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Tax Recovery Officers' Manual

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FOREWORD

The Tax Recovery Officers' Manual, 2007, was required to be revisited afresh, "keeping in view the emphasis on recovery of tax collections, modern methods that could be employed for recovery, improvement in tax administration, including computerization of tax records and assessment work, etc. It is heartening to note that an entire Chapter has been devoted to modern methods which can be employed for collection of information on defaulters. The Chapter on appointment of Receiver has been re-written to make this mode of recovery more effective.

2. Mounting arrears of tax demand over the years has drawn critical attention from all quarters. Institution of Tax Recovery Officers under the Income Tax Act has been vested with extensive powers to recover government dues from tax defaulters. Hence, an officer posted as a TRO need to be well versed with the nuances of law, procedures and also constraints within which he is required to exercise his powers.

3. The Members of the Committee deserve deep appreciation for efforts put in to bring out Revised, updated and comprehensive version of Tax Recovery Officers' Manual 2014' after a gap of 7 years.

4. I am confident that the valued inputs of this revised Manual will be of immense help in efficiently discharging of duties by TRO's and in liquidation of even most difficult arrears.



(ARUN KUMAR JAIN)

Member (R) & (A&J)

CBDT, New Delhi

24th September, 2014

INTRODUCTION

The first edition of Tax Recovery Officers' Manual was published in June, 1999. The second edition was updated by Smt. Poonam Saxena, the Director of Income-Tax (Recovery) with the active involvement of officers of her Directorate.

2. In order to give a concerted thrust to recovery work, a Committee was constituted vide order F.No. 375/1/2011-ITB dated 15th October 2013 of Director (Budget), CBDT, to revise the extant Manual for TRO, 2007, with the assistance of a committee comprised of the following officers:-

Sl. No.	Name of the Officer	Designation	
1	Shri P. C. Srivastava	CCIT-IV, Mumbai	Chairperson (Upto 30.06.2014)
2	Sml. Kiran O. Vasudev	Pr. DGIT(NADT) & Pr. CCIT, Nagpur	Chairperson (Since 01.07.2014)
3	Shri A. C. Shukla	CIT-VII, Mumbai	Member
4	Shri Ashish Verma	CIT(A), Agra	Member
5	Shri Sanjay Tripathi	Addl. DIT(Recovery), Delhi	Member Secretary
6	Shri Anshu Prakash	Director (Budget) CBDT	Member
7	Shri N. Balakrishnan	JCIT CPC, Bangalore	Member
8	Shri S. K. Sahoo	ADIT (Training) DTRTI, Kolkata	Member

Smt. Renu Jauhri, DIT(R) and Smt. Paramita M. Biswas, Addl. DIT(R) were also subsequently co-opted as members.

3. I appreciate the efforts of all the Committee members, especially Smt. Kiran O. Vasudev, who have put in considerable time and efforts in updating the manual. I 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.

4. I am grateful to Shri. Arun Kumar Jain, Member(R), CBDT, who has shown his sincere support and for writing the "Foreword" by sparing his valuable time in going through this manual.



(R. L. RINAWMA)

DGIT(Admn.)

New Delhi.

Dated: 24th September, 2014

LIST OF ABBREVIATIONS

AA	: All India Reporter
Act	: Income Tax Act
Agrl.	: Agricultural
AIR	: All- India Reporter
All.	: Allahabad
A.M.	: All-India Reporter Madras
AO	: Assessing Officer
AOP	: Association of Persons
A.P.	: Andhra Pradesh
APC	: All India Reporter Privy Council
Punj.	: All-India Reporter Punjab
Bom.	: Bombay
Cal.	: Calcutta
CIT	: Commissioner of Income Tax
CIBIL	: Credit Information Bureau of India Ltd
C.P.C	: Code of Civil Procedure
Cr.P.C	: Criminal Procedure Code
C.W.N	: Calcutta Weekly Notes
F.B.	: Full Bench
I.C.	: Indian Cases
IPC	: Indian Penal Code
ITC	: Income Tax Cases
ITCP	: Income Tax (Certificate Proceedings)
ITR	: Income Tax Reports
JQC	: Judicial Qualification Committee
Kar.	: Karnataka
Ker.	: Kerala
Lah.	: Lahore
L.J.	: Law Journal
LLP	: Limited Liability Partnership

L.R.	: Law Reports
Ltd	: Limited
Luck	: Lucknow
Mad	: Madras
M.L.J.	: Madras Law Journal
M.O.	: Money Order
Mys.	: Mysore
Nag.	: Nagpur
NOD	: Notice of Demand
NWPHCR	: North West Province High Courts Reports
P.C.	: Privy Council
Pr.CCIT	: Principal Chief Commissioner of Income Tax
P & H	: Punjab & Haryana
PR	: Punjab Reports
Raj. L.W.	: Rajasthan Law Weekly
SC	: Supreme Court
S.C.J.	: Supreme Court Journal
SCR	: Supreme Court Reports
SOP	: Standard Operating Procedure
TRC	: Tax Recovery Certificate
TRI	: Tax Recovery Inspector
TRO	: Tax Recovery Officer
W.R	: Weekly Reports.

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CHAPTER-I

INTRODUCTION

The raison d'être of the Income Tax Department being mobilization of revenue for nation building, collection and recovery of taxes occupy pride of place. Provisions relating to collection and recovery of taxes are contained in Chapter-XVII of the Income Tax Act 1961,¹ (hereinafter referred as the Act), Schedule II² and III³ of the Act and the Income Tax (Certificate Proceedings) Rules 1962⁴ (hereinafter referred to as ITCR Rules). Being fulcrum of recovery, the Tax Recovery Officer (hereinafter referred as TRO) in accordance with section 2(44) of the Act is vested with exclusive jurisdiction for recovery in case of certified demand. This manual contains succinct discussion of powers of TRO and procedures to be adopted for recovery. It is written in a manner where it is found to be in nature of a handbook and a work aid in day to day working.

2. Tax Recovery Officer (TRO)- Presently, as per Section 2(44), "Tax Recovery Officer" (TRO) means any Income Tax Officer who may be authorized by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner (hereinafter referred as Pr. CCIT/CCIT/Pr. CIT), by general or special order in writing, to exercise the powers of a TRO and also to exercise or perform such power and functions which are conferred on or assigned to an Assessing Officer (hereinafter referred as AO) under the Act and which may be prescribed.

3. Powers of TRO- TRO's authority is derived from sections 222 to 232 of the Act⁵, Schedule II⁶ and III⁷ of the Act and ITCR Rules⁸; they constitute a self-contained code prescribing the procedure to be followed for collection and recovery of taxes and the various modes of recovery of arrears of taxes under the Act to be applied against defaulter. These provisions are also applicable for recovery of arrears of taxes under the Wealth-tax Act, 1957 (section 32 of W.T. Act).

In addition, TRO in accordance with Rule 117C of the Income Tax Rules, 1962 (hereinafter referred as IT Rules) has been empowered to carry out rectification u/s 154 of the Act.

¹ Appendix-1

² Appendix-2

³ Appendix-3

⁴ Appendix-4

⁵ Appendix-1

⁶ Appendix-2

⁷ Appendix-3

⁸ Appendix-4

4. Defaulter Defined: -

Section 2(7) of the Act has provided an inclusive definition of the term "assessee". As per this section, assessee also includes every person who is deemed to be an assessee in default under any provision of this Act. Section 220(4) of the Act specifies the conditions where an assessee can be said to be an assessee deemed to be in default. As per Section 220(4), an assessee is deemed to be in default, if he does not pay the amount specified in the notice of demand issued under section 156⁹ of the Act within the time limit prescribed under section 220(1) and in the manner specified therein or within the time as extended under section 220(3) of the Act. Further, section 220(5) of the Act provides that if in a case where payment by instalments is allowed, the assessee commits defaults in paying any one of the instalments within the fixed dates, the assessee shall be deemed to be in default in respect of the whole of the amount then outstanding. To ascertain whether an assessee is in default or is deemed to be in default,

- there should be an assessment,
- there should be a valid service of notice of demand u/s 156¹⁰ of the Act and
- there should be failure by the assessee to pay the demand within the time allowed.

Thus, to hold an assessee as defaulter, giving exclusive authority to make recovery by TRO, a valid service of notice is of paramount importance. Unless a notice is validly served on the assessee, recovery proceedings cannot be initiated against him. Hence, application of provisions under section 222 of the Act begins only when it is ascertained that the assessee is in default or deemed to be in default.

5. Role of TRO -After assessments are made and demands are raised by proper service of demand notice, especially after appeal is decided upto the level of Income-tax Appellate Tribunal and demands against an assessee are still pending, recovery of such demands assumes much significance and since the AO is already burdened with other action plan targets of passing of assessment orders and budget collection, the role of TRO becomes very important in recovery of such difficult demands. For this purpose, TROs have been provided with extensive powers under the Income Tax Act and it is expected from an Income-tax Officer posted as TRO to invoke such powers judiciously and properly to create a deterrent effect against defaulters.

⁹ Appendix-10

¹⁰ Appendix-10

Role of TRO becomes crucial in collection of such demands where: -

- Assessee is not traceable (to the extent it is likely to affect recovery),
- Assessee has no assets/inadequate assets for recovery (to the extent of inadequacy),
- Notified persons under the Special Court (Trial of offences relating to Securities) Act 1992,
- Company in liquidation,
- Demand stayed by Courts/ITAT or any I.T. Authority after stay has been revoked due to default,
- Assets jointly attached with other agencies except BIFR etc.

6. Jurisdiction of TRO -

6.1 TRO gets jurisdiction the moment a demand is certified by him by drawing a statement u/s 222(1) of the Act with or without a proposal from AO in case of a defaulter. By the Direct Tax Laws (Amendment) Act, 1989 w.e.f. 01.04.1989, Sections 222 to 232¹¹ have been amended and under the amended provisions, where the assessee is in default or deemed to be in default, TRO shall assume jurisdiction by drawing up under his signature a statement in the prescribed Form 57¹² in accordance with Rule 117B of the Rules. This statement is popularly known as Tax Recovery Certificate (hereinafter referred as TRC). Central Board of Direct Taxes (hereinafter referred to as Board), vide Circular No.551¹³ dated 23.01.1990 has explained the scope and effect of the amendments about the powers given to TRO. Some provisions of Civil Procedure Code, 1908¹⁴ (herein after referred as CPC) relating to recovery of dues also apply in case of recovery of arrear demand from defaulter. A comparative chart of provisions of CPC, Rules of Second Schedules and ITCP Rules are provided in Appendices 8 & 11.

TRO cannot exercise jurisdiction against any defaulter before drawing a TRC.

6.2 As per section 223, TRO competent to take action u/s 222 shall be as follows:-

- within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situated, or

¹¹ Appendix-1

¹² Appendix-9

¹³ Appendix-122

¹⁴ Appendix-5

- within whose jurisdiction the assessee resides or any movable or immovable properties of the assessee are situated.

For both the above categories, orders u/s 120 is required to be passed by Pr. CCIT/CCIT/Pr. CIT.

6.3 Where an assessee has property within the jurisdiction of more than one TRO and TRO by whom a TRC 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, it is necessary so to do,

he may send the TRC or, where only a part of the amount is to be recovered, a copy of the TRC in the prescribed manner and specifying the amount to be recovered to a TRO within whose jurisdiction the assessee resides or has property.

Thereafter, that TRO shall proceed to recover the amount as if the TRC or copy thereof had been drawn up by him.

It may be mentioned that procedure to be followed for transfer of recovery proceeding from one TRO to another TRO is given in Rule 8, 9, 10, 11 & 12 of ITCP Rules¹⁵.

7. Mode of recovery - After drawing up TRC in the prescribed Form (Form No.57¹⁶) specifying the amount of arrears due from the assessee, TRO shall proceed to recover the amounts in arrears by one or more of the modes mentioned below in accordance with the Rules in Second Schedule¹⁷ and ITCP Rules¹⁸:-

1. Attachment and sale of the defaulter's movable property (Part II of Second Schedule to the Act)
2. Attachment and sale of the defaulter's immovable property (Part III of Second Schedule to the Act)
3. Appointment of a receiver for the management of the defaulter's movable and immovable property (Part IV of Second Schedule to the Act)
4. Arrest of the defaulter and his detention in a civil prison (Part V of Second Schedule to the Act)

¹⁵ Appendix-4

¹⁶ Appendix-9

¹⁷ Appendix-2

¹⁸ Appendix-4

Section 222(2) empowers TRO to take action under any one or more modes mentioned above and in any order as he deems fit. This procedure for recovery is without prejudice to any other mode of recovery available.

