the issue of fresh summons within 7 days after he has been required to deposit the necessary process fee for the issue of fresh summons. If the plaintiff objects, the matter shall be placed before the Presiding Officer for his orders.” (w.e.f. 30-3-1967)

Madras. – In Order V, for rule ISA which was inserted in 1929, substitute the following rule, namely:–

“18A. A District Judge, a subordinate Judge and a District Munsif within the meaning of the Madras Civil Courts Act, 1873, and a City Civil Judge within the meaning of the Madras City Civil Court Act, 1892 may delegate to the Chief Ministerial Officer of their respective Courts the power to issue fresh summons to a defendant when (i) the return on the previous summons is to the effect that the defendant was not served and (ii) the plaintiff does not object to the issue of fresh summons within 7 days after the return has been notified on the Notice Board.”

[Vide Port St Gee Gaz, dated 9th November, 1955.]

19. Examination of serving officer. – Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

HIGH COURT AMENDMENTS

Calcutta. – In Order V,–

(a) for rule 19, substitute the following rule, namely:–

“19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the declaration of the serving officer, and may, if it has been so verified, examine the serving officer, on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit.” (w.e.f. 25-7-1928)

(b) after rule 19, insert the following rule, namely:–

“19A. A declaration made and subscribed by a serving officer shall be received as evidence of the facts as to the service or attempted service of the summons.”

[Vide Notification No.10428-C, dated 25th July, 1928.]

Gauhati. – Same as in Calcutta.

¹[19A. **Simultaneous issue of summons for service by post in addition to personal service.**–Rep. by Act 46 of 1999, sec. 15 (w.e.f 1-7-2002)]

20. Substituted service. – (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

¹[(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) **Effect of substituted service.** – Service substituted by order of the Court shall be as effectual as if it has been made on the defendant personally.

¹ *Ins, by Act 104 of 1976, sec. 55 (wet 1.2-1977).*

(3) **Where service substituted, time for appearance to be fixed.** – Where service is substituted by order of the Court, the Court shall (ix such time (or the appearance of the defendant as the case may require.

HIGH COURT AMENDMENT

Punjab, Haryana and Chandigarh. – In Order V, in rule 20, insert the following proviso, namely:-

“Provided that if service in the ordinary manner or by registered post is not effected for the first date of hearing the Court may direct substituted service, in such manner as the Court deem fit even if no application is made by or on behalf of the plaintiff for the purpose.”

(Vide Punjab Gazette, Pt. III (LS.), p. 303, dated 11th April, 1975; Haryana Government Gazette, Pt. III (L.S.) p. 189, dated 25th March, 1975, Chandigarh Administration Gazette, P.II, p. 95, dated 1st May, 1975]

Order XXI, Rule 19.

19. Execution in case of cross-claims under same decree. – Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then–

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

COMMENTS

Order XXI, rule 19, provided for certain cases of set-offs. Cross-decrees as between two parties are entitled to be set-off against each other. Rule 19 speaks of ‘two parties’ being ‘entitled to recover sums of money from each other’. This means that where the cross-claims are not mutual in every respect, set-off is not available. For the rule to apply, the cross-decrees must satisfy the test ‘each otherness’; P. Venkataradan v. Lakshmi Ammal, AIR 1982 Mad 5.

ORDER XL

APPOINTMENT OF RECEIVERS

1. Appointment of receivers.– (1) Where it appears to the Court to be just and convenient, the Court may by order–

- (a) appoint a receiver of any property, whether before or after decree;

- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver, and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, H preservation and improvement of the property, the collection of the rents and profits thereof, the application and, disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

HIGH COURT AMENDMENTS

Allahabad. – In Order XL, in rule (1), in sub-rule (2), after the words “any person”, insert a comma and the words “not being a party to the suit,”.

[Vide Notification No. 2875/35(a)-S(2), dated 10th July, 1943].

Karnataka. – Same as in Allahabad.

COMMENTS

- (i) In the interest of justice and fairplay that a serving judicial officer should not be appointed as a receiver by any court of law; *Dilip Kumar Sharma v. Civil Judge (Sr. Division) Mathura*, AIR 2004 All 86.
- (ii) Sub-rule (2) clearly indicates that the Court and its officer, the receiver, does not possess any right higher than the right a party to the suit possesses; *Anthony C. Leo v Nandlal Ba? Krishnan*, AIR 1997 SC 173.
- (iii) Receivership cannot be imposed on the parties by the Court; *Hindustan Petroleum A’ Corpn. Ltd. v. M/s. Ram Chandra and Sons*, AIR 1994 SC 478.
- (iv) The Court appointed Receiver of the mortgaged disputed property. Receiver having taken vacant possession of the property cannot induct tenant in the property without the permission of the Court; *Aboobakar Abdulrehman & Co. v. Shreefi Properties*, AIR 1993 Born 265: 1992 (3) Born CR 402: 1993 (1) Cur CC 144.

2. Remuneration. – The Court may by general or special order. fix the amount to be paid as remuneration for the services of the receiver.

3. Duties. – Every receiver so appointed shall–

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

HIGH COURT AMENDMENTS

Andhra Pradesh. – Same as in Madras.

Karnataka. – Same as in Madras with the following modifications:–

- (i) in clause (a), for the words “in the movable property”, substitute the words “in such form and”.
- (ii) in clause (b), for the words “at such periods and in such forms as”, substitute the words “at such time and in such form as the Court may direct or”. (w.e.f. 30-3-1967)

Kerala. – Same as in Madras with the modification that in clause (a), for the word “movable”; substitute the word “unmovable”. : ‘

[Vide Notification No. B1-3312/58, dated 9th June, 1959.]

Madras. – In Order XL, in rule 3, for clauses (a) and (b), substitute the following clauses, namely:–

- “(a) unless the Court otherwise orders, furnish security in the movable property for such amount as the Court thinks fit duly to account for what he shall receive in respect of the property of which he is appointed a receiver.
- (b) submit his accounts at such periods and in such forms as may be prescribed.” *[Vide P Dis. No. 577 of 1944]*

4. Enforcement of receiver's duties. – **Where a receiver–**

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

HIGH COURT AMENDMENTS

Andhra Pradesh. – Same as in Madras.

Bombay. – In Order XL, for rule 4, substitute the following rule, namely:–

“4. Enforcement of receiver’s duties. – (1) If a receiver fails to submit his account at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time not beyond three years from the date of his discharge by the Court, make an inquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his willful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such inquiry. Notice of the inquiry shall be given by registered post prepaid for acknowledgment to the surety, if any, for the Receiver, but the cost of his appearance shall be borne by the surety himself, unless the Court otherwise directs:

Provided that the Court may, where the account is disputed by the parties and is of a complicated nature, or where it is alleged that loss has been occasioned to the property by the willful default or gross negligence of the Receiver, refer the parties to a suit. In all such cases, the Court shall state in writing the reasons for the reference.

(3) If the Receiver fails to pay any amount which he has been ordered to pay under sub-rule(2) of this rule, within the period fixed in the order, the Court may direct such amount to be recovered either on the security (if any) furnished by him under Rule 3, or by attachment and sale of his property, or, if the property has been attached under sub-rule (1) of this rule; by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him, and shall pay the balance (if any) of the sale proceeds to the Receiver.” (w.e.f 140-1983)

Karnataka. – Same as in Madras with the following modification:— In sub-rule (1), for the words “in the form ordered”, substitute the words “in the manner ordered”. (w.e.f. 30-3-1967)

Kerala. – Same as in Madras with the addition of the following marginal note to the rule:–

“Enforcement of receiver’s duties”.

[Vide Notification No. B1-3312/58, dated 7th April, 1959]

Madras.– In. Order XL, for rule 4, substitute the following rule 4, namely:–

“4. (1) If a receiver fails to submit his accounts at such-periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.

(2) The Court may, at the instance of any party to any suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his willful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver, but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs:

Sec 2(17) of CPC – “Public officer” means a person falling under any of the following descriptions, namely:–

- (a) every Judge;
- (b) every member of [an All India Service];
- (c) every commissioned or gazetted officer in the military ¹[naval or air] forces of ²[the Union] ³[****] while serving under the Government;
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorized by a Court of Justice to perform any of such duties;
- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is, an such officer,

¹ Subs. By Act 35 of 1934, Section 2 and Schedule for “or naval”.

² Subs. By the A.O. 1950, for “His Majesty”.

³ The words “including His Majesty’s Indian Marine Service”, omitted by Act 35 of 1934, Section 2 and Schedule.

to prevent offence, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

- (g) every officer whose duty it is, as such officer, 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, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;

Section 60 of the Code of Civil Procedure, 1908

⁴60. Property liable to attachment and sale in execution of decree. – (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be Liable to such attachment or sale, namely:–

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as

⁴ For amendments to section 60, in its application to East Punjab, see the Punjab Relief of Indebtedness Act, 1934 (Punjab Act 7 of 1934), sec. 35, as amended by Punjab Acts 12 of 1940 and 6 of 1942.

may have been declared to be free from liability under the provisions of the next following section;

- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to ¹[an agriculturist or a labourer or a domestic servant] and occupied by him;
 - (d) books of account;
 - (e) a mere right to sue for damages;
 - (f) any right of personal service;
 - (g) stipends and gratuities allowed to pensioners of the Government ²[or of a local authority or of any other employer], or payable out of any service family pension fund ³notified in the Official Gazette by ⁴[the Central Government or the State Government] in this behalf, and political pension;
 - ⁵[(h) the wages of 'labourers and domestic servants, whether payable in money or in kind ⁶[***];]
 - ⁷[(i) salary to the extent of ⁸[the first ⁹[one thousand rupees]] two-thirds of the remainder] ¹¹[in execution of any decree other than a decree for maintenance];
- ¹²[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period

¹ Subs by Act 104 of 1976, sec. 23, for "an agriculturist" (w.e.f. 1.2.1977)

² Subs by Act 104 of 1976, sec. 23(w.e.f. 1.2.1977).

³ For such a notification, see Gazette of India, 1909, Pt. I, p.5.

⁴ Subs. By the AO 1937, for "the G.G. in C."

⁵ Subs. by Act 9 of 1937, sec. 2, for clauses (h) and (i). The amendments made by that section have no effect in respect of any proceedings arising out of a suit instituted before 1st June, 1937, sn' Act 9 of 1937, sec. 3.

⁶ *The words 'and salary, to the extent of the first hundred rupees and one-half the remainder of such salary' omitted by Act 5 of 1943, sec. 2.*

⁷ Subs, by Act 5 of 1943, sec. 2, for clause (i) and proviso.

⁸ Subs, by Act 26 of 1963, sec. 2, for "the first hundred rupees".

⁹ Subs. by Act 104 of 1976, sec. 23, for "two hundred rupees and one-half the remainder" (w.e.f 1-2-1977).

¹⁰ Subs, by Act 46 of 1999, sec. 6, for "four hundred rupees" (w.e.f. 1-7-2002).

¹¹ Ins, by Act 66 of 1956, sec. 6 (w.e.f. 1-1-1957).

¹² Subs, by Act 104 of 1976, sec. 23, for the proviso (w.e.f. 1-2-1977).

of twenty-four months, be finally exempt from attachment in execution of that decree;]

¹³[(ia) one-third of the salary in execution of any decree for maintenance;]

¹⁴[(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;]

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, ¹⁵[1925 (19 of 1925)], for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

¹⁶[(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of lessee of a residential building to which the provisions of law for the time being in force relating 'to control of rents and accommodation apply;]

¹⁷[(l) any allowance forming part of the emoluments of any ¹⁸[servant of the Government] or of any servant of a railway company or local authority which the ¹⁹[appropriate Government] may by notification, in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to ²⁰[any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by ²¹[any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

¹³ Ins, by Aet 66 of 1956, sec. 6 (wet. 1-1-1957).

¹⁴ Subs, by Act 104 of 1976, sec. 23, for clause (j) (we.f. 1-2-1977).

¹⁵ Subs, by Act 9 of 1937, sec. 2, for "1897".

¹⁶ Ins, by Act 104 of 1976, sec. 23 (w.e.f. 1-2-1977).

¹⁷ Subs, by Act 9 of 1937, sec. 2, for clause (1).

¹⁸ Subs, by Act 5 of 1943, sec. 2, for "public officer".

¹⁹ Subs, by the A.O. 1937, for "G.G. in C."

²⁰ Subs, by Act 5 of 1943, sec. 2, for "any such officer or servant".

²¹ Subs, by A.O. 1937, for "any law passed under the Indian Councils Acts, 1861 and 1892".

- (p) where the judgment-debtor is a person liable for the payment of - land-revenue; any movable property which, under any law (or the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

²²[Explanation I.—The moneys payable in relation to the matters mentioned in clauses (g), (h), (i) (ia), (j), (I) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.]

²³[Explanation II.—In clauses (i) and (ia)] “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (I), derived by a person from his employment whether on duty or on leave.

²⁴[Explanation ²⁵III].—In clause (1) “appropriate Government” means—

- (i) as respect any ²⁶[person] in the service of the Central Government, or any servant of ²⁷[a Railway Administration or of a cantonment authority or of the port authority of a major, port, the Central Government; ²⁸***]
- (iii) as respects any other servant of the Government or a servant of any other ²⁹***] local authority, the State Government.]

³⁰[Explanation IV.—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled, unskilled or semi-skilled labourer.

Explanation V.—For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner, or agricultural labourer.

Explanation VI—For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

- (a) by his own labour, or
- (b) by the labour of any member of his family, or

²² Subs. by Act 104 of 1976, sec. 23, for Explanation I (w.e.f. 1-2-1977).

²³ Subs. by Act 104 of 1976, sec. 23, for “Explanation 2.—In clauses (h) and U)” (wet 1-2-1977).

²⁴ Ins, by the AC. 1937.

²⁵ Subs. by Act 104 of 1976, sec. 23, for “3” (w.e.f. 1-2-1977).

²⁶ Subs. by Act 5 of 1943, sec. 2, For “public officer”.

²⁷ Subs, by the A.O. 1950, for “a Federal Railway”.

²⁸ Clause (ii) omitted by the AC. 1948.

²⁹ The word “railway or” omitted by the AC. 1950.

³⁰ Ins, by Act 104 of 1976, sec. 23 (w.e.f. 1-2-1977).

- (c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.]

³¹[(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.]

(2) Nothing in this section shall be deemed ³²[***] to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, ³³[***].

³⁴[***]

STATE AMENDMENTS

Andhra Pradesh. – In section 60, in sub-section (1), in the proviso, in clause (g), in its application to the Andhra Area of the State of Andhra Pradesh, after the words “stipends and gratuities, allowed to pensioners of the Government”, insert the words “or of a local authority”.

[Vide Code of Civil Procedure (Andhra Pradesh) (Andhra Area) Amendment Act, 1950 (34 of 1950) as amended by the Andhra Pradesh Act 9 of 1961.]

In its application to the whole of the State of Andhra Pradesh,–

- A. (i) In section 60, in sub-section (i), in the proviso, after clause (k), insert the following clause, namely:—

“(kk) amount payable: under policies issued in pursuance of the rules for the Andhra Pradesh Government life Insurance and Provident Fund and the Hyderabad State Life Insurance and Provident Fund;”

- (ii) In section 60, in sub-section (1), after Explanation 2, insert the following Explanation, namely:—

“Explanation 2A—Where any sum payable to a Government servant is exempt from attachment under the provisions of clause (kk), such sum shall remain exempt from attachment notwithstanding the fact that owing to the death of the Government servant it is payable to some other person.”

[Vide Code of Civil Procedure (Andhra Pradesh) (Telangana Area)

³¹ *Ins, by Act 104 of 1976, sec. 23 (w.e.f. 1-2-1977).*

³² *The letter and brackets “(a)” rep. by Act 10 of 1914, sec. 3 and Sch. II.*

³³ *The word “or” rep. by Act 10 of 1914, sec. 3 and Sch. II.*

³⁴ *Clause (1,) rep. by Act 10 of 1914, sec. 3 and 5th. II.*

Amendment Act 11 of 1953, as amended by the Andhra Pradesh Act 10 of 1962.]

- B. (i) In section 60, in sub-section (1), in the proviso, after clause (kk), insert the following clause, namely:— -

“(kkk) amounts payable under the Andhra Pradesh State Employees’ Family Benefit Fund Rules;”;

- (ii) in Explanation 2 A, for the expression “clause (kk)”, substitute the expression “clauses (kk) and (kkk)”.

[Vide Andhra Pradesh Act 24 of 1979, sec. 2 (w.e.f. 5-9-1979).]

In its application to the Telangana area of the State of Andhra Pradesh in section 60, in sub-section (1):—

- (i) in the proviso, after clause (g), insert the following clause, namely—

“(gg) pension granted or continued by the Central Government, the Government of the pre-reorganisation Hyderabad State or any other State Government on account of past services or present infirmities or as a compassionate allowance; and”

- (ii) after Explanation 2, insert Explanation 2A which is same as given above with the addition of the words, brackets and letters “clause (gg) or” after the words “under the provisions of”.

[Vide Andhra Pradesh Act 18 of 1953.(w.e.f. 2-12-1953).]

Chandigarh. – Same as in Punjab.

Delhi. – Same as in Punjab.

Gujarat. – In section 60, in sub-section (1),—

- (a) in the proviso, after clause (g), insert the following clause, namely:
– “(gg) stipends and gratuities allowed to pensioners of a local authority, and”
- (b) in Explanation I, after the brackets and letter “(g)”, insert the brackets and letters “(gg)”.

[Vide Code of Civil Procedure (Bombay Amendment) Act, 1948 (Bombay Act 60 of 1948), sec. 2 (w.e.f. 30-11-1948).]

Haryana. – Same as in Punjab.

Himachal Pradesh. – In section 60, in sub-section (1), in the proviso,—

- (i) in clause (c), at the end, insert the following:—

“or compensation paid for such houses and buildings (including

compensation for the materials and the sites and the land referred to above) acquired for a public purpose”;

(ii) after clause (c), insert the following, clause, namely:—

“(cc) compensation paid (or agricultural lands belonging to agriculturists and acquired for a public purposes;”

[Vide Civil Procedure Code (Himachal Pradesh Amendment) Act 6 of 1956.]

Karnataka. – In section 60, in sub-section (1), in the proviso, after clause (p), insert the following clause, namely:—

“(pp) where the judgment-debtor is a servant of the State Government who has insured his life under the rules in force relating to the Official Branch of the Karnataka Government Life Insurance Department,—

(1) in the case of insurance effected prior to the ninth day of May, 1911, the whole of the bonus payable or paid thereunder to such servant, or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules; and

(2) in the case of insurance effected on or after the ninth day of May, 1911, and such insurance is compulsory, then the bonus in respect of the compulsory premia payable or paid to such servant, or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rule!,”

[Vide Civil Procedure Code (Mysore Amendment) Act 14 of 1952.]

Kerala. – In section 60, in sub-section (1), in the proviso—

(i) in clause (g), after the words “stipends and gratuities allowed to pensioners”, insert the words “or of a local authority”.

(Vide Kerala Act 13 of 1957, sec. 3 (w.e.f. 1-10-1958).]

[Ed—This amendment in clause (g) was made prior to the amendment made by the Central act 104 of 1976, sec. 23 (w.e.f. 1-2-1977)

(ii) after clause (g), insert the following clause, namely:—

“(gg) all moneys payable to the beneficiaries under the Family Benefit Scheme to the employees of the Government of Kerala;”

[Vide Kerala Act I of 1988, sec. 2 (w.e.f 5-1-1988).]

Maharashtra. – In Section 60, in sub-section (1), in the proviso—

(a) after clause (g), the following clause shall be inserted, namely:

“(gg) in the Hyderabad area of the State of Maharashtra, any pension granted or continued by the Central Government or the Government of the former State of Hyderabad or any other State Government, on account of past services or present infirmities or as a compassionate allowance, which is not covered by clause (g);”

(b) after clause (kb), insert the following clause, namely:

“(kbb) the amounts payable under the policies issued in pursuance of the Rules for the Hyderabad State Life Insurance and provident fund, which are not covered under clause (ka) or (kb).

Explanation.—Where any sum payable to a Government servant is exempt from attachment under this clause or clause (gg) such sum shall remain exempt from attachment, notwithstanding the fact that owing to the death of the Government servant the sum is payable to some other person;”

[Vide Maharashtra Act 65 of 1977, sec. 6 (w.e.f. 19-12-1977).]

Pondicherry. – Same as in Tamil Nadu.

[Vide Pondicherry Act 26 of 1968.]

Punjab.—In its application to the State of Punjab including the Pepsu area thereof as it was immediately before the 1st November, 1956,—

(a) in section 60, in sub-section (1), in the proviso,—

(i) in clause (c), for the words “occupied by him” the following words shall be deemed to be substituted, namely:—

“not proved by the decree-holder to have been let out on rent or lent to persons other than his father, mother, wife, daughter-in-law, brother, sister or other dependants or left vacant for a period of a year or more”.

(ii) after clause (c), insert the following clauses, namely:—

“(cc) milk animals, whether in milk or in calf, kids, animals used for the purposes of transport of draught cart and open spaces or enclosures belonging to an agriculturist and required for use in case of need for tying cattle, parking carts, or stacking fodder or manure;

(ccc) one main residential-house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him:

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.”

- (b) In section 60, after sub-section (2), insert the following sub-sections, namely:—

“(3) Notwithstanding any other law for the time being in force an agreement by which a debtor agrees to waive any benefit of any exemption under this section shall be void.

(4) For the purposes of this section the word ‘agriculturist’ shall include every person whether as owner, tenant, partner or agricultural labourer who depends for his livelihood mainly on income from agricultural land as defined in the Punjab Alienation of Land Act, 1900.

(5) Every member of a tribe notified as agricultural under the Punjab Alienation of Land Act, 1900, and every member of a scheduled caste shall be presumed to be an agriculturist until the contrary is proved.

(6) No order for attachment be made unless the Court is satisfied that the property sought to be attached is not exempt from attachment or sale.”

[Vide Punjab Relief of Indebtedness Act 7 of 1934, sec. 35 as amended by Punjab Acts 12 of 1940, 6 of 1942 and 14 of 1960 (w.e.f. 30-12-1960).]

Rajasthan. – In section 60, in sub-section (1), in the proviso,—

- (i) in clause (b) after the word “agriculturist,” insert the words “his milk cattle and those likely to calve within two years,”;

[Vide Rajasthan Act 19 of 1958 (w.e.f. 18-4-1958).]

- (ii) after clause (k), insert the following clause, namely:—

“(kk) moneys payable under Life Insurance Certificates issued in pursuance of the Rajasthan Government Servants Insurance Rules, 1953;”

- (iii) In section 60, in sub-section (1), after Explanation 3, insert the following Explanation, namely:—

“Explanation 4.—Where any money payable to a Government servant of the State is exempt from attachment under the provision contained in clause (kk), such money shall remain exempt from attachment notwithstanding the fact that owing to the death of a Government servant it is payable to some other person”. -

[Vide Rajasthan Act 16 of 1957, sec. 2 (w.e.f. 6-6-1957).]

Tamil Nadu. – In section 60, in sub-section (1), in the proviso, after the words “stipends and gratuities allowed to the pensioners of the Government”, insert the words “or of a local authority”.

[Vide Code of Civil Procedure (Madras Amendment) Act (34 of 1950).

This Act has been extended to Kanya Kurmari district and Shen Cottah taluk of the Tirunelveli District by the Madras by the Andhra Pradesh and Madras (Alteration Boundaries) (Act 66 of 1959) by the Madras (Added Territories) Adaptation of Laws Order, 1961.

Uttar Pradesh. – In section 60, in sub-section (1), after Explanation 1, insert the following Explanation, namely:–

“Explanation IA.— Particulars mentioned in clause (c) are exempt from sale in execution of a decree whether passed before or after the commencement of the Civil Procedure Code (United Provinces Amendment) Act, 1948, for enforcement of a mortgage of charge thereon.”

(Vide the Code of Civil Procedure (Uttar Pradesh Amendment) Act 35 of 1948, sec. 2 (w.e.f. 28-8-1948).]

COMMENTS

Immunity from attachment with regard to residential house is not available to debtor unless he establishes connection between the agricultural operations carried on by him and the house sought to be attached; Paruchuru Narasimha Rac v. Nune Pandu Ranga Rao, AIR 1994 AP 197.

APPENDIX-14

Copy of the letter F.No.83/DI(RSP)163-64, dated August 17, 1964, of Directorate of Inspection (Research, Statistics & Publication) New Delhi addressed to All Commissioners of Income tax

Service of notices-Provisions of CPC-Strict Compliance of Instructions regarding

Instructions were issued by the Board in their circular F.No. 13/80/6011T-(A-1), dated 7th October, 1961 that “the Income tax Officers and Inspectors should be asked once again to familiarizes themselves thoroughly with the provisions of the Civil Procedure Code and the Rules, if any, made by the local High Court under whose jurisdiction the Income tax officer functions”. Of late, some more cases have come to the notice of the Board where revenue was lost merely because of improper service of summons or notices. It is important that provisions regarding the service of notices and summons are properly understood and adhered to by all Officers and particularly by the process servers.

2. Section 282 of the Income-tax Act, 1961 which deals with the service of notices and summons, provides that “a notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by Court under the Code of Civil Procedure, V of 1908’. Any notice or requisition under Income-tax Act can be addressed.

- (a) In the case of a firm or Hindu Undivided Family, to any member of the firm or to the Manager or any adult member of the family;
- (b) In the case of a local authority or Company, to the principal officer thereof
- (c) In the case of any other Association or body of individuals, to the principal officer or any member thereof; and
- (d) In the case of any other person (not being an individual), to the person who manages or controls his affairs.

However, in the case of an individual, the notice or requisition ought to be addressed to the individual himself.

3. The two modes of service provided in Section 282 are distinct from each other and are governed by different principles of law.

4. When it is proposed to serve the notice by post, it is necessary that the same be sent properly addressed, prepaid and per registered post as required by Section 27 of the General Clauses Act, 1897. Unless the

contrary is proved, the service is deemed to have been effected when the letter is delivered. It was held in C.I.T. Vs.

5. Muichand Surana (28 ITR.684) that the presumption raised in Section 27 of the General Clauses Act was one of fact which could be rebutted. Where a notice sent by registered post is received back unnerved with the postal endorsement "refused", the notice may be presumed, without the examination of the postman, to have been refused by the assessee. Similarly, a person refusing a registered letter cannot afterwards plead ignorance of its contents (16 WR 223).

6. Apart from service by post, the notice of requisition under the Income-tax Act, can be served on the persons named therein as if it were a summons issued by a Court under the Civil Procedure Code. The issue and service of summons is regulated by order V Civil Procedure Code. The provisions of this order have been modified by different High Court to suit local conditions and the Officers are advised to familiarize themselves with the same.

7. It has been pointed out by Courts time and again that the provisions for service of summons must be strictly complied with. The normal mode of service, other than by post, is by a process server who contacts the person named therein, or the agent of the party empowered to accept notices in his behalf, and delivers a copy of the notice to the party or his agent and obtains an acknowledgement in token of receipt of the notice. However, if the notice cannot be served in this manner because the party or his agent refuses to sign the acknowledgement, or if, after using all due and reasonable diligence, the process server cannot find the party or his agent or any other person on whom service could be made, the process server can resort to service by affixture.

8. Service by affixture — (Order V Rule 17): It was held in 51 PLR 57 that the service of summons by affixation would be valid only if one of the following conditions are satisfied, namely —

- (i) If the defendant or his agent refused to sign the acknowledgement;
Or
- (ii) If the serving officer after using all due and reasonable diligence cannot find the defendant and there is no agent or other person on whom the service can be made.

In effecting service by affixture, the following steps have to be taken:

- (I) The process server should affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain;

- (II) The process server should then return the original to the Court from which it was issued with a report endorsed thereon on annexed thereto stating:
 - (a) that he has so affixed a copy,
 - (b) the circumstances in which he did so, and
 - (c) the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed,

Order V, Rule 19 requires that on receipt of this report from the process server, the Court should examine the report to see if the same is verified by an affidavit of the process sewer. If it has been so verified, the Court, may, and if it is not so verified by affidavit, the Court should, examine the process server on oath. After examination of the process sewer on oath and after making such enquiry as it thinks fit, the Court has to either declare that the summons has been duly server or order such service as it thinks fit. It will be observed that the provisions of Rule 19, which are mandatory, require that in the case of service by affixture, the Court should examine the process sever on oath unless the report of the process server is verified by his affidavit and declare on the order sheet whether the notice has duly been sewed or not.

8. Substituted Service: (Order V Rule 20) – As pointed out earlier, service by affixture can be resorted to by the process server, on his own initiative, if the defendant refused to sign the acknowledgement or after using due end reasonable diligence he cannot be found. However, there may be a case where the defendant is keeping out of the way for the purpose of avoiding service or the summons cannot be served in the ordinary way for any other reason. In such circumstances the summons is to be server under Rule 20. However, before substituted service can be effected, the Court has to pass on order under Rule 20 to the effect.

- (i) That the Court is satisfied as to me existence of circumstances which necessitate resort to substituted service under Rule 20.
- (ii) That the summons should be served,
 - (a) by affixing a copy thereof in some conspicuous place in the Court house (Viz. Income tax Office and also;
 - (b) upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain;
 - (c) or in such other manner as the Court thinks fit. (This would cover, for instance, advertisement in the public press; but

this procedure need not ordinarily be resorted to in the case of notices or summons issued by the Income tax Department)

9. Excerpts from some of important judicial pronouncements are given in the annexure for the guidance of officers. Needless to say that whichever mode service is found to be applicable in a particular case, it must be followed strictly in accordance with the provisions of the Civil Code. Mixing up of the procedure for service by affixture with that for substituted service might even lead to the service being held invalid. In a recent case where substituted service was resorted to, the service was held to be invalid because one copy of the notice was not affixed in the Office of the Income tax Officers.

10. These instructions should also be explained to the process servers and their acknowledgements obtained in token of having received these instructions and preserved in the Commissioner's Office.

APPENDIX-15**Instruction No. 41****Recovery of Income tax dues-Attachment and sale of movable and immovable properties-Delegation of powers under Rule 13 of the Second Schedule-instruction regarding-**

A question has arisen as to who should be deputed the execution of warrants of attachment and sale of immovable properties under Rule 13 of Second Schedule to the Income-tax Act, from amongst the staff of Tax Recovery Officer. Comprising of Inspectors, (U.D.Cs. and L.D.Cs. The Board have examined the matter and decided that Tax Recovery Officer should authorize an Inspector working under him under Rule 13 of the Second Schedule to carry out the necessary attachment and sale of moveable and immovable properties wherever necessary. Such delegation of functions is not permissible under Rule 19A of the Second Schedule if the Tax Recovery Officer happens to be an Income-tax Officer.

[CBDT letter F.No. I6/302/68-ITCC, dated the 22nd April, 1969]

APPENDIX-16

**ABSTRACT OF THE PROVISIONS OF PART II OF THE SECOND SCHDULE RELATING TO
ATTACHMENT OF MOVABLE PROPERTY**

Rule	Type movable property	Type of authorization	Type of service	Mode of attachment
1	2	3	4	5
20	Movable property other than- (i) Agricultural produce, and (ii) those mentioned in section 26 to 29, 31 & 32	Warrant issued by T.R.O	Warrant to be served on the defaulter	Actual seizure
24	Agricultural produce- Growing crop/crop gathered or cut	Warrant issued by T.R.O	i. Once copy of the warrant to be affixed on the land on which the crop has grown/ on the place where the crop is deposited; and ii. One copy to be affixed on the place of residence or business or the place of past residence or business.	Deemed to pass in to the possession of the TRO
26	Debts & Shares etc.	Prohibitory order	One copy to be served on the defaulter, one copy to be affixed on some conspicuous part (e.g. Notice Board) of the Office of the TRO; one copy to the debtor/ proper officer of the Corporation/ person in possession of the movable property concerned.	

APPENDIX-16
ABSTRACT OF THE PROVISIONS OF PART II OF THE SECOND SCHEDULE RELATING TO
ATTACHMENT OF MOVABLE PROPERTY (Contd.)

1	2	3	4	5
27	Decree of a Civil Court	Notice requesting stay of execution of decree.	To the Civil Court	
28	Share in movable property	Prohibitory Notice	To the defaulter	
29	Salary and allowance of Govt. servants	According to rule 48 of order 21 of CPC		-
30	Negotiable instruments	Order of attachment	To the TRI	Actual seizure
31	Property in custody of Court/Public Officer	Notice requesting that the property to be held subject to further orders	To the Court/Public officer	-
32	Defaulter interest in partnership property	Order charging share of defaulter – partner in the partnership property and profits	To the partnership firm, the defaulter and the other partners of the firm.	