8. Responsibility of TRO:- Effecting recovery casts an onerous burden on TRO. He is expected to be judicious and tactful in doing so. He should always be alert and should ensure that he does not become 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.

If at any time, after drawing the tax certificate, the higher authority treats the assessee as not being in default for a particular period for a certain demand, TRO is bound to stay his recovery proceedings for the said demand. He should coordinate with the AO for obtaining details of movable and immovable properties and also the correct position of demand.

9. Position of Tax Demand vis-à-vis other dues:-

It is settled law that tax demand under the direct tax laws has primacy over all other creditors except secured creditors and land revenue and municipal taxes. AOs/TROs have at times taken a view that such demand under direct tax laws has primacy over all other dues. However, such a view has not been endorsed by the judiciary. The controversy in this regard has been set to rest by decision dated 25.09.2014 of Hon'ble Supreme Court in case of **Stock Exchange Bombay vs V.S. Kandalgaonkar and others in civil appeal no. 4354 of 2003**. As per this decision, which referred to the Supreme Court decision in case of **Dena Bank vs Bhikhabhai Prabhudas Parekh and Co. and others (2000 AIR SCW 4237)**, Govt. dues only have priority over unsecured debts. The Supreme Court clearly held that a secured creditor would have priority over Govt. dues unless the law specifically provides to the contrary. Since no such provision exists in direct tax laws, secured creditors would have priority over direct tax dues.

10. Recovery through Other Modes:-

- (I) **Recovery u/s 226 of the Act:** - TRO may make recovery from defaulter also by invoking provisions of section 226 of the Act.
- (II) **Civil Suit:** - Outstanding demand can be recovered by filing a civil suit in a court of law, as provided in section 232 of the Act. Limitation for filing a civil suit is 30 years under Article 112 of the Schedule to the Limitation Act, 1963¹⁹.

¹⁹ Appendix-7

- (III) **Debt Recovery Tribunals:** - Where tax is being recovered under the exclusive jurisdiction of TRO, recovery of banks' dues through Debt Recovery Tribunal need not come in way of jurisdiction of TRO, as held in the case of **ICICI Bank Ltd. V Prakash (VT) (2003) 114 Comp Cas 133 (AP)**. There may be instances where the same property is found to be the subject matter of jurisdiction of both, in such cases, primary jurisdiction would vest with the authority having priority of claim. It was held in **Stock Exchange, Mumbai V Kandalgaokar (VS) (2003) 261 ITR 577 (Bom)** that where there is such overlapping demand from more than one creditor, Government dues will have priority.

CHAPTER-II
ORGANISATION OF WORK AND RECORD MANAGEMENT

1. For effective functioning of TRO Office, adequate manpower should be provided. Normally, the office of TRO consists of following officials:-

- (i) Inspector (TRI)
- (ii) Executive Assistant (EA)
- (iii) Tax Assistant (TA)
- (iv) Multi Tasking Staff (MTS)

2. **Organisation of Work:**

- (i) First job of TRO is to make physical verification of pending certificates and reconcile the same with different AOs falling within the charge of Pr. CIT with whom he is posted. While preparing the reconciliation, the total amount of demand against each certificate should be verified and where there has been a reduction in demand due to rectification, revision and appeal effect etc., it should be rectified and the correct demand must be communicated to the defaulter immediately.
- (ii) As soon as the statement to draw certificate is received from Assessing Officer in TRO's office, it should be entered in a separate Inward Register for certificates. This register is maintained by dividing it for each Circle/Ward separately. An inward number is assigned to each statement which is placed before TRO for drawing TRC. After drawing up TRC, the EA/TA enters the particulars of each certificate in TRO's Register in a chronological order. Separate serial number is given to each TRC by EA/TA according to the area allotted to him and an index is required to be maintained with a view to enable them to locate the number of certificates pending against each assessee. This also enables clubbing of the certificates relating to one defaulter but received at different points of time.
- (iii) The EA/TA then prepares Notice of Demand (ITCP 1)²⁰ (herein after referred as NOD) for each certificate and places it before TRO for his signature. Simultaneously, on the duplicate copy of the certificate, TRO's Register No. and date of preparation of the ITCP²¹ are indicated. Thereafter, duplicates are dispatched to the concerned AOs for information.

²⁰ Appendix-21

²¹ Appendix-21

- (iv) NOD (ITCP1)²², duly signed by TRO is then handed over to Notice server (in difficult cases - Inspector) for service on defaulter.
- (v) Recovery work is then allocated to TRI. The files given to TRIs should be duly entered in the control register maintained by TRI for this purpose and TRO should initial this allocation.
- (vi) Work of TRO can be conveniently classified under two heads, namely, work relating to brought forward certificates and current certificates.
- (vii) Details of movable²³ and immovable²⁴ properties attached by TRO/TRIs should be entered in the prescribed register immediately after attachment.
- (viii) TRO may assign the task of issuing proclamation for sale and holding of auction to TRI who shall report the completion of sale to TRO. In important cases, this task may be carried out by TRO himself.
- (ix) Where cash is collected by TRO/TRI against demand covered by TRC, it should be either directly remitted to the Government Treasury or handed over to the official authorized to deal with cash at the earliest.
- (x) When the amount mentioned in certificate is fully collected, the certificate is closed and this fact is recorded in the register of Closed Certificates²⁵. File is then closed and placed in the record room.

Work relating to attachment and sale of properties and cash collection should be closely monitored by TRO.

3. Important Registers to be maintained by TRO:-

Following is the list of important registers which are required to be maintained in TRO's office: -

- i) Inward Register for Certificates
- ii) Cash Book
- iii) Register of movable²⁶ and immovable²⁷ property attached and sold

²² Appendix-21

²³ Appendix-57

²⁴ Appendix-58

²⁵ Appendix-60

²⁶ Appendix-57

²⁷ Appendix-58

- iv) Execution Register²⁸
- v) Register of Daily Reduction/collection²⁹ of certified demand
- vi) Stay Register³⁰
- vii) Instalments Register³¹
- viii) Disposal Register³² for certificates finally disposed off
- ix) Closed Certificates Register³³
- x) Custody Register
- xi) Daily Diary
- xii) Register of Recovery in case of Companies in liquidation³⁴, BIFR & Sick companies.
- xiii) TRO's Control Register³⁵
- xiv) Any other register as prescribed

It is desirable that these registers are also maintained in electronic form.

TRO should by order in writing allocate maintenance and update of these registers to TRI/staff members posted with him and initial these registers every month. During the course of TRO's inspections, Inspecting Officers should see whether such registers are maintained by the office and initialled by TRO. These registers are described below: -

1. **Cash Book:-** TRO/TRIs are authorized to collect cash from defaulters while making recovery of tax in the course of attachment of properties etc. (Rules 22, 47 and 61 of Second Schedule³⁶). The cash so collected should be remitted to the nearest Treasury within 24 hours of its collection. Salient points are given below:-
 - (i) Each officer receiving money on behalf of the Government of India should maintain a Cash Book.
 - (ii) Where the amount is collected in cash, officer concerned must

²⁸ Appendix-53

²⁹ Appendix-54

³⁰ Appendix-61

³¹ Appendix-56

³² Appendix-59

³³ Appendix-60

³⁴ Appendix-55

³⁵ Appendix-131

³⁶ Appendix-2

issue a receipt to payer, 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 TRO/ TRI returns from tour. The Cash Book should be closed daily.
 - (iv) Where cheques/Drafts/Pay orders/electronic transfers have been accepted, temporary acknowledgement of the receipt of the cheques/Drafts/Pay orders should be given as prescribed vide letter F. No. 16/05/69-ITCC dated 10/11th February, 196937.
 - (v) TRI should place all the challans chronologically in a Loose Leaf Binder for verification and checking of the Cash Book by TRO every month.
 - (vi) Due care should be exercised while handling cash. Where amounts are collected in mofussil stations, it should be ensured that the amounts are remitted to the Treasury within 24 hours. For loss, if any, of cash collected by TRO/TRI, they would be held personally liable.
2. **Register of Movable³⁸ and Immovable³⁹ Properties:-** Officers/officials effecting attachment are solely responsible for safe custody of articles attached and brought to the office (vide Rule 23 of Second Schedule⁴⁰). With regard to movable articles kept in the Strong Room, it is also necessary that slips are pasted on each article giving serial No., name of the defaulter, the date of attachment and serial no. of the register.
 3. **Execution Register⁴¹:-** This register gives the number of warrants issued to and executed by TRO/TRI.
 4. **Register of Daily Reduction/Collection⁴² of Certified Demand:-** This register is the source record for the collection and reduction figures to be furnished in the monthly progress report.
 5. **Stay Register⁴³:-** This register, which contains the details of the

³⁷ Appendix-52

³⁸ Appendix-57

³⁹ Appendix-58

⁴⁰ Appendix-2

⁴¹ Appendix-53

⁴² Appendix-54

⁴³ Appendix-61

cases in which stay has been granted, enables TRO to monitor the cases properly. It should be updated regularly.

6. **Instalments Register⁴⁴**:- This register enables TRO to see whether the defaulters adhere to the time schedule of payments in cases where instalment facility has been granted.
7. **Disposal Register⁴⁵ for certificates finally disposed of**:- This register is meant for incorporating details of final disposal of cases where ITCP 17⁴⁶ had been issued.

In case of final disposal of cases where no recovery is required because demand ceases to exist as a result of appeal effect, rectification etc., closure of certificate should be recorded in a separate register after making appropriate entries.

8. **Custody Register**:- The articles attached by actual seizure are brought to the office of TRO and handed over to the officer in charge of the strong room after obtaining his acknowledgement. Officer in charge of strong room enters 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)⁴⁷, TROs are directed to obtain the title deeds of the attached property from defaulter. TRO should maintain proper record of such attached title deeds in the custody register and deposit them in strong room. It is advisable to get these title deeds scanned and stored electronically.
9. **Daily Diary**:- Work done by TRI every day should be entered in the Daily Diary. This diary should be initiated by TRO once in a fortnight.
10. **Register of Recovery for Companies in liquidation, BIFR & Sick Companies⁴⁸**:- 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, a separate Register of Recovery in case of companies in liquidation and in BIFR and sick companies should be maintained by TRO.

⁴⁴ Appendix-56

⁴⁵ Appendix-59

⁴⁶ Appendix-37

⁴⁷ Appendix-74

⁴⁸ Appendix-55

4. List of forms to be used by TRO

As per provisions of Second Schedule⁴⁹ and ITCP Rules⁵⁰, various forms for taking action during recovery proceedings are as under:

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

⁴⁹ Appendix-2

⁵⁰ Appendix-4

(1)	(2)	(3)	(4)
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)
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

(1)	(2)	(3)	(4)
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

5. Reports:- TRO should ensure timely submission of Monthly Progress Report (MPR), Quarterly Progress Report and such other reports as may be prescribed.

6. Appeals: -

6.1 Appealable Orders:- Under Rule 86, all original orders of TRO appointed under Section 2(44)(iii) of the IT Act 1961 which are not conclusive in terms of provisions of Second Schedule of the I T Act 1961⁵¹ are appealable before the Chief Commissioner or Commissioner. Pending the decision of such appeal, execution of the certificate may be stayed, if the appellate authorities so direct, otherwise TRO may continue with the recovery proceeding.