APPENDIX-17**PANCHNAMA**

Panchnama drawn by the Panchs, in the presence of Shri _____ T.R.I , of the Office of the Tax Recovery Officer, during the course of the execution proceeds of Warrant or Notice in Form No. _____ in the case of _____ of _____, who is a defaulter for non- payment of arrears of Income-tax etc., in the file No. _____ sport at House No. _____ Street No. _____ of _____ at the time _____ M. on _____ 20

Sl. No.	Name of panch & Father's Name	Address	Age	Case Profession

We, the above mentioned Panch on being called by the above said Shri _____ T.R.I., of the Office of the Tax Recovery Officer, _____ gathered here today at the place of H.No. _____ Sr. No. _____ of learned that Shri/ M/s. _____ is a defaulter for non-payment of Income-tax etc., arrears to the extent of Rs. _____ for the assessment year _____ and consequently the Tax Recovery Officer, _____ has issued a warrant of attachment of movable property of the defaulter in the form of ITCP-2 in the name of Shri _____ T.R., on date _____ No. _____ and the warrant is to be executed on or before date _____. And in execution thereof Shri _____ the holder of the warrant, today entered the premises of warrant on Shri _____ at _____ M., and after the service of warrant on Shri _____ demanded the payment of the arrears and on its non-payment, attached movable properties as detailed in the inventory attached to this Panchnama between the hours _____ M. and _____ M. in our presence.

We also hereby stated that during the execution proceedings

(to be filled in case of occurrence of any incidence)

Therefore, we solemnly, declare that the facts of the Panchnama mentioned herein are true & correct to the best of our observations & knowledge.

Dated Time

- 1.
- 2.
- 3.
- 4.
- 5.

Drawn before me.

T.R.

APPENDIX-18**INVENTORY**

Inventory of movables attached in the case of _____

File No. _____

Date: _____ 20

Inventory of movable properties attached at the premises of
 Shri _____ H. No. _____
 Street No. _____ of _____ under Rule 22 of the
 second schedule of the Income-tax Act, 1961 while executing warrant of
 attachment of movable issued by the Tax Recovery Officer, _____
 date _____ towards realization of arrears of tax of
 Rs. _____ due from _____ and executed by Shri _____
 T.R., on _____ 19. between the hours _____ M.

SI. No.	Description of Article	Estimated value	Place where kept for safe custody (Name of the person if necessary)

Witness:-

	Name & address of Panch	Signature

Drawn by me today the _____ 19 _____ at _____ M.

Signature of Defaulter:

Signature of T.R.

 (to be filled in case of occurrence of any incidence)

Therefore, we solemnly, declare that the facts of the Panchnama mentioned herein are true & correct to the best of our observations & knowledge.

Dated

Time

- 1.
- 2.
- 3.
- 4.
- 5.

Drawn before me.

T.R.

APPENDIX-19**TERMS & CONDITIONS OF SALE OF BY PUBLIC AUCTION****General**

1. The particulars mentioned in the sale proclamation have been stated to the best of the information of this office but this office shall not be answerable for any error, misstatement or omission in the proclamation of sale.
2. So far known to this office there are no claims, liabilities or encumbrances.
3. So far known to this office there are no arrears of Municipal tax or other taxes but if there are any, if the auction price obtained what is due from the defaulter to the Income-tax department then from out of the excess amount such Municipal tax arrears etc., will be paid but if there is no excess, such taxes will not be paid by the department and the purchaser of the property has to take the property subject to payment of taxes.
4. The amount by which each bidding is to be increased shall be determined by the Inspector conducting the sale. In the event of any dispute arising as to the amount of bid, or as to the bidder, the lot shall at once be again put to auction.
5. The property will be normally sold in the same order in which they have been shown in the proclamation of sale.
6. Each bidder should be qualified to bid at the auction.
7. Any bidder if he is bidding in behalf of a third party should exhibit an authority letter issued to him by the said third party.
8. Each bidder should clearly state the name & address of himself, if he is bidding for himself or the name & address of a third party on whose behalf he is bidding.
9. There is a reserve price fixed and if the highest bid is less than this reserve price even though the Inspector conducting auction might have knocked down in favour of the highest bidder the Tax Recovery Officer in his discretion may decline to accept such bid.
10. If the price offered appears to be clearly inadequate also the Tax Recovery Officer may decline to accept the bid.
11. The Inspector conducting the sale shall have the discretion to adjourn the sale for any reason subject to the provisions of the Second Schedule to the Income-tax Act, 1961. There is no necessity for fresh proclamation sale to be issued if the adjournment is for a period of not more than 30 days.

12. 2% of the purchase price upto Rs.1,000/- and 1% of the purchase price for the amount exceeding Rs.1,000/- will be collected from the purchaser as poundage. This will be the only extra expenses to be incurred by the purchaser.

13. Two or more persons also can join together and bid but they should declare their specific shares at the time of auction. In the absence it will be deemed they have equal shares. Only one sale certificate will be issued in case of immovable property. However, in their joint names. If the names & shares are mentioned such persons get right for that share in the property.

14. The Inspector conducting the auction may insist on a suitable deposit amount by all the bidders who are taking part in the auction. The deposit amount in the case of the successful bidder will be adjusted towards the bid amount, In the case of unsuccessful bidders, the deposit amount will be returned at the close of the auction.

15. All the bidders should note that in case the full amount of arrears due for which the proclamation of sale has been given is paid before the conclusion of the auction, the auction will automatically become cancelled. On no account the bidders can claim any costs, expenses or other compensation for their having attended and participated in the auction. Similarly, in case there is any stay from any authority including the Court, the auction will be postponed or cancelled without any further notice and the persons participating in the auction can not claim any damages etc., for such postponement.

16. Presence in the auction or participation in the bid shall be deemed to be an acceptance of the conditions specified here.

17. The Inspector conducting the auction reserves the right to prevent any individual from participating in the bid if he is satisfied that such an individual's presence may impede the progress of the auction.

Further Terms & Conditions of sale by Public Auction of Movable Property.

1. The entire price shall be paid at the time of the sale or as soon thereafter as the Inspector conducting the auction directs and in default of payment the property shall forthwith will again be put up for auction,

2. After the payment of the price the article will be handed over on the spot and a certificate of sale will be issued by the Inspector.

3. The goods will be sold on the assumption that the bidders have inspected the lots and have known that they are buying whether they have actually inspected them or not, and no complaints as to the quality, quantity, size, measurements, breakage, number, weights, etc., of the goods will be entertained from the buyers by weight or number and the

purchaser fails to obtain delivery of the whole or a portion of the goods sold, he shall not be entitled to make any claim other than for proportionate refund of the value of the undelivered quantity. He shall not be entitled to claim any damage, loss or profit, interest or compensation, on any account.

4. The goods sold will have to be removed by the buyer from the place of the storage within the period permitted by the Inspector conducting the auction. The purchaser will have to make his own arrangements for the transport and he will not be entitled to claim any facility or assistance for transport from this department.

5. The goods, shall remain in every respect at the risk of the buyer from the time of acceptance of his bid and the department shall not be under any liability for the safe custody or preservation thereof from that date.

**Further Terms & Conditions of sale by
Public Auction of Immovable Property**

(For General Terms & Conditions see Separate Sheet)

1. 25% of the purchase price should be paid to the Inspector conducting the auction as soon as the auction is knocked down and in default of payment the property will be again put up for auction. The balance of 75% of the amount together with poundage fees shall be paid to this office in or before 15th day from the date of the sale. Under no circumstances, this time of 15 days can be extended by any authority. If the amount is not so paid then out of the 25% of the amount paid the costs of the auction will be deducted and the balance may be forfeited to the Government according to the discretion of the Tax Recovery Officer.

2. The sale of immovable property will be confirmed after only on the confirmation of the sale it becomes absolute. Entire arrear is paid by the defaulter then the sale will cancelled.

3. For any reason if the sale is not confirmed but is set aside then the entire purchase money paid will be refunded to the highest bidder together with interest at such rate as will be allowed by the Tax Recovery Officer and also with an extra 5% of the money in certain circumstances.

4. The entire money paid by the purchaser will not be credited to the Income tax account until confirmation but will be kept with the Tax Recovery Officer himself under his personal custody and hence in case the sale is set aside the amount can be refunded immediately without any necessity for issuing a refund order by the concerned Income tax officer.

5. After the confirmation of the sale of immovable property, a certificate in form I.T.C.P. 20 will be issued. The original of this sale certificate is liable for stamp duty and a further duty of Rs.4.50 is also chargeable on

the copy of the sale certificate to be forwarded to the sub-Registrar. These charges (which may vary from State to State) are to be borne by the auction-purchaser. The original sale certificate thus issued will be the title for the property and it has the same value as a Sale Deed and it does not require the Registration by the purchaser. Thus, the auction-purchaser is saved expenses of registration, etc. This office itself will send a copy of the sale certificate for registration to the concerned Sub-Registrar for making necessary entries in his registers.

6. Along with the sale certificate as far as possible a plan of the property also will be issued.

7. After confirmation of the sale and after the issue of the sale certificate the delivery of the immovable property will be made by a beat of tom tom at the locality announcing that from the date of the sale it has become absolute and the purchaser has become owner of the property.

8. In case the property is occupied by any tenant the tenant cannot be evicted by this office. However, an order will be made declaring the purchaser as the owner of the property from the date the sale has become absolute and a copy of it will be served on 30 days after the sale and Before the 30 days if the become automatically the tenant and affixed on the property and the proclamation will be made by beat of tom tom. The tenant will automatically become the tenant of the new purchaser and from the date of purchase the new purchaser desires to evict the tenant he has to take recourse by himself in accordance with law by approaching the rent controller or other authority. The position regarding the lessee of agricultural lands also is exactly same.

9. In case the property is occupied by the defaulter himself or any other person on his behalf who is not a tenant then the purchaser is at liberty to go and take possession of the property. However, if any resistance is offered either by the defaulter or any person on his behalf, if an application is made by the purchaser under Rule 39 of the Income tax Certificate Proceedings Rules, 1962, then efforts will be taken to put the purchaser in the possession of the property and if need be by removing the defaulter or any other person on his behalf who is obstructing the possession of the property.

10. In case of agricultural lands, if there are any standing crops on the lands the land is sold without any right for the standing crops. The standing crops will continue to belong to the person or persons who are the owners thereof in whatever capacity it may be. The purchaser of the land should give access to such owners to render all such operations which are required to ripen the crops and should also give free access to such owners for cutting the crops and removing them after they are fit for harvest.

11. As far as possible efforts will be made to obtain a nil encumbrance certificate from the Sub-Registrar but the purchaser cannot demand as of right for such certificate.

**Tax Recovery Officer,
Income Tax Department**

APPENDIX-20**LIST OF BIDDERS AT THE AUCTION OF THE
MOVABLE/IMMOVABLE PROPERTY**

In the case of

Description of property for auction _____

Date, time and place of Auction _____

Auction conducted By _____

Sl. No.	Name	Father's name	Age	Occu- pation	Full address	Amt. depo- sited	Signa- ture	Amt. depo- sited	Signa- ture	Remarks
1	2	3	4	5	6	7	8	9	10	11
1										
2										
3										
4										
5										

Knocked down in favour of _____
 for a sum of Rs subject to confirmation of the sale by the TRO and
 subject to provisions of the Second Schedule to the I.T. Act and I.T.C.P.
 Rules, 1962.

Signature of the Inspector.

Signature of the Highest Bidder.

APPENDIX-21**CBDT's letter F.No.399/1/99-IT(B) Dated 28.09.1999.**

D.O .F. No. 399/1/99-IT(B)

New Delhi, the 28th Sept. 1999

My dear

It has come to the notice of 'the Board that proper attention is not being given to the working of TROs. This is evident from the fact that the number of TROs and the staff actually deployed for recovery work is much less than, the sanctioned strength. Collections made by TROs are also not substantial.

In this regard, it may be brought to your notice that the Board had issued a detailed action plan for TROs vide D.O. letter F.No. 399/1/95-IT(B) dated 22nd June 1995 (copy enclosed). This action plan, inter alia, had also fixed certain targets to enable supervisory officers to monitor the performance of TROs. Vide Board's instruction No. 1929 dated 22nd August 1995 issued from F.No. 398/2/93—IT(B), Board had fix a reduced disposal targets of 1200 recovery certificates from each TRO per year. However, from the progressive Report of tax recovery work for the year 1998—99, it is seen that the disposal of RC is far too below the norm of 1200 RC fixed by the Board.

The issue of strengthening of tax recovery machinery was one of the items for discussions in the Chief Commissioners conference held on 17th May 1999. It was emphasized that the TROs must be effectively used for tax recovery work in a big way.

In view of the above, You are requested to prepare, an Action Plan target for financial year 1999—2000 'for the TROs working in your region depending on the work load available with each TRO and monitor it closely. It must be strongly impressed on the IROs that their performance would be judged solely by the cash collection achieved by them.

Moreover, it is imperative to give proper emphasis to the recovery work and strengthen the TROs' offices by deploying adequate manpower to this area of work and making them available proper infrastructural facilities to effect recovery of taxes in a meaningful way.

Yours sincerely,

(O.P. Srivastava)

Shri B. Mishra,
Chief Commissioner of Income Tax
Bombay.

APPENDIX-22**INSTRUCTION NO. 517****Recovery of tax — Recovery certificate issued by Income — tax Officer against firm — Whether Tax recovery Officer can proceed against individual partners of firm.**

In case of Kethmal Parekh Vs. TRO, Vijayawada, and another (1973) 87 ITR 101 the Andhra High Court considered the question devoid of jurisdiction in relation to the partner when the Income-tax Officer had forwarded a certificate to the Tax Recovery Officer under section 222 of the Income — tax Act, 1961 mentioning only the name of the firm. Their Lordship held that since the partner's name was not included in the certificate issued under section 222 he could not be proceeded against under Rule 73. According to Rule 1(b) of the Second Schedule, defaulter means the assessee mentioned in the certificate inasmuch as the name of the partner does not appear in the certificate issued under section 222 he will not be subject to the proceedings initiated by the Tax Recovery Officer under the Second Schedule for collection of the Tax arrears of the firm.

2. While allowing the petition filed by the partner the High Court also held that the Income– tax Officer may amend the certificate under section 222 which has already been issued by including the name of the individual partner as defaulter.

3. The Board have accepted the decision of the Andhra Pradesh High Court. However, it is desired that in order to facilitate the Tax Recovery Officer to proceed against the partner(s) as well, the Income-tax Officer while issuing certificate under section 222 in the case of firm should also mention that names of the partners of the firm.

4. These instructions may be brought to the notice of the officers working in your charge.

[F. No404/52173-ITCC, dated 28-2-1973 from C.B.D.T.]

APPENDIX-23**RELEVANT PROVISIONS OF THE INDIAN PENAL CODE**

Sections 224. Resistance or obstruction by a person to his lawful apprehension. – Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sections 225. Resistance or obstruction to lawful apprehension of another person. – Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with ¹[imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to ¹[imprisonment for life] ²[***] ³[***] ⁴[***] or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

¹ Subs. by Act 26 of 1955, sec. 117 and Sch., for “transportation for life” (w.e.f. 1-1-1956).

² The words ‘or to’ omitted by Act 36 of 1957, sec. 3 and Sch. II (w.e.f. 17-9-1957).

³ The word “transportation” omitted by Act 26 of 1955, sec. 117 and Sch. (w.e.f. 1-1-1956).

⁴ The words “penal servitude” omitted by Act 17 of 1949, sec. 2 (w.e.f. 6-4-1949).

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with ¹[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Para I: Punishment – Imprisonment for 2 years, or fine, or both – Cognizable – Bailable – Triable by any Magistrate—Non-compoundable.

Para II: Punishment – Imprisonment for 3 years and fine – Cognizable – Nonbailable – Triable by Magistrate of the first class – Non-compoundable.

Para III & IV: Punishment—Imprisonment for 7 years and fine – Cognizable – Nonbailable – Triable by Magistrate of the first class.

Para V: Punishment – Imprisonment for life or imprisonment for 10 years and fine – Cognizable – Non-bailable – Triable by Court of Session.

Sections 225B. Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for. – Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 6 months, or fine, or both—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Sections 87. Issue of warrant in lieu of, or in addition to, summons.— A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

- (a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or
- (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

APPENDIX -24**ACCEPTANCE OF CROSSED CHEQUE PAYMENT OF TAX****Payment of taxes – Acceptance of Crossed Cheques – Instructions – Regarding –**

It has been decided by the Board that the Department will freely accept crossed cheques towards payment of tax dues under the Direct Taxes. With a view to ensure that such cheques are properly received, deposited promptly into the Government account and are properly accounted for the following instructions are issued for the guidance of the Commissioners:

(1) There will be pay in counters for receiving cheques. The number of such counters will be determined by the Commissioners having regard to the volume of work. Each counter will be manned by an Inspector/ Head Clerk and one U.D.C. to be provided for the present by the Commissioner out of existing resources in cities of Bombay, Calcutta, Ahmedabad, Delhi, Madras and Kanpur, and by a Headclerk and one UDC in other cities.

In small Income-tax Offices, the Commissioner will make suitable arrangements for receiving cheques, care being taken to see that the prescribed procedure with regards their verification, accounting and depositing is duly observed. He may nominate receiving and supervising officers as may be convenient according to local conditions.

(2) An ITO will be nominated by the Commissioner to supervise daily that:-

- (i) the counter observes all the requirements laid down in these instructions and the public circular;
- (ii) the register of cheques is maintained properly;
- (iii) the cheques are deposited promptly into the Government account; and
- (iv) cheques returned uncashed are forwarded back to the assessee promptly with a request for a fresh cheque.

The ITO should sign the prescribed registers daily in token of his having seen and tallied them.

(3) The cheques will be received by the UDC who will prepare a provisional receipt immediately, separately for each cheque paid in. This will be verified by the Headclerk/Inspector with the cheque and the challan and countersigned the Headclerk/Inspector

- (4) The staff in the pay-in-counter will satisfy that—
- (i) the cheque is crossed and is drawn by the assessee in favour of the Income-tax Department and the amount of the cheque tallies with the amount in the challan.
 - (ii) the contents of the challan as to the name, PAN No/ Ward etc. are legible; and
 - (iii) in case the cheque is drawn by a person other than the assessee, it has still to be drawn in favour of the I.T. Department and shall be of the same amount as appearing in the challan and is accompanied by a letter in Form B from the drawer of the cheque indicating that the cheque has been drawn for tax dues of the particular tax payer.
- (5) Payments by cheques will be received upto 4 P.M. An Inward Register will be maintained for each receiving clerk separately and will have the following columns:
- (a) Serial No.
 - (b) Provisional Receipt No.
 - (c) The name of the assessee & GIR No/Ward/PAN No.
 - (d) Particulars of the cheque vis, cheque No., date, name of the Bank.
 - (e) Amount.
 - (f) Date on which sent to the Reserve Bank.
 - (g) Date on which counterfoils of challans received. The serial number will be continuously running number for the financial year and the date in respect of entries made during the day will be recorded at the top of the page.
- (6) The supervising officer will sign the Inward Register for the day, tally the number of cheques received and keep them in safe custody for deposit the next day morning.
- (7) He will maintain a record of cheques deposited in the following form:
- (i) Date
 - (ii) No. of cheques received.
 - (iii) No. of cheques sent for deposit.
 - (iv) No. of cheques received back from the Bank unrealised.
 - (v) No. of cheques sent back to assessees.

- (vi) Balance, if any, carried over with reasons.
 - (vii) Signature of the ITO.
- (8) In respect of payments on self assessments, challans will be prepared by UDC attached to the counter on the basis of particulars in the pay-in-slip accompanying the cheque.
- (9) In a case where the assessee's cheque is returned uncashed, the same will put up by the Inspector/Headclerk to the ITO Incharge who will return it back to the assessee asking him to furnish another cheque for the same amount under intimation to the Assessing ITO or the ITO (Collection) as the case may be who may take such action as may be called for in cases of defaulting assessees.
- (10) On receipt of the challans after the cheques have been duly encashed, department is copy of the challan will be entered in the inward Cheque Register and thereafter sent to the ITO (Collection) or the ITO Incharge Pay-in-counter and serially arranged according to the provisional receipt number. This facilitate handling over assessee's copy of the counterfoil which will nest to be collected by him from the counter
- (11) All provisional receipts should be serially numbered. If the number of Clerks at the counter is more than one, the series should be prefixed by A,B,C and so on, depending upon the number of clerks issuing the receipts. A register should be maintained by the ITO Incharge recording the issue of the receipt book to a clerk and his signature taken in full against the issue. The receipt should be in duplicate, one of which will be perforated. This copy will be given to the tax-payer and the other will form the office record. The book exhausted will be retained by the ITO Incharge in his safe custody.
- (Refer Instruction No. 13, from F.No. 16/5/69-ITCC dated 10/11th February, 1969)

APPENDIX-25
EXECUTION REGISTER FOR THE ATTACHING OFFICIALS

Sl. No.	File No. ITO/TRO	Form No. 2	Form No.16 Others	Others	Date of Receipt	Date of Return	Signature of I.T.L.	Remarks
1	2	3	4	5	6	7	8	9

APPENDIX-26
REGISTER OF DAILY REDUCTION/COLLECTION OF CERTIFIED DEMAND

Form IV					
Sl. No.	Date	Entry No. in TRC Register	Name of the Defaulter	Amount Reduced/Collected	
				By transfer to other TROs.	By cash collections
				As a result of verification with ITOs. Records or intimation from ITOs.	Total
1	2	3	4	5	6
					7
					8

APPENDIX-27
REGISTER OF RECOVERY OF COMPANIES IN LIQUIDATION, BIFR & SICK COMPANIES

Sr. No.	Date	Entry No. in TRC Register	Name and address of defaulter	Amount of arrears	Date of companies No. going into liquidation/ BIFR & Sick	Due date of Loading Claim to be official Liquidator	Progress made in liquidation Proceedings	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

APPENDIX-28

[illegible]

APPENDIX-29

Sr. No.	File No.	Name & Address of Defaulter	Amount of arrear	Date of issue of Form No.2	Date of Attachment	Description of Articles	Estimated value of each Property	Place where the property is kept in custody	Date of sale/ re-sale	Amount of confirmation if any	Date of confirmation if any	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

APPENDIX-30

REGISTER OF IMMOVABLES ATTACHED AND SOLD

[illegible]

APPENDIX-31

DISPOSAL REGISTER FOR CERTIFICATES FINALLY DISPOSED OFF

Sl. No.	Dt. of disposal	Reference No. of entry in T.R.C Register	Name of the Defaulter		Dt.of issue	Rent & Bank Accounts		Movable Property		Immovable Property			Receiver Appointed (Yes/ No.)	Arrest & Detention Dt. of Issue			No. of Objection Petition	Remarks
			PA. No.	Service		Attached (Yes/ No)	Realised (Yes/ No)	Attached (Yes/ No.)	Sold (Yes/ No.)	Attached (Yes/ No.)	Procl-aimed (Yes/ No)	Sold (Yes/ No.)		ITCP 25	ITCP 26	ITCP 27		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	

APPENDIX-32
CLOSED CERTIFICATES REGISTER

SL. No.	S.R. No.	Name & address of the defaulter	Amt. of arrear	Nature of disposal	Remarks
1	2	3	4	5	6

APPENDIX-33**CHART INDICATING THE ANALOGOUS PROVISIONS OF
IT(CP) RULES, 1962 AND CIVIL PROCEDURE CODE**

Rules of I.T. (C.P.) Rules, 1932	Subject matter	Analogous Provision of C.P.C.
(1)	(2)	(3)
	<p align="center">PART-I</p> <p align="center">Preliminary</p> <p align="center">*****</p> <p align="center">PART-II</p> <p align="center">General Procedure</p> <p align="center">*****</p> <p align="center">PART- III</p> <p align="center">Attachment and sale of Property</p>	
r.16	Proclamation of sale	Rule 66 of Order XXI
r.17	Sale to be held by whom and his remuneration.	Rule 65 of Order XXI
	<p align="center">PART-IV</p> <p align="center">Maintenance and custody, while under attachment, of Livestock or other movable property, fees for such maintenance and custody, sale thereof and disposal of sale proceeds</p> <p align="center">*****</p> <p align="center">PART-V</p> <p align="center">Delivery of property sold and execution of Document or endorsement of negotiable Instrument or share in a corporation.</p>	
r.36	Delivery of movable property, debts and shares.	Rule 79 of Order XXI
r.37	Transfer of negotiable instruments and shares.	Rule 80 of Order XXI
r.38	Vesting order in case of other property	Rule 81 of Order XXI
r.39	Delivery of immovable property in occupancy of defaulter.	Rule 95 of Order XXI

(1)	(2)	(3)
r.40	Delivery of immovable property in occupancy of tenant.	Rule 96 of Order XXI
	<p style="text-align: center;">PART-VI</p> <p style="text-align: center;">Resistance or obstruction to delivery of Possession to purchaser.</p>	
r.41	Resistance or obstruction to possession of immovable property.	Rule 97 of Order XXI
r.42	Resistance or obstruction by defaulter	Rule 98 of Order XXI
r.43	Dispossession by purchaser	Rule 99 of Order XXI
r.44	Bonafide claimant to be restored to possession.	Rule 100 of Order XXI
r.45	Rules not applicable to transferee lite pendente.	Rule 102 of Order XXI
	<p style="text-align: center;">PART-VII</p> <p style="text-align: center;">Appointment, powers and duties of a receiver</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">PART-VIII</p> <p style="text-align: center;">Arrest and detention</p>	
r. 54	Subsistence allowance	Rule 39 of order XXI
	<p style="text-align: center;">PART- VIIIA</p> <p style="text-align: center;">Appeals to Tax Recovery Commissioners</p> <p style="text-align: center;">*****</p>	
	<p style="text-align: center;">PART-IX</p> <p style="text-align: center;">Scale of fees for processes, charges for other the proceeding and poundage fees etc.</p> <p style="text-align: center;">*****</p>	

APPENDIX-34

**CHART INDICATING THE I.T.C.P. FORMS AND
RELEVANT RULES OF I.T.(CP) RULES, 1962 AND
SECOND SCHEDULE OF THE INCOME-TAX ACT, 1961**

Form No. I.T.C.P.	Subject-matter	Relevant rule of the I.T.(C.P) Rules	Relevant rule of the Second Schedule
(1)	(2)	(3)	(4)
1.	Notice of demand to defaulter	14	2
2.	Warrant of attachment of movable property	22(i)	20
3.	Prohibitory order where the property consists of debts not secured by negotiable instruments.	22(ii)	26(1)(i)
4.	Prohibitory order where the property consists of share in a corporation	22(iii)	26(1)(ii)
5.	Prohibitory order where the property to be attached consists of movable property to which the defaulter is entitled subject to a lien or right of some other person to the immediate possession thereof	22(iv)	26(1)(iii)
6.	Notice of attachment of a decree of civil court.	22(v)	27
7.	Notice of attachment where the property consists of a share or interest in movable property.	22(vi)	28
8.	Order to attach salary or allowances of servants of Government or local authority.	22(vii)	29
9.	Order of attachment of negotiable instrument.	22(viii)	30
10.	Notice of attachment of movable property in the custody of a court or public officer.	22(ix)	31
11.	Order of attachment of property consisting of an interest in partnership property.	22(x)	32
12.	Warrant of sale of property	22(xi)	37 & 52(1)
13.	Proclamation of sale	22(xii)	38 & 52(2)
14.	Certificate of sale of movable property	22(xiii)	44(2)

(1)	(2)	(3)	(4)
15.	Order for payment to the Income-tax Officer of current coins and currency Notes attached.	22(xiv)	47
16.	Order of attachment of immovable property	22(xv)	48
17.	Notice for settling a sale proclamation	22(xvi)	53
18.	Order of confirmation of sale of immovable property.	22(xvii)	63(1)
19.	Notice to interested parties to show cause why sale should not be set aside.	22(xviii).	63(2)
20.	Certificate of sale of immovable property	22(xix)	65
21.	Certificate to defaulter authorising him to mortgage, lease or sell property.	22(n)	66(2)
22.	Order attaching a business	22(xxi)	69
23.	Bond (Sapurdnama)	26	—
24.	Appointment of receiver	52	69 or 70
25.	Notice to show cause why a warrant of arrest should not be issued	55(i)	73
26.	Warrant of arrest	55(ii)	73 to 81 (Part V)
27.	Warrant of detention in civil prison	55(iii)	Do
28.	Order of release.	55(iv)	77, 78 or 79
29.	Notice to legal representative	60	85
29A.	Appeal to the Tax Recovery Commissioner	55A	86(l)(c)
30.	Notice to surety	61	88

APPENDIX-35**Instruction No. 383****Payment of tax by assesseees where recovery certificates are issued
Intimation by Income-tax Officer to Tax Recovery Officer-Instructions
regarding**

Attention is invited to sub-section (2) of Section 225 of the Income-tax Act, 1961 which provides that where a certificate for the recovery of tax has been issued, the Income tax Officer shall keep the Tax Recovery Officer informed of any tax paid or time granted for payments, subsequent to the issue of such certificate.

2. Instances have come to the notice of the Board, of avoidable hardship caused to the assesseees by the non-observance of this provision of law by lack of intimation of payments, grant of time, etc. by the Income tax Officer to the Tax Recovery Officer. The Board desire that this provision should be strictly followed by the Income tax officers so that assesseees who paid the taxes are not put to inconvenience.

[F.No.404128/72/ITCC, dated the 11th February, 1972 from C.B.D.T.]

APPENDIX-36**Instruction No. 629**

It has been brought to the Board's notice that a particular Tax Recovery Officer had issued a prohibitory order on the assessee's bankers under Form No. ITCP.3, for an amount which in fact had already been paid by the assessee long back. It hardly needs stressing that coercive steps in such cases result in avoidable embarrassment for the assessee as well as the concerned departmental authorities. For avoiding such situations Board had issued Instruction No.363 (F.No.404/28/72-ITCC) dated 1st February, 1972 laying down the procedure to be followed by the Income tax Officers and the Tax Recovery Officers. The Board desire that before taking any coercive action, the procedure contained in the instruction referred to above must be strictly followed and an interview granted to the assessee(s), facts ascertained from them and payments reconciled. The Board also desire that a close scrutiny should be made to avoid recurrence of wrongful action in future.

2. These instructions may please be brought to the notice of all officers working in each charge.

[Board's F. No.404/266/73-ITCC, dated 22-10-1 973]

APPENDIX-37**Instruction No. 149****Discrepancies in the figures of certified demand as per the registers of Income tax Officers/Income-tax Officers, collection and tax recovery officers.**

There is a wide variation between the figures furnished by the Commissioners of Income tax on two different occasions in respect of arrear demand certified to Tax Recovery Officers and State Government Officers, demand recovered during the years and balance outstanding at the end of the years 1966-67 to 1972-73. In some charges, the arrear demand shown as certified to the Tax Recovery Officers as at the end of certain years is far in excess of the gross arrears for those charges at the close of the corresponding years. The reasons for these discrepancies have been analysed in the Board's office on the basis of reports received from the Commissioners; it is found that there are inexplicable differences in the figures of certified demand as per registers of the Income-tax Officers and the Tax Recovery Officers and the reasons for such discrepancies and differences include the following:

- (a) The variation in demand on account of rectifications, revisions, appeals, etc. are not promptly intimated to the Tax Recovery Officers by the Income tax officers (Collection)/other Income tax officers.
 - (b) Collections made by the Income tax Officers (Collection)/other Income tax Officers after issue of recovery certificate are not promptly intimated to the Tax Recovery Officers.
 - (c) When issuing certificates of fresh arrear demands, old outstanding arrears are also included in the fresh certificates in some cases.
 - (d) Adjustments of refunds against arrears are not intimated to the Tax Recovery Officers.
 - (e) When actual payments are proved before the Income tax Officers (Collection) other Income tax Officers, the arrears demand is reduced by them, but no intimation is sent to the Tax Recovery Officers.
 - (f) After issuing certificates for arrears of advance-tax, deletion of these arrears on completion of regular assessments is not intimated to the Tax Recovery Officers.
2. It is requested to please ensure that these lapses are not allowed to continue. You should issue suitable instructions to the Income tax Officers

and Tax Recovery Officers working under your charge to promptly intimate to each other any collection/reduction of certificated demand as a result of any of the actions pointed out above or for any other reasons. You should also introduce a system of half-yearly reconciliation of the registers of the Income tax officers (Collection)/or other Income tax officers and Tax Recovery Officers as on 31st March and 30th September every year. A certificate of reconciliation should be obtained from the concerned Income tax officer/ Tax Recovery Officers by 30th April/31st October, every year.

[CBDT F.No.404/217/74-ITCC dated 18th November, 1974]

APPENDIX-38**Instruction No. 1149****Report of the committee on Income tax Arrears Measures to streamline machinery for collection of arrear demand-and to expedite write off of irrecoverable demands.**

While considering the report of the Committee on Income tax arrears, the Board has noted with concern the existing practice of indiscriminate issue of Tax Recovery Certificates by the ITOs in the last month of the financial year when the statutory period of limitation is about to expire. Due to this bulk issue, the certificates suffer from one or more of the following defect:

- (i) The particulars of the assets of the defaulter are not reported to the TRO.
 - (ii) The amount certified is incorrect since assessee's claim for credit /rectification is not properly considered.
 - (iii) Certificates are issued even in cases where the assessee is not in default since the demand has been stayed/kept in abeyance or the assessee has been permitted to pay the tax in installments.
2. It is also noticed that the Income tax Officers do not commence action for recovery of tax arrears under their own powers in a large number of cases with the result that the TROs are burdened with an increasing number of certificates and the demand certified goes on increasing unnecessarily to that extent.
3. The Board would, therefore, like to impress on the Commissioners of Income tax the need to take urgent remedial action on the following lines:
- (i) The TROs should be instructed to take up the work of preparing the "aid-sheets" and thereafter issuing recovery certificates in cases where found necessary, from October onwards. The practice of issuing the certificates only in the month of March of each Financial Year, if prevalent in your charge, should be stopped.
 - (ii) The practice of issuing certificates even in respect of stayed demand should be discontinued. A watch over such cases can be kept, through the Registers prescribed in the Board's Instruction No.1139 dated 16- 1-1978 for demands stayed/kept in abeyance and demands permitted to be paid in installments. A review of this register every year will enable the ITO to issue the TROs in cases where such issue had been postponed due to the Demand being stayed or allowed to be paid in installments [consequently,

the existing Recovery (Limitation) Register - (ITNS-19) will be discontinued]. The IACs must periodically check the Register to ensure that certificates are issued in time wherever necessary.

- (iii) In all cases where the demand to be certified exceeds Rs.25,000, the ITO should forward the certificates to the TRO through the IAC with a note explaining the action taken already for recovery and indicating the action required to be taken by the TRO.
 - (iv) (a) A procedure for organising periodical meetings by CIT/IAC/JCIT/Addl.CIT, with the ITO/TRO was prescribed in Board's Circular No.175 dated 14-8-75 (F.No.404/III/754TCC). The CIT IAC need not himself participate in these meetings; it will be sufficient if they ensure that such meetings are held between the ITOs and the concerned TROs at least once a month. The scope of thither recovery action to be taken in cases presenting difficulties should also be discussed in these meetings.
 - (b) The TRO's staff should also periodically visit the ITOs office wherever necessary in order to collect the particulars of collection/reduction in cases of certified demands.
 - (v) As far as possible, the jurisdiction of each TRO should be so organized that it coincides with the jurisdiction of the ITOs working in a particular Range.
 - (vi) The TROs work should be reviewed every month by the IAC who should also conduct periodical inspection. The Cs.I.T. should also review the work of the TROs every month as desired by the Board in Instruction F.No.404/138/77-ITCC, dated 5-10-1977 and copies of the/ Commissioner's review should be endorsed to the Board and the DOMS.
4. The continuing pendency of a large number of certificates which are very old indicates that sufficient attention is not being devoted to the work of writing off of such demands in a systematic manner. The Board has decided that the ITO (Headquarters) attached to each individual Commissioner of Income tax should be specially utilized for assisting the IT for organizing on regular basis and taking all follow up action for expeditious process of writing off irrecoverable demand. If this work is attended to properly a lot of dead wood can be eliminated.
5. The Cs.I.T. are requested to acknowledge receipt of this letter and to forward to the Board a note by 30-4-1978 on the action taken by them to give effect to the above decision.

[F.No.385/75/76-IT(B), dated the 10th February, 1978 from
Central Board of Direct Taxes)

APPENDIX-39

File No.

Office of the Tax Recovery Officer,
Income tax Department

Dated:

CERTIFICATE OF PAYMENT OR REDUCTION OF TAXCertified that Shri/M/s. _____ defaulter in file
No. _____* (i) has paid the tax of Rs. _____ for the assessment year 20 as
per as per challan No. _____ dated. _____* (ii) got reduction of tax of Rs. _____ for the assessment
year 20 _____ as per the proceedings of the Income tax Officer
in /Permanent Account No. _____ dated

* Strike off inapplicable portion.

Forwarded to : I.T.O./ACIT
JT CIT/Addl. CIT

T.R.I.

APPENDIX-40**Excerpts from important judicial pronouncements as reproduced in civil court manual – Volume I (MU PUBLICATIONS)**

- (i) A simple delivery of the copy of a summons personally to the defendant is not complete service. It is the duty of the process server to take the signatures of the defendant to its acknowledgement. It is incumbent to effect service under Rule 16 and without that the service is not complete.
- (ii) The serving officer cannot be deemed to have exercised due and reasonable diligence unless he has made real and substantial efforts after proper enquiries to find the defendant.
- (iii) Where the defendant is known to have gone to another place and process server does not try to find out whether there is any agent empowered to accept service of the summons on behalf of the defendant, the process server is not entitled to affix a copy of the summons on the defendant's house.
- (iv) Where the process server was told that the defendant would be back in the evening and he there upon affixed the summons to the door of the house, it was held that the summons had not been duly served for it could not be said that reasonable diligence has been used to find the defendant.
- (v) Where the report of the process server entrusted with the service of the summon on a defendant, was to the effect that he sent the summons to the defendant through a maid-servant and the latter is not examined to prove that the defendant refused to accept the summons, it was held that there has not been a proper service under order V Rule 17.
- (vi) It is necessary that the defendant should be residing in the house in such a manner as to make it probable that the knowledge of the service of the summons will reach him.
- (vii) An affidavit in support of service under this Rule (R.17) should show that proper efforts have been made to find out when and where the defendant is likely to be found.
- (viii) The only material on which a court could come to a conclusion that a summons has been duly served is the endorsement reified on oath on the summons itself and the court is not entitled to proceed with the enquiries ex-parte and pass a decree without an order that the defendant had been duly served.

- (ix) Rule 19 of Order V casts a duty on the Court when a summons is returned under Rule 17 either to declare that the summons has been duly served or to order such service as it thinks fit.
- (x) The provisions of Rule 19 will apply to all cases in which return of summons is made under rule 17 whether due to absence or refusal of persons. Even in the case of refusal, unless there is a declaration by the Court that the service under Rule 17 is sufficient as required by the provisions of Rule 19, any order passed by the Court in the absence of the judgment debtor will not constitute *re judicator*.
- (xi) Where substituted service is ordered without even mentioning that the officer was satisfied that a contingency provided for in Rule 20 of order V did exist, the order is defective.
- (xii) A conditional order while issuing fresh summons that substituted service may be effected in case of evasion, is illegal. Evasion or no evasion is a matter for the Court's decision.
- (xiii) It is only when reasonable grounds exist for believing that the defendant is keeping out of way to avoid service or that for other reasons it cannot be served in the ordinary way that substituted service should be ordered. Mere affixing the summons to the defendant's house is not sufficient service.
- (xiv) When substituted service is ordered, sufficient time ought to be given for notice of the fact to reach the defendant wherever he may be.
- (xv) It is obligatory on the Court to effect substituted service under Rule 20 only if the summons could not be served in the ordinary way. Where the process server had reported that the appellant had refused to accept the service and the Court was satisfied about the correctness of the report, the Court was entitled to hold that the appellant had been duly served and to proceed *ex-parte*.

APPENDIX-41

File No. Office of the Tax Recovery Office,
Income-Tax Department.

Dated:

To,
The Office-In-Charge,
Police Station,

Sir,

**Subject: Recovery of Income-tax arrears — assistance by Polite
requisition u/s. 19 of the Second Schedule to the Lt Act -
Request for**

During the course of the recovery proceedings, in the case of an Income-tax defaulter the assistance of police is found necessary as it is felt that the defaulter may obstruct or give resistance to the officials executing the processes. I, therefore, request you to kindly depute half dozen constables with a Head Constable for rendering the necessary assistance. I feel it will be advisable that atleast one or two of them are armed for any contingencies that may arise.

In this connection, I would like to invite your attention to Rule 19 of Second Schedule to the Income-tax Act, 1961 which is quoted below:

“RULE-19: Any officer authorised to attach or sell any property or to harass the defaulter or charged with any duty to be performed under the Schedule may apply to the Officer-In-charge of the nearest police station for such assistance as may be necessary in the discharge of his duty, and the authority to whom such application is made shall depute a sufficient number of Police Officers for furnishing such assistance.”

In terms of the above Rule, I request you to depute the above referred officials.

Yours faithfully,

APPENDIX-42
PANCHNAMA
(for immovable property)

I/We. _____ S/o _____
residence of _____ (2) _____ on
being called upon by Shri _____ to witness
the attachment/proclamation for the sale of the under mentioned
properties for realisation of arrears from _____ in File
No. _____ solemnly state as under.

(1) _____

(2) _____

(mention the properties here)

1. That, we identified the properties referred to above.
2. That, a copy of the order of attachment / proclamation for sale was affixed to the outer door/to a pole fixed in respect of each property separately in our presence.
3. That, the order of attachment/ proclamation for sale has been proclaimed, near each property cited above, and in the locality by beat of drum.
4. That, the contents of this Panchnama has been explained to us in vernacular and having understood, we certify that what is stated above is correct & true.

BEFORE ME/US

1.

1.

2.

2.

APPENDIX-43**Instruction No. 1103****Implications of the Urban land (Ceiling & Regulation) Act, 1976 on sale of immovable properties under the second schedule of the Income-tax Act. 1961**

The Commissioner of Income tax. Kanpur has reported that the Urban Land (Ceiling and Regulation) Act, 1976 which came into operation with effect from 17th February, 1976 has created certain doubts in the minds of the Tax Recovery Officers, with retard to the auction of the attached immovable properties and confirmation of sale of properties sold already as per provisions of Second Schedule to the Income-tax Act, 1961

2. The matter has been examined in consultation with the Ministry of Law. The Board are advised that the restrictions on transfer of lands imposed by sub-section (3) of section 5 (and similarly in by sub-section (4) of section 10) of the Urban Land (Ceiling and Regulation) Act apply only to voluntary sales and not to involuntary sales like acquisition proceedings under Chapter XXA of the Income-tax Act, 1961. Since the restriction on transfer of land imposed by the Urban Land Ceiling Act is not applicable to the sale effected by the Tax Recovery Officer under the provisions of the Second Schedule to the Income-tax Act, 1961, it is not necessary to give notice or to apply for permission to the competent authority under section 26 or 23 of the Urban Land Ceiling Act. However, sale under the Second Schedule of the Income-tax Act by the Tax Recovery Officer should be made and the possession of the relevant property should be handed over to the auction purchaser before the notification vesting the property in the State Government under section 10(3) of the Urban Land Ceiling Act is issued. Once the notification is issued under the said section. The land would be vested in the State Government in consequence of this vesting, it would cease to be the property of the owner/transferor. The property could not be the subject matter of auction in a recovery proceedings under the Income-tax Act, 1961.

[F.No. 403/4/77-ITCC dated the 28th September, 1977
from Central Board of Direct Taxes.]

APPENDIX-44**BIDDING SHEET AT THE AUCTION OF THE
MOVABLE /IMMOVABLE PROPERTY**

In the case of _____
Description of property for auction _____
Date, time and place of auction _____
Auction conducted by _____

Sl.No.	Name of the Bidder	Amount bid
1.		
2.		
3.		
4.		

Knocked down in favour of _____ for a sum
of Rs. _____

Subject to confirmation of the sale by the T.R.O., and subject to
provisions of the Second Schedule to the I.T. Act, and the I.T.C.P. Rules
1962.

Signature of the Inspector,

Signature of the Highest Bidder.

Witness

APPENDIX-45**CERTIFICATE OF IRRECOVERABILITY**

(To be issued by Tax Recovery Officers)

1. Name of the defaulter
2. Date on which the Certificate was received by the T.R.O.
3. Amount certified for recovery with further additions from time to time
4. Amount by which the arrear was reduced
 - (a) as a result of auction taken by T.R.O.
 - (b) as a result of other auction or developments
5. Steps taken by the T.R.O. to effect recovery in Chronological order and the results achieved
6. Amount considered irrecoverable
7. Amount recommended for write off

I hereby certify that in my opinion and after having enquiries made, all possibilities of recoveries have been exhausted. As such the demand outstanding in this case amounting to Rs _____ is certified to be irrecoverable.

TAX RECOVERY OFFICER

APPENDIX-46**INSTRUCTION NO. 315**

F.No. 16/28 1/69-ITCC

Government of India**Central Board of Direct Taxes**

New Delhi, the 26th July, 1971.

From:

S.K. Lall,
Secretary,
Central Board of Direct Taxes.,

To

1. All Commissioners of Income tax,
2. All Addl. Commissioner of Income-tax,

Subject: Item No.11(10) of the minutes of the conference of Commissioners of Income tax held at New Delhi during May, 1969-Delegation of powers to Tax Recovery Officers to collect cash from Individual defaulters

The question of delegation of powers to Departmental Tax Recovery Officers to collect cash from individual defaulters has been under the consideration of the Government for some time past. The matter was also discussed at the Commissioners Conference held in May, 1969. It has been decided that the Tax Recovery Officers and the Inspectors attached to them may collect cash from individual defaulters while effecting recovery of tax in the circumstances referred to in Rules 22, 47, 60(1) and 73 of the Second Schedule to the Income-tax Act, 1961 if other methods of collection through cheques/bank drafts are not possible and the cash so collected should be remitted into the nearest treasury within 24 hours of its collection. In all other cases, the Tax Recovery Officers should however accept only crossed cheques payable to him. The Board desire that it may be impressed upon all the Tax Recovery Officers and the Inspectors attached to them that they should follow the detailed procedure laid down in the compilation of the Treasury Rules for the receipt of Government moneys and payment of such moneys into the public account. Some of the salient points relating to the procedure for handling Government money and the accounting thereof are given below:

- (1) Every Tax Recovery Officer receiving money on behalf of the government of India, should maintain a cash book in form T.R.4 and follow strictly the instructions contained in Part III of the

G.T.RS. Vol. I for receipt of money and maintenance of cash book.

- (2) All monetary transactions should be entered in the cash book as soon as they occur and in any case before the close of the day and in the case of a touring officer on the very day the Officer returns from tour. All such transactions should be attested by the Head of Office in token of having checked these.
- (3) The cash book should be closed daily and completely checked. The head of the office should verify & the totalling of the cash book or have this done by some responsible subordinate other than the writer of the cash book and initial it as correct.
- (4) At the end of each month, the head of the office should verify the cash balance in the cash book and record a signed and dated certificate to that effect. He Head of Office should also conduct surprise checks once or twice a month.
- (5) When Government moneys in the custody of a Government Officer are paid into the treasury or the Bank, the head of office making such payments should compare the Treasury Officer's or the Bank's receipt on the challan with the entry in the cash book before attesting it, and satisfy himself that the amounts have been actually credited into the Treasury or the Bank. He cash collected from the various parties in realisation of outstanding taxes and which have to be kept in suspense pending their adjustment in satisfaction of the tax arrears should be credited to the personal Deposit accounts opened in the names of the Tax Recovery Officers concerned as per instructions contained in Board's instruction No.312 dated 23rd September, 1969 (F.No.15/209/6SITCC).
- (6) Where cheques have been accepted temporary acknowledgement of the receipt of the cheque should be given as prescribed under this office letter No. 16/5/69-ITCC dated 10/11th February, 1969. The procedure outlined in board's Instruction No.13 (F.No. 16/5/69-ITCC) dated 10/11th February, 1969 should be followed in regard to receipt of cheques, maintenance of record of the cheques and their deposit etc.
- (7) Wherever dues are realised in cash the Officer concerned must issue a receipt in machine-numbered form T.R.5 to the party quoting therein the number and date of the Recovery Certificate against which the amount has been realised. The Officer must give a cross reference of the T.R.5 No. and date and the treasury challan number and date (I) in all the relevant Recovery

Certificates and (ii) enter on the treasury challan the numbers of Recovery Certificates to which the realisation relates in the column- 'Full particulars of the remittance and or authority if any'. In regard to the books containing temporary acknowledgement slips referred in (6) above and the receipt books in T.R.5 mentioned above suitable registers showing the receipt of books and the persons to whom the books are issued should be mentioned by the Tax Recovery officer.

- (8) The receipt books in form T.R.5 should be kept under lock and key in the personal custody of the Officer authorised to sign the receipts on behalf of the Government.
- (9) To enable the Tax Recovery Officer to watch the accounting of moneys received through T.R.5 the Inspectors attached to him should after making cash collection, forward to the Tax Recovery Officer all counterfoils of T.R.5 immediately. It will then be the duty of the Tax Recovery Officer to verify with reference to the cash book as to whether all amounts realised on T.R.5 have been accounted for by deposit in the Treasury. In cases of cash collections made at outstations, the cash should be remitted to the nearest Treasury to avoid any possible risk. If the case is brought to the Head Quarters.
- (10) Under no circumstances duplicates or copies of receipts granted for money received should be granted. If any necessity arises for such a document, a certificate may be given that on a specified date a certain sum or a certain amount was received from a certain person.
- (11) The Tax Recovery Officer should issue at one time only one receipt book to each Inspector attached to him and the subsequent receipt book should be issued only after the counterfoils of the first book have been received and all the realisation have been properly accounted for.
- (12) For the information of the general public the Commissioner should publish, at the beginning of each year or as and when any change occurs in the local newspapers the names of the Tax Recovery Officer and the Inspectors attached to him who are authorised to accept cash on behalf of the Government.
- (13) Each Tax Recovery Officer and the Inspector attached to him should carry an Identity Card (to be issued by the Commissioner) which should specifically mention that he is authorised to receive cash on behalf of the Income tax Department)

- (14) The cash books, used and unused receipt books, registers and other documents should be made available to audit conducted by the C. & A.G. of India as and when demanded.
2. The duty cast on the TROs in clauses (1) and (9) above to maintain the cash book to verify the entries therein with reference to receipt books etc. can be discharged only if they are Heads of Offices. It is presumed that all the TROs working in your charge have already been declared as Heads of Offices by you. If the Commissioner of Income tax Additional Commissioner of Income tax being the Heads of Departments may please take immediate steps to declare them Heads of offices.
3. The Board have further decided that as the Tax Recovery Officers and their Inspectors may be required to handle large amounts of cash in certain circumstances, they may be asked to furnish a Fidelity Insurance Bond for Rs.5,000 in each case.

Yours faithfully,

Sd/-

(S.K. Lall)

Secretary, Central Board of Direct Taxes.

APPENDIX-47**EXTRACTS FROM THE BOARD'S CIRCULAR No. 179, DATED THE 30TH SEPTEMBER, 1975M, CONTAINING THE EXPLANATORY NOTES ON THE AMENDMENTS INTRODUCED BY THE TAXATION LAWS (AMENDMENT ACT, 1975)****(v) Measures for reducing tax arrears**

16. The Amending Act has made several changes in the provisions of the Income-tax Act for facilitating expeditious recovery of taxes. The substance of the main changes in this behalf is explained in paragraphs 17 to 28.

Liability of directors of private companies in certain cases (Section 179)

17. Section 179 of the Income-tax Act imposes, in certain cases, a personal liability on the directors of a private company in respect of the tax payable by the company. Under this provisions, in a case where a private company is wound up on or after 1st April, 1962 and it is found that any tax assessed on the company, whether before the commencement of the liquidation, or in the course of or after the liquidation, cannot be recovered from the company, then every person who was a director of the company at any time during the relevant previous year is held jointly and severally responsible for the payment of the tax that cannot be so recovered. A director can escape this vicarious liability if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part. The amending Act has enlarged the scope of this provision so as to impose personal liability on the directors of a private company in respect of any tax payable by the company even in cases inhere the company has not gone into liquidation. Further, where a private company is converted into a public company and the assessed in respect of any income of any previous year during which such company was a private company cannot be recovered from the company, persons who were directors of the company in any such previous year will be jointly and severally responsible for the placement of such un-recovered tax, so however, that the personal liability of a director in such a case will not extent to the tax payable for any assessment year prior to the assessment year 1962-63. [Section 50 of the Amending Act].

Recovery of tax due from partners of dissolved firms [Section 189]

18. Sub-section (1) of section 189 of the Income-tax Act provides that where any business or profession carried on by a firm is discontinued or where the firm is dissolved, the assessment of the total income of the

firm shall be made as if no such discontinuance or dissolution has taken place. Sub-section (3) of that section thither provides that every person who was at the time of such discontinuance or dissolution a partner of the firm will be jointly and severally liable for the amount of tax, penalty or the sum payable by the firm. Under sub-section (4) of section 182 of the Act, a registered firm may retain out of the share of each partner in the income of the firm a sum not exceeding 30 per cent, thereof until such time as the tax which may be levied on the partner in respect of that share is paid by him. It further provides that where the tax so levied cannot be recovered from the partners, the firm shall be liable to pay the tax to the extent of the amount which had been retained or which could have been so retained.

Under the Explanation inserted by the amending Act in sub-section (3) to section 189, every person who was a partner of the firm at the time of discontinuance of its business or profession, or at the time of dissolution of the firm itself, will be jointly and severally liable for the amount of tax which could have been retained by the firm under sub-section (4) of section 182 before its discontinuance or dissolution but which was not so retained. [Section 52 of the Amending Act].

Attachment and sale of property transferred by the assessee to his relatives in certain cases (Section 222)

20. Under section 222 of the Income-tax Act, the Tax Recovery Officer is empowered to recover arrears of tax, inter alia, by attachment and sale of assessee's movable or immovable property or by appointment of a receiver for the management of assessee's movable and immovable properties. With a view to curbing attempts at defeating the recovery of tax dues by transfer of properties to near relatives, the amending Act has inserted an Explanation in sub-section (1) of section 222 to provide that, for the purpose of that sub-section, the assessee's movable or immovable property will include property, which has been directly or indirectly transferred by him after 31st May, 1973 to his spouse or minor child or daughter in-law or son's minor child without adequate consideration where such property is held by, or stands in the name of, any of the aforesaid persons. Accordingly where an assessee is in default, it will be open to the Tax Recovery Officer to proceed against any movable or immovable property transferred by him after 31st May, 1973 to the aforesaid relatives. The property transferred to the minor child or son's minor child will continue to remain liable to be proceeded against even after the date of attainment of majority by the minor, but the liability will be restricted to any arrears due from the assessee in respect of any period prior to the said date. [Section 54 of the Amending Act].

Tax recovery Officer to whom certificate to be issued [Section 223]

21. At present, when a certificate is issued to a Tax Recovery Officer for recovering any amount for which an assessee is in default, the Tax Recovery Officer is first required to take steps to recover the amount himself and it is only when he is not able to recover the entire amount and has information that the assessee has property within the jurisdiction of another Tax Recovery Officer that he can forward the certificate to such other officer. The amending Act has substituted the existing sub-section (2) of section 223 of the Income tax Act by a new sub-section to provide that the Tax Recovery Officer to whom a certificate has been issued may forward the certificate or a certified copy thereof to another Tax Recovery Officer within whose jurisdiction the assessee resides or has property for realizing the tax or part of the tax due, not only when he is himself not able to recover the entire amount but also when he considers that doing so would expedite or secure the recovery of the dues. [Section 55 of the Amending Act]

Provisional attachment to protect revenue in certain cases [New Section 281(8)]

27. The amending Act has inserted a new section 281B in the Income-tax Act with a view to empowering the Income tax officer to make a provisional attachment of any property of the assessee during the pendency of any proceeding for the assessment or re-assessment of any income (even though there is no demand outstanding against the assessee), if he is of the opinion that it is necessary to do so to protect the interests of the revenue. The order of provisional attachment will be made only after obtaining the approval of the Commissioner. Such provisional attachment will ordinarily cease to have effect after the expiry of the period of six months but, in appropriate cases, the Commissioner may, for reasons to be recorded by him in writing, extend this period from time to time so, however, that the total period of extension shall in no case exceed two years. This provision has been made in order to protect the interests of the revenue in cases where the raising of demand is likely to take time because of investigations and there is apprehension that the assessee may thwart the ultimate collection of that demand. [Section 74 of the Amending Act].

Amendments to the provisions of the Second Schedule

1. Some of the rules in the Second Schedule to the Income-tax Act dealing with the procedure for recovery of tax have been amended for facilitating expeditious recovery. These amendments are as follows:

- i. Rule 19A has been amended to enable a Gazetted Officer of the Central Government working as a Tax Recovery Officer to

delegate any of his functions to any other officer tower than him in rank but not below the rank of an Inspector of Income tax. Where the Tax Recovery Officer is an Income tax Officer, he will be able to delegate his functions to any other officer only after obtaining the approval of the Inspecting Assistant Commissioner. The object of this change is to enable the Tax Recovery Officer to expedite recovery of taxes by delegating some of his work to his subordinates.

- ii. A new clause (ee) has been inserted in rule 53 to provide that a proclamation of sale of immovable property shall also specify the reserve price, if any, below which the property may not be sold. A proviso added to rule 56 lays down that no sale shall be made under the rule if the amount bid by the highest bidder is less than the specified reserve price.

A sub-rule added to rule 59 provides that where the sale of a property for which a reserve price has been specified is postponed fur want of a bid equal to or exceeding the reserve price, an Income tax officer, if so authorised by the Commissioner, may, at a subsequent sale, bid for the property on behalf of the Central Government.

The object of the provisions mentioned in (ii) and (iii) above is to defeat the maneuvers of defaulters who try to manage that adequate bids for property put up for auction are not made.

- i. A new rule 68A has been inserted to provide that where sale of a property is postponed for want of a bid equal to or exceeding the reserve price, an Income tax Officer, duly authorised by the Commissioner in this behalf, may accept the property in satisfaction of the while or any part of the amount due from the defaulter at an agreed price. It also provides that where the price of the property agreed upon exceeds the amount due from the defaulter, the excess shall be paid to the defaulter within a period of 3 months failing which simple interest at the rate of 12 percent per annum shall be payable to the defaulter for the period commencing on the expiry of the said period of 3 months and ending with date of the payment of the amount.
- iv. A new sub-rule (3A) has been added to rule 73 to provide for execution of warrant of arrest, issued by one Tax Recovery Officer, by any other Tax Recovery Officer within whose jurisdiction the defaulter may, for the time being, be found. An Explanation added to sub-rule 4 of rule 73 stipulates that where the defaulter is a Hindu undivided family, the Karta thereof shall be deemed to be the defaulter.

The object of these provisions is to defeat attempts by tax defaulters to evade arrest by moving from place to place, and to make Karta of a Hindu undivided family able for arrest and detention in a civil prison, where the family is a defaulter. [Section 81 of the Amending Act].

APPENDIX-48

C.B.D.T.'s Instruction No. 1785 Dated 25.02.1988 — reference u/s. 220 — 95th report of the Public Accounts committee-properties under attachment - need for publicity

Instruction No	:	1785
Date of Issue	:	25.2.1988
Section(s) Referred	:	220
Statute	:	Income-Tax Act
Also Referring	:	48 & 50 of IInd Schedule

Subject : 95th report of the Public Accounts committee-properties under attachment - need for publicity - regarding.

Rule 50 of the Second Schedule to the Income-tax Act, 1961 provides that the order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or customary modes, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer. The Public Accounts Committee in their 95th Report, have expressed the opinion that the provisions of Rule 50 are not sufficient to warn the bonafide purchaser or a third party, against entering into any transaction in respect of a property under attachment. To achieve this, the Committee suggested that the wide publicity of the attachment of immovable property u/s 48 of the Second Schedule to I.T. Act 1961 should be given by way of advertisements in newspapers. This recommendation has been accepted.

2. Accordingly, it is decided that wide publicity should be given about the properties under attachment. As soon as order of attachment under Rule 48 of the Second Schedule is passed, the TRO concerned should issue advertisements in English and local languages newspapers giving the name of the defaulter and details of the properties. The details must be specific and should enable clear identification of the property. In respect of old cases, a list of such attachment giving similar details as above may be prepared and published. These instructions may be brought to the notice of all concerned.

[F.No. 405/23/87 - ITCC dt. 25-02-88 from CBDT]

APPENDIX-49

C,B.D.T.'s Instruction No. 1786 Dated 25.02.1988–reference u/s. 220 – Action regarding arrear demand.

Instruction No	:	1786
Date of Issue	:	25.2.1988
Section(s) Referred	:	220
Statute	:	Income-tax Act
Also Referring	:	48 & 50 of IInd Schedule

Subject : Action regarding arrear demand.

The DI (Recovery), Delhi, carried out a sample study in six Commissioners charges at Delhi to find out whether proper and adequate attention is being paid to the collection of arrear demands. This study has revealed that this important aspect of work is being neglected by the assessing officers. The supervisory officers have also been found not to have taken requisite interest in this matter.

Some of the reasons for pendency of arrear demands noticed during the course of sample study are :

1. In many cases, there is no certification of the arrear demand brought forward in the arrear register.
2. Reconciliation of demand has not been done. No reconciliation statements have been found in any of the records maintained in the assessing officers offices.
3. In a number of cases, no action has been taken on rectification petition filed by the assesseees.
4. In some cases, stay petitions filed by the assesseees have not been attended to by the officers.
5. Even in cases where show case notices have been issued, they have not been followed up for any further action. The files do not indicate whether, on the dates fixed for hearing of the show cause notices, there was any appearances by the assesseees or his representative.
6. In quite a few cases, appeal effects have not been given promptly where appeals have resulted in large reduction of demand. In some cases, only part effect has been found to have been given to the appeal orders.

7. In a large number of cases, no effort has been made for collection of the demand even after it has fallen due.
8. Adjustment on account of cash seized during search operations, even where requests have been received, not carried because of lack of communication between different officers.
9. Even in respect of cases which have been found fit for write off, no action has been taken to initiate the requisite action for write off.
10. TROs have not been informed about the modification in the certified demands after rectifications have been carried out and/or after appeal effects have been given.
11. Regular meetings between ITOs and the TROs have not been held to sort out the problems regarding the arrear demands.

The most shocking aspect that has emerged from this study relates to apathy of higher functionaries in the matter of collection of outstanding demand. In the charges that have been inspected, it has been found that there has been practically no involvement of the IACs or the Commissioners of Income-tax and almost no action has been taken from their side to ensure that outstanding demand is expeditiously collected. Even stay petition filed before them have not been disposed of for long periods.

The Chief Commissioners and Directors General shall bring the above to the notice of all the officers working under them. The eleven items of work enumerated above should invariably be commented upon by the CC/DG/C IT/IAC while conducting inspections.

[F.No. 404/269/87 - ITCC dt. 25-02-88 from CBDT]

APPENDIX-50

C.B.D.T.'s Instruction No. 1826 Dated 28.08.1989 — reference u/s. 226 — Tax Recovery Officer and Tax Recovery Inspector-Need for furnishing of fidelity Bonds-Instruction No. 315 dated 26-7-71

Instruction No	:	1826
Date of Issue	:	28.8.1989
Section(s) Referred	:	226
Statute	:	Income-Tax Act

Subject : Tax Recovery Officer and Tax Recovery Inspector-Need for furnishing of fidelity Bonds-Instruction No. 315 dated 26-7-71 -Regarding.

Reference is invited to Board's instruction No.315 (F.No.16/281/69-ITCC) dated 26.07.71 wherein Board had clarified the mode of dealing with cash, whenever Tax Recovery Officers/ Tax Recovery Inspectors received payment of taxes in cash. As per para 3 of the instructions, the Tax Recovery Officers/Tax Recovery Inspectors are required to furnish fidelity Insurance bonds for Rs.5,000/- each.

In a study conducted by the Directorate of Organisation and Management Services (IT) it was found that the stipulation of these bonds was not necessary as it may not serve any purpose. It was also pointed out that Officers who are sent on search & seizure work are not required to execute similar bonds even though they deal with cash and other valuables. Considering all these aspects it has been decided to dispense with the need for furnishing of Fidelity Bonds by Tax Recovery Officers/Tax Recovery Inspectors. Wherever it has already been done, necessary action may be taken to discontinue the same. These instructions may be brought to the notice of all the officers working in your region/charge.

[F.No. 405/44/89 - ITCC dt. 28-08-89 from CBDT]

APPENDIX-51**C.B.D.T.'s Instruction No. 1866 Dated 21.11.1990 —reference u/s. 222**

Instruction No	:	1866
Date of Issue	:	21.11.1990
Section(s) Referred	:	222
Statute	:	Income-Tax Act

In its 152nd report, the Public Accounts Committee has recommended that the Income-tax Department should take possession of title deeds in respect of immovable properties subsequent to attachment are forestalled. This recommendation has been accepted by the Government, in principle. Therefore, wherever possible, all efforts should be made to obtain the title deeds of the attached property from the assessee. Such an action can be taken without any difficulty wherever the assessee asks for stay of recovery, grant of instalments etc.

2. The Public Accounts Committee has also noticed that in many cases, auctions of immovable properties attached by the department had to be postponed for want of a bid equal to or more than the reserve price. Rule 59 of the Second Schedule to the Income-tax Act, 1961 provides for participation of the Central Government (through the Assessing Officer authorised in this behalf by the Chief Commissioner or Commissioner of Income-tax) in a subsequent auction for the sale of such properties. Therefore, wherever practicable, the Assessing Officers should actively participate in such second or subsequent auctions so that the attached properties are disposed of expeditiously.

3. The above instructions may be brought to the notice of all officers in your region.

4. Hindi version will follow

APPENDIX-52**C.B.D.T.'s Instruction No. 1883 Dated 07.06.1991 — reference u/s. 220 — Charging of interest u/s. 220(2) of the Income-tax Act, 1961**

Instruction No	:	1883
Date of Issue	:	7.6.1991
Section(s) Referred	:	220
Statute	:	Income-Tax Act

Subject : Charging of interest u/s. 220(2) of the Income-tax Act, 1961 - regarding -

The Comptroller and Auditor General of India has, in paragraph 2.01.17 of his report for the year ended 31-3-1988, dealt with the subject of carry over of arrear demands. The review of C&AG has commented adversely on many cases where demand in lakhs of rupees on account of interest under section 220(2) of the Income-tax Act, 1961 for non-payment of tax, etc., by the due date specified in section 220(1) was not raised.