6.2 Orders not appealable:- Following orders passed by TRO have been made conclusive and no appeal shall, therefore, lie to the Chief Commissioner or Commissioner against these orders:

- (i) An order determining the attachability or otherwise of any property U/R 10 and
- (ii) An order U/R 11(6) dismissing or allowing the petition of the claimant U/R 11(1)
- (iii) TRC drawn U/S 222

6.3 Appealable Orders:- Apart from the orders mentioned in 6.2 above, all other orders of TRO are called original orders against which appeal can be made under Rule 86. The following are some of the original orders passed by the TRO against which an appeal lies under this Rule-

1. Effecting recovery by executing TRC without proper notice U/R 2 in contravention of Rule 3;

⁵¹ Appendix-2

2. Under second proviso of Rule 3 an order of releasing such property from attachment;
3. An order U/R 8(2) determining the dispute against I.T.O's claim u/r 8(1)(c);
4. An order u/R 9 on every question arising between the ITO and the defaulter or their representatives relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside of a sale held in execution of such certificate.
5. An order U/R 14 making the defaulting purchaser answerable for loss on resale;
6. An order u/r 15 for adjournment or stoppage of sale;
7. An order u/r 22 of attachment of movable property;
8. An order of attachment of agricultural produce (u/r 24);
9. An order for costs, custody, watching , tending, cutting and gathering the crops (u/r 25);
10. An order either suspending or refusing to suspend the execution of the order of attachment (u/r 25(4));
11. An order attaching debts, shares etc. (u/r 26);
12. An order attaching the decree of a Civil court (u/r 27);
13. An order attaching the defaulter's share in movable property (u/r 28);
14. An order attaching salary of Government Servant or servant of a local authority (u/r 29);
15. An order attaching negotiable instruments (u/r 30);
16. An order attaching property in custody of any court or public office (u/r 31);
17. An order attaching partnership property, or an order appointing a receiver, or an order directing accounts, or enquiry to be made, or an order for sale of such interest (u/r 32);
18. An order whereby excessive attachment by seizure has been made (u/r 34);
19. An order to break open doors etc (u/r 36);
20. An order directing sale of attached movable property (u/r 37);

21. An order for sale of movable property before the expiry of fifteen days without the consent of the defaulter (u/r 40);
22. An order directing the sale of agricultural produce or an order refusing to postpone the sale under sub-rule (2)(b) thereof (u/r 41);
23. An order directing the sale of growing crops (u/r 42);
24. An order declaring the sale of movable property absolute (u/r 44);
25. An order directing the sale of negotiable instruments (u/r 46);
26. An order directing the payment of coin or currency notes seized, to the ITO (u/r 47);
27. An order attaching immovable property (u/r 48);
28. An order directing sale of immovable property so attached (u/r 52);
29. An order for re-sale on default of payment of 25 per cent of purchase money (u/r 57(1));
30. An order for re-sale on default of payment of purchase money or an order forfeiting all claims of the defaulting purchaser (u/r 58);
31. An order rejecting the bid of persons who fail to deposit their authority to bid (u/r 59);
32. An order disallowing the application made under Rule 60,61 or 62, or an order confirming the sale (u/r 63(1));
33. An order setting aside the sale (u/r 63(2));
34. An order allowing interest to the purchaser (u/r 64);
35. An order refusing to postpone sale for enabling the defaulter to raise funds (u/r 66);
36. An order attaching the business (u/r 69);
37. An order appointing a receiver (u/r 70);
38. An order issuing a warrant of arrest of the defaulter (u/r 73(3));
39. An order for detaining the defaulter in custody pending enquiry (u/r 75);
40. An order of detention in Civil prison (u/r 76);
41. An order refusing to release the defaulter from prison (u/r 77(1) proviso);

42. An order releasing the defaulter from prison, or an order of re-arrest (u/r 78(1));
43. An order (u/r 78(2));
44. An order fixing the quantum of reserve price (u/r 17 of the ITCP Rules 1962);
45. An order fixing the quantum of reserve price (u/r 18 of the ITCP Rules 1962);
46. An order fixing the quantum of remuneration of the custody officer (u/r 25 of the ITCP Rules 1962);
47. An order for sale of movable property in default of payment of costs (u/r 30 of the ITCP Rules 1962);
48. An order fixing remuneration of person incharge of live stock (u/r 34 of the ITCP Rules 1962);
49. An order fixing the cost of sale (u/r 35 of the ITCP Rules 1962);
50. The various orders passed for effecting delivery of movable property to the purchaser (u/r 36 of the ITCP Rules 1962);
51. An order vesting the property in the panchas (u/r 38 of the ITCP Rules 1962);
52. An order directing the purchaser to be put in possession (u/r 42 of the ITCP Rules 1962);
53. An order (u/r 43 of ITCP Rules, 1962);
54. An order (u/r 45 of ITCP Rules, 1962);
55. An order fixing receiver's remuneration (u/r 49);
56. An order attaching the receiver's property, etc. (u/r 51);

6.4 Limitation for Filing of Appeal:- every appeal shall be presented within thirty days from the date of order appealed against.

7. Officers deemed to be acting judicially -According to Rule 82⁵², the provisions of the Judicial Officer's Protection Act are applicable to TROs and others acting under Second Schedule⁵³.

8. Process Fees - The following scale of fees shall be charged for service and execution of the process issued during the recovery proceedings:-

⁵² Appendix-4

⁵³ Appendix-2

		Where the amount mentioned in the certificate	
		Exceeds Rs. 1,000	Rs. 1,000 or under
		Rs.	Rs.
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

9. 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 of the gross amount realized by the sale, calculated at the rate of 2 percent on such amount upto Rs. 1,000 and at the rate of 1 percent on the excess of such gross amount over Rs. 1,000.
- (2) The poundage fee leviable under sub-rule (1) shall be calculated in 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, realized by the sale upto Rs. 1,000 and in the case of proceeds of 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 sale takes place 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) of Rule 57 of ITCP⁵⁴ Rules shall be paid by 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 ITCP Rules⁵⁵, TRO may make an order for

⁵⁴ Appendix-4

⁵⁵ Appendix-4

payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fee paid by purchaser of the property under sub-rule (1) read with sub-rule (4).

10. Copying Fee

- (1) Except where copies are supplied free under rules or instructions in force, copying fee 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) 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).

11. Inspection Fees

- (1) Fees for inspecting records of proceedings before the Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner or TRO under Second Schedule shall, where such inspection is permitted, is to 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.

CHAPTER-III

SOURCE OF FUNDS FOR EFFECTING RECOVERY

For effective performance of the task, TRO should tap different sources for identifying assets of the defaulter. The list of sources enumerated in this chapter is only illustrative and not exhaustive. It shall require updation/alteration depending on the existing milieu and latest developments.

2. Most challenging aspect of TRO's work is identification of assets for attachment. This has two aspects - assets in defaulter's name and benami names.

- (i) As regards assets in name of defaulter, the statement sent by AO for drawing of TRC is accompanied by details of assets as available in the assessment records. It should be supplemented by information gathered from discreet enquiry. These details require further verification by TRO to ensure that all available assets as per records and enquiry are included in the said statement. In case, anything is left out, TRO should add the same.
- (ii) As regards benami assets, a list of family members of the defaulter, related concerns and concerns where family members of the defaulter have interest is required to be made. Discreet enquiry and keeping defaulter under watch for some period is a must to know his frequently visited places with a view to identify benami assets. From the assessment records, addresses of residential and business premises of the assessee may be ascertained. In case of any company, firm or Limited Liability Partnership (LLP), all the addresses of its offices, factories etc. may be ascertained and then from the banks situated in those areas, efforts should be made to enquire whether the assessee has been maintaining any bank account or locker or fixed deposits or any other types of deposits or investments made in that bank. Such accounts, lockers or investments may be traced in these banks: -
 - in case of individual assessee, in the names of his family members, friends or domestic servants;
 - in case of firm/LLP, in the names of its partners or their family members or friends;
 - in case of company, in the name of company or its directors or their family members or related companies and their directors;

Thereafter, correct ownership of such account or investment should be ascertained in case huge deposits are found to have been made and recovery proceeding may be initiated in case such account or investment is found to be made by the defaulter.

3. It must be mentioned that local enquiry is the most important step to make the process of recovery productive and efficacious. In every case where known assets of the assessee are inadequate to liquidate the outstanding demand, Standard Operating Procedure (SOP) requires conduct of discreet local enquiry by two different officials who should mandatorily furnish a report on the results of such enquiry. Such an enquiry should, inter alia, require keeping the defaulter's movement and his activities under close watch for a given period of time. Duration in this regard shall be decided by TRO on case to case basis. For the purpose of such enquiry, discussion about relevant external and internal sources follows.

I. External Sources:

(a) Internet Search:

TRO must be conversant with the internet searches and must search relevant information from various search engines like google, yahoo etc. If 'assessee is not traceable' and there is information that he has moved abroad, then country specific search engine must be exploited e.g. AOL search, ASK JEEVES, EXCITE, LYCOS, WIKIPEDIA, GOOGLE, YAHOO etc.

Sites of regulatory agencies in India and overseas such as Securities and Exchange Commission (USA), SEBI (India) provide a great deal of information about global details of entities listed on various stock exchanges.

Paid sites like 'World Check' and 'Venture Intelligence' are useful sites, engaged in the business of collecting information from the public domain about prominent persons whether businessmen, sportsmen, politicians, intermediaries as well as about acquisitions, mergers and takeovers across the world.

A general search on the internet may reveal unauthentic information in nature of lead and it cannot be used as evidence in a court of law. However, such information can be used for recovery purpose.

Online availability of Yellow Pages, Industrial Directories, BSNL Directories and individual websites of the specific assessee are very useful in extracting information about the assessee company and its directors.

(b) Information from Credit Information Bureau of (India) Ltd. (CIBIL):-

CIBIL, a credit information company founded in August 2000, is an organization created to have a clear perspective about creditors and their credit worthiness. CIBIL collects and maintains records of an individual's payments pertaining to loan and credit cards. It maintains details of all loans taken and collaterals given by a person.

(c) Information from National Stock Exchange (NSE), Bombay Stock Exchange (BSE) and Multi Commodities Exchange (MCX): -

All assesseees of certain status have dealings in shares/bonds/securities/ commodities. Therefore, relevant information can be obtained in an effective manner by writing a letter to the above exchanges.

(d) Information from Registrar of Companies (ROC): -

Information regarding companies and their directors as available on the site MCA 2000 can be obtained online on payment of prescribed fee. Alternatively, letter to ROC may be written following the same procedure as mentioned for CIBIL. Details about incorporation of the company, change of directors, details of share holding pattern can be obtained from the regular returns filed with the ROC. Director Index Number (DIN) information is useful because it contains the list of companies in which the same person is director.

(e) Information from Registrar of Properties:-

Any new property purchased by defaulter assessee in his name or in the name of a family member or anyone else, such as servant etc. may be found out from Registrar of Properties. In such cases where property is in the name of a person other than the defaulter, recovery can be effected to the extent of investment in such property by defaulter.

(f) Collecting details of On-Line purchases and credit card purchases:-

Financial resources of a tax defaulter can be ascertained by tracking down purchases made by such person online or through credit or debit cards and then the sources through which payments/ repayments are made may be considered for recovery.

(g) Recovery from surety: -

Rule 88 of Second Schedule⁵⁶ provides for recovery from any person who stands surety for the defaulter. If defaulter has taken loan from any bank, enquiry should be made from the bank about any surety given by the defaulter. Before any steps for recovery are taken against the surety, it is necessary to serve a notice on the surety under Rule 61 of ITCP Rules⁵⁷, 1962 in Form No. ITCP 30⁵⁸.

(h) Database of Aadhar Card, Voters' list, Passport, Motor Vehicle Registration, Club and Holiday home membership:-

The database of Aadhar Card and Voter list may be utilised with a view to locate an untraceable defaulter.

Database of RTO, Club & Holiday Home membership may be utilised for locating untraceable defaulter as well as to ascertain his financial status.

(i) Passport offices and Embassies :-

There may be cases of defaulters who have gone abroad on long term basis and are reported as not traceable in our database. In such cases, enquiries from passport office and embassy issuing visa for their visit and enquiries through Indian embassies abroad may help in locating the defaulter.

3.1 For collecting information from the agencies/authorities mentioned above, TRO can either request AO to issue a letter under section 133(6) or exercise his power under Rule 83 of Second Schedule to write letters to respective agencies/authorities.

II. Internal Sources:**(a) Integrated Taxpayer Data Management System (ITDMS), Annual Information Report (AIR) and Individual Transaction Statement (ITS):-**

ITDMS is available in all Investigation Directorates which mines databases, both internal and external, to provide meaningful information about an assessee. It can be utilized to get information about financial status of defaulter.