2. The Board had earlier issued instructions on this subject viz. Instruction No. 805 (F.No. 404/301/74-ITCC) dated 27-11-1974 and Instruction No. 844 (F.No. 400/39/75-ITCC) dated 12-6-1975. These instructions contained references to rules 118 and 119 of the I.T Rules, 1962. These rules prescribed the point of time at which the Assessing Officer was to raise the demand on account of interest under section 220(2) of the I.T. Act. These rules have since been omitted with effect from 30-11-1989.

3. Besides, section 220(2) of the Act has also been amended by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989. In section 220(2) prior to this amendment, only the point of beginning from which interest was to be charged, was specified. As against this, in the amended section 220(2), both the points of time of beginning and ending of the period for which the interest is to be charged, have been specified. This period becomes ascertainable only after the tax, etc. on which the interest is payable, has been paid. This raised a doubt whether the amended provisions of section 220(2) preclude the Assessing Officer from charging interest annually or by the assessee. The matter was referred to the Ministry of Law, who have advised that the Assessing Officer is not so precluded because the liability to pay interest accrues immediately after the tax, etc. becomes due but remains unpaid. Further,

the section does not say that the interest is not to be charged or realised till the tax is paid.

4. In view of the above advice given by the Ministry of Law, the Board have decided that the Assessing Officer should calculate the interest payable under section 220(2) at the end of each financial year if the amount of tax, etc., in respect of which such interest is payable, has not been paid in full before the end of any such financial year and issue the demand notice accordingly. If the amount of tax, etc., in respect of which such interest under section 220(2) is payable, is paid before the end of any financial year, the Assessing Officer shall calculate the interest payable under section 220(2) upto the date on which the payment is made and issue the demand notice accordingly. Further, as is evident from Form No. 57, prescribed under Rule 117B of the I.T Rules, for the drawing up of statement under section 222 by the Tax Recovery Officer, interest under section 220(2) from the day when amount became due, to the date of drawing up of the statement, has to be indicated in the statement.

5. The Board have also decided that in cases where the interest under section 220(2) has to be charged by the Assessing Officer upto 31st day of March of a financial year in respect of demands outstanding on that date, he should calculate interest and issue demand notice within a period of 30 days from the end of the financial year i.e. by the 30th day of April. In cases where interest has to be calculated and charged by the Assessing Officer upto date of payment which falls prior to the 31st day of March, interest should be calculated and charged within a week of the date of final payment. Interest should also to be charged by the Assessing Officer upto the date of drawing up of a recovery certificate at the time of drawing up of such certificate by the Tax Recovery Officer. After the date of drawing up of the certificate, interest should be charged and collected by the Tax Recovery officer alongwith the outstanding demand shown in the recovery certificate.

6. Further, with a view to ensuring proper compliance with the above instructions, the Supervisory Officers i.e. Commissioners or Deputy Commissioners, as the case may be, should carry out half-yearly review of the work of Assessing Officers and Tax Recovery Officers for the periods ending 30th September and 31st March, in the months of November and May, respectively, and send a report thereon to their Supervisory Officers i.e. Chief Commissioners or Commissioners, as the case may be, so as to reach the letter by 15th December and 15th June, respectively.

7. These instructions may be brought to the notice of all officers in your region.

[F.No. 396/21/90 - ITCC dt. 07-06-91 from CBDT]

APPENDIX-53

C.B.D.T.'s Instruction No. 1884 Dated 07.06.1991 —reference u/s. 226, 220, 281B — Provisional attachment of property u/s. 281B of the Income-tax Act, 1961.

Instruction No	:	1884
Date of Issue	:	7.6.1991
Section(s) Referred	:	226 , 220 , 281B
Statute	:	Income-Tax Act

Subject : Provisional attachment of property u/s. 281B of the Income-tax Act, 1961-regarding-

Section 281B was inserted in the Income-tax Act, 1961 with effect from 1-10-1975 in order to protect the interest of revenue in cases where the raising of demand is likely to take time because of investigations and there is apprehension that the assessee may thwart the ultimate collection of demand.

2. This section provides that where, during the pendency of any proceeding for assessment or reassessment of any income including the proceedings under section 132(5) of Income-tax Act, the Assessing Officer is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner/Commissioner of Income-tax, by an order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. The attachment is valid for 6 months from the date of order of attachment. This period of 6 months can be extended by the Chief Commissioner/Commissioner by a maximum period of 2 years.
3. The Board desire that the Assessing Officers should always bear in mind the provisions of the aforesaid section and resort to provisional attachment in all suitable cases.
4. These instructions may be brought to the notice of all officers in your region.

[F.No. 396/21/90 - ITCC dt. 07-06-91 from CBDT]

APPENDIX-54

**C,B.D.T.'s Instruction No. 1893 Dated 26.03.1992 — reference u/s. 226—
Entry in the Demand and Collection Register of the Assessing Officer
in cases where tax recovery certificates have been issued by him or
drawn up by the Tax Recovery Officer.**

Instruction No	:	1893
Date of Issue	:	26.3.1992
Section(s) Referred	:	226
Statute	:	Income-Tax Act

**Subject : Entry in the Demand and Collection Register of the Assessing
Officer in cases where tax recovery certificates have been
issued by him or drawn up by the Tax Recovery Officer -**

As you are aware as a result of the amendment of section 226 and insertion of Rule 94 in the 2nd Schedule to the I.T.Act w.e.f. 1-4-89, the Assessing Officer does not have any powers of recovery u/s.226 in cases where a tax recovery certificate (TRC) has been issued by him or has been drawn up by the TRO. In such cases, the TRO alone can exercise these powers. Therefore, there is a need for the Assessing Officer to maintain a record of all such cases where the TRO has drawn up tax recovery certificate.

2. Till 1989 the Assessing Officer used to maintain a register in Form ITNS-161 of recovery certificates issued by him and a corresponding register in Form ITNS-162 was maintained by the TRO. Subsequently on account of the removal of time limit of 3 years u/s.231 for issue of the Tax Recovery certificate and the decision to draw up TRCs in selected cases only (decisions communicated to the chief commissioner vide the board's letter file no. 396/3/90-ITCC date 13-2-90) and in view of the fact that the Assessing Officer's register was rarely put to any use, the register in Form ITNS-161 was discontinued. Therefore, presently the Assessing Officer does not perhaps keep any record of cases where a recovery certificate has been drawn up by the TRO.

3. With a view to ensuring that the Assessing Officer does not take recovery action u/s.226 in cases where tax recovery certificates have been issued by him or drawn up by the TRO, the Board desire that whenever the TRO draws up a tax recovery certificate and enters the same in his register in Form ITNS-162, he should send intimation thereof to the concerned Assessing Officer so that the Assessing Officer makes a note thereof against the corresponding entry in his D & CR in the

following form—Tax Recovery Certificate drawn up by the TRO (address of TRO) and entered in his register at Sl.No.____on(date)____”. Obviously this note will have to be carried forward to the new registers whenever the D & CR entries are carried forward.

4. Such an exercise of indicating against the relevant entries in the Assessing Officer’s D & CR, the details regarding the issue/drawing up of tax recovery certificates, may please be carried out immediately in respect of all the existing arrear and current demand entries also.
5. The above instructions may please be brought to the notice of all officers working in your region and suitable action in this regard may be taken.

[F.No. 385/88/90 - IT(B) dt. 26-03-92 from CBDT]

APPENDIX-55**C.B.D.T.'s Instruction No. 1897 Dated 31.08.1992 —reference u/s. 220—
Bunching of entries of outstanding income tax demand - “Register of
Bunched arrear entries**

Instruction No	:	1897
Date of Issue	:	31.8.1992
Section(s) Referred	:	220
Statute	:	Income-Tax Act

**Subject : Bunching of entries of outstanding income tax demand -
“Register of Bunched arrear entries”**

As you are aware, the mounting income-tax arrears have been a matter of great concern over the last few years. Reduction of outstanding demand has, therefore, been made one of the key result areas in the Central Action Plans for several years. In this context, proper control over arrear entries assumes great importance.

2. The Conference of the CCsIT & CsIT held in June, 1992 had suggested that instructions should be issued regarding the bunching together of all the entries of outstanding demand pertaining to each assessee. The intention is to prepare a “Ledger Folio” for each assessee against whom there is some arrear demand.

3. This suggestion has been carefully considered by the Board. The total number of arrear entries is so large that at present it is very difficult to bunch them together, assessee-wise. At the same time, a beginning has to be made to evolve a method whereby the total net arrear demand due from each assessee, in the more important cases can be located at a glance.

4. The Board has, therefore, decided that for the present all arrear entries in respect of only the following assesseees should be bunched together:

- i) All cases of limited companies, both private and public;
- ii) All cases assessed by Deputy Commissioners (Special Ranges);
- iii) All cases assessed in Central Circles; and
- iv) All cases assessed by Assistant commissioners.

5. The assessing officer should maintain a register in which one or more pages may be allotted to each assessee. In this register, the name of the assessee, full address, the PAN and the details of all demand outstanding year-wise should be written from the existing D & CRs. The idea is that the demands pertaining to each assessee are brought together at one place so that it would help the assessing officers in monitoring

the recovery of demand. In the first instance all entries of demand should be grouped assessee-wise. This register should be updated every month to take into account fresh demand created or old demand collected or reduced. It may be clarified that this register would be in addition to the existing D & CRs which would continue to be maintained.

6. The work of bunching together of entries of all demands pertaining to each assessee should be done manually. Only in those centres where computers are under-utilised, should such computers be used for this purpose.

7. Each Chief Commissioner may devise his own format of the aforesaid Register. An Alphabetical index will be useful.

8. The Board desire that the work relating to bunching of entries of outstanding demand as indicated above, should be started immediately and completed by 31-10-92.

[F.No. 385/23/92-IT(B) dt. 31-08-92 from CBDT]

APPENDIX-56**C.B.D.T.'s Instruction No. 1902 Dated 17.09.1992 —reference u/s. 143—
Scope of Audit in cases processed u/s 143(1)(a) of the Income-tax Act
- Remedial action as a sequel of Audit Objections**

Instruction No	:	1902
Date of Issue	:	17.9.1992
Section(s) Referred	:	143
Statute	:	Income-Tax Act

Subject : Scope of Audit in cases processed u/s 143(1)(a) of the Income-tax Act - Remedial action as a sequel of Audit Objections

While processing a return u/s.143(1)(a) of the I.T.Act, the Assessing Officer can make only the adjustments prescribed under the section. The Board has been taking the view that the scope of the objections raised by the Audit (both Receipt Audit and Internal Audit) in cases processed u/s.143(1)(a) should be limited only to pointing out failures on the part of the assessing Officers to make any of the prescribed adjustments and not to pointing out mistakes/omissions which could be taken care of only by making a scrutiny assessment. Accordingly, vide F.NO.237/5/84-A&PAC-II dated 26-12-88 instructions had been issued by the Board, that in all objections pointing out failures in making the prescribed adjustments, appropriate remedial action was to be invariably taken.

2. Even so, the Receipt Audit continued to raise objections pointing out mistakes/omissions which fell outside the scope of the adjustments prescribed u/s.143(1)(a) and included a number of such objections in the Audit Reports. In view of the increased revenue effect involved in such audit paragraphs the Board decided that as a special measure remedial action should be taken in all draft-para cases included in the Reports of the C & AG for 1989-90 and 1990-91(F.NO.246/136/90-A & PAC I dated 14-1-1992) even if such action warranted scrutiny of any case already processed u/s.143(1)(a).

3. The C & AG has now agreed that the Revenue Audit, apart from raising objections in scrutiny assessments, shall henceforth confine itself to raising objections only with respect to failures of the Assessing Officers to make the prescribed adjustments in cases processed u/s.143(1)(a).

4. Therefore, in the changed circumstances, it has been decided by the Board that henceforth in cases processed u/s.143(1)(a), appropriate remedial action should be taken only when the objections pointed out are for failure to make the prescribed adjustments. The remedial action

has to be initiated and completed as per existing Instruction No.1598 dated 1-2-1985 and letter dated 15th November, 1988 vide F.NO.237/6/87-A&PAC II issued in this regard.

[F. No. 237/5/84-A&PAC-II, dt. 17-09-1992 from CBDT]

TO THE GOVT. OF INDIA

**[COPY OF BOARD'S LETTER F. NO. 237/6/87-A & PAC-II,
DT. 15-11-1988 ISSUED BY A&PAC-II, CBDT, NEW DELHI]**

**Subject : Taking remedial action as a precautionary measure where
Receipt Audit Objections are not accepted by the Department-
Regarding.**

The existing instructions of the Board on the captioned subject were conveyed vide F.No. 246/30/84-A&PAC II dated the 1st February, 1985 as Instruction No. 1598.

However, certain difficulties were experienced regarding implementation of para 3(c) of the said Instruction. The matter has been reconsidered. Para 3(c) of Instruction No. 1598 has, therefore, been amended, to lead as follows: -

“Where there is a decision of a High Court or a Tribunal rejecting the view of Audit, but the Department has not accepted the decision, remedial action may be completed, except in cases falling under the jurisdiction of the High Court which has rendered the decision. In such cases, the High Court or the Supreme Court may be moved for staying the operation of the judgment. Only on obtaining the stay orders, shall remedial action be taken in such cases.

However, Audit may be informed that the decision of the High Court or Tribunal is contrary to the view taken by Audit, and therefore, the point raised cannot be considered as a ‘mistake’ or an ‘irregularity’”.

This amendment should be brought to the notice of all officers working in your jurisdiction.

Sd/-

Kulvinder Singh

Officer on Special Duty (PAC)

**D.O.F. No. 370/11/92-IT(B)
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES**

New Delhi, the 11th June 1992

Please refer to the Chairman's D.O.F. No. 17/1/92-OD/DOMS dated 3rd June, 1992 regarding the Central Action Plan 1992-93.

2. You would have observed that reduction of outstanding income tax demand has been identified as one of the key result areas and the following targets have been laid down for the current financial year:-

- (i) The amount of income tax demand to be carried forward on 1-4-1993 should be 20% less than the demand if brought forward on 1-4-1992;
- (ii) The arrear demand brought forward on 1-4-1992 should be reduced by 60%; and
- (iii) The current demand should be reduced by 85%.

The inter se priority among these 3 targets will be in the above order. There will be no target for reduction in the number of entries relating to outstanding demands.

3. As you are aware, our performance in the matter of reduction of outstanding demand was not good during the year 1991-92. As against the Action Plan target of reduction in demand by 10%; the total demand actually increased from Rs. 6695 crores as on 1-4-1991 to Rs. 8364 crores as on 1-4-1992. This indicates that sufficient attention was not paid in the field to this important area of work.

4. During the current financial year, all of us will have to wholly involve ourselves right from the inception to the crucial task of reducing the outstanding demand, by as much as 20%, as laid down in the Action Plan. For this purpose, some of the important steps which have to be taken are given below: -

- (i) The outstanding demand should be divided into the following categories and collection should be insisted upon in the manner mentioned against each:-
 - (a) Demand against which no appeal has been filed. 100 per cent collection.
 - (b) Demand against which 1st appeal has been filed. 100 per cent collection unless stay has been granted by any authority.
 - (c) Demand against which 1st appeal has been decided. 100 per cent collection unless the demand has been stayed after taking approval of the Commissioner.
- (ii) Inspections should be carried out by the Commissioners/Deputy Commissioners to ensure that adequate steps are being taken by

the Assessing Officers/TROs to recover the demands as indicated above.

- (iii) The bigger first appeals involving large demands, pending with the Commissioners (Appeal) in your region, should be closely monitored and it may be ensured that these are decided as per the time frame set by the Chairman in his D.O. letter No. Dir (Hqrs.)/Ch (DT)/ 1266-1300 dated the 14th May, 1992.
 - (iv) The Assessing Officers should plan their work in such a way that the assessments involving big demands are finalised by the end of December, 1992.
 - (v) The tendency on the part of the Assessing Officers to make unsubstantiated, high-pitched assessments will have to be curbed. You and the other supervising officers should ensure that patently illegal additions are avoided; such additions only increase the workload of our Department.
 - (vi) The entries of outstanding demands pertaining to each assessee should be bunched together, if possible with the help of computer, so as to facilitate locating of all demands against each assessee and recovery thereof. To start with, the entries relating to larger outstanding demands should be bunched together. A detailed instruction in this regard will be issued by the Board separately. In the meantime, you may please get the preparatory work done in this regard.
 - (vii) The President/Vice President of the ITAT should be requested to take appeals involving large demands for out of turn disposal.
 - (viii) In cases where large demands have been stayed by the Courts, steps should be taken to get the stays vacated, wherever possible.
 - (ix) Adequate number of officers and staff should be posted in the Tax Recovery Wings and the performance of the TROs should be regularly monitored.
 - (x) Rectification applications, stay petitions, revision petitions and waiver petitions should be expeditiously disposed of. Appeal effects should be promptly given.
5. It may please be impressed upon all the officers in your region that the constantly increasing income-tax demands are a matter of great concern for the Government and all possible measures have to be taken to reduce the demand and meet the Action Plan targets. Failure to meet the targets will be viewed adversely.

6. Please write to me about your own ideas on this vexed problem; your suggestions, if found useful, will be circulated to all other Board Members and all Chief Commissioners.

Sd/-
N.R. SIVASWAMY

All Chief Commissioners of Income-tax/
Directors General of Income-tax.

**F. No. 279/116/92-ITJ
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
CENTRAL BOARD OF DIRECT TAXES**

New Delhi, the 8th September, 1992

To
All Chief Commissioners of Income-tax/
All Directors General of Income-tax.

Subject : Delegation of functions to Chief Commissioners regarding acceptance or non-acceptance of adverse judgments of High Courts/ITAT.

I am directed to refer to Board's Instruction No. 1777 dated 4-11-87 (F. No. 279/110/87-ITJ) on the above subject. The decision to accept or contest adverse judgments of High Court/ITAT etc. was delegated to the concerned Chief Commissioners, who could authorise filing of departmental appeal/reference if the revenue effect exceeded the prescribed monetary limits. This was, however, subject to some exceptions, as in para No. 3(iii)(e) which provided:

“Where in respect of one assessment year the order is contested in the case of an assessee for any reason, the adverse judgment for other years in the issue in that case should also be contested irrespective of the amount involved so that Department's case on the issue is not prejudiced on the ground that in respect of some year the Department has already accepted the assessee's case”.

2. It is clarified that the exception in para No. 3(iii)(e) is restricted only to the case of the assessee in which the earlier proceedings are being contested. In respect of other assessees, the monetary limits prescribed for filing departmental appeals/references will be applicable. Therefore, in such cases, the Chief Commissioners/ Directors General of Income-tax may send proposals to the Board for filing SLP before the Supreme Court only where the revenue effect exceeds the prescribed limits. It is also requested that the revenue effect should invariably be intimated in

Proforma 'B' required to be annexed to the SLP proposal as per Board's Instruction No. 1890 dated 17-12-91 (F. No. 279/134/90-ITJ).

Sd/-
PRAVIN VARMA
Under Secretary (Judl)
Central Board of Direct Taxes.

APPENDIX-57**C.B.D.T.'s Instruction No. 1914 Dated 02.12.1993 —reference u/s. 220—
Recovery of outstanding tax demands**

Instruction No	:	1914
Date of Issue	:	2.12.1993
Section(s) Referred	:	220
Statute	:	Income-Tax Act

Subject : Recovery of outstanding tax demands-

The Board has felt the need for a comprehensive Instruction on the subject of recovery of tax demand in order to streamline recovery procedures. This Instruction is accordingly being issued in supersession of all earlier Instructions on the subject and reiterates the existing Circulars on the subject.

2. The Board is of the view that, as a matter of principle, every demand should be recovered as soon as it becomes due. Demand may be kept in abeyance for valid reasons only in accordance with the guidelines given below :-

A. RESPONSIBILITY

- (i) It shall be the responsibility of the Assessing Officers and the TRO to collect every demand that has been raised, except the following :
 - (a) Demand which has not fallen due;
 - (b) Demand which has been stayed by a Court or ITAT or Settlement Commission;
 - (c) Demand for which a proper proposal for write off has been submitted;
 - (d) Demand stayed in accordance with para B & C below.
- (ii) Where demand in respect of which a Recovery Certificate has been issued or a statement has been drawn, the primary responsibility for the collection of tax shall rest with the TRO.
- (iii) It would be the responsibility of the supervisory authorities to ensure that the Assessing Officers and the TROs take all such measures as are necessary to collect the demand. It must be understood that mere issue of a show cause notice with

no follow up is not to be regarded as adequate effort to recover taxes.

B. STAY PETITIONS

- (i) Stay petitions filed with the Assessing Officers must be disposed of within two weeks of the filing of petition by the tax payer. The assessee must be intimated of the decision without delay.
- (ii) Where stay petitions are made to the authorities higher than the Assessing Officer (DC/CIT/CC), it is the responsibility of the higher authorities to dispose of the petitions without any delay, and in any event within two weeks of the receipt of the petition. Such a decision should be communicated to the assessee and the Assessing Officer immediately.
- (iii) The decision in the matter of stay of demand should normally be taken by Assessing officer/TRO and his immediate superior. A higher superior authority should interfere with the decision of the AO/TRO only in exceptional circumstances e.g. where the assessment order appears to be unreasonably highpitched or where genuine hardship is likely to be caused to the assessee. The higher authorities should discourage the assessee from filing review petitions before them as a matter of routine or in a frivolous manner to gain time for withholding payment of taxes.

C. GUIDELINES FOR STAYING DEMAND.

- (i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are—
 - (a) If the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or court earlier; or
 - (b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or
 - (c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgement.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points. Further, where it is subsequently found that the assessee has not cooperated in the early disposal of appeal or where a subsequent pronouncement by a higher appellate authority or court alters the above situation, the stay order may be reviewed and modified. The above illustrations are, of course, not exhaustive.

- (ii) In granting stay, the Assessing Officer may impose such conditions as he may think fit. Thus he may.
 - (a) require the assessee to offer suitable security to safeguard the interest of revenue;
 - (b) require the assessee to pay towards the disputed taxes a reasonable amount in lumpsum or in instalments;
 - (c) require an undertaking from the assessee that he will cooperate in the early disposal of appeal failing which the stay order will be cancelled;
 - (d) reserve the right to review the order passed after expiry of reasonable period, say upto 6 months, or if the assessee has not cooperated in the early disposal of appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations;
 - (e) reserve a right to adjust refunds arising, if any against the demand.
- (iii) Payment by instalments may be liberally allowed so as to collect the entire demand within a reasonable period not exceeding 18 months.
- (iv) Since the phrase 'stay of demand' does not occur in Section 220(6) of the Income-tax Act, the Assessing Officer should always use in any order passed under Section 220(6) [or under Section 220(3) or Section 220(7)], the expression that occurs in the section viz, that he agrees to treat the assessee as not being in default in respect of the amount specified, subject to such conditions as he deems fit to impose.
- (v) While considering an application under Section 220(6), the Assessing officer should consider all relevant factors having a bearing on the demand raised and communicate his decision in the form of a speaking order.

D. MISCELLANEOUS

- (i) Even where recovery of demand has been stayed, the Assessing Officer will continue to review the situation to ensure that the conditions imposed are fulfilled by the assessee failing which the stay order would need to be withdrawn.
 - (ii) Where the assessee seeks stay of demand from the Tribunal, it should be strongly opposed. If the assessee presses his application, the CIT should direct the departmental representative to request that the appeal be posted within a month so that Tribunal's order on the appeal can be known within two months.
 - (iii) Appeal effects will have to be given within 2 weeks from the receipt of the appellate order. Similarly, rectification application should be decided within 2 weeks of the receipt thereof, Instances where there is undue delay in giving effect to appellate orders, or in deciding rectification applications, should be dealt with very strictly by the CCITs/CITs.
4. The Board desires that appropriate action is taken in the matter of recovery in accordance with the above procedure. The Assessing Officer or the TRO, as the case may be, and his immediate superior officer shall be held responsible for ensuring compliance with these instructions.
5. The procedure would apply imutatis mutandis to demands created under other direct taxes enactments also.

Sd/-

Narende Singh

Under Secretary (ITCC) CBDT

[F. No. 404/72/93-ITCC dated 2nd December 1993 from CBDT]

APPENDIX-58

**C.B.D.T.'s Instruction No. 1929 Dated 22.08.1995—reference u/s. 222—
Revised annual norm for disposal of recovery certificate by Tax
Recovery Officer**

Instruction No	:	1929
Date of Issue	:	22.8.1995
Section(s) Referred	:	222
Statute	:	Income-Tax Act

**Subject : Revised annual norm for disposal of recovery certificate by
Tax Recovery Officer-**

Since the nature and quantum of workload of TRO had undergone considerable change a study was conducted by the Directorate of O&M to look into the norm of 3700 Recovery certificates per TRO, per year earlier fixed and recommend a realistic norm for disposal of Recovery certificates by TRO. The report of the DOMS was considered by the Board and it has been decided to fix the norm of disposal of Recovery certificates by a TRO, per year at 1200 Recovery certificates.

The revised norm may please be brought to the notice of all Tax Recovery Officers under your jurisdiction. In view of this lowering of the norm from 3700 to 1200 Recovery certificates, it may please be ensured that this norm should be achieved by each TRO and his performance judged on this basis.

Yours faithfully,

Sd/-

Anjani Kumar
Director (Budget)

[F.No. 398/2/93 - IT(B) dt. 22-08-95 from CBDT, New Delhi]

APPENDIX-59

**C.B.D.T.'s Instruction No. 1937 Dated 25.03.1996 —reference u/s. 142(1)— Information of movable and immovable assets of the assessee-
Collection of information during assessment proceedings**

Instruction No	:	1937
Date of Issue	:	25.3.1996
Section(s) Referred	:	142(1)
Statute	:	Income-Tax Act

**Subject : Information of movable and immovable assets of the assessee-
Collection of information during assessment proceedings.**

It has come to the notice of the Board that the lack of sufficient information about the movable and immovable assets of an assessee has often resulted in delay in recovery of outstanding demand.

2. It has, therefore, been decided that in all cases selected for scrutiny, other than salary cases, the Assessing Officer shall obtain from the assessee the particulars of assets including name and address of debtors, bank accounts Bank deposits etc. The information may be obtained under the provisions of Section 142(1) of the Income-tax Act and may be utilised for early recovery of tax dues.

Sd/-

(NISHI SINGH)

Secretary CBDT, New Delhi.

[F. No 225/44/96 - ITA-II dated 25/3/1996 from CBDT, New Delhi]

APPENDIX-60**C.B.D.T.'s Instruction No. 6 Dated 19.10.2001–reference u/s. Miscellaneous– Instructions regarding scrutiny of assessments.**

Instruction No	:	6
Date of Issue	:	19.10.2001
Section(s) Referred	:	Miscellaneous
Statute	:	Income-Tax Act

Subject : Instructions regarding scrutiny of assessments.

In continuation of Instruction No, 5/2001 dated 20th September, 2001 on the above subject, I am further directed to state as under:

1. Each range is expected to have one DCIT/ACIT and 5 Income Tax Officers. Barring aside one ITO to work as TRO, this will leave five Assessing Officers (1 + 4) with each range.
2. Cases selected for Scrutiny (30 or 40 depending upon company or non company cases) will be allocated to the Assessing Officers nominated by the Addl. CIT/Jt. CIT, as already stated iii para (viii) of the above instruction.
3. Each range is supposed to have around 35000 number of files. All the files except those selected for scrutiny should, therefore, be allocated among all Assessing Officers. These files may be allocated in alphabetical order.
4. In salary cases, the files may, however, be allocated employer-wise in all alphabetical order.
5. Files reliving latest returned income of Rs. 10 lacs and above in case of Delhi, Mumbai, Calcutta, Chennai, Bangalore, Pune and Ahmedabad should be assigned to DCIT/ACIT and rest of the files below this income should be allocated among Income Tax Officers. In other cities except above, files having latest returned income of Rs. 5 lacs and above should be allocated among the DCIT/ACIT and those below Rs. 5 lacs should be allocated among Income Tax Officers.
6. As far as possible alphabets should be distributed in such a way that all the Income Tax Officers have almost equal number of files.
7. Assessments, rectifications, processing reports for appeals and appeal effects in all the files marked for assessment to any officer concerned will be completed by the same officer. He will also issue notice under Section 156 on conclusion of such proceedings.

8. All other jobs except above, including those mentioned in enclosure to Instruction No. 5/2001, should be completed by the Assessing Officers to whom the files have been allotted by the range Addl.CIT/Jt.CIT. They will also look after the collection and recovery work and all other statutory work in those files. As the said officers will process the cases under section 143(l), the refunds arising out of the same and also that out of appeal effects and other proceedings will also be issued by the said officers.

9. The jurisdiction/allocation of files among the Assessing Officers made hitherto may be modified accordingly so as to be in conformity with these instructions.

Sd/-

Dr. Rajendra Kumar

Under Secretary to Govt. of India

[F. No. 225/95/2001-IT.II dated 19-10-2001 issued by CBDT]

APPENDIX-61**C.B.D.T.'s Instruction No. 8 Dated 06.12.2001 —reference u/s. Miscellaneous – Restructuring of the Internal Audit instructions**

Instruction No	:	8
Date of Issue	:	6.12.2001
Section(s) Referred	:	Miscellaneous
Statute	:	Income-Tax Act

Subject : Restructuring of the Internal Audit instructions- Reg.

As part of restructuring of Income-Tax Department, it has been decided to replace the existing internal audit system with a new system of internal audit from this financial year. Till now the work of internal audit was being conducted with manpower exclusively assigned the audit work (about 200 officers and 300 staff). The new system of internal audit would involve all the JCITs (Ranges) and the Assessing Officers in audit work (about 6000 persons), The new system will be broad based and will have wider scope to include audit relating to the work of TROs and the Office Superintendents/Administrative Officers. Under the new system, audit work will be conducted on “chain basis” and the audit function will be a continuous process, For example, audit of Assessing Officers of one range will be conducted-by the Assessing Officers of another range within a month of completion of assessment. The objective, scope and functions of the Internal Audit remain the same as mentioned in the existing Internal Audit Manual Volume-I.

2.00 CREATION OF AUDIT CHAINS IN METROPOLITAN CHARGES OF MUMBAI, CHENNAI, DELHI AND KOLKATA

At present four CITs (Audit) have been posted in metropolitan charges. The concerned cadre controlling CCIT in these four metropolitan charges shall provide man- power to the CIT (Audit) similar to that of an Administrative CIT as these posts of CIT (Audit) have been created by diverting the post of an administrative commissioner in these locations. It will be the duty of the CIT (Audit) to create “Audit Chains” indicating the CIT whose JCIT (Ranges), TROs and Office Superintendents will conduct the audit of various Ranges, TROs and Office Superintendents under the charge of another CIT. The audit chains will be set up in such a manner that all the audit work of one CIT will be conducted by the Ranges, TROs and Superintendents posted under another CIT. The CIT (Audit) will keep a record of audit chains thus created and will inform the concerned CCITS, CITS, JCIT (Ranges), TROs and Superintendents.

The JCIT Ranges in turn will create similar chains of the Assessing Officers for auditing the work of a particular Assessing Officer (Ward/Circle) of the Auditee Range [Example: ITO Ward (1)(1) will audit the work of ITO Ward (2)(1) in the chain of JCIT Range-1 assigned the Audit of JCIT Range-2]. He will keep record of such chains and send copy to the CIT, JCIT (Auditee), Assessing Officers concerned and CIT (Audit). The work of audit chain creation should be completed within one month from the issue of this instruction. CIT (Audit) shall consolidate the audit chains created by him, by CIT (Admn.) and by the JCITs Ranges and send copy to the DIT(Audit).

3.00 AUDIT OF CENTRAL CHARGES IN FOUR METROPOLITAN CHARGES OF MUMBAI, CHENNAI, DELHI AND KOLKATA

In view of the complexities involved in Central Cases, and also in view of the heavy work load of JCIT Range in Central Circles, it has been decided that CIT (Audit) in the metropolitan charges will conduct the internal CITs (Central) Charges. The CIT (Audit) will form audit parties headed by JCIT/DCIT/ACIT or ITOs/Inspectors, as the case may be, from the staff strength provided to the CIT (Audit). The CIT (Audit) will maintain all prescribed records for audit work and will also watch the settlement of audit objections. He will send the prescribed monthly reports to DGIT (Investigation), who will forward it to DIT (Audit)/CBDT.

4.00 OTHER CCITs/DGITs (Investigation) CHARGES

In the non-metro CCIT/DGIT (Investigation) charges, the audit chains will be created by the CCIT/DGIT (Investigation) indicating the CIT charge whose JCITs Ranges and Assessing Officers will audit the, work of another CIT charge in the same station if the particular station is multi-CIT charge. In single CIT charges, chains may be created from within the ranges under the same CIT charge. The CCIT/DGIT (Investigation) will keep record of such chains and send copy of the same to the cadre controlling CCIT, CITs/JCITs and to the DIT (Audit). The CITs will create further chains of JCITs who in turn will create further chains of Assessing Officers, TROs and Administrative Officers Superintendents and maintain record of such chains and send a copy of the same to the CCIT/DGIT (Investigation), concerned CITs, JCITs, Assessing Officers, TROs and Superintendents. This work should be completed within one month from the date of-issue of this instruction. CCIT/DGIT (Investigation) shall consolidate the record of such chains created them, by (Administration) and JCITs Ranges and send copies of such consolidated orders to the DIT (Audit).

5.00 ROLE AND FUNCTIONS OF VARIOUS AUTHORITIES IN NEW AUDIT SET-UP

5.01 ROLE OF CCIT/DGIT (Investigation)

Each CCIT/DGIT (Investigation) shall provide for a small unit in his office from the existing strength provided to him to ensure smooth functioning of both the Internal Audit work and the Receipt Audit work. Such unit should be under the control of a DCIT/ACIT, if required, as an additional charge. The CCIT/DGIT (Investigation) office shall be responsible for obtaining the statistical reports from the CIT/CIT (Audit) in four metropolitan charges and after consolidation, forward it to DIT (Audit)/CBDT. In non - metropolitan charges they will establish the audit chain and will monitor the audit work of CIT (Administration).

5.02 ROLE OF CIT (ADMINISTRATION)

Each CIT (Administration) shall provide for a small unit in his office from the existing strength provided to him to ensure smooth functioning of both the Internal Audit work and the Receipt Audit work. Such unit should be under the control of a DCIT/ACIT, if required, as an additional charge. CIT (Administration) shall be responsible for audit work of his jurisdiction and the conduct of audit of the Ranges assigned to his JCITs. He shall monitor the smooth functioning of the audit chains, maintenance of proper records and settlement of objections. He shall maintain ledger cards in respect of officers for all the major internal audit objections. He will consolidate and send monthly report about the audit work in the prescribed proforma to the CCIT. He will provide training, Audit Manuals, Circulars, Instructions and gist of common mistakes committed by the Assessing Officers as pointed out by C&AG in their annual audit reports submitted to the Parliament. He will also bring to the notice of CDBT any important point of law which comes to his notice during the audit work. Final acceptance/non-acceptance of audit objections with tax effect exceeding Rs. 50,000/- will be decided by CIT (Administration) and he shall ensure quick remedial actions in such cases. CIT (Administration) will comment on audit performances of JCITs and Assessing Officers/TROs/Administrative Officers/Superintendents in their annual confidential reports.

5.03 ROLE OF JCIT (RANGE)

Each JCIT shall provide for a small unit in his office from the existing strength provided to him to ensure smooth functioning of both the Internal Audit work and the Receipt Audit work. Such unit should be under the control of an Administrative Officer/Superintendents, if required, as an additional charge. He will have twin functions of being

in charge of auditing range and also of the auditee range. His duties would therefore include:

(a) AS JCIT (Auditing) RANGE

- (i) Creation of the audit chains of Assessing Officers, TROs and Superintendents and keeping records of such claims.
- (ii) Maintenance of audit records in prescribed registers and folders.
- (iii) Audit of cases with assessed income/loss of Rs.25 lacs and above and cases involving refunds exceeding Rs.10 lacs. These monetary limits will be Rs.50 lacs and Rs.20 lacs respectively for Mumbai, Delhi Chennai and Kolkata. Such cases will be picked up by the JCIT (Auditing) Range from the monthly list of auditable cases received from JCIT (Auditee) Range. He will provide copies of the audit memo to him concerned Assessing Officer and to the JCIT (Auditee) Range.
- (iv) Consolidation of the list of audit paras raised by him and/or his officers (Major and minor objections separately) and forwarding of the list along with audit memos to the JCIT (Auditee) Range and to the concerned CITs by the 20th of each month.
- (v) Ensuring that audit work is undertaken continuously and that auditable cases received in a particular month are audited in the next month positively.

(b) AS JCIT (AUDITEE) RANGE

- (i) Obtaining the list of auditable cases (category wise) from officers and after consolidation sending the list to the JCIT (auditing range,) by the 10th of each month and he shall keep a monthly folder of such cases.
- (ii) Recording the receipt of audit objections in the prescribed register on monthly basis.
- (iii) Deciding acceptance/non-acceptance of audit objections with tax effect of Rs. 5,000/- to Rs.50,000/- within a period of 3 months from the receipt of audit objections. Ensuring quick remedial actions in cases tax Effect of Rs. 5,000/- to Rs.50,000/-.
- (iv) Assisting the CIT in deciding acceptance/non acceptance of audit objections with tax effect exceeding Rs.50,000/- and in ensuring quick remedial actions in such cases.

- (v) Informing the auditing range about acceptance/non-acceptance of the audit objections within three months from the date of receipt of such objections.
- (vi) Helping the CIT in maintenance of ledger cards.
- (vii) Commenting on the audit performance of the Assessing Officers in their annual confidential reports.

Note : For JCIT (Auditing) Range the internal audit objections will be treated as settled as soon as he receives intimations of acceptance/non-acceptance from the Auditee Range. However, the audit objection shall be treated as settled by the Auditee Range only when remedial action is completed and additional demand is raised.

5.04 ROLE OF ASSESSING OFFICERS

(a) AUDITING FUNCTIONS

- (i) Each Assessing Officer shall keep record of auditable cases received each month from Auditee Assessing Officer.
- (ii) He shall inform the Auditee Assessing Officer about his audit programme at least a week before commencement of the audit so that the Auditee Assessing Officer keeps the records ready.
- (iii) He shall provide audit memo to the concerned Assessing Officer and shall send copy of the same in duplicate to his JCIT Range for onward transmission to the JCIT (Auditee) Range.
- (iv) He shall keep record of auditing objections raised in the prescribed register

(c) AUDITEE FUNCTIONS

- (i) Each Assessing Officer shall prepare a list of auditable cases by the 7th of month and send a copy to the Auditing Assessing Officer and also to the JCIT Range.
- (ii) He shall produce the auditable records before the Auditing Assessing Officer and also shall extend full cooperation to the Auditing party.
- (iii) He shall keep record of audit objections received by him in the prescribed register.
- (iv) He will help the JCIT Range in the maintenance of the audit records pertaining to his jurisdiction.

- (v) He will decide the acceptance/non-acceptance of audit objections with tax effect upto Rs. 5,000/-. In audit objection cases with tax effect of Rs.5,000/- to Rs.50,000/-, approval of JCIT Range and in audit objection cases with tax effect exceeding Rs.50,000/-, approval of the CIT (Administration) shall be obtained by him for acceptance/non-acceptance of audit objections.
- (vi) He shall initiate most appropriate remedial action if audit objection is found to be acceptable. The remedial action will be completed within a period of three months from the receipt of the audit objections.
- (vii) He shall maintain audit registers IAR-1A and IAR-2A for watching and controlling his audit functions as Auditing Officer and as Auditee Officer respectively (specimen proforma of registers are enclosed).

6.00 LIST OF AUDITABLE CASES

The auditable cases shall be of the following categories:

6.01 IMMEDIATE CASES (Target for Audit: 100%)

- i) All Search and Seizure cases
- ii) All cases of foreign companies.
- iii) All Scrutiny/assessments under the Income-tax Act.
- iv) Refund cases exceeding refunds of Rs.10 lacs each.
- v) TDS cases exceeding TDS of Rs.50 lacs each.
- vi) All Summary assessments with assessed income/loss exceeding Rs.10 lacs in each case.
- vii) All scrutiny assessments under Other Direct Tax Acts.

6.02 PRIORITY CASES (Target for Audit 50%)

- i) TDS Cases with TDS of Rs. 10 lacs to Rs.50 lacs in each case.
- ii) Refund cases exceeding Rs. 5 lacs but below Rs.10 lacs in each case

6.03 RESIDUAL CASES

- i) Non-scrutiny company/non-company assessments with income/loss upto Rs. 10 lacs in each case
- ii) Refund cases upto Rs. 5 lacs in each case.
- iii) TDS cases upto Rs. 10 lacs in each case.

7.00 NORMS FOR CHECKING OF CASES

7.01 Considering the fact that larger man-power will be available for audit work, the percentage of cases to be audited is fixed as under :

Cate- gory	Description	Target for for scrutiny assessments	Target non- scrutiny assessments	Old Target
A.	Company assessment with income/loss below Rs.50,000 and non-Company assessment with income/loss below Rs. 2 lacs.	100%	Company- 5% Non Company- 2%	Company- 2% Non- Company- 2%
B.	Company assessment with income/loss of Rs. 50,000 and above but below Rs.10 lakh and non company assessments with income/loss of Rs. 2 lacs and above but below Rs. 10 lacs.	100%	Company- 25% Non Company- 10%	Company- 10% Non Company- 10%
C.	Company and non-company assessments with income/loss of Rs.10 lacs and above.	100%	100%	100%
D.	Search and seizure assessments	100%	100%	100%
E.	Foreign companies	100%	100%	Nil
F.	Expenditure tax	100%	20%	Nil
G.	Wealth tax cases exceeding Rs.20 lacs	100%	5%	2%
H.	Surtax and Interest Tax Cases. Old Pending Cases etc.	100%	Nil	Nil

7.02 NORMS FOR TDS CASES.

The percentage of TDS Returns for audit is fixed as under

(a) TDS upto Rs. 10 lacs	10%
(b) TDS from Rs.10 lacs to Rs. 50 lacs	50%
(c) TDS exceeding Rs.50 lacs	100%

7.03 NORMS FOR CHECKING OF REFUND CASES

The percentage for checking of refund cases is fixed as under

(a) Cases with refund upto Rs.1 lac	Salary Cases:	2%
	Other Cases:	5%

(b) Refunds exceeding Rs.1 lac and upto Rs.5 lacs	20%
(c) Refunds exceeding Rs.5 lacs and upto Rs.10 lacs	50%
(d) Refunds exceeding Rs. 10 lacs	100%

8.00 AUDIT BY TROs

The concept of 'audit chains' and the process of setting up of such chains for TRO audit will be similar to those of Assessing Officers. The TRO shall audit the records/registers of another TRO and check the accuracy of arrear demands entered in the registers with the arrear demands certified by Assessing Officer. He shall check the accuracy of interest charged u/s 220(2) of the IT Act.

9.00 AUDIT BY ADMINISTRATIVE OFFICERS/SUPERINTENDENTS

The Administrative Officers/Superintendents shall audit the records, registers, arrear reconciliation statements, arrear carry - forward registers, all periodical statements and the statistical data pertaining to another Administrative Officers/Superintendents. They will check whether all records/registers statements are properly maintained and whether the entries in the registers are accurately, authentically and properly made.

10.00 NORMS FOR ATTENDING TO RECEIPT AUDIT OBJECTIONS.

10.01 METROPOLITAN CHARGES OF MUMBAI, CHENNAI, DELHI AND KOLKATA

The CIT (Audit) will be the nodal officer for dealing with Revenue Audit. He will coordinate between the CIT and the C&AG for settling the pending receipt audit objections. Each CIT (Administration) shall be responsible for keeping record of receipt audit objections, ensuring remedial actions and for sending Proforma Reports in Part A and Part B to the CBDT and to the DIT (Audit) relating to draft audit paras. The existing procedure laid down in Audit Manuals, Circulars and Instructions of CBDT shall be applicable for Receipt Audit. The CIT (Audit) will obtain relating to remedial actions taken by the Assessing Officers and shall forward the report regarding settlement of audit objections to the DIT(Audit)/CBDT. CIT (Audit) will maintain the ledger cards in respect of Assessing Officers and corresponding Auditing Assessing Officers relating to the major receipt audit objections.

10.02 OTHER CCIT/DGIT (investigation) CHARGES

In respect of other CCIT/DGIT (Investigation) charges, the CIT (Administration) will have the primary responsibility of coordination and planning work relating to Receipt Audit. He will keep the records of receipt audit objections, ensure prompt remedial action as per the existing Instructions of CBDT, maintain ledger cards, send reports to the

CCIT and to the DIT (Audit)/CBDT in the cases involving draft audit paras. He will ensure that cases are audited by internal audit parties before the receipt audit is undertaken by the Receipt Audit parties.

11.00 RECORDS/REGISTERS TO BE MAINTAINED

11.01 INTERNAL AUDIT

The JCIT Auditing Range shall maintain records of auditable cases received from the Auditee Range in the prescribed Internal Audit (IAR-1) (specimen format attached)

The JCIT Auditee Range shall maintain a folder of monthly auditable cases received from his Assessing Officers and forward them to the JCIT Auditing Range. The JCIT Auditee Range shall properly maintain Internal Audit Register-2 (IAR-2) (specimen format attached) for recording the audit objections received from the Auditing Range and for controlling the actions taken on the audit objections in this register.

The Assessing Officers shall properly maintain prescribed audit registers IAR-1A and IAR-2A for keeping records of audit objections raised by them and also to the audit objections received by them and the follow up actions taken by them (specimen proformae are enclosed).

The formats for preparing the lists of auditable cases relating to different categories in the form of Internal Audit Statements are prescribed as IAS-1A, IAS-1B and IAS-1C. The JCIT Auditee Range shall consolidate the statements received from the circles and wards in the similar proforma and forward the same to the Auditing Range on month - after- month basis and he will retain a copy in his office for record. Each JCIT Range shall send a monthly statement to the CIT in the form of Internal Audit Monthly Statement or IAMS in the prescribed proforma (specimen copy is enclosed).

11.02 RECEIPT AUDIT

The existing records and registers relating to receipt audit objections as prescribed in the Audit Manual shall continue.

12.00 CLEARENCE OF BACKLOG

The CIT (Administration) will ensure the Internal Audit of pending cases received by them on account of transfer of jurisdiction and will further ensure the audit of such cases before the audit by Receipt Audit Parties. The old pending receipt audit objections as well as old internal audit objections be settled by him on priority basis.

13.00 The various Circulars/Instructions issued by the CBDT regarding functioning of the internal audit and the procedure/guidelines laid down in the Internal Audit manual shall be followed to the extent these are not

modified by the above instructions and till the Internal Audit Manual are updated.

14.00 This instruction may be brought to the notice of all officers working in your region for compliance.

15.00 Hindi version will follow.

Yours faithfully,

Sd/-

N. N. Mishra

Director, Central Board of Direct Taxes.

APPENDIX-62

C.B.D.T.'s Instruction No. 14 Dated 06.11.2003 —reference u/s. Miscellaneous — Raising the Monetary Ceilings for Write-off and Reconstitution of Committees.

Instruction No	:	14
Date of Issue	:	6-11-2003
Section(s) Referred	:	Miscellaneous
Statute	:	Income-Tax Act

Subject : Raising the Monetary Ceilings for Write-off and Reconstitution of Committees.

In partial modification of earlier instructions on the subject, the Board have revised the prescribed monetary ceilings for write-off of irrecoverable dues of Direct Taxes by the various income-tax authorities. At the same time, the Board have reviewed and modified the existing structure of the Committees for recommending write-off. The revised procedure in this regard would be as follows:

Regular Procedure.

2. A three-tier structure of Committees (as against two at present) to consider and recommend write-off has been approved as under:

- Zonal Committee
- Regional Committee, and;
- Local Committee

2.1. Accordingly, the monetary ceilings with respect to the powers of various I.T. authorities to write-off irrecoverable dues have been enhanced and the level of authority whose administrative approval would be required for write-off has been re-defined. Further, the respective jurisdiction of the three Committees over write-off proposals has been re-delineated.

2.2. The revised scheme for write-off under the Regular Procedure is summarized in the following Table:

Committee	Constitution	To be Notified by	Order of Write-off by	Monetary Ceilings for Write-off
Local Committee	3 officers of the level of Addl. CIT	CCIT	ITO/TRO	Demand upto Rs. 5,000/-

			DCIT/ACIT	Demand over Rs.5,000/- and upto Rs.25,000/-
			Addl. CIT/JCIT	Demand over Rs.25,000/- and upto Rs.1 Lac
Regional Committee	3 officers of the level of CIT	Cadre Controlling CCIT (under intimation to Board)	CIT Subject to report to the next higher	Demand over Rs.1 lac and upto Rs.10 lacs authority
Zonal Committee	3 officers of the level of CCIT	CBDT	CCIT Subject to report to the next higher authority	Demand over Rs.10 lacs and upto Rs.25 lacs
			CCIT with the approval of Full Board	Demand over Rs.25 lacs and upto Rs.50 Lacs
			CCIT with the approval of Full Board and the Finance Minister	Demand over Rs.50 Lacs

2.3 All other conditions and requirements under the Regular Procedure would remain unchanged.

Ad-hoc Procedure

3. Under this procedure, the overall monetary ceiling has been raised from the present level of Rs. 2,000/- to Rs. 5,000/-. Presently, irrecoverable demand exceeding Rs. 500/- requires issue of Irrecoverability Certificate by the Tax Recovery Officer (TRO). Such Certificate will now be required only in cases of irrecoverable demand exceeding Rs. 2,000/-.

3.1 All other conditions and requirements under the Ad-hoc Procedure would remain unchanged.

Summary Procedure

4. The monetary ceiling under this procedure has been raised from the present level of Rs. 25/- to Rs. 1,000/-.

4.1 All other conditions and requirements under the Summary Procedure would remain unchanged.

5. These instructions shall apply to irrecoverable dues under all Direct Tax enactments. It is reiterated that all procedures and conditions under

the existing guidelines pertaining to write-off of irrecoverable demand, other than those mentioned herein, shall remain in force. All proposals to be sent to the Board and the Minister for write-off shall continue to be routed through Directorate of Income Tax (Recovery) as per the existing guidelines.

These Instructions will come into force immediately. Instruction regarding constitution of the various Committees are being issued separately.

APPENDIX-63

C,B.D.T.'s Instruction No. 7 Dated 19.08.2004 —reference u/s. Miscellaneous — Raising the Monetary Ceilings for Write-off and Reconstitution of Committees.

Instruction No	:	7
Date of Issue	:	19.8.2004
Section(s) Referred	:	Miscellaneous
Statute	:	Income-Tax Act

Subject : Raising the Monetary Ceilings for Write-off and Reconstitution of Committees.

The Monetary ceilings with respect to the powers of various Income-tax authorities to write-off irrecoverable dues of income tax were enhanced and the level of authority whose administrative approval would be required for write-off was re-defined by instructions No. 14/2003 dated 06.11.2003. In partial modification of the said instruction, the Board has revised the prescribed monetary ceilings for write-off of recoverable dues of Direct Taxes by the various income-tax authorities.

2. The revised monetary ceilings for write-off have been mentioned in column 5 of the following Table :

Committee	Constitution	To be Notified by	Order of Write-off by	Monetary Ceilings for Write-off
Local Committee	3 officers of the level of Addl. CIT	CCIT	ITO/TRO	Demand upto Rs.5,000/-
			DCIT/ACIT	Demand upto Rs.25,000/-
			Addl. CIT/JCIT	Demand upto Rs. 1 Lac
Sub-Zonal or Regional Committee	3 officers of the level of CIT	Cadre Controlling CCIT (under intimation to Board)	CIT Subject to report to the next higher authority	Demand upto Rs. 10 Lacs
Zonal Committee	3 officers of the level of CCIT	CBDT	CCIT Subject to report to the next higher authority	Demand upto Rs.25 Lacs

			CCIT with the approval of Full Board	Demand upto Rs.50 Lacs
			CCIT with the approval of Full Board and the Finance Minister	Demand over Rs.50 Lacs

3. It is further clarified that any proposal for write-off of irrecoverable demand, which has already been recommended by a Zonal Committee or a Local Committee constituted as per the provisions of the earlier instructions/guidelines would not be required to be re-considered and recommended again by a Zonal Committee or Regional Committee or Local Committee, as the case may be, constituted as per the new instructions (Instruction No. 14/2003) dated 6.11.03 and 16.2003 dated 16.11.03). However, the new monetary ceilings as per column 5 of the Table on pre-page would apply for determining the authority that would pass the order for write-off.

4. As regards the monetary ceilings for write-off of irrecoverable dues of Wealth Tax, Gift Tax, Expenditure Tax, Interest Tax and Estate Duty, the revised scheme of write-off is summarized in the following Table :

Committee	Constitution	To be Notified by	Order of Write-off by	Monetary Ceilings for Write-off
Regional Committee	3 officers of the level of CIT	Cadre Controlling CCIT (under intimation to Board)	Commissioner of WT/GT/ Exp. Tax/Intt. Tax/Est. Duty	Up to Rs.5 Lacs
Zonal Committee	3 officers of the level of CCIT	CBDT	Chief Commissioner of WT/GT Exp. Tax/Intt. Tax/Est. Duty	Up to Rs.10 Lacs

5. It may be clarified that writing-off of recoverable dues of revenue would not lead to a release or waiver by the Government of its claim but would be only a write-off in the Department's books. The Government shall have the right at any time during the next 30 years, counting from the date of the claim, to recover the amount by a Civil Suit, if it appears to the Government that the defaulter has got some assets or means to pay.

6. It is reiterated that all procedures and conditions pertaining to write-off of irrecoverable demand, other than those mentioned herein, shall remain in force. All proposals to be sent to the Board and the Minister for write-off shall continue to be routed through Directorate of Income Tax (Recovery) as per the existing guidelines.

These Instructions will come into force immediately.

APPENDIX-64

C.B.D.T.'s Instruction No. 8 Dated 02.09.2004 —reference u/s. Miscellaneous — Steps to secure recovery of demand in high demand cases.

Instruction No	:	8
Date of Issue	:	2.9.2004
Section(s) Referred	:	Miscellaneous
Statute	:	Income-Tax Act

**Subject : Steps to secure recovery of demand in high demand cases -
Regarding**

It has been the experience in the past that on several occasions, the Assessing Officers create huge demands against assesseees without obtaining the details of any known assets of the assessee. With the passage of time and in the absence of such details, no concrete action gets taken to recover this demand. As a result, Department is burdened with the responsibility to recover the huge arrears existing in its records, with little possibility of actual recovery in many cases. As on 1-4-2004, the arrears increased by 20% to Rs. 87,885 crore while the objective was to reduce arrears by 20% as compared to the preceding year.

2. The Board has, therefore, decided that in cases where demand of Rs. 5 lakh and above in big cities like Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad, Pune and Bangalore and Rs. 1 lakh and above elsewhere, is likely to be created and it appears that the recovery, in full or in part, could become difficult, it shall be the responsibility of the Assessing Officer, during the assessment proceedings itself, to enquire into all assets of the assessee and place under provisional attachment, in terms of provisions of section 281B of the Income-tax Act, before the assessment is completed, the assets sufficient to cover the demand in question (or to the maximum extent, as the case may be). After completion of the assessment, if the provisional attachment cannot be continued till recovery, the same assets can be considered for attachment etc. under section 222/226. In each of these cases, the Assessing Officer shall mention in an Office Note to the Assessment Order in question, the efforts made to locate the assets of the assessee, the details of assets located, the details of assets placed under provisional attachment etc.

3. In search and seizure cases, huge demands are raised under block assessment and the recovery of the same is tedious and time-consuming. In this regard, it is extremely important for Assessing Officers in Central

Charges to explore the possibility of invoking the provisions of section 281B. At the time of preparation of Appraisal Report, the DDIT(Inv.)/ADIT(Inv.) should take particular care in identifying the properties of the assesseees which could be attached under this section and make a specific mention of the same in the Appraisal Report itself.

4. It shall be the responsibility of all Assessing Officers to follow the above procedure. If any demand becomes irrecoverable due to the failure of the Assessing Officer to follow these guidelines, he shall be held accountable for the loss caused to the Government, regardless of his subsequent posting.
5. While making a review of scrutiny assessments, the Commissioners of Income-tax and Chief Commissioners of Income-tax concerned shall specifically comment on this aspect.

APPENDIX-65**CBDT's letter Dated 22.06.1995 – Action Plan for TRO's for 1995-96**

New Delhi, the 22nd June 1995

My Dear

Subject: Action Plan for TROs for 1995-96

The area of work relating to TROs does not appear to well-defined and well-monitored, This is so in spite of the decision taken by the Board in its meeting, on 1.2.1990 (Board's Meeting No. 2/1990), A copy of this decision is closed for ready reference. To have the matter clearly spelt out, I called a meeting with the Directors of different directorates - Recovery. RSP&PR.. Systems and O&M. I would like to reiterate the Board's decisions and request the Chief Commissioners to ensure that the following steps are taken immediately so that the work of the, TROs can be well-defined and properly monitored for appraisal of their performance.

2. Henceforth, the TRO shall not draw up any case u/s 222 except in the manner indicated in this letter. The Assessing officer, only after he has satisfied himself that he has taken all possible actions under the law to recover the demand would intimate the TRO for drawing up the case u/s 222 of the Act. The AO, will intimate the TRO only with the approval of the Deputy Commissioner in the case of Ranges and CIT in the case of special Ranges. He will certify that he has completed all the penalty and recovery proceedings u/s 221 and 226. The DCIT/CIT will also satisfy himself that the AOs have taken all steps to recover the demand specifically by completing the proceedings u/s 221 and 226.
3. The intimation from the A.O. shall consist of following letters
 - (1) Covering letter certifying that the proceedings u/s. 221 and 226 have been completed.
 - (2) Form No. 57 duly filled in (only keeping the TRO's signature blank); and
 - (3) A list of movable and immovable properties of the assessee against which the proceedings u/s. 222 can be initiated by the TRO.
4. The AOs shall conduct quarterly reviews to decide which case shall require drawing up of statement u/s. 222 of the Act and intimate about in to the TROs through DC/CIT.

5. After receiving the intimation from the AO, the TRO shall draw up certificate u/s. 222 and take all steps as_____ the demand. The DCIT must associate himself closely supervise that the TRO discharging their function in an effective manner monitor the performance of the TROs, the following tax have been fixed for the current financial year 1995-96.

- (i) 30% of the aggregate demand i.e demands brought forward on 01.04.95 plus the demands received up to the quarter and shall be collected in cash.
- (ii) 20% of the aggregate numbers of certificates i.e. no of certificates brought forward on 01.04.95 plus that received up to the quarter and shall be__

Thus, only these two targets shall be monitored on _____ basis all the supervisory officers.

6. The progress report of tax recovery work, presently being submitted on quarterly basis, shall However it shall be ensured that these reports are time. The report for the quarter ending March, still not been received from some of the charges, as of which All-India compilation of the statistics is The Chief Commissioners are requested to ensure that for the quarter ending March, 1995 is sent immediately not done earlier.

7. While sending the report for March,1995, should be taken to ensure that the number of pending as on is on actual basis. The entries must be removed before bring forward on 01.04.95.

8. All the pending reports for quarter ending 1995 should be submitted immediately and not later July and the DIT (RSP&PR) should submit the All India by the end of July, 1995. Thereafter, the quarter in respect of TROs work should be submitted by the month following the quarter. Thus, the All India for quarter ending June, 1995 should be received by the end of August and for the quarter ending 1995 by the end of October, 1995 and so on these directions are dutifully followed by the TROs and there is no occasion for calling for any delays or errors in reporting.

With regards

Yours

(C.V. Gupta)

Shri
All Chief Commissioners of Income Tax
and DGIT (Inv)

APPENDIX-66**Circular 40**

Date of issue: 22.04.1969

A question has arisen as to who should be deputed for the execution of warrants of attachment and sale of immovable properties under Rule 13 of 2nd Schedule to the I.T. Act, from amongst the staff of TRO, comprising of Inspectors, U.D.C's and L.D.C's. The Board have examined the matter and decided that TRO should authorise an Inspector working under him under Rule 13 of the Second Schedule to carry out the necessary attachment and sale of moveable and immovable properties wherever necessary. Such delegation of functions is not permissible under Rule 19A of the 2nd Schedule if the TRO happens to be an ITO.

APPENDIX-67**Circular 104**

Date of issue: 30.08.69

The self-contained Recovery Code consisting of 2nd and 3rd Schedule to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules 1962 have been in force for some time now, some practical difficulties in the working of the above rules have come to the notice of the Board and the following clarifications are offered for the guidance of the officers.

2. (i) Notification of appointment of tax Recovery Officers/ Commissioners and their jurisdiction orders-Proposals for the appointment of a Tax Recovery Officer under section 2 (44) (iii) of the Income-tax Act, 1961 and for jurisdiction order under Rule 6 are sometimes received in the Board's office either after an Income-tax Officer has already taken over charge as Tax Recovery Officer or has ceased to officiate in the vacancy caused on account of the regular incumbent proceeding on leave. It is clarified that an Income-tax Officer cannot exercise the powers of a Tax Recovery Officer until he has been so appointed under Section 2(44)(iii) of the Income-tax Act, 1961 by the Central Government and jurisdiction has been further vested in him by an order under Rule 6 of Income-tax (Certificate Proceedings) Rules 1962 by the Board. Moreover, such Notifications and orders cannot be issued with retrospective effect because of statutory requirements. The Tax Recovery Officers is entitled to take steps against an individual's property for the realisation of tax dues. He exercises statutory functions which affect the rights of third persons. Consequently, it is necessary that he should be clothed with the requisite authority from the time he begins to function.

It is, therefore, necessary that all proposals for the appointment of Income-tax Officers as Tax Recovery Officers and for conferment of jurisdiction on them and also for a change in their jurisdiction should reach the Board well in advance so that Notifications and orders are issued only with prospective effect.

A notification under section 2(44)(iii) of the Income-tax Act, 1961 is quite different from an order under Rule 6 of the Income-tax (Certificate Proceedings) Rules 1962. The former contemplates the appointment of a Tax Recovery Officer by the Central Government whereas the latter empowers the Central Board of Direct Taxes to confer jurisdiction on the Tax Recovery Officer so

appointed by the Central Government. In view of this, separate drafts for the appointment and jurisdiction of Tax Recovery Officers should invariably be sent to the Board. It should also be specified in the covering letter if any earlier notifications/orders require to be superseded in view of these proposals. Draft specimens for guidance are reproduced below. Commissioners of Income-tax are appointed as Tax Recovery Commissioners by the Central Government under Rule 4 of Income-tax (Certificate Proceedings) Rules 1962. They are assigned their jurisdiction by the Board under Rule 5 of the said Rules. For the reasons discussed above separate draft orders under Rule 4 and 5 should, therefore, be sent to the Central Government/ Board well in advance, for being issued.

- (ii) Leave Arrangements for Tax Recovery Officers-In practical working, it may so happen that a Tax Recovery Officer may have to proceed on leave suddenly due to some unforeseen circumstances and it may not be possible for the Commissioner of Income-tax to obtain the requisite orders from the Central Government/Board in advance. In such circumstances another Tax Recovery Officer already notified under Section 2(44)(iii) should be asked to hold the additional charge and the Board should be telegraphically informed in order to enable it to modify the jurisdiction order suitably. Further unless any action is getting time-barred it would be better if the statutory functions of the Tax Recovery Officer proceeding on leave are kept in abeyance until revised jurisdiction order has been issued by the Board. In bigger charges it would be preferable to have an extra Tax Recovery Officer holding concurrent jurisdiction to meet such contingencies.
- (iii) Rules 38 & 52(2) of the Second Schedule "language of the District"- A question has arisen about the strict interpretation of the term 'the language of the district' occurring in Rules 38 and 52(2) of the Section Schedule of the Income-tax Act, 1961. Under Rule 22 of the Income-tax (Certificate Proceedings) Rules, 1962 the Board has prescribed ITC-P 13 in English language for the purpose of issuing proclamation of sale of movable or immovable property. The Board has been advised by the Law Ministry that the proclamation must always be issued in the language of the district in which the recovery is being affected as the object behind this requirement is to ensure that the public is made aware of the proclamation. The requirement of the rules would, however, be sufficiently served by a substantially accurate, though free translation of the Form in the language of the District. The

Commissioner of Income-tax can take the assistance of the local authorities in getting the Form translated in regional languages to be used in the various districts under his jurisdiction. He will however, ensure that the translation is faithful and accurate enough to obviate any legal difficulty in future on account of the proclamation.

3. The Commissioners are requested to bring the above clarifications to the notice of all the officers working in their charges.

APPENDIX-68**Circular 164**

Date of issue: 25.04.70

The question of permitting the State Government TROs and/or their staff to accept crossed cheques in payment of arrears of taxes was under the consideration of the Board for some time past. The Department has already introduced the system of acceptance of crossed cheques in payment of the tax dues in all the IT Offices. The procedure in this regard is contained in Instruction No.13 dated 10/11th February 1969(F.NO.16/5/69-IT-Coord). It has now been decided that if an assessee wants to pay his arrears of tax by means of a crossed cheque and having regard to the circumstances of the case of the TROs and/or their staff are prepared to accept such payments they may do so and the procedure prescribed in Instruction No.13 dated 10/11th February, 1969 may be followed. With a view to avoid duplication of efforts, it would, however, be preferable, if in places where a pay-in-counter exists, the defaulter is asked to pay the arrears of taxes by crossed cheque(s) at the pay-in-counter of the IT Office. It may, however, be mentioned here that in cases of extreme coercion viz., sale of movable/immovable property and/or civil detention, the TRO should normally accept only cash payment before dropping the coercive proceedings, as an unreliable assessee may make payment by means of a cheque which is not likely to be cleared, merely with a view to gain time.