ITS may be accessed by the Range Heads to mine the information on specified parameters with a view to find out financial status

⁵⁶ Appendix-2

⁵⁷ Appendix-4

⁵⁸ Appendix-51

of the assessee. This information may be made available to TRO in respect of defaulters.

As per amendments to Section 285BA of the Act, specified entities are required to furnish AIR. To facilitate recovery, TRO can ascertain cash deposits in saving accounts, payments against bills by Credit Cards, acquisition of Mutual Funds/Bonds/Debentures/RBI Bonds, purchase or sale of immovable property.

(b) Collection of Information from Financial Intelligence Unit (FIU)

Information of cash transactions available with FIU can also be utilized to find out if any transaction is done by the defaulter and accordingly recovery may be effected from such defaulter by having recourse to section 222 of the Act.

Once the demand is classified under the categories "assessee not traceable" and "No assets/inadequate assets for recovery", the information should be sent by the CCITs/DGITs concerned to the Directorate of Income Tax (Recovery) in the prescribed proforma (Annexure-II). The procedure for obtaining information from FIU-IND is laid down in CBDT letter F. No. 404/02/2011-ITCC dated 29.09.2011⁵⁹ as amended by letter dated 26.09.2014. It is clarified that no direct reference would be entertained by the FIU-IND.

4. The aforesaid list of sources is only illustrative and not exhaustive. TRO has to resort to ingenuity for getting results. This point is best illustrated by the success story in Gujarat Region. The income tax department of Gujarat Region hired private detectives to track down tax defaulters, most of whom had started new businesses and shifted base. As a result, there was partial collection of certified demands.

4.1 It may be mentioned that as we resort to lifting of veil for ascertaining the actual state of affairs during assessment proceedings aimed at determination of taxable income, in recovery proceedings also, TRO has to resort to lifting of veil for ascertaining the correct financial status of the defaulter. For this purpose, shareholding structure of the defaulter company and of those companies where shares are held by defaulter company must be thoroughly examined with a view to ascertain assets of all such companies where defaulter company has financial interest by way of shares or otherwise. It must be kept in view that every director of defaulter company is liable for liability of defaulter company. Therefore, all these aspects require to be kept in view for finding out the financial status of the defaulter company.

⁵⁹ Appendix-129

It may be noted that experience has thrown many cases where the defaulter company, its shareholders and directors had no assets for recovery; however discreet inquiries showed that defaulter company was shareholder in companies with huge assets and the attachment of shares of defaulting company and imminent possibility of its sale through auction by TRO had huge impact; because of possibility of loss arising from transfer of shares. In one of the cases, defaulter company arranged for funds to liquidate outstanding demand plus interest to prevent the auction.

4.2 Presently, a new technique of skip tracing is being employed by banks for tracing their loan defaulters. Same may be kept in mind by TRO to trace the tax defaulters. Skip tracing tactics used by “skiptracers” include phone number databases, credit reports (including information provided on a loan application, credit card application, and in other debt collector databases), job application information, criminal background checks, utility bills (electricity, gas, water, sewage, phone, Internet and cable), social security, disability and local tax information. While some of these records may be publicly available, some cannot be accessed without an appropriate search warrant which is generally available to only law enforcement agencies or licensed private investigators. However, mere awareness in this regard may yield significant clues for recovery.

The aforesaid discussion clearly shows that out of box thinking is required to deal with hide and seek game played by defaulter and to ensure collection of demand in certified cases.

CHAPTER-IV
PROCEDURE TO INITIATE RECOVERY

Procedure for recovery involves following steps: -

- Verification and reconciliation of arrears of tax.
- Drawing of TRC
- Issue and service of notice
- Coordination with AO

A. VERIFICATION AND RECONCILIATION

Verification and reconciliation require the following: -

1. As per amended procedure, AO is required to draw a statement containing details of arrears as per format given at the back of Form No.57⁶⁰ and sign the same and then forward the statement to TRO to enable him to draw TRC showing correct amount of outstanding demand pending against defaulter.
2. Before drawing up of TRC, both AO and TRO are required to ascertain correct position of demand after giving credit to all prepaid taxes and giving effect to rectification petitions, appeal orders, revision orders, etc. Commencement of recovery proceedings cannot be done before verifying the actual position of demand or before addressing the objections/ disputes, if any, raised by the assessee.
3. The statement drawn by AO must contain details of all movable and immovable assets of defaulter on the basis of the last return filed or on the basis of information gathered by AO by conducting post-assessment enquiries in this regard.

B. DRAWING OF TAX RECOVERY CERTIFICATE

1. **Procedure for drawing of Tax Recovery Certificate:** As per Rule 117B of Income Tax Rules, 1962, a TRC for the purpose of making recovery u/s 222 and 223 is to be drawn in Form No. 57⁶¹. After correctness of the demand outstanding against defaulter is verified and the verifications have been made by AO from the records that no action relating to rectification, giving of appeal effect and giving credit for any payment made by the assessee is pending and he has also ensured that he has taken all possible action under the law to recover the demand, he will send intimation to TRO only with the prior approval of the Joint/Addl.

⁶⁰ Appendix-9

⁶¹ Appendix-9

Commissioner of Income Tax. The Assessing Officer will certify that he has completed all the penalty and recovery proceedings under sections 221 and 226. The JCIT/Addl. CIT will also satisfy himself that the Assessing Officer has taken all steps to recover the demand specifically by completing the proceedings under sections 221 and 226. On the basis of such statements and after verifying the correctness of the demand from the relevant assessment records and registers, TRO shall draw certificate in Form No.57⁶² under his signature. Conversely, where there is delay by AO in sending the statements of arrears, TRO can call for such statements from the Assessing Officers by writing letter to AO and endorsing a copy of this letter to the Range head for information. To expedite recovery in cases where demand is difficult to recover, the Pr. CIT concerned may issue necessary instruction to AO and TRO to draw TRC in a time bound manner.

2. Time limit for drawing up certificate: The Board has specified that the proceedings for recovery of tax may be initiated by TRO by way of drawing up of recovery certificates under his signature in the prescribed form⁶³ specifying the amounts due from an assessee in default or deemed to be in default in all cases where the demand is more than one year old. The concerned range head shall ensure that all the cases of assessee in default where demand is more than one year old are examined by TRO for drawing of TRC after following the prescribed procedure. To ensure that all eligible cases for issue of TRC are examined by TRO and AO, Addl. CIT shall hold a quarterly meeting between the two for deciding the cases fit for drawing of TRC. He should guide the AO and TRO and ensure that TRC is drawn in appropriate cases. Addl.CIT shall obtain a list of cases where TRC is drawn and send it to concerned CIT. In case of a Joint CIT Special Range, he shall be eligible to make reference to TRO of his own accord.

Effective from 15.11.2014, Department has been restructured and one post of TRO is allocated to the charge of each Pr. CIT. In view of this, the work pertaining to coordination will have to be carried out in the office of Pr. CIT who should ensure that all the cases eligible for drawing of TRC are processed and followed up. He should further ensure that TRO takes effective step for speedy recovery of demand and protecting the interest of revenue.

3. Validity of certificate and cancellation or amendment thereof:- Section 224 of the Act provides that it shall not be open to the assessee to dispute the correctness of any certificate drawn up by TRO on any ground whatsoever but it shall be lawful for TRO to cancel the certificate

⁶² Appendix-9

⁶³ Appendix-9

if, for any reason, he thinks it necessary so to do or to correct any clerical or arithmetical mistake. In this regard, the Calcutta High Court has also held in *Union of India V Bikash Ch. Ghosh - 78 ITR (1970) 524 (Cal)* that no objection to the certificate lies on any ground. This section imposes an absolute bar on raising any question about the certificate before TRO and TRO cannot entertain any objection to the validity of the certificate. If the defaulter desires, it is for him to take up the matter in appropriate proceedings under the Act and TRO cannot go beyond the certificate drawn by him.

4. Continuation of certificate

Rule 84 and 85 of Second Schedule⁶⁴ and Rule 60 of ITCP Rules⁶⁵, 1962 authorise TRO to continue the proceedings in respect of a certificate received against a person who dies subsequently. TRO cannot draw a certificate against a person who is already dead.

5. Procedure for entry in Demand and Collection Register

(a) As per Instruction No. 1883 of 1991⁶⁶, the Board desires that whenever TRO draws up a tax recovery certificate and enters the same in his register, he should send intimation to the concerned AO so that AO makes a note thereof against the corresponding entry in his Demand and Collection Register in the prescribed form as "Tax Recovery Certificate drawn up by TRO (address of TRO) and entered in his register at Sl.No. _____ on (date) _____".

This note will have to be carried forward to the new registers whenever the D & CR entries are carried forward and this entry should be continued to be carried forward till the certified demand is collected by the TRO.

C. ISSUE AND SERVICE OF NOTICE

1. Issue of Notice of Demand in Form No. ITCP-1⁶⁷:- Rule 2 of Second Schedule⁶⁸ read with ITCP Rules 14⁶⁹ prescribes that when a TRC has been drawn, TRO shall cause to be served upon the defaulter a notice in ITCP1 requiring him to pay the amount specified in the TRC within fifteen days of service of such notice intimating the defaulter that in default, steps would be taken as per Second Schedule to recover the amount.

⁶⁴ Appendix-2

⁶⁵ Appendix-4

⁶⁶ Appendix-75

⁶⁷ Appendix-21

⁶⁸ Appendix-2

⁶⁹ Appendix-4

2. Service of Notice of Demand⁷⁰ is a pre-condition:- Valid service of notice of demand⁷¹ is a pre-condition for initiation of recovery proceedings. Failure to serve NOD would result in declaration of recovery proceedings invalid – **Sri Mohan Wahi v. CIT (2001) 248 ITR 799 [SC]**.

3. Execution of the Certificate:- Rule 3 of Second Schedule⁷² provides that no step in execution of TRC can be taken before expiry of 15 days from date of service of NOD⁷³. In other words, the movable / immovable properties of the defaulter cannot be attached before the aforesaid 15 days. However, first Proviso to Rule 3 makes it clear that when TRO is satisfied that defaulter is likely to conceal, remove or dispose of the whole or any part of such of his property as would be liable for attachment in execution of a decree of civil court and that the realisation of the certified amount would be delayed or obstructed as a result thereof, he may, at any time, direct an attachment of the whole or any part of such property. Before doing so, TRO is required to record his reasons in writing. Second Proviso to Rule 3 provides that if, the defaulter whose property has been so attached, furnishes security to the satisfaction of TRO, such attachment shall be cancelled from the date on which such security is accepted by TRO.

4. Consequence to follow on non compliance of 'NOD':- Rule 4 of Second Schedule⁷⁴ provides that if amount mentioned in the NOD⁷⁵ is not paid within the time mentioned therein or within such time as TRO may allow in his discretion, TRO shall proceed to recover the amount by taking recourse to one or more of the following modes of recovery:

- a) by attachment and sale of defaulter's movable property;
- b) by attachment and sale of defaulter's immovable property;
- c) by arrest of the defaulter and his detention in Civil Prison;
- d) by appointment of a Receiver for the management of defaulter's movable and immovable properties.

5. Interest, Cost and Charges Recoverable:- Rule 5 of Second Schedule⁷⁶ provides that, in addition to the certified 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

⁷⁰ Appendix-21

⁷¹ Appendix-21

⁷² Appendix-2

⁷³ Appendix-21

⁷⁴ Appendix-2

⁷⁵ Appendix-21

⁷⁶ Appendix-2

of the certified amount shall be recovered from the defaulter along with the cost of execution of the certificate.

6. Attachment to relate back to date of service of 'NOD'⁷⁷- Where any immovable property is attached under Second Schedule⁷⁸, such attachment shall relate back to and take effect from the date on which the NOD was served on the defaulter (Rule 51). If the defaulter enters into any transaction in respect of the property so attached between the period starting from date of service of NOD and date of attachment, such transaction shall be void and the attachment would prevail - **State Bank of Patiala Vs. Union of India & others (1976) 103 ITR 256 (P&H)**. In fact, once a property is attached by TRO, even a Civil Court is not competent thereafter to attach such property belonging to the defaulter - **TRO, Coimbatore Vs. V.A. Ramaswamy and others 1978 114 ITR 408 (Mad.), Union of India Vs. Ganesh Lal Bajaj 1978 115 ITR 791 (Mad.)**

7. Prior Permission of TRO (Rule 16) :- When a notice has been served upon the defaulter under Rule 2⁷⁹, the defaulter or his representative shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to the defaulter except with prior permission of TRO, nor shall any Civil Court issue any process against such property in execution of a decree for the payment of money.