2. Necessary instructions may be issued to all State Government Officials acting TROs in your charge in this regard.

APPENDIX-69**Circular 223**

Date of issue: 29.09.70

The question of how to deal with the cost incurred in the process of executing recovery certificates in cases in which the assesseees have already made the payments was under consideration of the board for some time past. The board has been advised by the Ministry of law that when a certificate has been wrongly issued. It means that the central government is claiming certain money from a party to which it is not legally entitled to. The cancellation of the certificate or its non-enforcement would not result in government foregoing any amount which is otherwise due to it, for admittedly no money is due to the government from the party. Consequently this cannot be said to be a case of waiver or of abandonment of government revenues for that necessarily implies that Government has a claim. It is therefore open to the TRO s to amend their earlier notices under rule 2 by invoking the provisions of rule 87 of the 2nd schedule to the I.T. Act. The board has decided that the above procedure may be followed in all cases where the certificate costs do not exceed Rs.10 in each case.

APPENDIX-70**Circular 260**

Date of issue: 15.01.71

A scrutiny of several proforma relating to the arrears of taxes exceeding Rs. 25 lakhs in each case has revealed that the ITO's after issue of recovery certificates generally do not take any independent steps as provided under the law, such as attachments u/s.226(3) for recovering the arrears of taxes. The position in law in this regard is very clear but in view of the common prevailing practice it is necessary to emphasise upon the ITO's that the issue of recovery certificates is only one of the modes of recovery and as such in all suitable cases other steps for recovery should also be taken after the recovery certificates have been issued to the TROs.

2. Another major defect that has been noticed is that notices to the defaulters in terms of rule 2 of the 2nd schedule are not issued by the TROs promptly in all cases where recovery certificates have been issued to him by the ITO's with the result that in all these cases the assesseees are quite free to alienate their assets and the provisions of rule 16 of the 2nd schedule are not applicable. The position in law is that if a notice is served upon a defaulter under rule 2 any private alienation of assets without the permission of the TRO in such cases would be void in terms of rule 16 of the 2nd schedule. It may, therefore please be ensured that in the interests of revenue notices under rule 2 of the 2nd schedule are invariably served upon the defaulters within a couple of months of the receipt of the recovery certificates. Where this work has gone into arrears in the past the CsIT may temporarily set aside some staff from the offices of ITO/TROs for completing this important work.

APPENDIX-71**Circular 331**

Date of issue: 20.10.1971

The Income-tax Department has almost in all the states taken over the work of tax recovery and it is therefore necessary that the ITO's and the TROs should be fully aware of the powers conferred on them under the I.T. Act for the recovery of tax. U/s.222 when an assessee is in default or is deemed to be in default in making a payment of tax, the ITO may forward to the TROs a certificate under his signature specifying the amount of arrears due from the assessee and the TRO on receipt of such certificate shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below in accordance with the rules laid down in the 2nd schedule:-

- a) Attachment and sale of the assessee's movable and immovable property.
- b) Arrest of the assessee and his detention in prison.
- c) Appointing a receiver for the management of the assessee's movable and immovable properties.

2. Arrest of the assessee and his detention in prison is thus one of the modes of recovery available to TRO. This power of detaining the assessee in prison has not been exercised save in a few exceptional cases with the result that these provisions have remained a dead letter so far. The work of recovery of tax has assumed great importance and it is necessary that all the powers available under the law should be exercised effectively so as to bring down substantially the arrears of tax and also not to allow the defaulters to go scot free. The procedure to be followed with regard to arrest and detention of the defaulters in prison is laid down in part v of the 2nd schedule to the I.T. Act. The steps to be taken for arrest and detention are in short discussed below:-

- (I) Issue of notice: Before an order for the arrest and detention in civil prison of a defaulter is made the TRO has to issue and serve a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison.
- (II) Issue of warrant: Where appearance is not made in obedience to the notice issued and served, the TRO may issue a warrant for the arrest of the defaulter. A warrant of arrest of the defaulter may also be issued by the TRO if he is satisfied by affidavit or otherwise that with the object or effect of delaying the execution

of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the TRO. The affidavit mentioned here has to be filed by the ITO concerned before the TRO. Even in the absence of such an affidavit the TRO on his own satisfaction may issue a warrant for the arrest of the defaulter.

- (III) Arrest of the defaulter: Every person arrested in pursuance of a warrant issued as stated above shall be brought before the TRO as soon as practicable and in any event within 24 hours of his arrest. For the purpose of making an arrest the following points are to be kept in mind:-
- (a) No dwelling house shall be entered after sunset and before sunrise;
 - (b) No outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto, but when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there.
 - (c) No room, which is in the actual occupancy of a woman who according to the customs of the country, does not appear in public shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.
- (IV) Hearing by the TRO: When a defaulter appears before the TRO in obedience to a notice to show cause or is brought before the TRO (after arrest the TRO shall proceed to hear the ITO and take all such evidence as may be produced by him in support of execution by arrest. He shall also give the defaulter an opportunity of showing cause why he should not be committed to the civil prison. After hearing both the parties the TRO has to record the reasons in writing and his satisfaction to the effect:-
- (a) that the defaulter with the object or effect of obstructing the execution of the certificate has after the receipt of the certificate in the office of the TRO dishonestly transferred, concealed or removed any part of his property or
 - (b) that the defaulter has or has had since the receipt of the certificate in the office of the TRO, the means to pay the

arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

- (V) Order of detention and release: The TRO after conducting the hearing as mentioned above and after recording his satisfaction may make an order for detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest. If the TRO does not make an order of detention, he shall if the defaulter is under arrest direct his release.
 - (VI) Period detained in the civil prison in execution of a certificate may be so detained:-
 - a) Where the certificate is for a demand of an amount exceeding Rs.250 for period of six months and
 - b) In any other case-for a period of six weeks.
 - (VII) Release after detention; A defaulter may be released after detention in the following circumstances-
 - (1) The TRO may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the TRO and that he has not committed any act of bad faith. However if the TRO has a ground to believe that the disclosure made by the defaulter is untrue he may order the re-arrest of the defaulter in execution of the certificate.
 - (2) When the amount mentioned in the warrant has been paid to the officer incharge of the civil prison, the defaulter shall be released.
 - (3) If the ITO who has issued the certificate makes a request for the release of the defaulter the TRO shall issue and order for the release of the defaulter.
 - (VIII) Prohibition against arrest: A woman or any person who is a minor or of unsound mind cannot be arrested or detained under the above said provisions.
3. For the purpose of detaining the defaulters arrangements may be made with the state authorities to lodge the defaulters in Tehsil lock-up. The state authorities would normally agree to give this facility on our paying the subsistence allowance and other necessary charges. If any difficulties are encountered in this regard, the CsIT may take up the matter with the Chief Secretaries to the various state Govts. Police

assistance may also be taken wherever necessary for effecting the arrest of a defaulter.

4. Attention is also invited to the provision of sec. 281 according to which any transfer of assets, which will include both movable and immovable properties by the assessee to defraud the revenue would be void and similarly any transfer of immovable property made with the intent to defeat or delay the creditors of the transfer or shall be voidable at the option of any creditor so defeated/ delayed (sec.53 of T.P. Act). It is thus evident that the provisions of sec 281 which cover fraudulent transfers during the course of pendency of any proceedings under the act are very comprehensive in their applicability and fully safeguard the interests of revenue.

These provisions however, have been rarely used. It is therefore, necessary that all the officers of the I.T. Department should be fully acquainted with these provisions and they should make use of these powers in all suitable cases.

5. The above instructions may kindly be brought to the notice of all officers in your charge.

APPENDIX-72**Circular 437**

Date of issue: 12.07.72

Your attention is drawn to Board's Circulars F. No. 16/115/64-IT(B) dated 22-11-65 and F. No. 16/81/66-IT(B) dated 17-9-66 in which clear instructions were issued to the effect that recovery certificates should not be issued in cases where the demands have already been paid and where the assessee claims to have made the payment of the demand covered by the recovery certificate, the certificate may not be enforced till the Certificate Officer hears from the I.T. Officer. The Board is still receiving complaints that the assessees who have paid their taxes are being harassed with coercive measures. Indeed a question has been asked in Parliament about cases where action was wrongly taken in one State. I am directed to request you to take immediate steps to remedy this situation and to inform the Board what steps you have taken:-

- (a) To weed out the infructuous certificates. (Will it not be a good idea to arrange the certificates according to the arrear demand in the Demand and Collection Register each ward?)
- (b) To ensure that taxes paid and or reduced in appeal are properly entered in the Demand and Collection Register and the challans are properly filed.
- (c) Coercive measures are taken only after ensuring that taxes are really due.
- (d) To correct the officials who have caused harassment to honest assessees by their negligence. Specific instances of action taken may be reported to the Board by 31-8-1972.

2. In this connection, it may be mentioned that in order to avoid the issue of too many tax recovery certificates, it will be advisable to resort to section 226 (3) wherever the assessee is known to have a debt due from a Bank or some other person. Such action will not only produce the desired result but also save the limitation provided in section 231 (34 ITR 113 and 40 ITR 506).

APPENDIX-73**Circular 467**

Date of issue: 24.10.72

It has been brought to the notice of the Board by the Revenue Audit that in several wealth-tax assessments, involving the assessment years 1967-68 and onwards the Wealth-tax Officers have failed to revalue the foreign assets on such valuation dates as were subsequent to the date of the Wealth-tax Officers has resulted into a substantial loss to the revenue. When the cases, in which audit objections were raised were scrutinised by the Department it was further noticed that the Wealth-tax Officers had also failed to adopt the correct valuation of the foreign assets, located in countries having their currency based on Pound Sterling, subsequent to the devaluation of Sterling on 18-11-67. In other words the value of the foreign assets of the assesseees should have been duly enhanced in accordance with the official rates of exchange subsequent to the devaluation of Rupee on 6-6-66 and also their value reduced correspondingly subsequent to the devaluation of the Pound Sterling on 18-11-67.

2. The Board desire that an immediate review of all cases of W.T. assesseees, having foreign assets, whose assessments have been completed for the years 1967-68 and onwards, should be undertaken with a view to examine if the value of these foreign assets was correctly adopted by the W.T. Officers in respect of the assessment years 1967-68 and onward. The result of this review i.e. the number of under-assessment/over-assessments detected, the action taken, and the revenue effect thereon etc. should please be intimated to the Board by 30th December, 1972.

3. It should also be impressed on all assessing officers in your charge that in the pending wealth-tax assessments for 1967-68 and onwards the correct value of foreign assets must be adopted on the basis of the devaluation of rupee and/or the devaluation/revaluation of the currency of such foreign countries where the assets of the assessee are located.

APPENDIX-74**Circular 517**

Date of issue: 28.02.73

In the case of Kethmal Parekh Vs. TRO, Vijayawada, and another (1973) 87 ITR 101 the Andhra High Court considered the question whether a notice issued under Rule 73 of the Second Schedule was devoid of jurisdiction in relation to the partner, when the Income-tax Officer had forwarded a certificate to the Tax Recovery Officer under section 222 of the Income-tax Act, 1961 mentioning only the name of the firm. Their Lordship held since the partner's name was not included in the certificate issued under section 222 he could not be proceeded against under Rule 73. According to Rule 1(b) of the Second Schedule, defaulter means the assessee mentioned in the certificate and inasmuch as the name of the partner does not appear in the certificate issued under section 222 he will not be subject to the proceedings initiated by the Tax Recovery Officer under the Second Schedule for collection of the tax arrears of the firm.

2. While allowing the petition filed by the partner the High Court also held that the Income-tax Officer may amend the certificate under section 222 which has already been issued by including the name of the individual partner as defaulter.
3. The Board have accepted the decision of the Andhra Pradesh High Court. However, it is desired that in order to facilitate the Tax Recovery Officer to proceed against the partner(s) as well, the Income-tax Officer while issuing certificate under section 222 in the case of firm should also mention the names of the partners of the firm.
4. These instructions may be brought to the notice of the officers working in your charge.

APPENDIX-75**Circular 717**

Date of issue: 12.07.74

Some CIT's have brought to the notice of the Board that there is a large number of cases involving arrears of more than Rs.500 which are pending for write off because neither the assessment records nor the addresses of the assesseees are available. In the absence of addresses, no enquiries about the assesseees can be made. The question as to how the arrears in these cases are to be treated is under consideration of the Board.

2. However, to avoid recurrence of such a problem in future, the Board desire that full addresses and Permanent Account Numbers of the assesseees should invariably be recorded in the Demand & Collection Register while entering the original demand or carrying forward the arrear demand. In order to verify that these instructions are being followed, a test check of the entries made in the Demand & Collection Register in relation to both current and arrear demand should be carried out. The test check must be made at least once in a year and, where necessary more than once. The proportion of entries checked may vary from 5 to 20 per cent depending upon the number of entries and their revenue importance. For carrying out the test check, it is requested to nominate senior and responsible officers.

3. In cases where omission of addresses and/or PAN is detected in the test check, a broader check should be made and the deficiencies made good. The officers making the test check should furnish a certificate to you after doing the needful. After you have received these certificates, you may kindly send a report to the Board in the enclosed proforma.

4. For future years, the report may be sent by 31st December, but this being the first year, special attention will have to be given to the checking of entries relating to arrear demand and the report sent to the Board by 30th September, 1974.

APPENDIX-76**Circular No. 805**

Date of issue: 27.11.1974

Reference is invited to Board's Instruction No.478 (F.No.404/54/72-ITCC) dated the 25th November, 1972.

2. In continuation of the above, your attention is drawn to the provisions of Rule 118 of the Income Tax Rules, 1962. According to Rule 118(1), ITO is under an obligation to calculate interest under sub-section (2) of Section 220 at the end of each financial year if the amount of tax, penalty or other sum in respect of which such interest is payable has not been paid in full before the end of any such financial year, and issue notice of demand under section 156 to the assessee in respect of the said interest. If, however, the aforesaid amount of tax, penalty or other sum is paid up before the end of any financial year, the ITO shall calculate interest upto the date of payment and issue demand notice under section 156 of the IT Act accordingly. (Rule 118 (2).

3. It has come to the notice of the Board that whereas interest is generally charged by the ITOs at the time of issue of certificate to the TRO in accordance with Rule 119 of the IT Rules, 1962, interest is not regularly charged under Rule 118.

4. The Board desire that in cases where interest has to be charged by the ITO upto the 31st day of March of each financial year in respect of demands outstanding on that date, he should calculate interest issue demand notice within a period of thirty days from the end of the financial year i.e., upto the 30th day of April. In cases where interest has to be calculated and charged by the ITO upto the date of payment which falls prior to the 31st day of March, interest should be calculated and charged within a week of the date of final payment.

5. These instructions should be brought to the notice of all the Income Tax Officers in each charge.

APPENDIX-77**Circular No. 844**

Date of issue: 12.05.75

Reference is invited to Board's Instruction No. 805 F.No. 404/301/74-ITCC dated the 22nd/27th November, 1974 wherein attention was drawn to the defaults committed by the Income-tax Officers in complying with the provisions of Rule 118 of the Income-tax Rules, 1962. As a result of review of the information regarding the performance of Tax Recovery Officers during the period of 1st April, 1973 to 31st December, 1973, furnished by the Commissioners of Income-tax in response to Board's letter F.No. 404/305/74-ITCC dated the 16th December, 1974, instances have now come to the notice of the Board where interest was not found to have been charged by the Income-tax Officers, at the time of issuing certificates u/s 222 of the Income-tax Act, 1961, on the amount of arrears of tax, penalty, or other sum, upto the date of issue of the certificate, in accordance with the provisions of Rule 119(1) of the Income-tax Rules 1962, and accordingly, it was also not indicated in the certificates in accordance with Rule 119(2). It has further come to the notice of the Board that the Tax Recovery Officers also failed to calculate and collect, along with the amount of tax, penalty, or other sum, mentioned in the certificate, interest which accrued on the aforesaid amounts for the period commencing immediately after the date of issue of the certificate upto the date of recovery of the demand by them.

2. The Board desire that the attention of the Income-tax Officers/Tax Recovery Officers should specifically be drawn to the provisions of Rule 119 of the Income-tax Rules, 1962 and they should be directed to strictly comply with these provisions.

3. With a view to ensuring proper compliance with Rules 118 and 119, the Inspecting Asst. Commissioners of Income-tax should be directed to carry out a half-yearly review of the work of the Income-tax Officers/Tax Recovery Officers for the half-years ended 30th September and 31st March to find out whether:

- (i) Interest has been charged by the Income-tax Officers at the end of each financial year on the demands outstanding at the end of the said financial year;
- (ii) Interest has been charged by the Income-tax Officer upto the date of payment of the outstanding demands, in accordance with the provisions of Rule 118(2);
- (iii) Interest has been charged by the Income-tax Officers at the time

of issue of Recovery Certificates in accordance with Rule 119(1) and indicated in the certificate; and

- (iv) Interest has been charged and collected along with the outstanding demand shown in the Recovery Certificate in accordance with the provisions of Rule 119(3).

4. You should also obtain from the Inspecting Asst. Commissioners of Income-tax a report on the reviews carried out by them and send a copy thereof to the Board with your comments so as to reach the Board by 15th November and 15th May.

APPENDIX-78**Circular No. 175**

Confidential

F.No. 404/171/75-ITCC
 Government of India
 Central Board of Direct Taxes

New Delhi, the 14th August, '75

From

V.P. Mittal
 Secretary
 Central Board of Direct Taxes

To

All Commissioners of Income-tax
 (by name)

Sir,

Subject : Recovery of Tax Arrear-Instructions-regarding.

The problem of arrears has been the subject matter of adverse criticism by the comptroller and Auditor-General of India and various Parliamentary Committee and as such has been constantly engaging the attention of the Board. As will be seen from the chart given below, the arrears had virtually got stabilized around Rs. 800 crores during the past 3 to 4 years. However, the arrears as on 31.03.1975 have again registered a steep increase and this trend needs to be reversed:-

ARREARS OF INCOME TAX

As on	Gross	Net
(RUPEES IN CRORES)		
31.03.1971	738.77	499.68
31.03.1972	805.37	438.60
31.03.1973	790.02	433.10
31.03.1974	815.60	471.13
31.03.1975	935.96	537.72

2. The Boar consider that the heavy pendency of tax arrears is partly due to the fact that the various powers conferred under the Income-tax Act have not been fully utilized; some of such powers are mention below:-

- i) Powers of Distraint and Sale of Movable Property referred to in Section 226(5) and the Third Schedule to the I.T. Act, 1961 seem to have been very sparingly used. This is a useful mode of collection especially where small accounts are involved. In fact, the threat or use of this power would considerably help in the recovery of arrears.
 - ii) It is also seen that the powers of arrest and detention in civil prison available under rule 73 of the Second Schedule to the Income-tax Act, 1961 also do not appear to have been utilized adequately. More frequent use of this Rule will not only enable the Department to effect recoveries in cases wherever recourse to this power is taken but also have a salutary effect on other defaulters as well. The Board, in their confidential letter F.No. 403/27/73-ITCC dated the 17th September, 1973 has already drawn your attention to this aspect.
 - iii) While immovable properties are attached by Tax Recovery Officers in a large number of cases, there is generally an inordinate delay in putting them to sale. In this connection, your attention is invited to the insertion of Rule 59(1) by the 'Taxation Laws Amendment Act, 1975' whereby the Central Government can bid for the property at any subsequent sale of the bid if the earlier sale had been for a price which was less than the reserve price. This rule has been included in the Annexure where other changes made by the Taxation Laws Amendment Act, 1975 relating to recovery has been listed.
3. It is also seen that the total amount of arrears under certificates as shown by the Tax Recovery Officers are considerably more than the entire arrears demand which could have been certified. The Board, in their circular letter F.No. 404/217/74-ITCC dated 18th November, 1974 (Instruction No. 149) have already desired that there should be a six-monthly reconciliation of the registers of the Tax Recovery Officer and the Income-tax officer. The first report in respect of such reconciliation is due on 31st October, 1975.
4. At the instance of the Board, some of the Commissioners of Income Tax have been meeting periodically the Income Tax Officer of each range together with the Inspecting Assistant Commissioner of Income Tax concerned. In such meetings, the Tax Recovery Officer concerned is also associated. The TRO asked to reconcile his figures of arrears demand with those atleast one ITO before the next meeting so that over a certain period, the figures in respect of each range are fully conciled. The Board, therefore, desire that this practice should be effectively adopted by all the Commissioners of Income Tax. However, in mofussil charges, where

it may not be venient for the Commissioner of Income Tax to associate himself with all such meetings, the concerned Inspecting Assistant Commissioner of Income Tax should hold periodical meeting on his Income-tax Officers and the concerned Tax Recovery Officer(s).

5. The Taxation Laws (Amendment) Act, 1975 has also made changes as per Annexure which should go a considerable way in enforcing recovery. The Board desire that the officers may be apprised of these changes so that necessary steps could be taken by them.

Yours faithfully,

(V.P. Mittal)

Secretary

Central Board of Direct Taxes

Encl: Annexure as above.

To letter addressed to the Commissioners of Income-tax in F. No. 404/171/75-ITCC dated the (14th August 1975)

LEGILATIVE MEASURES TO MAKE RECOVERY MORE EFFECTIVE

Changes made in the Act.

An explanation has been added to sub-section (1) of Section 222 of the Income- tax Act, 1961 by clause 54 of the Taxation Laws (Amendment) Act, 1975. This explanation reads as under:-

‘Explanation: For the purposes of this sub-section, the assessee’s movable or immovable property shall include any property which has been transferred, **directly or indirectly on or after the 1st day June. 1973** by the assessee to his spouse or minor child or son’s wife or son’s minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property so transferred to his minor child or his son’s minor child is concerned, it shall even after the late of attachment of majority by such minor child or son’s minor child, as the case may be, continue to be included in the assessee’s movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.”

2. In Section 223, sub-section (2) has been added by clause 65 of the Taxation Laws (Amendment) Act, 1975 which reads as under:-

“(2) Where an assessee has property within the jurisdiction of more

than one Tax Recovery Officer and the TRO to whom a certificate is sent by an Income-tax Officer.

- (a) is-not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction or.
- (b)
- (c) Is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this chapter, it is necessary so to do, he may sent the certificate or, where only a part of the amount is to be recovered a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a TRO within whose jurisdiction the assessee resides or has property, and thereupon, that TRO shall also proceed to recover the amount under this chapter as if the certificate or the copy thereof had been the certificate sent to him by the Income-tax officer.

3. Rule 73 of Second Schedule to the Income-tax Act has also been amended and a sub-rule (3A) has been added by the provisions of Section 81 (vi) of the Taxation Laws (Amendment) Act, 1975. The new rule (3A) reads as under:-

“(3A) A warrant of arrest issued by a TRO under sub-section rule (2) or sub-rule (3) may also be executed by any other Tax Recovery officer within whose jurisdiction the defaulter may for the time being be found.”

4. Further, an Explanation has been added to sub-rule (4) of Rule 73 after the provision which reads as under:-

“Explanation:-For the purposes of this rule, where the defaulter is an Hindu undivided family, the Karta thereof shall be deemed to be the defaulter”.

5. Clause 68 has amended Section 276C. As per sub-section (2) of Section 276C, even willful attempts to evade the payment of any tax has been made liable to prosecution. Section 276C(2) reads as under:-

“(2) If a person willfully attempts in any manner what sever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation : For the purposes of this section, a willful attempt to

evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

- (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act.) containing a false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (iii) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

6. Clause 73 has amended Section 281 to provide for certain transfers to be void. The amended Section reads as under:-

“281. (1) Where, during the pendency of any proceeding under this Act or after the completion thereof but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.

Provided that such charge or transfer shall not be void if it is made:-

- (i) for adequate consideration and without notice of the pendency of such proceeding, or as the case may be, without notice of such tax or other sum payable by the assessee; or
- (ii) with the previous permission of the Income-tax officer.

(2) This section applies to case where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation:- In this section, “assets” means land, building machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock in trade of the business of the assessee.

7. Clause 74 has inserted a new Section 281B to provide for provisional attachment, to protect revenue in certain cases. Section 281B reads as under:-

“281B. (1) Where, during the pendency of any proceeding for the assessment for any income or for the assessment or reassessment of any income which has escaped assessment, the Income-tax officer is of the opinion that for the purpose of protecting the interest of the revenue, it is necessary so to do, he may, with the previous approval of the Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(2) Every such provisional attachment shall cease to have effect after the expiry of period of six month from the date of the order made under sub-section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so however, that the total period of extension shall not in any case exceed two years.

8. Causes 81 has made certain amendments of the Second Schedule. These are as under:-

“81. In the Second Schedule to the Income-tax Act,–

(i) rule 19A shall be re-numbered as sub-rule (2) thereof, and before the sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:–

(1) A Tax Recovery Officer, being a Gazetted Officer of the Central Government who is authorized to exercise the powers of the Tax Recovery Officer under this Act, may entrust any of his functions as Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income Tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be Tax Recovery Officer.

Provided that where the Tax Recovery Officer is an Income Tax Officer any entrustment under this sub-rule shall be made only with the approval of the Inspecting Assistant Commissioner;

(ii) In rule 53, in clause (c), the ward “and” occurring at the end shall be omitted, and after that clause, the following clauses shall be inserted, namely:-

“(cc) the reserve price, if any, below which the property may not be sold; and;

(iii) to rule 56, the following proviso shall be added, namely:–

“Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53;

- (iv) Rule 59 shall be re-numbered as sub-rule (2) there of, and before that sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:-

(1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Income Tax Officer, if so authorized by the Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale:

- (v) in Part III, after rule 68, the following rule shall be inserted, namely:-

68A. (1) Without prejudice to the provisions contained in this Part, an Income Tax Officer, duly authorized by the Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mention in sub-rule (1) of rule 59, at such price as may be agreed upon between the Income tax Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Income Tax Officer and on the date the possession of the property is delivered to the Income Tax Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908, accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceed the amount due form the defaulter, such excess shall be paid by the Income Tax Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the Income Tax Officer fails to pay such excess within the period aforesaid, the Central Govt. shall for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid pay simple interest at twelve percent per annum to the defaulter on such amount;

(vi) in rule 73,–

- (i) after sub-rule (3), the following sub-rule shall be inserted, namely,–

(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within those jurisdiction the defaulter may for the time being be found;

(ii) in sub-rule (4),—

- (a) for the words, brackets and figures “sub-rule (2) or sub-rule (3)”, the words “this rule” shall be substituted and after the words “Tax Recovery Officer”, the words “Issuing the Warrant” shall be inserted;

- (b) after the proviso, the following Explanation shall be inserted, namely:—

Explanation:- For the purpose of this rule, here the defaulter is a Hindu Undivided family, the Karta thereof shall be deemed to be the defaulter.”.

APPENDIX-79**Circular 1103**

Date of issue: 28.09.77

The Commissioner of Income-tax, Kanpur has reported that the Urban Land (Ceiling and Regulation) Act, 1976 which came into operation with effect from 17th February, 1976 has created certain doubts in the minds of the Tax Recovery Officers, with regard to the auction of the attached immovable properties and confirmation of sale of properties sold already as per provisions of Second Schedule to the Income-tax Act, 1961.

2. The matter has been examined in consultation with the Ministry of Law. The Board are advised that the restrictions on transfer of lands imposed by sub-section (3) of section 5 (and similarly in by sub-section (4) of section 10) of the Urban Land (Ceiling and Regulation) Act apply only to voluntary sales and not to involuntary sales like acquisition proceedings under Chapter XXA of the Income-tax Act, 1961. Since the restriction on transfer of land imposed by the Urban Land Ceiling Act is not applicable to the sale effected by the Tax Recovery Officer under the provisions of the Second Schedule to the Income -tax Act, 1961, it is not necessary to give notice or to apply for permission to the competent authority under section 26 or 27 of the Urban Land Ceiling Act. However, sale under the Second Schedule of the Income-tax Act by the Tax Recovery Officer should be made and the possession of the relevant property should be handed over to the auction purchaser before the notification vesting the property in the State Government under section 10(3) of the Urban Land Ceiling Act is issued. Once the notification is issued under the said section, the land would be vested in the State Government and in consequence of this vesting, it would cease to be the property of the owner/transfer. The property could not then be the subject matter of auction in a recovery proceeding under the Income-tax Act, 1961.

APPENDIX-80**Circular 1149**

Date of issue: 09.02.78

While considering the report of the Committee on Income-tax arrears, the Board has noted with concern the existing practice of indiscriminate issue of Tax Recovery Certificate by the ITO's in the last month of the financial year when the statutory period of limitation is about to expire. Due to this bulk issue, the certificates suffer from one or more of the following defects:

- (i) The particulars of the assets of the defaulter are not reported to the TRO.
 - (ii) The amount certified is incorrect since assessee's claim for credit/rectification is not properly considered.
 - (iii) Certificates are issued even in cases where the assessee is not in default since the demand has been stayed/kept in abeyance or the assessee has been permitted to pay the tax in instalments.
2. It is also noticed that Income-tax Officers do not commence action for recovery of tax arrears under their own powers in a large number of cases with the result that the TRO's are burdened with an increasing number of certificates and the demand certified goes on increasing unnecessarily to that extent.
3. The Board would, therefore, like to impress on the commissioners of Income-tax the need to take urgent remedial action on the following lines:
- (i) The ITO's should be instructed to take up the work of preparing the "aid-sheets" and thereafter issuing recovery certificates in cases where found necessary, from October onwards. The practice of issuing the certificates only in the month of March of each financial year, if prevalent in your charge, should be stopped.
 - (ii) The practice of issuing certificates even in respect of stayed demand should be discontinued. A watch over such cases can be kept through the Registers prescribed in the Board's Instruction No.1139 dated 16.1.78 for demands stayed/kept in abeyance and demands permitted to be paid in instalments. A review of this register every year will enable the ITO to issue the TROs in cases where such issue had been postponed due to the demand being stayed or allowed to be paid in instalments. (Consequently, the existing Recovery (Limitation) Register (ITNS-19) will be

discontinued). The IAC must periodically check this Register to ensure that certificates are issued in time wherever necessary.

- (iii) While issuing the Recovery Certificate to the TROs, particulars of the assets should be noted in the forms accompanying the TRC, as already prescribed on page 324 of the Recovery Manual.
- (iv) In all cases where the demand to be certified exceeds Rs.25,000, the ITO should forward the certificates to the TRO through the IAC with a note explaining the action taken already for recovery and indicating the action required to be taken by the TRO.
- (v) (a) A procedure for organising periodical meetings by CIT/IAC with the ITO/TRO was prescribed in Board's Circular No.175 dated 14.8.75 (F.No.404/171/75-ITCC). The CIT/IAC need not himself participate in these meetings; it will be sufficient if they ensure that such meetings are held between the ITO's and the concerned TROs at least once a month. The scope of further recovery action to be taken in cases presenting difficulties should also be discussed in these meetings.

(b) The TRO's staff should also periodically visit the ITO's office wherever necessary in order to collect the particulars of collection/reduction in cases of certified demand.
- (vi) As far as possible, the jurisdiction of each TRO should be so organised that it coincides with the jurisdiction of the ITO's working in a particular IAC Range.
- (vii) The TRO's work should be reviewed every month by the IAC who should also conduct periodical inspections. The CsIT should also review the work of the TROs every month as desired by the Board in Instruction F.No.404/138/77-ITCC, dated 5.10.77 and copies of the Commissioner's review should be endorsed to the Board and the DOMS.

4. The continuing pendency of a large number of certificates which are very old indicates that sufficient attention is not being devoted to the work of writing off of such demands in a systematic manner. The Board has decided that the ITO (Headquarters) attached to each individual commissioner of Income-tax should be specially utilised for assisting the CIT for organising on a regular basis and taking all follow up action for expeditious process of writing off irrecoverable demand. If this, work is attended to properly; a lot of dead wood can be eliminated.

5. The CsIT are requested to acknowledge receipt of this letter and to forward to the Board a note by 30.4.78 on the action taken by them to give effect to the above decisions.

APPENDIX-81**Circular 1235**

Date of issue: 07.02.1979

Attention is invited to the Board's letter F.No.385/109/78-IT (B) dated 22-12-1978 and reiterating the instructions contained in D.O. letter of late Sri. R.S.Chadha, Member, CBDT in F.No.385/50/76-IT(B) dated 21st August 1976 on the above subject.

2. The test check conducted recently by the Staff Inspection Unit in a few selected TRO's charges have disclosed that substantial proportion of the disposal of recovery certificates by the TROs during the financial year 1977-78 has been achieved through verification of the certificated arrears with assessment records and cancellation of the tax recovery certificates. The high proportion of such disposals clearly indicates that notwithstanding the issue of instructions on 21st August, 1976, the task of removing fictitious demands from the registers of the department by giving prompt credit for pre-paid taxes and prompt effect to the appellate orders and by promptly attending to the pending requests for rectification of assessments or re-opening the ex-parte assessments invoking the provisions of sec.146 has not received adequate attention. You will no doubt, agree that such indiscriminate issue of revenue recovery certificates without proper verification of the payments made by the assesseees or their claims for revision of the demands leads to all-round increase in infructuous work besides serving as an irritant to the assessee and thus harming the public image of the Department.

3. In the current financial year, the problem is likely to be accentuated by delays in the receipt of challans from the focal point branches of some banks in some of the areas. The result is likely to be that even taxes already paid may not properly be given credit to in some cases resulting in the increase in the number of infructuous recovery certificates unless due care is taken to eliminate such certificates well in time.

4. The Board, therefore, desire that in all cases where tax recovery certificates are to be issued before 31-3-79, Aid Sheets should be sent to the concerned assesseees if not already done and their objections duly considered. Wherever no real tax arrears will subsist if the assessee's grievances are rectified, follow-up action should be taken to ensure that such arrears are removed from the registers so that no recovery certificate has to be issued in such cases. Where, however, the tax payments claimed by the assessee cannot be verified due to the delay in receipt of challans, the ITOs should, clearly indicate to the TROs while forwarding recovery certificates, the fact that the assessee has claimed to have made the

payment but credit for such payment could not be given due to the delay in the receipt of challans. The TRO should be requested not to proceed to take any further recovery action in pursuance of the certified arrear until the ITO confirms the correctness of the said arrear. The ITO should, on his part, verify the correctness of the subsisting arrears in all such cases before 30th April 1979 and take steps to cancel modify or confirm the recovery certificates issued to the TRO since the relevant challans would have by then, been received by all ITOs. The due date for verification and confirmation should be strictly adhered to as, in the absence of immediate follow-up action; the process of verification at a subsequent stage would only become more difficult and time-consuming.

5. You may kindly ensure through the IACs and ITOs that in every case where recovery certificates are to be issued before 31-3-79, the procedure laid down in the preceding paragraph is followed before the issue of the recovery certificate. Issue of a recovery certificate in a routine manner without following the aforesaid procedure should be viewed seriously.

APPENDIX-82**Circular No. 1229**

Date of issue: 19.10.1979

A case has come to the notice of the Board wherein the Official Liquidator did not pay the tax arrears for the assessment years 1970-71, 1971-72 and 1973-74 due from a company which had gone in liquidation on the ground that he had distributed after obtaining the orders of the court the sale proceeds of the properties belonging to the company among the creditors much earlier to the raising of the demand by the department. The facts of the case in brief are that the Official Liquidator had given notice of his appointment under sub-sec.1 of sec.178 of the Act. The ITO thereafter did not intimate to him, under sub section(2) the amount required to be provided for the payment of tax which was there or was likely thereafter to become payable by the company. The ITO did not make enquiries about the properties likely to be disposed of by the Official Liquidator the amount of capital gains tax that was likely to arise, as a result of the disposal of the capital assets of the company.

2. The question that came up for consideration before the Board in this case whether or not personal liability for payment of the tax could be fixed on the Official Liquidator in view of section 178(4) of the Act.

3. The matter has been examined in consultation with the Ministry of Law. The Board are advised that as the liquidator had given notice of his appointment under sub-section (1) but the ITO failed to send intimation under sub-sec (2), there is no failure on the part of the liquidator under sub-sec (3) of sec.178. Accordingly it would be difficult to fix any personal liability for the tax on the official liquidator. The board are however advised that, in such cases, where liquidation proceedings are still pending, steps may be taken to bring to the notice of the court the taxes due and the fact of the non-payment so that the Court may pass orders for payment of whatever amount that could now be realised from the Official Liquidator. Further, the conduct of the Official Liquidator can also be brought to the notice of the Central Government in the Department of Company Affairs for action u/s.463 (1) of the Companies Act.

4. As non-compliance with the provisions of sec. 178(2) is likely to jeopardise the interests of revenue, ITOs should take particular care well in time to ascertain and intimate to the liquidator the amount of tax and any other sum which is then, or is likely thereafter to become payable by the company including the estimated tax on capital gains that may arise on the sale of assets during liquidation proceedings of the company.

5. It may be incidentally clarified that recoveries made through the liquidator u/s.178 are without prejudice to any action the ITO may take u/s.179 against the directors of private companies who come within the purview of the section.

APPENDIX-83**Circular 1240**

Date of issue: 06.03.79

The Board is examining the question whether on the admission of a Settlement Commission u/s.245-D of the I.T. Act and during the pendency of the proceedings before the Settlement Commission, the prior demands raised in the assessment in respect of which the application is filed will cease to be enforceable. Some time is likely to elapse before a final decision is taken on the subject. Meanwhile the Board desires that pending a final decision in the matter recovery certificates should be issued immediately u/s.222, in all such cases where the period for commencing recovery proceedings expire on 31-3-79. The recovery certificates should be sent to the TROs with the following note viz:

“In respect of the assessment in which this demand was raised an application for settlement has been admitted by the Settlement Commission u/s.245-D(1) of the I.T.Act.1961 and the proceedings before the Settlement Commission is pending. This certificate is issued to save limitation. No further steps to recover the certified arrears may be taken till receipt of a further communication from me”.

APPENDIX-84**Circular No. 1332**

Date of issue: 02.05.1980

The revenue Audit has brought to the notice of the board certain cases where Tax Recovery Inspectors had incurred expenditure on carriage of goods, hamali charges, thela charges, cost of drum beating etc. from out of their pockets and got these expenses reimbursed to themselves out of the recoveries effected from the defaulters by attachment and sale of movable/immovable properties. The AG's objection to such appropriation was that the same was opposed to rule 7 of the Central Treasury rules.

2. The matter was examined in the board in consultation with the Ministry of law C & AG and chief controller of accounts. It is obvious that practice of drawing on private resources to meet such recurring expenditure on government account and not accounting for the receipt and disposal of a part of the sale proceeds received on government account cannot be given any official recognition. The need for cash to incur anticipated expenditure arises in other areas of official activity also and is met under the existing procedure by drawing from the imprest amount or drawing from the treasury by submitting a bill estimated expenditure on account of charges to be incurred by the department in recovery proceedings should be anticipated and provided for in the budget grant of the office concerned to enable the drawl of the money as and when required.

3. Rules 5'b of the 2nd schedule authorises the recovery of all charges in respect of proceedings taken for realising the arrears from the defaulter. Rule 8'1'a' of the 2nd schedule directs that whenever assets are realised in execution of a certificate the costs incurred by the ITO shall be paid to him.

4. It has therefore been decided that the TROs should be instructed to-

- i) draw from contingencies to meet expenses in connection with recovery and
- ii) credit amount recovered from the defaulter towards such charges to government account under the major head concerned under the minor/ detailed head other receipts /other items.

5. If any TRO needs an increase in his imprest account, necessary proposals making out a case for such increase should be submitted by him to his Accounts officer with data relating to actual expenditure on

this account in the past to enable the accounts officer to consider the request for such increase.

6. These instructions may be brought to the notice of all TROs they should be strictly advised that expenditure should not be incurred out of pocket without their being brought into account and there should be no appropriation of the sale proceeds with out their passing through account.

APPENDIX-85**Circular No. 1412**

Date of issue: 17.09.1981

In a petition to the chairman CBDT, it has been stated that the ITO issue recovery certificates even when the demand has been paid or a rectification/appeal affected is pending. Under the existing law the TRO is not competent to hear the objections of the assessee and to vary the demand certified to him. Therefore when the recovery proceedings are initiated by the TRO the assessee has still to approach the ITO concerned to give effect to rectification/appeal effect etc. Even in cases where the ITO modifies the demand by giving credit for pre-paid taxes or by passing an order of rectification or giving appeal effect he does not send any intimation of the modified demand to the TRO. This causes avoidable harassment to the assessees.

In the light of the difficulties pointed out in the above petition the legal position in respect of power to vary the certified demand has been considered by the board. U/s.224 of the IT Act it is not open to the assessee to dispute before the TRO the correctness of an assessment or to raise objections to the certificate on any ground. Under the said section the power to withdraw or correct any certificate vests with the ITO only. U/s.225 of the IT Act the power to grant stay or to grant instalments in respect of the certified demand also vests with the ITO.

Though, it is true that power to vary a certified demand vests only with the ITO issuing the certificate, there is no express bar on the TRO to satisfy himself about the correctness of the certified demand. Under clause 4 of 2nd schedule the TRO can call upon an assessee to pay the demand within a specified time or within such further time as the TRO may grant in his discretion. This power to grant further time would imply that the TRO can either stay the recovery for a specified time or for an indefinite time.

The board therefore is of the view that in cases where the assessee disputes the demand certificated to the TRO for the reasons that the same has already been paid or it requires reasons that the same has already been paid or it requires modification as the rectification or appeal effect is pending in his case, the TRO will first collect the undisputed portion of the demand. Only after the undisputed demand has been collected, he will write to the ITO to consider the assessee's objections and to intimate the correct demand so that balance outstanding if any can be collected by the TRO. The TRO at the end of the month should send a list of such cases to the IAC where he has requested the ITOs to

consider the assessee's objections. The IAC in his turn would keep a watch on such cases and ensure that the ITOs send intimation of the modified demand to the TRI within a reasonable time. Till such time the ITO sends the modified demand the TRO will not take any further action on the certificate originally issued to him. This will not only avoid harassment to the assessee but would make the ITOs responsible for taking appropriate action, the powers for which vest only in them u/s. 224 and 225 of the I.T. Act.

These instructions may be brought to the notice of all the officers in your charge.

APPENDIX-86**Circular 1490**

Date of issue: Not given

A question has been raised whether the Tax Recovery Officer while proceeding with investigation under Rule II of the Second Schedule to the Income-tax Act, 1961, should investigate the claim after fixing the date for such investigation and after notice is given both to the claimant and to the Income-tax Officer who has issued the Tax Recovery Certificates.

2. In *M.R. Prakasan Vs. Tehsildar Vandavasi* (1974,97 ITR 235), the Madras High Court observed (at P.238) that the investigation contemplated in Rule II is an investigation which is in pari materia with an enquiry usually held by Civil Courts under Order 21, Rule 58 of the Code of Civil Procedure. As a matter of fact, Rule II(96) of the Second Schedule contemplates that an aggrieved party may institute a suit in a civil court to establish the right which he claims to the property in dispute. This again is a provision very similar to Order 21, Rule 63 of the C.P.C. In the aforesaid judgment, it was also held that the investigation is not an empty formality but a quasi-judicial process inviting a reasoned decision by the statutory functionary after hearing the affected party and the Revenue adequately and fully.

3. The matter has been examined. The Board are advised that Rule 82 of the Second Schedule provides that the Tax Recovery Officer shall in the discharge of his functions, be deemed to be acting, judicially within the meaning of the Judicial Officers Protection Act, 1850. Under Rule 83, the said Officer has all the powers of a Civil Court for the purpose of receiving evidence, administering oaths etc. Rules 86 and 87 provide for a right of appeal and a right of review against the order passed by the Tax Recovery Officer to the appropriate authority named therein. Rules 62 and 63 of the Income-tax (Certificate Proceedings) Rules, 1962 enable the Tax Recovery Officer not only to hear a claimant or the witnesses who are produced on his behalf, but also the Income-tax officer concerned.

In the light of the foregoing, the mode of investigation of the claim or objection should be more or less the same as that the civil court. The Tax Recovery Officer is required to investigate the claim or objection by giving adequate opportunity to the claimant as well as the Income-tax Officer.

4. When an opportunity as aforesaid is given by the TRO, the I.T.O. shall either personally or through an authorised Inspector assist the TRO

in respect of the Departments case and interests in the recovery proceedings.

5. These instructions may kindly be brought to the notice of all TROs and ITO's working in your charge.

APPENDIX-87**Circular 1520**

Date of issue: 20.07.83

In the wake of mounting arrears of Income-tax and other direct taxes over the years the report of the Comptroller & Auditor General of India for 1981-82 tabled in the Lok Sabha on 4th April, 1983, severely criticised the functioning of the Recovery Officers in the country. The appraisal of the C&AG attributes the slow pace of recovery to defective Planning of work in the Income-tax Offices, defective maintenance of records in the Recovery officers, lack of coordination between the Income-tax and Recovery Officers and inadequate recovery proceedings.

2. There are complaints that most of the ITO's issue recovery certificates in a mechanical manner without ascertaining the correct position of demand which leads to harassment to a large number of assesseees at the hands of TROs. Keeping in view the report of the C & A G as well as these complaints the Board would like the field officers to take the following steps:

- (a) The Commissioners of Income-tax should ensure that the TROs and their staff are well versed in the recovery procedure. For this, it is necessary that each TRO should be given a Refresher Course in recovery work as soon as possible after his appointment as TRO. As regards the training of the recovery staff this should be done at the station of their posting or at the headquarters of the Commissioners of Income-tax by officers having experience in recovery work.
- (b) The Commissioner of Income-tax (Recovery) in the Metropolitan Cities has brought to the notice of the Board that the Recovery Wings are not given the adequate sanctioned strength by the administrative Commissioners. Instances are also there where the staff given to the TROs is not relieved after their posting. In many cases it has been found that the Tax Recovery Officers and their staff do not want to put normal period of service in this Wing of the Department. The Board would like to impress upon the administrative Commissioners that adequate manpower should be deployed to this important area of work. Once persons are posted in the Recovery Wing, it would be ensured that they complete their normal tenure of 3 years in this job. It should also be ensured that before completion of their tenure, proposal for denotification of TROs are not sent to Board.

- (c) It goes without saying that a tax recovery certificate is the hinge on which the entire work of recovery depends. The report of the Comptroller & Auditor General of India mentions cases of serious lapses like furnishing of wrong address or other relevant particulars in the tax recovery certificates. To prevent this members of the staff entrusted with the job of preparing recovery certificates, or found to be in the habit of putting recovery certificates in a mechanical manner to the ITO without verifying the actual demands should be dealt with sternly. The ultimate responsibility for this lapse of furnishing incomplete and inaccurate details in the certificates should be fixed on the Income-tax Officer forwarding the certificate.
 - (d) The Commissioners are requested to issue instructions to the ITO's that TROs will bring to the notice of the Commissioner of Income-tax the cases where the certificate signed by the ITO bear wrong addresses or where details of assets given in the certificates are either incomplete or incorrect.
 - (e) Once an assessee comes forward and submits evidence showing that the demand in question has already been paid, the TRO, instead of directing the assessee to obtain the cancellation order from the ITO (as in the practice now) will depute and Inspector to the concerned ITO to verify the submissions and evidence furnished by the assessee and arrange to get a report from the ITO showing the correct position of the demand. In the meantime, he may issue a letter to the assessee to the effect that the demand has been kept in abeyance (as provided in item 9 Chapter II of the Tax Recovery Inspectors' Manual).
 - (f) The TRO should not take any coercive step, such as sale of movable and immovable assets, detention of defaulter in the Civil Prison, for the recovery of the demand during the period when the evidence furnished by the assessee is being subjected to check by the ITO (as provided in item 8, Chapter-II of Tax Recovery Inspectors' Manual).
3. The Commissioners are directed to bring immediately these instructions to the notice of the Tax Recovery Officers and the Income-tax Officers of their charge. It should be impressed upon these officers that the Board is keen that the above steps are taken to avoid addition to the infructuous work of the TROs and the ITO's as also to improve the public image of the Department.

APPENDIX-88**Circular No. 1542**

Date of issue: 03.12.1983

In the Board's Instruction No.1520 (F.No.398/3083-IT(B)) dated 20.7.1983 stress was laid on the fact that once persons are posted in the Recovery Wing it should be ensured that they complete their normal tenure of 3 years in the job. Representations were received subsequently from All India Federation of Income-tax Gazetted Services Association and others stating that many Charges are following the practice of posting of Tax Recovery Officers for two years only and, therefore, the prescription of three years in the aforesaid instruction be re-considered. The matter has been re-considered by the Board and it has been decided that the tenure of T.R.O. may be fixed between two and three years according to the administrative convenience.

2. It has been noticed that in some cases names of persons who have not completed even two years in the Tax Recovery Wing are recommended by the Commissioners concerned for de-notification in the public interest. This practice is likely to affect the recovery work. The Commissioners may, therefore, ensure that persons appointed in the Recovery Wing complete two to three years.

APPENDIX-89**Circular 1567**

Date of issue: 28.06.1984

The question of reducing the infructuous arrear demands in smaller cases has been engaging the attention of the Board for some time. At the conference of Commissioners held in May, 1984, certain recommendations in this regard were made and these were considered by the Board at its meeting held on 31st May, 1984. It has now been decided by the Board that:-

- (i) The CIT (Recovery) will identify cases involving demand of Rs.10,000 and below with respect to which recovery certificates were issued upto 31-3-79 and where no recovery was made during the last 5 years.
- (ii) Such cases will be processed for write-off. This will involve the convening of monthly meetings by the concerned IAC with the ITOs and TROs. Cs.I.T.(Recovery) will liaison with the local Commissioners and convene these meetings.

The arrear demands in the above cases will be written off within the existing procedures and instructions.

2. The exercise of powers of write-off of irrecoverable demands by the field authorities upto the level of IAC in respect of amounts upto Rs.10000 in each case is regulated with the approval of the Government as detailed in para 3.1 Para 4.1 according to the 1983 Edn. of the Brochure on Write-off detailed in paras 4.1 to 4.3 para 5.1 to 5.3 according to the 1983 Edn. therein.

3. It is therefore, requested that immediate action may be initiated by the Cs.I.T.(Recovery) and other Tax Recovery Commissioners for identifying cases involving demand of Rs.10,000 and below with respect to which Recovery certificates were issued upto 31-3-79 and where no recovery was made during the last 5 years. After identification of the cases monthly meetings of the concerned IAC with the ITO's and TRO's will be convened by the Cs.I.T.(Recovery) in liaison with the concerned local commissioners and by the Tax Recovery Commissioners for processing them for write-off.

4. In order to enable the Board to watch the progress of arrears thus written-off you are requested to send an yearly statement to the D.I.(RSP) as per the enclosed proforma. This may be furnished to the D.I.(RSP) by the 30th April and the D.I.(RSP) will consolidate the information and furnish it to the Board by the 30th June every year.

APPENDIX-90**Circular 1578**

Date of issue: 13.09.84

Several instructions have been issued by the Board from time to time stressing the need for ensuring proper coordination between ITO's and TROs so that recovery work is not held up. However, in spite of these instructions, it is found that Department is still facing criticism in this aspect both from the public and the Parliament.

2. The subject of coordination between different offices of Income-tax Department in various fields was studied by a Committee specially set up for this purpose. Among other aspects of cooperation, the Committee in para 13 of its summary of recommendations have stated as follows:-

“13. There should be proper and adequate coordination between the Tax Recovery officer and the assessing officer. Changes in demand should be promptly communicated to the Tax Recovery Officer. Certificates on which no action is required to be taken should be promptly cancelled. There should be regular meetings between Commissioner of Income-tax and Commissioner of Income-tax (Recovery) wherever such Commissioners are functioning and between Inspecting Assistant Commissioners and Inspecting Assistant Commissioners (Recovery). Dossiers of demand of Rs. 1 lakh and above can be discussed in such meetings (Paras 4.30 to 4.32)”.

3. The report of the Committee was considered by the Board and accepted, particularly having regard to the fact that only recently in the 217th report of the PAC, 1983-84 the recommendations at Para 5.19 touched upon the lack of coordination between ITO's leading to holding up of revenue collections which has been mentioned in the Board's letter F. No. 398/19/84-IT (B) dated the 2nd July, 1984. Therefore your attention is once again invited to various instructions on the subject which are enumerated in brief below and which instructions are reiterated.

4. In Instruction No. 1149 dated 10-2-1978 {F. No. 385/75/76-IT (B)} the report of the Committee on Income-tax arrears was considered. The following deficiencies were noted:-

- (a) Bulk issue of certificates at the end of the year instead of spacing out evenly.
- (b) Certificates being issued without meeting assessee's objections regarding alleged payments or rectifications pending and without amendment after etc.

- (c) Certificates issued in spite of stay of demands and/or grant of instalments.
- (d) Automatic issue of certificates without any action for recovery taken by the ITO himself leaving it to the TRO to take all steps for collection some of which could have been taken by the ITO himself.

The following instructions were issued thereupon:-

- (a) Aid sheet to be prepared from October onwards so that issue of certificates can be evenly spaced out.
- (b) To avoid certificates for demands which have been stayed or for which instalments have been granted here the Boards earlier instruction was referred to and it was reiterated that the register specified to be kept for such demands stayed etc., should be kept which should be inspected periodically by the IACs.

While on this subject attention is invited to instruction No.1412 dated 17-9-81 which deals with the topic of what should be done when the assessee disputes the correctness of the demand. Drawing attention to clause of 2nd schedule which empowers the TRO for granting further time, it was reiterated therein that in such cases only the anticipated demands should be collected, pending clarification from the ITO on the objection raised by the assessee. It was desired therein that the TRO at the end of the month should send a list of such cases to the IAC, wherein he had requested the ITO to consider the assessee's objections. The IAC in their turn would keep a watch on such cases and ensure that the ITO's send intimidation of modified demands to the TRO within a reasonable time.

Instruction No.1520 dated 20th April,1983 was issued from F.No.398/30/83-IT(B) in which in para 2(e) it was specifically mentioned that pending clarification which could be obtained even by deputing Inspector to the ITO a letter may be issued to the assessee to the effect that the demand has been kept in abeyance. It was also reiterated at para 2(f) of the above instruction that as per item 8 of the same Manual till such clarification no coercive step for the disputed demands should be taken pending verification.

- (c) Particulars of assets to be specified invariably in the form prescribed in page 324 of the Recovery manual.
- (d) In all cases of demands of Rs.25, 000 and above the certificates are to be forwarded through the IAC indicating the action taken

by the ITO for recovery and indicating the line of further action for TRO. This instruction is probably never obeyed. Here C.I.T.'s (Recovery) can enforce adherence to this instruction by stating that they will not accept certificates in such cases unless routed through IAC with the particulars as specified.

- (e) There should be regular meetings between C.I.T, IACs, ITOS and TRO's even as indicated in Boards circular No.175 dated 14-8-1975. Even in this connection attention is invited to recent instruction No.1567 dated 28-6-84 wherein instructions were issued for regular meeting of CsIT (Recovery) with IACs, ITOS and TROs to identify and pursue cases of Rs.10,000 and below lying pending without recovery action for 5 years for the purpose of write off.
 - (f) The staff of TRO should visit the office of ITO periodically to collect helpful data to settle cases.
 - (g) In carrying out jurisdiction for TROs the administrative commissioner should ensure that they cover and are co-terminus with the jurisdiction of ITOs.
 - (h) The work of TRO should be reviewed every month (F.No.404/138/77-ITCC dated 5-10-77).
5. In instruction No.1520 dated 20th July, 1983 mentioned above the following additional instructions were issued:
- (a) THE COMMISSIONERS SHOULD INSTITUTE REFRESHER COURSES FOR TROs and STAFF FOR ENSURING BETTER PERFORMANCE with better knowledge, better planning and better maintenance of records.
 - (b) The administrative CIT should ensure adequate sanctioned strength being given to the Recovery wing.
 - (c) Incomplete or wrong particulars or addresses and assets should be avoided in the certificates and any lapse on this part viewed seriously. Now that separate CsIT (Recovery) are there at 5 Metropolitan Charges, it should be easier for them to take action in respect of such careless work come to their notice.
6. While sending the quarterly report for TROs performance giving details of the certificates disposed and the amounts collected etc., kindly add a para giving brief particulars in respect of the following:-
- (a) Action taken for the various lapses mentioned above.
 - (b) Reviews and inspection done by IACs and CsIT.
 - (c) Meetings held with IACs and ITOs.

APPENDIX-91**Circular No. 1608**

Date of issue: 15.03.1985

Sec.231 of the I.T.Act, 1961 has been amended by the Taxation Laws(Amendment) Act, 1984 with effect from 1-10-84 with a view to extending the period of limitation for commencing recovery proceedings from one year to three years.

2. The Board had an occasion to consider whether the extended time limit will apply to demands created prior to 1-10-84. A view has been expressed that as sec.231 is a procedural section, amended provision would extend the time limit even in cases where demands were created prior to 1-10-84.

3. The Board with a view to avoid controversy and litigation in the matter, have decided that in cases where the demands were created on or before 30-9-84 recovery certificate shall be issued within a period of 1 year from the last day of the financial year in which the demand is made. As regards demands created on or after 1-10-84 the recovery certificates may not be issued by the ITOs and IACs (Assessment) in a routine and indiscriminate manner. All the assessing officers should make utmost efforts to collect the demand within extended time limit before issuing the Recovery Certificates.

4. In view of the above the Commissioners may ensure that the Recovery certificates in respect of all cases where the demands were created prior to 1-10-84 are issued according to the provisions existing in the Act prior to the aforesaid amendment. The Commissioners may also ensure that the extended time limit as per the new provision is utilised adequately for recovery of demands created on or after 1-10-1984.

APPENDIX-92**Circular 1642**

Date of issue: 14.08.1985

Reference is invited to Boards instructions. No.1520, dated 20th July 1983 as amended by Instruction No.1542 dated 3rd December 1983 whereby the need for having proper co-ordination between the ITO & TRO and for imparting training to the staff in the Recovery wing etc., was communicated to you. In pursuance of the recommendations made by the Public Accounts Committee (1983-84) in para 5.18 of its 217th report the board entrusted to DOMS the conduct of a comprehensive study particularly the efficiency of the TROs. Extracts of the observations and recommendations made by DOMS in this regard are given below:-

It is observed that very junior officers are being posted as Tax Recovery Officers. Information obtained in respect of the metropolitan charges illustrates this point.

From the above chart it is seen that in Delhi and Calcutta charges all the TROs are ITOs Group B with less than 5 years experience. In other charges also majority of the officers posted as TROs are junior officers. In none of the charges any ITO in Group A senior scale has been posted as a Tax Recovery officer. It may be pointed out that a TRO has to tackle many complicated problems which require knowledge not only of Income Tax law but also a various other laws including transfer of property Act, Civil procedure code etc., He has to deal with assesseees who are not very straight forward and have managed to delay the payment of taxes for a long time. It may not be therefore possible for a newly promoted officer to tackle those problems effectively. It is therefore recommended that some senior Group 'A' Income Tax Officers should be posted as Tax Recovery Officers for handling high demand and more complicated cases of recovery.

Quality of Staff

Even in Metropolitan charges where Commissioners of Income-tax(R) are functioning the entire staff is under the administrative control of CIT I who posts the staff with the TROs. It has been found that it has become almost a practice to post either newly promoted Inspectors of staff in tax recovery officer unit or even worse, condemned staff. It is therefore not surprising that the TROs are not able to extract work from such staff. In any office, there is bound to be some more efficient and some less efficient staff. The point to be made is that the TRO should not as a rule have inefficient staff members only. C.I.T (Admn.) should

therefore provide a fair-mix of competent and not so competent staff for the Tax Recovery officers.

2. The recommendations made by the Review committee in this regard have been considered and accepted by the board. The Board desires that the above recommendations be kept in mind by the Commissioners while posting officers and staff to the Recovery wing.

APPENDIX-93**Circular 1644**

Date of issue: 30.07.85

In pursuance of the recommendations of the Public Accounts Committee the Board entrusted the conduct of the study of the Tax Recovery machinery to Directorate of O&M Services. In the course of the said study it was noticed that the problem being faced by the TROs is lack of co-ordination with the I.T.O's para 5.20 of the report submitted by the DOMS reads as under:-

Another problem being faced by the TROs is lack of co-ordination with the ITO's. Section 225(2) of the Act provides that the ITO's shall inform the TRO about any taxes paid or time granted for payment after the issue of TRC. However in practice this is never done. The problems faced regarding co-ordination are mentioned below:-

- (i) The variation in demand on account of rectification, revisions, appeal effects etc. are not being intimated promptly by the ITO's and the TROs.
- (ii) Collection made by the ITO's after issue of TRCs as also adjustment of refunds against arrears is not being intimated to the TROs.
- (iii) No intimations about the deletion of advance arrears on completion of regular assessment are sent to TROs.
- (iv) Files are not made available by the staff of ITO's office to the staff of TROs office.

To bring about better co-ordination between ITO's and TROs and to overcome the problems mentioned above it is recommended that IACs (R)/Range IACs should convene a meeting of the TROs and the concerned ITO's twice a month. Before the date of such meeting the TRO should supply a list of defaulters with arrears exceeding Rs.10, 000 in duplicate to the ITO concerned who should indicate in the list any changes in the arrear position in those cases and should also give the latest assets position. Those cases then may be discussed in the meeting so that appropriate action is taken expeditiously.

The findings of the committee have been considered by the Board. In order to achieve better results in this regard the board desires that CsIT should direct(R)/IAC(R). IAC's to convene a meeting of the TROs and the concerned ITO's twice a month, for which specific dates may be set apart every month. Before the dates of such meetings the TROs should

supply a list of defaulters with arrears exceeding Rs.10,000 in duplicate to the ITO concerned who would indicate in the list any change in the arrear position in those cases and should also give the latest position regarding assets. This will obviate time consuming and dilatory cross references between the offices of the TRO and ITO and thus hasten the process of recovery.

2. It is requested that these instructions may please be brought to the notice of all concerned.

APPENDIX-94**Circular No. 1664**

Date of issue: 22.11.85

It has been brought to the notice of the Board that the Income-tax Officers and Inspecting Assistant Commissioners in some charges are not taking any action for effecting any recovery in cases where recovery certificates have been issued to the Tax Recovery Officers. It has been reported that they have taken the stand that in view of the following directions contained in Board's instruction No. 1478 [F.No. 398/29/81-IT(B) dated 27-7-82], they are precluded from taking any action for recovery in respect of certified demands:

‘(v) In so far as certified demand is concerned, recovery proceedings, stay or instalments will be the responsibility of CIT(R) and his officers. Normally the territorial CIT or his officers should not deal with the certified demands.’

The aforesaid instruction was issued with the idea of removing the bottlenecks which generally arise from multiplicity of responsibility. In this connection attention is invited to the provisions of Section 225 and 226 of the Income-tax Act which authorise the Income-tax Officers to take recovery action to the extent provided therein, notwithstanding the issue of R.Cs. to the T.R.O in any particular case. It is, therefore, clarified that the direction contained in the aforesaid instruction does not override the statutory provisions contained in the Income-tax Act and consequently does not preclude the ITOs from taking any action for recovery. The position was reviewed in a meeting of the Board recently on 3-9-1985. It is emphasised that when there is necessity for immediate recovery action (such as attachment of bank account) the Income-tax Officer should exercise his powers in the interests of revenue; where there is time to intimate the TRO for recovery action without jeopardising interest of revenue, Income-tax Officer can intimate the particulars of assets to him for recovery.

2. However, as regards grants of instalments in certified cases, the ITO, IAC or CIT (Admn.) will consult his counterpart in the Recovery Wing before granting them.
3. With a view to effecting better co-ordination between ITOs and TROs, especially in metropolitan charges where separate Commissioners of Income-Tax (Recovery) are functioning, it is advisable to work out the modalities for liaison between the territorial Commissioners of Income-tax and the Commissioners of Income-tax (Recovery).
4. These instructions may please be brought to the notice of all officers working under your charges.

APPENDIX-95**Circular No. 1723**

Date of issue: 18.08.1986

According to Tax Recovery Inspectors Manual, two registers are required to be maintained in the office of Tax Recovery Officers, one for movable attached and sold and other for immovable attached and sold, containing details regarding name of tax defaulters, amount of arrears, date of attachment, description of property attached, date of sale etc.

2. The C & AG in their report for the year 1984-85 (para 1.09.04) have noted that these registers were not being maintained at all or were maintained in a defective manner. In case of immovable properties the proper maintenance of this register and the inspection of it at periodic intervals would ensure effective monitoring of arrear collection, by sale of immovable properties attached. The proper filing in of the survey, number of property, its estimated value, the amount of sale proceeds, date of confirmation and the date of issue of sales certificate would go a long way in ensuring that properties attached are put to sale and the proceeds realised and adjusted against the arrear demand. In case of movable properties, among other things clear, accurate and detailed description of the properties should be recorded in the register to avoid any ambiguity or confusion about the property attached.

3. The Board desires that steps should be taken to ensure that these registers are maintained properly and updated from time to time as per the existing guidelines in the Tax Recovery Inspectors Manual. Compliance certificates from TROs working under your charge should be obtained, while inspecting the work of TROs, the senior officers should invariably inspect these registers.

4. This may kindly be brought to the notice of all TROs and their supervisory officers in your charge.

APPENDIX-96**Circular No. 1729**

Date of issue: 12.09.1986

It has been brought to the notice of the Board that the tax recovery certificates are issued by ITOs without verifying the correctness of arrears of taxes to be reported in the certificate. This causes avoidable harassment to the assessee in whose cases the demands have already been paid. This can be avoided by properly verifying the correctness of the arrears from the assessee concerned. The Board desires that before issuing tax recovery certificates, ITO should ascertain the correctness of the arrear position appearing in D & C Register by issuing a letter to the concerned assessee giving the particulars of tax arrears, assessment yearwise and mentioning as to whether this relates to IT, WT, GT, penalty, interest, etc., and asking the assessee to bring to his notice if there is any discrepancy/, for example, any rectification/appeal effect pending or credit not having been given to tax payments already made etc. This will go a long way in improving the public relation of the Department and ensure correct certificates being issued to the TROs.

2. Further it has been found by DOMS in a review of the working of tax recovery machinery that generally the tax recovery certificates are issued in the month of March resulting in a large number of defects in the TRC, e.g., full names and addresses of the assessee are not given; and addresses of partners in cases of firms are not furnished; relevant assessment years, certified amount etc., are not correctly given, names and addresses of legal heirs, wherever necessary, are not furnished etc. etc. In large number of cases these defects occur due to preparing TRCs on the basis of D & C Registers without referring to actual case files. To avoid these defects in TRCs, the Board desires that Income-tax Officers should prepare the Tax Recovery Certificates with reference to the actual base files and not on the basis of the D & C Registers alone.