8. TRO must ascertain correct demand before taking coercive measures for Recovery- Before embarking on coercive steps to recover the demand, it is incumbent upon TRO to ascertain the correct figure of outstanding demand. In actual practice, discrepancies are often noticed between the outstanding dues specified in the TRC and the arrears shown to be outstanding as per AO's report. Cases in which correctness of the demand specified in the NOD is not accepted by defaulter, should be marked by TRO to TRI for verification. TRI should carry out the reconciliation and verification and ascertain the correct amount to be recovered.

9. Consequential action when variation noticed in arrear demand as per AO'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, TRO should modify the certificate drawn by him u/s. 222 accordingly.

10. Modification of demand on giving effect to appellate orders, carrying out rectification etc.:- In some cases, defaulter may claim that NOD is incorrect on the ground that appellate orders favourable to him have not been given effect to or that the mistakes pointed out by him

⁷⁷ Appendix-21

⁷⁸ Appendix-2

⁷⁹ Appendix-2

have not been rectified by AO. In such cases, TRO may request AO to finalize the pending matters or may do so at his own level if the mistake is rectifiable at his level.

11. AO to intimate reduction in demand:- Care should be taken to issue fresh notice of demand⁸⁰ where it stands varied as a result of reductions. In **ITO Vs. Seghu Buchiah Setty (1964) 52 ITR 538 (SC)** 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 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. - **Union Saw Mills & others Vs. Jardine Hinderson Ltd. 118 ITR 112, Gopi Chand vs Union of India (Uoi) And Ors. (102 ITR 707 PH 1976) and Chulai Ram Vs. ITO (Collections) Varanasi (1974) 94 ITR 463 (Alld.)**

12. Joint and several liability for payment of 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 liable to pay the demand raised in a single assessment. Sections of the Act dealing with this issue are :- Section 65, Section 167C, Section 171(6), Section 177(3), Section 179, Section 188A, Section 189(3). Where a number of persons are made jointly and severally liable for the demand, TRO has to draw as many certificates as there are persons who are jointly and severally liable. The joint and several responsibility of each partner/member in the case of Partnership Firm and a Limited Liability Partnership Firms should always be explored through the aforesaid express legal provisions.

In case, recovery is to be made from a company that does not hold any asset but such company is found to exercise control over chain of certain companies (existing only on paper doing no activities) by holding their shares and assets are existing in the name of such companies, lifting of veil of such arrangement is required to be resorted. As we resort to lifting of veil for ascertaining the actual state of affairs during assessment proceedings aimed at determination of taxable income, in recovery proceedings also, TRO has to resort to lifting of veil for ascertaining the correct financial status of the defaulter company. For this purpose, shareholding structure of the defaulter company and of those companies where shares are held by defaulter company must be thoroughly examined with a view to ascertain assets of all such companies where defaulter company has financial interest by way of shares or otherwise and then

⁸⁰ Appendix-21

it is to be established that, on the basis of the shareholding pattern, it is the defaulter company and its directors who actually exercise control over the assets of paper companies. It must be kept in view that every director of defaulter company is liable for liability of defaulter company. Therefore, all these aspects are required to be kept in view for finding out the financial status of the defaulter company.

13. Recovery from defaulter as per the Status:- Depending on the status of a defaulter, recovery can be effected from various persons as given below:-

S. No.	Status of defaulter	Person from whom recovery can be made	Legal Provisions involved
1.	HUF	Every person who was a member of the HUF at any time during the relevant previous year	Section 171(6) of the Income Tax 1961.
2	Partnership Firm	Every person who was a partner of the firm at any time during the relevant previous year	Section 188A of the Income Tax Act 1961
3	LLP	Every person who was a partner of the LLP at any time during the relevant previous year	Section 167C of the Income Tax Act 1961
4.	Private Companies	Every person who was a director of the company at any time during the relevant previous year, who is found liable for non recovery of tax due to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.	Section 179(1) of the Income Tax Act 1961
5.	AOP & BOI	Every person who was a member of AOP or BOI at any time during relevant previous year	
6.	Trust	Trust through Managing Trustee	

14. Intimation to AO regarding collection:- Whenever TRO collects any amounts towards the satisfaction of the certificated dues, he should send an intimation in this behalf to the AO. While one copy of the said intimation is to be retained as the office copy, two copies thereof will be forwarded to the AO.

D. MODE OF SERVICE OF NOTICE

1. Mode of service as prescribed in the Act:- Procedure relating to the service of notices issued by TRO under Second Schedule⁸¹ is governed by the provision of Section 282 of the Act (as amended w.e.f. 01.10.2009). Section 282(1) provides that the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein in the following manner:-

(a) by post or by such courier services as may be approved by the Board;

or

(b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons;

or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000;

or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

Section 282(2) enables the Board to make rules providing for the addresses (including the address for electronic mail and electronic mail message) to which the communication referred to in Section 282(1) may be delivered or transmitted to the person therein named. It has been explained that the expressions "electronic mail" and "electronic mail message" shall have the meanings assigned to them in Explanation to Section 66A of the Information Technology Act, 2000.

Explanation to Section 66A of IT Act:— For the purpose of this section, terms "electronic mail" or "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

⁸¹ Appendix-2

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 assessee proves the contrary. However, it should be kept in mind that if a notice, sent by Registered Post is received back unserved with postal remarks, namely, "left", "not found", "not known", etc., then there is **no tender of the notice**. Hence, it cannot be held that the notice has been validly served. Notice sent by speed post is considered as sent by registered post.

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

- (i) **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 a member of assessee's family. When the serving officer delivers a copy of the notice to assessee or any other person on his behalf, he shall obtain on the original notice signature of the person to whom a 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)⁸² in token of service of the notice.

Full name of the person on whom notice is served should be written along with the status in which such notice is received.

- (ii) **Service by affixture:-** Rule 17, 18 & 19 of Order V of the CPC⁸³ provide for the contingency when the assessee or his agent refuses to take the notice or when the serving officer, after using all due and reasonable 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. 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.

The person who is making service by affixture should submit an

⁸² Appendix-69

⁸³ Appendix-5

affidavit to TRO and such affidavit should outline the circumstances in which service by affixture was done in presence of two witnesses along with their names, addresses, telephone numbers etc., evidencing such service.

- (iii) **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, TRO has to pass an order under Rule 20 of Order V of the CPC⁸⁴ to that effect and order substituted service of the notice by affixing a copy of the notice at some conspicuous place in TRO's office and also upon some conspicuous part of the house (if any) in which defaulter is known to have last resided or carried on business or personally worked for gain.

Copy of such notice may preferably be published in a newspaper widely circulated in the area where the assessee has last resided.

4. Service of notice to non-individual defaulter:- Where the person is not an "Individual", service of notice has to be made on the person(s) specified in Sections 282(2), 283 and 284 of the Act. This is explained below:-

Status of the defaulter	The person on whom service is to be made
<p>(i) Hindu Undivided Family:</p> <p>(a) When the family is either in existence or partially partitioned or whose business is discontinued at the time of issuing the notice.</p> <p>(b) Where the family is totally partitioned and is not in existence.</p>	<p>(a) Manager (Karta) or any adult member (not necessarily male) of the family</p> <p>(b) 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.</p>
<p>(ii) Firm / LLP</p> <p>(a) Where the firm is in existence</p> <p>(b) Where the firm is dissolved</p> <p>(c) Where the firm has discontinued its business</p>	<p>(a) Any partner of the firm</p> <p>(b) Any person who was partner of the firm immediately before its dissolution</p>

⁸⁴ Appendix-5

	(c) Any person who was member of the firm at the time of its discontinuance
<p>(iii) Other Association of Persons (AOP) or Body of Individual:</p> <p>(a) Where the AOP is in existence</p> <p>(b) Where the AOP is dissolved</p> <p>(c) Where the AOP discontinued its business</p>	<p>(a) Principal officer or other member thereof</p> <p>(b) Any person who was a member of the AOP immediately before dissolution.</p> <p>(c) Any person who was a member of the AOP at the time of its discontinuance</p>
<p>(iv) Company or local authority:</p> <p>(a) Where the company or local authority is in existence</p> <p>(b) Where the company discontinued its business (Not applicable to limited company)</p> <p>(c) Where the company is in liquidation.</p>	<p>(a) Principal officer thereof</p> <p>(b) Principal officer thereof at the time of its discontinuance</p> <p>(c) Official liquidator.</p>
<p>(v) Any other person (not being an individual) as in the case of an artificial juridical person e.g. a deity.</p> <p>(vi) Other cases</p> <p>(a) Deceased person</p> <p>(b) Insolvent person</p> <p>(c) Minor, Lunatic or Idiot</p> <p>(d) Beneficiaries of estates</p>	<p>The person who manages or controls its affairs, say, a shebait or a Mutawalli.</p> <p>(a) Legal representative, which term includes an administrator or executor of the deceased.</p> <p>(b) Official Assignee or Official Receiver</p> <p>(c) Guardian or manager</p> <p>(d) Court of Wards, or Administrator General or Official Trustees, or Receiver or Manager or Trustee, as the case may be</p>

5. Responsibility of TRI in service of notice:- TRI should guard against any irregularity in service of notices. He must scrupulously follow the prescribed procedure as validity of recovery proceedings depends on correct service of the initial demand notice under Rule 2 of Second Schedule⁸⁵. It is advisable that TRI should study Board's Instructions on the matter contained in the letter dated 17th August, 1964⁸⁶.

6. Effect of Non-issue of Notice:- Issue of a notice under Rule 2⁸⁷ is mandatory and cannot be dispensed with. TRO has to issue a notice required by Rule 2 before he can assume jurisdiction unless he is acting under the 1st proviso to Rule 3. The Supreme Court has held in case of **Baransi Devi Vs. Income-tax Officer 53 ITR 100 SC(1964)** that it is not sufficient that notice only been issued. Following proper procedure, it should also be 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. - **CIT Vs. Sheo Kumari Debi 157 ITR 13 (1986)**.

7. 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 90⁸⁸ (corresponding to Rule 61 of Second Schedule⁸⁹) and vitiates the entire proceeding.

8. Defaulter not being allowed the statutory period of fifteen days within which to pay the demand:- Rule 3⁹⁰ requires that the notice should give clear fifteen days time to the defaulter within which he is allowed to pay the arrear demand. If no time is given or if the time given is less, the notice is irregular unless there are circumstances which justify such action under the first proviso to Rule 3⁹¹.

9. Limitation to issue the Notice:- No time limit has been prescribed for issue of a notice to the defaulter after TRC is drawn by TRO. However, it is desirable to issue notice to defaulter within a reasonable time preferably within fifteen days of drawing of TRC.

E. MONITORING OF DEMAND POSITION USING ITD APPLICATION

Till ITD application facilities become available to TRO, he should

⁸⁵ Appendix-2

⁸⁶ Appendix-125

⁸⁷ Appendix-2

⁸⁸ Appendix-4

⁸⁹ Appendix-2

⁹⁰ Appendix-2

⁹¹ Appendix-2

utilize the functionality available to the Pr. CIT with a view to monitor position of demand in respect of certified demand.

F. COORDINATION WITH THE ASSESSING OFFICER

1. Coordination of work between TRO and AO is very important for recovery of certified demand. It should start from the stage of drawing up of TRC after determining the correct amount of outstanding demand against the defaulter; each subsequent action taken by TRO relating to recovery should be intimated to AO and reflected in the record of AO. As soon as any recovery is made or in case any demand is reduced, it should be intimated to AO.

2. Once TRC is drawn, exclusive jurisdiction vests in TRO for recovery u/s 226 of the Act. As a result of amendment of Section 226 and insertion of Rule 94 in Second Schedule⁹² to Income-tax Act, 1961 with effect from 1.4.89, AO does not have power of recovery under section 226 once TRC is drawn. Therefore, there is a need for AO to maintain a record of all such cases where TRO has drawn up TRC.