3. For better recovery of the certified arrear demand, it is necessary that the senior officers should also involve themselves in the day to day progress in cases where arrears are high. The Board desires that CsIT in non-metropolitan charges (i.e. where there is no CIT(R) posted) should oversee all cases of certified demand between Rs. 1 lakhs, and guide the TROs in speedy collection of the arrear demand.

4. With the amendment of law by Taxation Law (Amendment) Act., 1984 extending time for issue of recovery certificates from one year to 3 years, it may not be possible for TROs to take coercive action for recovery of tax u/s 222 of the Income-tax Act for 3 years unless the certificates are

issued early. The Board, therefore, desires that a notification should be issued by the Commissioners immediately u/s 226(5) authorising the ITOs to recover the arrear demands by issue of distraint warrants to the defaulters.

5. This may be brought to the notice of all officers working in your charge for its strict compliance.

APPENDIX-97**Circular No. 1730**

Date of issue: 23.10.1986

I am directed to say that the Directorate of organisation and Management Services (Income-tax) in its study report on the working of tax recovery machinery has recommended at Para 5024 there of (S. No. 23 of the Summary and Recommendation that the DI(R) should obtain the 'Monthly Progress Report of the TROs work' and the "Action Plan for TROs", and make a chargewise review of these report for information of the Board for better management of recovery work.

2. The matter has been carefully considered by the Board. At present the monthly progress report is required to be collected and consolidated by you for your use. The quarterly report on the Action Plan for TROs is required to be furnished by you to Member (R&A). The Board desires that in future the consolidated monthly progress report of the TRO's work should be furnished to D.I (Recovery) by all Commissioners and where separate Commissioner of I.T. (Recovery) are functioning by such Commissioner by the 25th of the succeeding month. Also a copy of the quarterly feed back report on the action plan for TROs may be endorsed to the D.I.(R). The D.I. (Recovery) shall make a chargewise review of these reports and furnish its findings/comments to ITCC Section of the Board by the 30th of the succeeding month in the case of monthly progress report and by the 30th Oct. 30th Jan. and 30th April in the case of Action Plan for TROs to IT (B) Section of the Board. The time schedule prescribed herein may please be adhered strictly.

3. These instructions may please be brought to the notice of all officers working in your charge.

APPENDIX-98**Circular No. 1826**

Date of issue: 28.08.1989

Reference is invited to boards instruction No.315 dated 26-7-71 wherein board had clarified the mode of dealing with cash whenever TRO's/ITI's received payment of taxes in cash. As per para 3 of the instructions, the TROs/ITIs are required to furnish fidelity Insurance Bonds for Rs.5000 each.

In a study conducted by the Directorate of Organisation and Management Services (IT), it was found that the stipulation of these bonds was not necessary as it may not serve any purpose. It was also pointed out that officers who are sent on search and seizure work are not required to execute similar bonds even though they deal with cash and other valuables. Considering all these aspects it has been decided to dispense with the need for furnishing of fidelity bonds by Tax Recovery Officers/ Tax Recovery Inspectors. Wherever it has already been done, necessary action may be taken to discontinue the same. These instructions may be brought to the notice of all the officers working in your region/charge.

APPENDIX-99**Circular No. 1929**

Date of issue: 22.08.1995

Since the nature and quantum of workload of TRO had undergone considerable change a study was conducted by the Directorate of O&M to look into the norm of 3700 Recovery certificates per TRO, per year earlier fixed and recommend a realistic norm for disposal of Recovery certificates by TRO. The report of the DOMS was considered by the Board and it has been decided to fix the norm of disposal of Recovery certificates by a TRO, per year at 1200 Recovery certificates.

The revised norm may please be brought to the notice of all Tax Recovery Officers under your jurisdiction. In view of this lowering of the norm from 3700 to 1200 Recovery certificates, it may please be ensured that this norm should be achieved by each TRO and his performance judged on this basis.

APPENDIX-100**Circular No. 1937**

Date of issue: 25.03.1996

It has come to the notice of the Board that the lack of sufficient information about the movable and immovable assets of an assessee has often resulted in delay in recovery of outstanding demand.

2. It has, therefore, been decided that in all cases selected for scrutiny, other than salary cases, the Assessing Officer shall obtain from the assessee the particulars of assets including name and address of debtors, bank accounts Bank deposits etc. The information may be obtained under the provisions of Section 142(1) of the Income-tax Act and may be utilised for early recovery of tax dues.

APPENDIX-101

REFERENCES

DIGEST OF CASE LAWS PERTAINING TO TROs & RECOVERY WORK (Section 222 to 232 of I.T.Act)

Section 222

S.No.	Citation	Case Name	Gist	Index No.
1.	68 ITR128	Mohamedaly Sarafaly and Company Vs. ITO	ITO can proceed u/s 226(3) without certificate u/s 222	
2.	72 ITR 623	Kapurchand Shrimal Vs. TRO	In case of HUF manager is not assesses in default	
3.	76 ITR 188	Bogram Lakshmiah and Brothers Vs. TRO	Act of 1922 replaced by Act of 1961	
4	76 ITR 607	Segu Butchaiah Setty Vs. ITO	AO P-no separate demand notice for individual required.	
5.	78 ITR 524	Union Saw Mills and Others	Assessee cannot dispute the correctness of asstt. before the TRO	
6.	82 ITR 955	Gourishankar	IT.Act 1961 superceeds other public demand recovery act.	
7.	84 ITR 113	Behari Lal Ram Charan Kothi Vs. ITO	Issue of Tax recovery certificate is mandatory u/s 222(1)	
8.	87 ITR101	Kethmal Parekh Vs. TRO	RPC in the name of firm Individual partners cannot be treated as defaulters	

9	97 ITR 235	M.R. Prakasam and others	Rule 11(1) of IInd schedule. Scope of investigation quasi-judicial process.	
10	97 ITR 310	Iqubal Begum and Others Vs. TRO	Benami property to be decided by TRO when a claim is made before him	
11	105 ITR 144	ITO Vs. C.V.George	Partner's liability	
12	102 ITR 689	K. Jagadish Mitter	<u>232</u> Provides for other modes of recovery including civil suit.	
13	113 ITR 299	Union saw mills and others	229 recovery of penalties 221(1). Only after it had obtained finality u/s. 221(2)	
14	114 ITR 645	ITO Vs. Narula Finance Ltd. (in liquidation)	IT Dues gets no preference over other creditors before liquidator.	
15	117 ITR 868	TRO Vs. V. Raghavan, Asstt. Commissioner	Bonafide transferee for valuation consideration gets protection.	
16	121 ITR 868	S.N. Santhalingam Vs. ITO	Proceedings against partner of firm invalid.	
17	139 ITR 906	Brij Ratan Lal Bhoop Kishore and Another	Unregistered firm partners property cannot be attached.	
18	141 ITR 54	Chhotu Sood Vs. TRO	Auction and sale should adhere to rule 15 (2) of schedule II.	
19	143 ITR 607	S.C.Jain	Attachment of main residential house of defaulter exempt under another act.	
20	148 ITR 608	Manohar Lal Ahuja and others Vs. ITO	Jurisdiction u/s 226(3) only when there is arrears or recovery certificate.	

21	166 ITR 759	S. Hardip Singh Sandhu Vs. TRO	Order u/s 179 can be issued with demand with u/s 156	
22	168 ITR 56	ITO Vs Manmohanlal and others	Partners jointly and severally liable to firm's arrears	
23	172 ITR 56	Surinder Nath Kapoor	Recovery proceedings are not illegal when appeals are pending.	
24	172 ITR 612	Mannoo Lal Kedar Nath (HUF) Vs. ITO	Sale invalid. If arrears of tax are reduced substantially in appeal.	
25	174 ITR 247	Smt. Shanti Devi Vs. ITO	Property cannot be sold by petition for waiver of interest is pending	
26	176 ITR 204	Kuldeep Singh Vs. TRO	Appeal under rule 86 of Schedule II pending. No imprisonment of assessee possible.	
27	183 ITR 204	Duncan Stratton and Co. Ltd. and another	Tax recovery certificate should indicate the years to which dues relates.	
28	184 ITR 275	Malabar Produce and rubber co ltd. Vs. TRO	Lease 8 ranted during substance of attachment not maintainable	
29	189 ITR 534	K. Shahal Hassan Musallar (Legal Heir of A. Thangal Kunju Musallar.	Recovery proceedings can be initiated on the legal representative only if notice of demand is served on the legal representative and he fails to pay amount as demanded.	
30	191 ITR 179	Sultan Leather Finishers P. Ltd.	Recovery proceedings cannot be taken when rectification application was pending.	
31	198 ITR 229	Mahmed Akhtar Hussein (alias) Kadar Bhatti	Arrest and order of TRO under rule 76(1) of IIInd Schedule without subjective satisfaction.	

32	208 ITR 486	Inder Raj Malik and others	After attachment notice served no transaction possible. Sale of property by TRO valid.	
33	211 ITR 807	Mariam Misria Vs. TRO	RRC issued against defaulter. Recovery an continue against legal representative.	
34	218 ITR 676	Punjab National Bank	RRC issued and served on the assessee/defaulters. No transaction without prior permission of TRO possible. As per rule 16. Civil Court cannot intervene.	
35	222 ITR 608	Darshan Kumar	Directors liability to recovery. Revision petition is not ipso facto stay.	
36	222 ITR 632	Gajendra Kumar Banthia.	TRO's notice should be specific.	
37	223 ITR 771	Janaki S. Menon and others	Income tax and other dues are first charge on the estate of the deceased.	
38	223 ITR 297	K. Basavarajappa Vs. TRO	Intending purchaser had no locus standi under Rule 60.	
39	238 ITR 312	State bank of India Vs. TRO	Rule 11(6). Suit in civil suit against attachment possible.	
40	240 ITR 87	Srikanta Datta Narasimha Raja Wediyar	Section 32 of wealth Tax Act incorporate 221-232 and IInd and IIIrd schedules of I.T.Act.	
41	244 ITR 324	Prakash Chand Lunia Vs. TRO	Attachment of defaulter's share in HUF property valid. Purchaser of share in auction, will become a shareholder of HUF property.	
42	250 ITR 45	Padam Kumar	Rule 11 of IInd Schedule. Claim or objection against attachment/sale proclamation to be investigated and orders passed.	

Section 224

1	78 ITR 524	Union Saw Mills and Others	Assessee can not dispute the correctness and assessment before TRO.	
2	168 ITR 308	Sohani Devi and Others	TRO cannot look into the correctness of assessment. Assessee cannot question the same before TRO as per sec 224.	
3	164 ITR 540	Himangshu Sekhar Chakravarty	Once recovery certificate has been issued recovery proceedings are not barred by limitation.	
4	247 ITR 395	Commissioner of Income Tax and others Vs. K. Shahal Hasssan Musaliar	Rule 85 applies only when defaulter dies after the issue of the RC.	

Section 224(2)

1	172 ITR 56	Surinder Nath Kappor	Writ cannot be issued to quash recovery proceedings.	
2	100 ITR 591	Chittoori Ramachandra Rao.	Inform assessee of the tax reduced in appeal. No sufficient to sale of property.	

Section 226

1	68 ITR 128	Mohamedaly Sarafaly and company Vs TRO	226(3) notice to 3rd party need not be after issuing certificate u/s. 222 to the defaulter.	
2	84 ITR 113	Behari Lal Ram Charan Kothi Vs ITO	226(3) (i) notice without mentioning amount is not invalid.	
3	106 ITR 540	Satya Pal Verma Vs ITO	Tax arrear of demand to be recovered form legal heir. First demand notice u/s. 156, the only 221 notice.	

4	144 ITR 29	Modi Sugar Mills Ltd	Old Act on amalgamation.	
5	144 ITR 645	Income Tax Officer, Company Circle XVII, New Delhi and others Vs Narula Finance Pvt Ltd (In Liquidation)	IT dues get the preference over other creditors with official liquidator.	
6	136 ITR 89	Shaukat Trading Co. Pvt. Ltd. Vs Tax Recovery Officer, Varanasi, And Others.	TRO cannot attach money in bank's account without ITO first issuing demand notice to the defaulter.	
7	156 ITR 30	Hira Lal and sons Vs ITO	Partners arrears can be adjusted from firm after giving the firm the opportunity of being heard.	
8	167 ITR 668	Bank of India	Property of wife cannot be attached for arrears of husband unless proved to be held benami.	
9	172 ITR 56	Surinder Nath Kapoor	Tax reduced in appeal. Recovery proceedings valid	
10	173 ITR 10	ITO Vs. Manmohanlal and others	Service of demand notice, pre-requisite for recovery proceeding.	
11	183 ITR 652	Beni Ram Mool Chand and another Vs. TRO	TRO bound to consider application for refund and adjustment of tax arrears	
12	235 ITR 13	Salar Publication Trust Vs. ITO	Relates to Section 231 prior to amendment in 1987 w.e.f 1.04.89	
13	240 ITR 562	N.K. Mohnot	Seizure of promissory notes in accordance with rule 30 after issue of ITCP 9 during 133A survey valid.	

Section 226(3)

1	58 ITR 777	Chhagan Lal Rathi Vs. ITO	Writ can be filed against attachment notice.	
2	62 ITR 402	Bansal and Company Vs. ITO	Statutory time limit as per norms to be given before initiating garnishee proceedings.	
3	64 ITR141	Tara Chand Vs. ITO	Provisions of section 226(vi) of I.T. Act	
4	71 ITR 806	Third Income-tax Officer Vs. M. Damodar Bhat	Validity of notice u/s 226(3) of I.T. Act	
5	78 ITR 427	P.K. Trading Co. Vs. ITO	226 (3) notice can be issued only against a debtor of defaulter	
6	79 ITR 743	Tara Chand Vs. ITO	Notice u/s 226(3)(vi) should mention the amount and time for making the payment.	
7	83 ITR 790	Southern Textiles Ltd. Vs. ITO	Dispute about liability officer to make enquiries before recovering the amounts by garnishee proceedings.	
8	94 ITR 378	In the matter of National Conduits P. Ltd. Income Tax Officer, Distt. II(2)/ Additional (Collection), New Delhi Vs. P.T. Gajwani, Official Liquidator National Conduits P. Ltd.	Company under liquidation. Leave of court to be obtained before proceeding to recover tax.	
9	105 ITR 622	P.P. Kanniah Chetty Vs. ITO	Garnishee order can be issued against amount due to partner in case of an unregistered firm	

10	102 ITR 225	K.A. Veerichetty and Sons Vs. ITO	In case of AOP member of AOP can-not be held as defaulter and money due to member cannot be attached.	
11	108 ITR 627	Madan Lal Lohia	Estate duty	
12	112 ITR 829	E.P. Eapen Vs. ITO	In case of a dissolved firm partner are jointly and severally liable towards arrears of tax	
13	116 ITR 306	T.R. Rajkumari	226(3) cannot be resorted to in case of time barred dues/debts	
14	131 ITR 129	Beharilal Ramcharan Vs. ITO	Objection by garnishee. ITO/TRO to conduct inquiry and determine.	
15	148 ITR 608	Manohar Lal Ahuja and others Vs. ITO	226(3) notice cannot be issued without valid demand notice u/s 156 of I.T.Act	
16	150 ITR 678	Embassy Radio Television P. Ltd. and another	Provisions of 226(3)(vi) affirmed.	
17	173 ITR 155	Mcdermott Internaitonal Inc.	226(3) notice cannot be issued to a person who owes no money to the defaulter	
18	173 ITR 164	Mcdermott Internaitonal Inc.	226(3) notice invalid if assessment order and demand notice not served on the assessee.	
19	173 ITR 469	Surinder Nath Kapoor	Garnishee order is for a specific sum Higher price on sale to be paid to the defaulter as compensation	
20	186 132	Miss Gayatri Devi Vs. ITO	226(3) notice can be issued only if money is due to the defaulter	
21	187 ITR 398	Salil Kumar Ghosh Vs. ITO	Excess realization through garnishee proceedings is to be refunded to the assessee.	

22	196 ITR 743	Lal Man	226(3) order becomes null and void when original asstt. order is set aside.	
23	197 ITR 499	Kurumber Betta Estate	Arears of partner can be recovered through garnishee proceedings on the firm	
24	204 ITR 571	Mohan Singh	Before effecting recovery assessee should be served notice and given opportunity of being heard	
25	208 ITR 103	Smt. Tejal R. Amin	In garnishee proceedings debtors can be deemed to be assessee in default only for limited purpose.	
26	234 ITR 475	Narendra Kumar	Disputes on questions of facts cannot be adjudicated under writ.	
27	235 ITR 619	Tissan Joseph	Opportunity of being heard to be given before garnishee proceedings u/s 226(3)	
28	241 ITR 178	Vysya Bank Ltd. Vs. JCIT Global Trust Bank Ltd. Vs. JCIT	Banks to pay the amounts as per garnishee proceedings even before the maturity of FDs.	
29	251 ITR 158	KEC International Ltd.	Order rejecting stay petition by AO should give the reasons for rejection.	

Section 226(4)

1	61 ITR 538	Mohamed Thaha Vs. ITO	226(4) can be issued to court and court is required to comply.	
2	168 ITR 616	Manmohanlal and others Vs. ITO	Only when notice is properly served, recovery of tax possible	

Section 230(2)

1	148 ITR 316	Dr. Jayanti Dharma Teja	Notice given to Airlines u/s 230(2) by TRO valid	
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CHAPTER -I INTRODUCTION

S.No.	Citation	Case Name	Gist	Index No.
1.	82 ITR 955	Gourishankar	Act and Schedules are self contained codes	Case Law-1
2.	102 ITR 580	Pranavi Ram Baruva	Proper and valid service of demand notice	Case Law-3
3.	88 ITR 443	Raja Jagadish Pratap Sahi	TRO can recourse to any other mode open to him. Other than modes prescribed in the Act and schedules.	Case Law-4
4.	78 ITR 352	Jwala Prasad	Action without lawful jurisdiction not permissible.	Case Law-5
5.	72 ITR 623	Kapurchand Shirmal Vs. TRO	ITO/TRO can act only against assessee in default and not any other employee.	Case Law-6
6.	196 ITR 1	M.R.Pratap	For a company Managing Director in the Principal officer and therefore can be prosecuted. But no recovery of the tax be made from him unless provided as per section 179 in case of limited companies.	Subsequent Case to Case No. 6

CHAPTER-III – VERIFICATION AND RECONCILIATION OF ARREARS

S.No.	Citation	Case Name	Gist	Index No.
1.	64 ITR1	Kapurchand Shrimal	Requirement of satisfaction of TRO, as per rule 73(1)(b)	Case Law-1
2.	114 ITR 408	TRO Vs. V.A.Trivedi	Civil Court cannot attach a property, after TRO had issued notice under Rule 2 of second schedule.	Case Law-2
3.	115 ITR 791	Union Saw Mills and	Rule 16(1) of second schedule, others prevents civil courts from attaching property after service of notice under rule 2 of second schedule.	Case Law-2
4.	103 ITR 256	State Bank of Patiala	Attachment of property takes effect from the date of service of notice under Rule 2 and not from the date of attachment. Any transaction between the date of service of notice and actual attachment is invalid.	Case Law-3
5.	115 ITR 364	M. Rajagopal (Managing Partner, K M S Bus Service, Palghat)	TRO not empowered to prohibit transfer, but interest of revenue will be protected if transfer is prejudicial to its interest	Case Law-4
6.	115 ITR 791	Union Saw Mills and others	Setting aside of sale by Civil Court would not automatically vacate attachment by department. Attachment will remain.	Case Law-5 (same as Sl. No. 3)
7.	63 ITR 555	Behari Lal Baldeo Prasad	Reduction on demand on appeal. TRO's proceedings on previous demand is null and void.	Case Law-7
8.	118 ITR 112	Union Saw Mills and others Vs. Jardine Henderson Ltd.	Demand modified Fresh notice not required only the recovery certificate needs modification.	Case Law-8

9	161 ITR 275	M.N. Jadhav (Decd. by legal representatives)	Demand cancelled by appropriate authority, but subsequently upheld by higher appeal on authority. Fresh demand notice not required.	Case Law-8 (later case law)
10	113 ITR 299	Union Saw Mills and others	Penalty order u/s 221 before the completion of asstt. cannot be recovered through RRC	Case Law-9
11.	102 ITR 724	C.V. George and others Vs. ITO	Recovery can be made only from an assessee in default.	Case Law-11
12	87 ITR 101	Kethmal Parekh Vs. TRO	Recovery certificate in the name of firm, individual partners cannot be treated as defaulter.	Case Law-12
13	105 ITR 144	ITO, Asstt II, Calicut and another Vs. C.V. George and others	When a firm is in default individual partners can be proceeded against	Case Law-12
14	112 ITR 829	E.P. Eapen Vs. ITO	Partners of the firm are jointly and severally liable for any tax payable	Case Law-12 (Late case law)
15	72 ITR 617	Rajeshwar Nath Vs. ITO	Partner of an unregistered firm can be proceeded against to recover the tax of the un registered firm	Case Law-13
16	140 ITR 821	Union saw mills and others Vs. Madar Bux and another	Civil Court have no jurisdiction over the recovery matters	
17	92 ITR 85	Karaa Singh Sobti	Each partner of the firm has the legal obligation to pay the entire tax payable by the firm	Case Law-14
18	44 ITR 454	Moti Lal and another Vs. ITO	A partner of a dissolved firm is liable to pay the tax assessed on the firm.	Case Law-15

19	93 ITR 353	Agricultural company, Rampur	Service of notice on the accounts officer of the company is valid service	Case Law-15
20	89 ITR 120	ITO, Sitapur Vs. Khanjan Lal and another	Entire tax payable by the firm cannot be recovered from one of the partners only when other partners of firm are solvent.	Case Law-16
21	94 ITR 463	Chulai Ram Vs. ITO	Recovery of taxes in case of a dissolved firm – s.189(3)	Case Law-17
22	102 ITR 707	Gopi chand	Fresh demand notice is not required in case of reduction in appeal	Case Law-18
23	116 ITR 176	Imperial Chit funds Ltd. (In liquidation) Vs. I T Deptt.	Official liquidator to set apart funds for I.T. liability as per 178(2) of I.T Act	Case Law-19
24	101 ITR 470	ITO, B-Ward Company Circle, Hyderabad Vs. Official Liquidator	Preferential treatment to I T arrears in case of a company in liquidation.	Case Law-20
25	64 ITR 378	In the matter of National Conduits P. Ltd. ITO, Distt. II(2)/Additional (Collection), New Delhi	Leave of court to be sought to recover the from a company in liquidation	Case Law-20
26	102 ITR 153	Baroda Board and Paper Mills Ltd. (In liquidation) Vs. ITO and Sales Tax Officer, Peiad Vs Rajratna Naranbhai Mills Co. Ltd and another	No priority for I T dues in case of company in liquidation	22 decision reversed (see next case law)

27	189 ITR 90	Rajratna Naranbhai Mills Co. Ltd.	Priority for I T Dues in case of company is in liquidation	22 (later case law)
28	114 ITR 645	ITO, Co Circle XVII, New Delhi and others Vs. Narula Finance P. Ltd. (In liquidation)	I.T. Department get no preference but only paid pari passu with other creditors.	23
29	118 ITR 57	S. Hardip Singh and another Vs. ITO	Private company. Provision u/s 179 to proceed against directors even when company is in liquidation	24
30	233 ITR 508	Basant Singh (Decd.) and others Vs. TRO	Proceedings as per section 179 & valid against directors of a Pvt. Co wound up	24 (later case law)
31	112 ITR 829	E.P. Eapen Vs. ITO	Partners are jointly and severally liable for the tax in case of a dissolved firm	25 (see serial no. 16 above)
32	117 ITR 308	S. Arunagiri chettiar Vs. Third ITO	Person who was not partner at the time of dissolution cannot be proceeded against.	26

CHAPTER-IV - SERVICE OF NOTICE

S.No.	Citation	Case Name	Gist	Index No.
1	53 ITR 100	Banarsi Debi and another Vs. ITO	Notice should be served within prescribed time	Case law 1
2.	157 ITR 13	Commissioner of Income Tax Vs. Sheo Kumar Debi	Notice should be issued within prescribed time	1 (case law reversed next case law)
3.	107 ITR 409	B. Johar Forest Works	Proper service of notice a pre requisite	3
4.	27 ITR 54	CIT, Bombay City I, Vs. Ramsukh Motilal Bombay	Statutory time limits prescribed for notices to be given to the defaulter.	11
5.	68 ITR 407	Kurban Hussain Ibrahimji Mithiborwala Vs. CIT, Gujarat	Proceedings should be based on valid notice	11
6.	52 ITR 625	Mir Iqbal Husain Vs. The State of UP	Statutory time limits prescribed should be given to the defaulter	11
7.	45 ITR 348	Commissioner of Agricultural Income Tax, Kerala, Vs. Amalgamated Coffee Estates Ltd.	Prescribed time limits to give to notices in accordance with law	11
8.	141 ITR 85	Commissioner of Agricultural Income Tax Vs. Ramkuvar and other	Prescribed time limit as per law to be given to the defaulter	11
9.	46 ITR 452	Mohammed Atiq Vs. ITO	Levy of penalty	12

CHAPTER-V – ATTACHMENT OF PROPERTY

S.No.	Citation	Case Name	Gist	Index No.
1.	117 ITR 255	Smt Shakuntala Devi Bhartiya Vs. TRO	Objections raised by the defaulter should be considered by TRO before recovery proceedings are continued.	Case law-23
2.	115 ITR 423	Maina Debi Goenka	Tax arrears of the deceased cannot be recovered from third party unless funds were inherited from the deceased.	24
3.	167 ITR 668	Bank of India	Beanmi property to be proved before attachment	25
4.	114 ITR 213	Union of India and others (and other Petitions)	State gets precedence in recovery of tax article attached is hypothecated.	26
5.	112 ITR 156	Shardaben Jayantilal Shah and Others Vs. TRO	Compensation received on the death of defaulter cannot be attached by TRO	69
6.	73 ITR 520	Baldeo Prasad	Procedure laid down by Rule 55 of second schedule to be followed	75
7.	101 ITR 624	Bijli Cotton Mills (Under Authorised Custodian) Vs. TRO	TRO to investigate the claim of the objector and decide before proceedings with sale.	76

CHAPTER-VI – ATTACHMENT OF MOVABLE PROPERTY

S.No.	Citation	Case Name	Gist	Index No.
1	48 ITR 943	Commissioner of Wealth-Tax, Assam Vs. Ahmed Tea Company (Private) Limited	Wealth Tax debt owed	Case law 6
2	48 ITR 1005	Commissioner of Wealth-Tax, Madras Vs. Pierce Leslie and Company Limited, Kozhikode.	Wealth Tax-debt owed	Case law 7
3	62 ITR 745	Sahukara Bank Limited Vs. ITO	Garnishee denies liability to defaulter. IT authorities can still attach the amount	Case law 13
4	83 ITR 790	Southern Textiles Limited Vs. ITO	Officer can enquire into the bonafides of denial by garnishee	Case law 13
5	116 ITR 306	T.R. Rajkumari Vs. TRO	Garnishee proceedings cannot be resorted to once the debt becomes time barred.	(later case law)
6	62 ITR 402	Bansal And Company Vs. ITO	Garnishee proceedings are valid	Case law 14
7	79 ITR 743	Tara Chand Vs. ITO	Garnishee proceedings should mention the amount and time limit for payment in the notice	Case law 14
8	28 ITR 362	Virji Devshi Vs. Virina Soorayya	Can the decree of a Civil court attached ?	Case law 19
9	98 ITR 194	Bhagwandas Narayandas Vs. Commissioner of Income-Tax	Fixed deposit receipt issued by Bank does not possess any intrinsic value.	Case law 23

10	103 ITR 294	Syed Khaja Vs. Raghvendra Rao & others	Amount deposited in pursuant to an order of court by the defaulter cannot be attached u/s 226(3).	Case Law-24
11	135 ITR 572	TRO, Dharwar Vs. Hansaben and Another.	Property in custody of Court can be attached as per Rule 31 of second schedule.	Case Law-24a
12	197 ITR 407	V. Satyanaryana and Others. Vs. TRO	Attachment became effective from the date of demand notice issue by TRO under rule 2 of second schedule.	(Later case law)
13	104 ITR 20	Sriniwas Pandit. Vs. S. Jagjeet Singh Sawhney and Another	IT dues have priority over other creditors even in a decree by civil court in favour of other creditors	Case Law-30
14	161 ITR 220	TRO Vs. Punjab and Sind Bank and Others	I.T dues Vs. Bank mortgage Department is an unsecured creditor only and mortgage has priority.	(later case law)
15	110 ITR 135	Union Saw Mills and Others. Vs. Tata Mills Limited and Others.	Tax dues of the firm can be recovered from sale proceeds of Partner's property.	Case Law-30
16	168 ITR 616	Manmohanlal and Others. Vs. ITO	Tax becomes due only when notice is properly served.	Later case law
17	6 ITR 180	Manickam Chettiar. Vs. ITO	I.T dues have priority over other creditors.	Case Law-32
18	37 ITR 487	Associated Pictures Limited Vs. Union of India and Others	I.T dues have priority over decree holder	Later case law
19	7 ITR 411	Governor-General in Council Vs. Chotalal Shivdas and Another	I.T dues have precedence over all other debts.	Case Law 33

20	56 ITR 91	Builders Supply Corporation Vs. Union of India and Others	Tax dues take precedence and priority over unsecured debts.	Case Law-34
21	140 ITR 894	Union Saw Mills and Others Vs. South Indian bank Limited and Others. Union Saw Mills and Others. Vs. T.D. Murthy and Co. and Others. R.K. Raghavan Alias R.K. Selvaraj Vs. Union of India and Others South Indian Bank Limited Vs. Union of India and Others	Mortgage prior to I.T. dues had priority over I.T. recovery.	Case Law-34a
22	179 ITR 312	R. Sulochanamma Vs. Union Saw Mills and Others.	Second Mortgage subsequent to I.T dues is not sustainable	(later case law)
23	5 ITR 677	Secretary of State for India Vs. Official Assignee.	I.T debts should be given priority	Case Law-35
24	74 ITR 668	Somasundaram Mills Pvt. Ltd. Vs. Union of India and Others	Govt. Priority over other creditors cannot be enforced if sale proceeds were already distributed. Decision reversed by SC	Case Law-36 (see next case law)
25	152 ITR 420	Union Saw Mills and Others. Vs. Somasundaram Mills Pvt. Limited and Another.	Govt. priority over other creditors even when asset sold to a third party.	(later case law)

CHAPTER-VII - ATTACHMENT OF IMMOVABLE PROPERTY

S.No.	Citation	Case Name	Gist	Index No.
1	51 ITR 29	Vimiaben Vadilal Mehta Vs. H.S. Manvikar and another	Attachment order should show correct amount of arrears or it will be invalid	Case Law-11
2	104 ITR 723	Preision Instruments Private Limited	Properties of a person cannot be sold for arrears of tax of a third party	(later case law)
3	100 ITR 591	Chittoori Ramachandra Rao Vs. TRO	Wrong figures in sale proclamation can be corrected and reduction in appeal to be informed to defaulter.	Case Law-12
4	72 ITR 722	K. Iswar Wariyar Vs. commissioner of Agricultural Income-Tax, Kerala	Receiver cannot be considered as legal representative of the defaulter.	Case Law-17
5	197 ITR 398	TRO Vs. K. Basavarajappa and Others.	Attachment is from the date of service of notice under rule 2 and any transaction subsequent to it to it is not valid	Case Law-19
6	197 ITR 407	D.V. Satyanarayana and Others Vs. TRO	Attachment is effective from the date of notice under rule 2 and agreement of sale subsequent to it not valid.	Similar case law
7.	103 ITR 256	State Bank of Patiala Vs. Union of India and Others.	Mortgage subsequent to the service of notice under rule 2 is not valid	Case Law 20

CHAPTER-IX - HOW TO CONDUCT AUCTION.

S.No.	Citation	Case Name	Gist	Index No.
1	162 ITR 153	Ranbir Raj Kapoor Vs. S.S. Bhonsale, Tax Recovery Officer	Property cannot be auctioned less than the reserve price?	Case Law-2

CHAPTER-X - SALE OF MOVABLE AND IMMOVABLE PROPERTIES

S.No.	Citation	Case Name	Gist	Index No.
1	188 ITR 528	Pishori Lal Sethi and Another Vs. TRO	Forfeiture of deposit not automatic Orders to be passed with clear findings	Case Law-27
2	197 ITR 398	Tax Recovery Commissioner and another	Intended purchaser cannot seek setting aside of sale under rule 60	Case Law-32
3	197 ITR 407	D.V. Satyanayana and Others. Vs. TRO	Person intending to purchase property cannot invoke rule 61 of second schedule.	Case Law-47
4	106 ITR 77	Balkisandas. Vs. Additional Collector, Akola, and Others.	When TRO's order confirms the sale, the sale becomes absolute	Case Law-53