⁹² Appendix-2

CHAPTER-V
MODE OF RECOVERY

Section 222 of the Act provides for following modes of recovery:-

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

It is made clear by the Hon'ble Supreme Court in the case of *Padrauna Raj Krishna Sugar Works Ltd. V. Land Reforms Commissioner (1970) 75 ITR 358 (SC)* that law imposes no obligation on TRO to recover tax arrears first by sale of movables or by arrest and detention of the defaulter before immovable property of the defaulter may be proceeded against. Therefore, keeping in view the facts and circumstances of each case, TRO may take a decision to adopt any one or more of the above modes of recovery. In *Puranmal Rajkumar v. TRO (1989) 187 ITR 706 (Cal.)*, it has been held that these modes of recovery can be adopted for making recovery even during the pendency of appeal. However, generally, it is advisable not to resort to such coercive mode of recovery during pendency of appeal unless there is information that assessee may alienate his assets during pendency of appeal; in view of such eventuality, provisional attachment u/s 281B may be ordered by CIT on proposal from TRO.

2. Apart from the modes of recovery specified in Section 222, TRO may recover the tax by any one or more modes of recovery provided in Section 226. They are given below:-

- (i) Attaching the salary, if the defaulter assessee is in receipt of salary income;
- (ii) Attaching any payment of money due or may become due to defaulter assessee from debtors; this includes attachment of his bank accounts and making recovery from such bank accounts;
- (iii) Making application to a court which is custodian of defaulter's money;
- (iv) By distraint and sale of movable property of defaulter in the manner laid down in the Third Schedule.

3. Before starting to effect recovery by resorting to any of the above modes of recovery, TRO may give an opportunity to defaulter to pay the

arrears of certified demand voluntarily. For this purpose, section 225 of the Act authorizes him to grant time for payment; during such time, TRO shall stay the proceedings for recovery.

In respect of disputed demand certified by TRO and modified in appeal or other proceedings under this Act and where department has gone in appeal, TRO 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. When appellate proceedings reach finality, TRO shall make corresponding modifications accordingly.

Since Section 225 empowers TRO to grant time for payment of demand, he has implied discretionary powers to grant instalments for payment.

A. ATTACHMENT OF MOVABLE AND IMMOVABLE PROPERTY

A1 ATTACHMENT OF PROPERTY (General Principles)

After elapse of fifteen days notice period as given in ITCP1⁹³ or extended time granted by TRO, coercive measures u/s 222 can be initiated if certified demand remains unpaid. Attachment and sale of movable and immovable properties is critical step for initiating coercive measures of recovery. It is discussed in this chapter.

1. Definition of Property:-

There is no exhaustive definition of property under any Act. However, property in general is defined as something that is owned either individually or jointly being in the nature of movable i.e. some goods or equipments or immovable i.e. land, building etc.

2. Criteria to Judge whether a property is movable or immovable -

(a) Movable property

2.1 Movable property is generally understood as a property that can be moved from one location to another. It includes all assets of every description that can be moved without damage or permanent alteration to the asset and can be used after removal. Examples include auto-mobiles, clothes, appliances, machinery, furniture, liquid assets (shares, bonds, deposits and anything else that can be easily converted into cash) and so on.

(b) Immovable property

2.2 Immovable property implies that it is attached to the earth or

⁹³ Appendix-21

permanently fastened to anything attached to the earth that cannot be moved without destroying or altering it.

“attached to the earth” means –

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

2.3 The definition given under the **General Clauses Act, 1897** says that the “**immovable property**” shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

Under the **Transfer of Property Act 1882**, the definition given in section 3 (interpretation clause) says that unless there is something repugnant in the subject or context, “**immovable property**” does not include standing timber, growing crops or grass.

Definition given in Section 2(6) of the **Registration Act, 1908** says that “**immovable property**” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass;

The definition of immovable property for the purpose of capital gains and compulsory acquisition in the Act is on similar lines as contained in the aforesaid Acts.

3. Attachment Defined:-

3.1 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 to compel defaulter to fulfil his obligation. The power of seizure by legal process is incorporated in Second Schedule⁹⁴ to the Act and it may be exercised by an officer specifically empowered by the said schedule.

3.2 ‘Actual seizure’ explained:- The movable properties covered by warrant procedure are attached by ‘actual seizure’, which means taking physical possession. It does not mean application of force or violence on either the defaulter’s property or his person. Actual seizure also includes constructive seizure. Where a warrant of attachment is executed by affixing

⁹⁴ Appendix-2

it to the outer door of the warehouse in which goods belonging to defaulter are stored, it is a case of constructive seizure.

4. Property which can be attached:-

4.1 A property held in the name of defaulter or by any other person on behalf of defaulter (acquired from funds of defaulter) may be attached. 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 defaulter may have acquired for his benefit, can be seized and sold as held in the case of **Radha Rani Vs. Vidodamaiyare 45 CWG 245**.

4.2 Section 60 of CPC⁹⁵ enumerates certain properties liable to attachment. They are given below:-

- (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 securities for money
- (xi) debts
- (xii) shares in a corporation
- (xiii) All other 'saleable property' movable or immovable belonging to the defaulter or over which, or the profit of which, he has disposing power.

4.3 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;

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- (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;
- (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 TRO and the State will have priority over amounts due under the hypothecation deed.
- (xxv) Trade Mark
- (xxvi) Patents
- (xxvii) Copyright

4.4 It is hereby clarified that a general insurance policy assigned to Insurer Company against a loan etc can be attached. Further, Rule 15 of ITCP Rules, 1962⁹⁶ provides that TRO can attach even property with

⁹⁶ Appendix-4

encumbrance (like assignment). Rule 31 of Second Schedule⁹⁷ further provides that even assigned movable property (like insurance policy) in the custody of a court can be attached by TRO by issuing ITCP⁹⁸ and the court will decide whether the assignee/any other person will get priority over TRO. As per Karnataka High Court's Judgment in **The Vysya Bank Ltd. vs. JCIT & TRO** and **Global Trust Bank Ltd. vs. JCIT & TRO - 241 ITR 178 (Karnataka) (2000)**, fixed deposits can be attached and recovered u/s 226(3) even before date of maturity.

5. Properties which cannot be attached:-

As per Rule 10 of Second Schedule⁹⁹, property exempted from attachment in execution of a decree of Civil Court by the CPC shall be exempt from attachment or sale by TRO. Properties which are exempt from attachment are specified in proviso to section 60 of the CPC¹⁰⁰. Personal effects of a defaulter should not be attached. Provisions of law for attachment of salary are contained in Section 226(2) read with section 60 of CPC.

5.1 For ready reference, the list of items which cannot be attached is given below:-

- (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 any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;
- (c) Houses and other buildings (with material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to 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;

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¹⁰⁰ Appendix-5

- (g) Stipends and gratuities allowed to pensioner of the Government [or of a local authority or of any other employer] or payable out of any service family pension funds notified in the official gazette by the Central Government or the State Government in this behalf, and political pensions;
- (h) Wages of labourers and domestic servants, whether payable in money or in kind;
- (i) Salary to the extent of the first [one thousand rupees] and [two thirds of the remainder] [in execution of any other than a decree for maintenance].

[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 in execution of one and same decree, shall after the attachment has continued for a total period of twenty four months, be finally exempt from attachment in execution of that decree].
- (ia) One-third of the salary in execution of any decree for maintenance;]
- (j) The pay and allowance of persons to whom the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1957, applies;]
- (k) 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;
- (ka) All deposits and other sums in or derived from any fund 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 attachments;
- (kb) All money payable under a policy of insurance on the life of the judgment debtor;
- (kc) 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.]
- (l) Any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification

in the Official Gazette declare to be exempt from attachment, and subsistence grant of allowance made to 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 any Indian law, to be exempt from liability to attachment or sale in execution of a decree; and
- (p) Where the judgment debtor 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 an arrear of such revenue.

5.2 As per Notes 2 & 3 below Rule 74, Central Govt. Accounts (Receipts & Payments) Rules, 1983 (Also mentioned in Page - 803 of Swamy's Complete Manual of Establishment and Administration), following allowances are exempt:-

- (1) all kinds of travelling allowances;
- (2) all kinds of conveyance allowances;
- (3) all kinds of House Rent Allowances;
- (4) all allowances granted for meeting the cost of uniforms and rations;
- (5) allowances granted as compensation for higher cost of living in localities considered by the government to be expensive localities including hill stations;
- (6) dearness allowances or any other allowances granted to provide relief against the increased cost of living;
- (7) a foreign allowance, frais de representation in the case of diplomatic missions, assigned to officers serving in posts abroad;
- (8) children's Education allowance whether described as such or as Children's Education Assistance or in any other manner;
- (9) all amounts paid by way of reimbursement of medical expenses;
- (10) dearness pay which is really a part of Dearness Allowance;

6. Persons authorised to attach:-

The person who will attach and sell is declared in Rule 13 of Second Schedule¹⁰¹. It is stated that this "may" (and not "shall") be done by such

¹⁰¹ Appendix-2

person as TRO may direct. It means that TRO himself can do it or he may authorize any other person including TRI under Rule 19A of Schedule II. Therefore, TRI, if authorized by TRO, can make attachment but cannot further delegate his power of attachment to his subordinates. At the time of attachment, TRI should be personally present.

7. Time to start attachment:-

7.1 After drawing of TRC, first step is to issue and serve a notice of demand in ITCP1¹⁰². As per Rule 3 of Second Schedule¹⁰³, attachment of movable/immovable property or any other coercive action cannot be taken before expiry of fifteen days from the date of service of ITCP1.

In exceptional cases, TRO may attach movable/immovable property before expiry of stipulated fifteen days, by recording reasons if he is satisfied that defaulter may conceal, remove or dispose whole or any part of movable property thereby resulting in delay or obstruction of realization of outstanding demand.

8. Objections to attachment or sale -

At any time before the sale, defaulter or his representative can raise an objection that the attached property is exempt under Rule 10 of Second Schedule¹⁰⁴. However, TRO's decision in this regard is conclusive as provided in sub-rule (2) of this Rule and as held in the case of **Bijli Cotton Mills (under authorized custodian) Vs. TRO 101 ITR 624(1975)**. At times, a person other than defaulter may claim to be the owner of the articles attached. In these circumstances, the provisions of Rule 28 of the ITCP Rules¹⁰⁵ are applicable. Once the sale is confirmed, it is not open to anybody to raise objection as held in the case of **Smt. Shakuntla Devi Bharthiya Vs. TRO 117 ITR 255 (1978)**

9. Investigation by TRO on Objections to attachment:-

- (a) Where in execution of a certificate any claim is preferred 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 attachment or sale, TRO shall proceed to investigate the claim or objection.
- (b) Where the property to which the claim or objection applies has been advertised for sale, TRO may postpone the sale, upon such terms as to security or otherwise, pending investigation.

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¹⁰³ Appendix-2

¹⁰⁴ Appendix-2

¹⁰⁵ Appendix-4

- (c) The claimant or objector must prove that he had interest:-
- in respect of immovable property on the date of service of notice in ITCP1 and
 - in case of movable property on the date of attachment.
- (d) Where, upon the said investigation, TRO is satisfied that, for the reason stated in the claim or objection such property was not in the possession of the defaulter or of some person in trust for him, TRO shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.
- (e) Where TRO is satisfied that the property, at the said date, in the possession of defaulter was his own property and not on account of any other person, TRO 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, the order of TRO shall be conclusive.

10. Postponement of Sale on Objection:- When TRO decides to investigate the claim made before him against the attachment and proclamation for sale of a property, he may postpone it pending investigation. However, the discretion conferred on TRO by Rule 11(2)¹⁰⁶ 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.

11. Frivolous Claims:- Proviso to sub-rule (1) of Rule 11 of Second Schedule¹⁰⁷ is designed to put a stop to frivolous claims which are made with the motive of delaying the proceedings.

A2 PROCEDURE FOR ATTACHMENT

A2.1 MOVABLE PROPERTY

Procedure for attachment of movable properties is provided in Part II of Second Schedule from Rule 20 to Rule 26¹⁰⁸. For a ready reference, some important rules relating to attachment of different types of movable properties are given below:-

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<i>Rule</i>	<i>Type of movable property</i>	<i>Type of authorization</i>	<i>Type of service</i>	<i>Mode of attachment</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
20	Movable property other than (i) Agricultural produce and (ii) those mentioned in section 26 to 29, 31 & 32	Warrant issued by TRO	Warrant to be served on the defaulter	Actual seizure
24	Agricultural produce growing crop/ crop gathered or cut	Warrant issued by TRO	i. One 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	Deemed to pass in to the possession of TRO.
			ii. One copy to be affixed on the place of residence or business or the place of past residence or business.	
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 TRO; one copy to the debtor/ proper officer of the corporation/person in possession of the movable property concerned.	Prohibited to pay to the defaulter
27	Decree of a Civil Court	Notice requesting stay	To the Civil Court	Execution of decree is stayed

		<i>of Execution of decree</i>		<i>till TRC is cancelled or TRO applies to the Court to execute decree for applying the net proceed in satisfaction of TRC</i>
28	<i>Share in movable property</i>	<i>Prohibitory Notice</i>	<i>To the defaulter</i>	<i>Prohibiting the defaulter to transfer the shares</i>
29	<i>Salary and allowance of Government Servants</i>	<i>According to Rule 48 of order 21 of CPC</i>	<i>To employer</i>	<i>Not to pay attached salary to defaulter</i>
30	<i>Negotiable instruments</i>	<i>Order of attachment</i>	<i>To the TRI</i>	<i>Actual seizure</i>
31	<i>Property in custody of court/public officer</i>	<i>Notice requesting that the property to be held subject to further orders</i>	<i>To the court/public officer</i>	<i>Hold in custody of the Court till further order of TRO</i>
32	<i>Defaulter's interest in partnership property</i>	<i>Order charging share of defaulter partner in the partnership property and profits</i>	<i>To the partnership firm, the defaulter and the other partners of the firm</i>	<i>Shares of defaulter's in firm's property is attached.</i>

2. Steps to be followed for attachment: Rules 33 to 36 of Second Schedule¹⁰⁹ lay down the prescribed procedure for attachment and it must be strictly followed; otherwise, the entire attachment and subsequent sale are liable to be quashed. The prescribed procedure for attachment of movable property is as follows:

¹⁰⁹ Appendix-2

- (i) First step is to issue warrant as provided in Rule 20 in Form No. ITCP 2¹¹⁰. This is the second opportunity to defaulter to avoid coercive action (after ITCP1 served earlier).
- (ii) Essential ingredients of a warrant are:
 - a) it should be in writing;
 - b) it should be signed by TRO;
 - c) it should specify name of the defaulter and amount to be realized;
 - d) it should state the place where from the movables should be attached;
 - e) If the movables to be attached lie in different places, addresses of all such places should be shown in the warrant of attachment.

It must be noted that the order directing the attachment must be specific as to the place from which the seizure has to be made. If the order gives an omnibus authority to attach the movable property, wherever it may be found, the same is illegal (*Hari Prasad vs. Bailiff, Small Causes Court (1941) 197 IC 8861*).

- (iii) Next step is to serve warrant on defaulter. As per Rule 21 of Second Schedule¹¹¹, authorised officer shall cause a copy of warrant to be served on defaulter. Service of warrant is a condition precedent to attachment of the properties in question. Warrant should be served on defaulter himself. In case defaulter is available but refuses to receive it, service by affixture as per the CPC may be adopted. If defaulter is not present but any other adult member is present who normally attends to the business of defaulter or belongs to his family, warrant may be served on him. In case such adult member also refuses to receive warrant, it should be served by affixture as per CPC. In case, defaulter is not found traceable on his last known address available in the Income Tax record, warrant should be served by substituted service as per CPC.
- (iv) If, after service of a copy of warrant, the certified demand is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter as provided in Rule 22 of Second Schedule.

¹¹⁰ Appendix-22

¹¹¹ Appendix-2

- (v) As per Rule 23 of Second Schedule, TRO will do attachment by actual seizure only between sunrise and sunset and he must be careful to ensure that value of attached property is, as nearly as possible, proximate to the amount specified in the warrant.
- (vi) Before effecting attachment, TRO should call two witnesses and defaulter and clearly state that he is commencing attachment. While attaching the articles, TRO should be careful not to attach such articles which are exempt under section 60 of the CPC¹¹². An inventory of articles¹¹³ attached should be made and a Panchnama¹¹⁴ recording the entire proceedings, including the time of commencement should be drawn up in presence of two independent witnesses who should sign the Panchnama¹¹⁴ as witnesses. After preparing the inventory and Panchnama, copies of the same should be made available to defaulter.
- (vii) When stage is set for executing warrant, cash should be first taken up. Generally, the defaulter at this stage tenders cash towards arrears of tax. If he tenders cash available with him, question of attachment of cash does not arise. A receipt for the amount collected must then be given to him and the other movable property should be proceeded against for the recovery of the balance of arrears. If cash is not tendered, it should be attached in the first place.
- (viii) To effect the attachment, TRO or authorised officer can break open any inner/outer door/window 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. He cannot break open any almirah, suit case, receptacle, etc. If necessary, TRO may attach (i.e. seize) the said almirah etc. along with contents. Should this become necessary, he may even request the competent authorities to consider invoking section 132 of IT Act, 1961 for this purpose.
- (ix) Powers of TRO under Rule 23 of Second Schedule¹¹⁵ are limited to actual seizure of movable properties and he has no power to search. Powers conferred on TRO are narrower than the powers conferred on AO or any authority at the time of search under Section 132 of the Act. At the time of attachment, the objective of TRO is limited to attachment of movable property found in the

¹¹² Appendix-5

¹¹³ Appendix-15

¹¹⁴ Appendix-13

¹¹⁵ Appendix-2

premises to the extent of amount mentioned in warrant, in view of Rule 34 of Second Schedule.

- (x) There is no specific provision under the rules for a proforma of the inventory. However, a proforma is prepared and given in this Manual as Appendix-15, which may be used. It is advisable to make the inventory an integral part of the Panchnama¹¹⁶. While preparing the inventory¹¹⁷, a complete description of the articles must be written. Where valuables like diamond, gold jewellery and silver articles are attached, it is necessary to get them valued by an approved valuer in format prescribed for valuation report for Wealth Tax purposes. A copy of inventory should be delivered by the authorized officer to defaulter and another copy should be forwarded to TRO as provided under Rule 33 of Second Schedule¹¹⁸.
- (xi) In case of attachment of agricultural produce, provisions of Rule 24 and 25 of Second Schedule should be followed. For this purpose, a copy of ITCP2¹¹⁹ duly filled in should be placed on the land where crop is standing and if it is already cut, on the threshing floor. Another copy should be pasted on the outer door or some other conspicuous part of defaulter's residence or (with TRO's permission) the place where he carries on business or where he is known to have resided or carried on business last. By doing this, possession of the said property is deemed to have passed to TRO (Rule 24 of Second Schedule¹²⁰). However, due to its unique nature of quick decay and time necessary for ripening and harvesting, provisions of Rule 25 of Second Schedule are to be followed.
- (xii) As per Rule 34 of Second Schedule, attachment by seizure shall not be excessive, i.e., it will be very near to the amount specified in the warrant (ITCP2).

3. Difficulty in Attachment :

3.1 At times, when TRO tries to remove the attached articles from the premises of the defaulter, he may meet with resistance. Whenever he apprehends such eventuality, he should seek Police assistance. In all such cases, a panchnama¹²¹ should be got drawn by two respectable

¹¹⁶ Appendix-13

¹¹⁷ Appendix-15

¹¹⁸ Appendix-2

¹¹⁹ Appendix-22

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¹²¹ Appendix-13

witnesses of the locality. In cases of physical resistance, the written consent of the Pr. CIT/CIT should be obtained for lodging a complaint with the Police.

3.2 During the course of attachment, TRO as the attaching official may come across certain practical difficulties. For example, defaulter may refuse to receive a copy of the warrant or to avoid 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 and to proceed with the attachment.

3.3 If someone objects under Rule 11 of Second Schedule¹²² against attachment of movable property on the ground that the objector and not the defaulter was having interest in it as well as possessing it and such possession or interest was not in the manner provided in Sections. 65, 159, 171, 177, etc. but in his own capacity and hence the attachment was wrong; on receipt of such objection, TRO has to examine whether there is any truth in the objection or it is simply to delay/obstruct the process of attachment and sale. For such examination, he can cause enquiry and call for books of accounts, other documents and witnesses. If he is satisfied that such objection petition was merely a ploy to delay/obstruct the recovery process, he will reject such objection by passing a speaking order, giving reasons for decision. If he does not reject the objection, TRO has to withdraw attachment after recording reasons.

4. Attachment of Movable Property Depending Upon its Custody (in custody of defaulter or in custody of others): For the purpose of attachment, movable property can be divided into two types:-

- property in the custody of defaulter and
- property not in the custody of defaulter.

4.1 Attachment of movable property in the possession of defaulter is to be done by actual seizure. For this, first step for TRO is to issue warrant in ITCP2¹²³ to a officer (i.e. TRI) authorizing him to attach property of defaulter and then such officer shall serve a copy of warrant on defaulter. On service of such warrant, defaulter has to pay the demand and interest at the very time of service of ITCP 2 on defaulter and in case of failure to pay, attachment by actual seizure of movable property, shall begin immediately.

4.2 Attachment of movable property in the custody of others is to be

¹²² Appendix-2

¹²³ Appendix-22

done by serving prohibitory orders. Since such properties are not in the custody of defaulter, their custodians are prohibited from allowing defaulter to enjoy any benefit from it or exercising the right as owner by serving the prohibitory order on them. Procedure for attachment of such properties is given below:-

(a) **Attachment of debt:-**

A debt may be defined as a certain sum due from one person to another under a deed or under simple contract, written or oral. Essential requisites of a debt are as under:-

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

In case of attachment of a debt, TRO should issue ITCP 3¹²⁴ to the debtor prohibiting him from paying to defaulter and also to defaulter prohibiting him from receiving it if he plans to sell the debt by auction. In the alternate, he should issue notice u/s 226(3) to the debtor.

The location 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 location of the debt is outside the jurisdiction of TRO attaching the debt, the prohibitory order (ITCP No.3) should not be served on the debtor by the said TRO. After issuing the prohibitory order to defaulter, TRO must transfer the certificate proceedings to TRO having jurisdiction over the situation of the debt.

Attachment of a debt does not prevent defaulter from suing his debtor or from taking any other steps necessary for recovery of debt. But he is not entitled to receive a payment from his debtor unless the tax for which attachment was made is first cleared.

If debt is due to defaulter jointly with one or more persons, the entire debt cannot be attached under Rule 26 and only the part of the debt relating to defaulter should be attached under this Rule.

Salaries of employees (other than employees of Government or local authority) will also come under the term 'debt due', and

¹²⁴ Appendix-23

will have to be dealt with under Rule 26(1)(a). 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 10 of Second Schedule read with proviso to section 60 of CPC¹²⁵ Exemption contemplated by Rule 10 of Second Schedule 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 under Rule 26(1)(a) read with Rule 10 of Second Schedule provided there is no statutory provision specifically exempting the Dearness Allowance from attachment. Deductions to be made on account of Provident Fund (P.F.) and Income-tax should be paid 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. Government Securities and 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.¹²⁶

(b) Attachment of shares:-

For attaching shares, an order in ITCP 4¹²⁷ should be issued both to defaulter and Principal-Officer of the company prohibiting them from making any transfer of shares. A copy of the prohibitory order shall also be affixed on the notice board of TRO.

The company in which defaulter holds shares need not necessarily be located in territorial jurisdiction of TRO. What is required is that at the time of attachment, the share should stand in the name of defaulter in the books of the company. A deed of transfer executed by a defaulter will have no effect on attachment if the deed is defective.

(c) Attachment of other movable property:-

For attachment of movable property (other than debts and shares) not in the possession of defaulter (except property in the custody of court), TRO has to issue ITCP 5¹²⁸ to such person who is in immediate possession of the property prohibiting him from delivering the said property to any other person.

¹²⁵ Appendix-5

¹²⁶ Appendix-130

¹²⁷ Appendix-24

¹²⁸ Appendix-25

In case of movable property not in possession of defaulter such as pledged articles, an order in ITCP 5 should be served on a person who is custodian of such property. For instance in case of a pledged property, it should be served on the person who holds the property. A copy of the said order should also be served on defaulter prohibiting him from receiving the property.

4.3 In all the three types of attachments mentioned above, affixing of a copy of the prohibitory order on the notice board of TRO 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 TRO's office.

4.4 Attachment of other movable properties not in possession of defaulter is discussed below:-

(a) Attachment of decree of a Court:-

It is to be done by TRO by issuing ITCP6¹²⁹ to the Court. Rule 27(3) of Second Schedule¹³⁰ makes TRO the deemed holder of decree and it gives him the eligibility to apply to the court for execution of decree in the same manner as that of a decree-holder, namely, defaulter. For this, TRO has to seek legal advice from the Ministry of Law (MOL) and then ask MOL for opinion and appointment of a lawyer from their panel for filing application for execution of the decree. In this way, defaulter's property will be sold to raise money equal to decreed amount.

(b) Salary of an employee of government or local authority:-

Salary income of such assessee is attached under Rule 29 of Second Schedule by serving ITCP8¹³¹ duly filled in on the person responsible for payment of salary to the defaulter employee. As per Rule 29, the attachment will be as per Rule 48 of order-XXI of CPC which provides that "...the officer or other person whose duty it is to disburse the same shall withhold and remit to the Court the amount due under the order, or the monthly instalments as the case may be" .Therefore for attaching salary of such assesses, provision of Rule 48 of CPC should be followed. Though Rule 29 of Second Schedule is very much under the sub-heading "Part-II : Attachment and sale of movable property," it is because of Rule 48 of Order-XXI of CPC that salary, recovery from salary unlike other movable property, is not required to be made by public auction.

¹²⁹ Appendix-26

¹³⁰ Appendix-2

¹³¹ Appendix-28

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. Rule 29 of Second Schedule applies to attachment of 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.

(c) Attachment of negotiable instrument:-

Rule 30 of Second Schedule lays down that negotiable instruments shall be attached by actual seizure by serving ITCP⁹¹³² on the person who has custody of such instruments. 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. Its title 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.

A copy of the attachment order along with inventory¹³³ of seized negotiable instruments should be handed over to the defaulter. Panchnama¹³⁴ must also be drawn up.

(d) Attachment of property in the custody of a court/public officer:-

Attachment of such property is done under Rule 31 by issuing ITCP¹⁰¹³⁵ to the court or to the Public Officer. For getting the custody of such property, help of lawyer on departmental panel may be taken to file a prayer before the court or the Public Officer. The term Public Officer has been defined in Sec 2(17) of the CPC. The court or the Public Officer need not necessarily be within the jurisdiction of 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. Where the Court has already passed a rateable distribution order, it cannot be attached. 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 from TRO. An attachment made before the money has reached the Public Officer is invalid. Money deposited by a contractor with

¹³² Appendix-29

¹³³ Appendix-15

¹³⁴ Appendix-13

¹³⁵ Appendix-30

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 can be attached under this rule. 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 under Rule 31, as such an attachment does not in any way interfere with the administration of the insolvent's estate.

Attachment under Rule 31 may give 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. There is no difference in this respect between Income tax and any other tax due to a State such as Sales Tax. 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. Arrears of Income tax are recoverable in preference to other debts even without effecting an attachment of the defaulter's property. Under the Constitution, Income tax dues have priority over debts due to unsecured creditors. 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. But this priority exists only so long as the assets remain the property of the judgment debtor. Where an order for rateable distribution is made, the title of the judgment debtor to the fund in court is extinguished and with that the right of the Government to proceed against it must cease.

(e) Share or interest in Movable Property:-

Rule 28 of Second Schedule¹³⁶ provides for attachment of share or interest in movable property belonging to the defaulter and others in co-ownership. Such a share or interest cannot be attached by actual seizure. A provision has, therefore, been made for constructive seizure by service of notice to the defaulter in form ITCP 7¹³⁷.

(f) Attachment of defaulter's interest in partnership property:-

Rule 32 of Second Schedule deals with attachment of partnership property. The interest of a partner in firm or LLP business is

¹³⁶ Appendix-2

¹³⁷ Appendix-27

movable property. Any such interest of defaulter partner in the business of firm or LLP is to be attached by serving notice in ITCP11¹³⁸. A copy of this order of attachment should be served on the firm as well as the defaulter partner.

5. Responsibility of Authorised Officer making Attachment :

5.1 The attached articles have to be removed either to the office of TRO or to the place where they have to be deposited. As seized property cannot be generally sold before expiry of 15 days from attachment, these are to be kept in safe custody for this period. If attached property is cash, bullion, jewellery, securities or other valuables, TRO has to keep these items in the Departmental strong room wherever available, or in local treasury /RBI/SBI /Subsidiaries of SBI/ authorised banks as per Rule 27 of ITCP¹³⁹ Rules. However, cash/coins may be handed over to A.O. through ITCP15¹⁴⁰ as per Rule 47 of Second Schedule¹⁴¹.

As per Rule 25 of ITCP Rules, other movable property may be kept as under:-

- (i) in the custody of an auctioneer or private security company after TRO fixes terms and conditions and remuneration.
- (ii) in some iron/steel chest/safe under lock and key in some room of Income-tax office, posting police for protection (like strong room of Investigation Wing) or private security guards. Remuneration will be treated as cost of certificate proceeding (as per Rule 35 of ITCP Rules). This can be done by TRO after discussion with police authorities.

5.2 Where heavy articles such as iron safes, steel-almirahs or any item of delicate or fragile nature are attached, it may not be economical or may be risky to get them transported to the office, then in such cases, TRI may, with the permission of TRO, leave the attached articles in custody of defaulter till they are sold. Under Rule 26 of ITCP Rules¹⁴², the attaching officer or the custody officer, with the previous approval of TRO, may entrust, subject to his right of supervision, the attached movable property to the defaulter on his executing a duly stamped bond (Sapurdnama) in Form No. ITCP 23¹⁴³ which may be so verified as the circumstances of each case may require. The stamp duty varies according to the value of the property, the minimum being Rs. 250. In cases where the articles are

¹³⁸ Appendix-31

¹³⁹ Appendix-4

¹⁴⁰ Appendix-35

¹⁴¹ Appendix-2

¹⁴² Appendix-4

¹⁴³ Appendix-43

very valuable, it will be advisable to require the defaulter to furnish a surety bond executed by two solvent persons in addition to Sapurdnama¹⁴⁴. Once the articles are left in the custody of the defaulter on his executing a Sapurdnama, TRO has no power to lock up the doors of the room in which the articles are deposited

5.3 Wherever and however kept, as per Rule 23 of Second Schedule¹⁴⁵, TRO shall be responsible for due custody of the seized property. However, (a) when the property seized is prone to quick decay or (b) when expenses of keeping it in custody are likely to exceed its value, TRO may sell it at once (Proviso to Rule 23 of Second Schedule).

TRO is personally responsible for the safe custody of the articles attached by him. The effect of making an attachment under this Rule is to transfer the possession in the attachment property from the defaulter to TRO, whether the latter takes custody of such property or not - *Teeka and Others vs. State of UP 1962 (1) SCR 75*. TRO or Authorised Officer who has made attachment should be very careful in upkeep of the movable properties till they are sold. If, however, the goods get damaged or destroyed due to negligence of the officer having custody, he shall be liable for damages for the loss sustained - (*New Hindustan Bank Ltd. Vs. Amritsar Pathankot Transport Ltd. AIR 1958 PH 248*). Therefore, TRO shall personally ensure that the articles are safely brought to TRO's office or to the place where the Department has made arrangements for their safe custody. Perishable articles such as milk and milk products, eggs, fruits, vegetables, etc. should be sold at once.

6. Deterrent Effect of Attachment:- Attachment of movable properties has effect of dispossesses defaulter from his property in full view of other people and it creates tremendous psychological impact on defaulter. Thus, apart from monetary impact, it also has a tactical impact and may prompt defaulter to come forward to pay the certified demand.

7. Expenses on attachment:- All expenses connected with attachment, maintenance and custody and removal of movable property are recoverable from defaulter - vide Rule 35 of the ITCR Rules¹⁴⁶. 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.

II. IMMOVABLE PROPERTY

Recovery of outstanding taxes by attachment and sale of immovable

¹⁴⁴ Appendix-43

¹⁴⁵ Appendix-2

¹⁴⁶ Appendix-4

property is governed by the provisions of Part III of Second Schedule¹⁴⁷ to the Income Tax Act, 1961 and ITCP Rules, 1962¹⁴⁸. This mode of recovery is very effective as it has definite advantages over the other three modes of recovery available under Second Schedule. Advantages of this mode of recovery are as under:-

- (i) it does not involve physical dispossession of the property unlike in the case of movable property and therefore there is less risk of resistance;
- (ii) it does not require safe custody for a considerable period (and so, no risk of loss by theft/destruction) unlike in case of movable property;
- (iii) it gives substantial collection at one go, unlike the other three modes and
- (iv) it is not as sensitive, emotional and risky as "Arrest and detention".

2. Provision of Law Governing Attachment and its Effect :-

2.1 Part III of Second Schedule¹⁴⁹ deals with attachment of immovable property. Attachment is made under Rule 48 of Second Schedule by an order in ITCP 16¹⁵⁰. It results in:-

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

To achieve these twin-objective:-

- o a copy of the order of attachment must be served on the defaulter;
- o the fact of attachment proclaimed; and
- o 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 TRO.

2.2 TRO is statutorily bound to serve a notice in Form No. ITCP1¹⁵¹ immediately after drawing up of TRC on the defaulter. An order of attachment under Rule 48 can be issued only thereafter and that too,

¹⁴⁷ Appendix-2

¹⁴⁸ Appendix-4

¹⁴⁹ Appendix-2

¹⁵⁰ Appendix-36

¹⁵¹ Appendix-21

when the defaulter has failed to pay the arrears. Rule 51 makes it clear that the attachment of immovable property shall take effect from the date of service of the notice of demand in Form No. ITCP 1.

3. Check List before taking steps for attachment:-

3.1 Before invoking power of attachment, it must be ensured that following steps have already been taken:-

- (i) Correctness of TRC should be ensured. In this regard, it may be ensured that it bears TRO's signature and stamp and all columns, blank spaces etc. have been appropriately filled up.
- (ii) Service of assessment order & demand notice should be verified. A copy of tear-off acknowledgement slip should be obtained and kept in certificate case file.
- (iii) Service of ITCP1¹⁵² must be ensured.
- (v) Correctness of certified demand must be ensured (after due verification as discussed in Chapter IV(A)).
- (vi) Ownership of the property should be verified from all possible sources like Income-tax records, Registrar's office, Municipality Office, Block Land & Land Reforms Officer (BL&LRO's) office etc. and available documents must be kept in safe custody.
- (vii) Correctness of Jurisdiction over the property to be attached must be ensured.
- (viii) It should be ascertained if the demand has become final or any appeal/revision petition/settlement petition is pending.

3.2 It should also be ascertained whether on any earlier occasion, the same property was attached but could not be sold within the time period as provided in Rule 68B of Second Schedule¹⁵³. If so, no further attachment can be done after the expiry of the said date. For the purpose of ascertaining the limitation of period u/s 68B to make sale of attached property, decision of the Hon'ble Andhra Pradesh High Court in the case of **S.V. Gopala Rao vs. CIT (2004) 270 ITR 433 (AP)** may be referred as discussed in para 2.2 of Chapter V(C)

The time limit given in Rule 68B can be extended only under following circumstance:-

- If the property is required to be resold on grounds mentioned in Rule 57 or 58 or set aside under Rule 61, then period of limitation shall stand extended by one year.

¹⁵² Appendix-21

¹⁵³ Appendix-2

It may be mentioned that following period will not be counted in computing the limitation period:-

- i. period u/r 68B during which the collection of the demand is stayed by an order or injunction of any Court
- ii. period during which the proceedings of attachment or sale are stayed by an order or injunction of any Court:
- iii. period during which an appeal filed against any of TRO's order under Second Schedule is pending.

If the available period is less than 180 days after the exclusion of the above period then such period shall stand extended to 180 days.

3.3 Under the circumstances mentioned above, if a property cannot be sold due to expiry of limitation under Rule 68B, the Assessing Officer duly authorised by the Pr. Chief Commissioner of the Income-tax can invoke Rule 68A to accept property in satisfaction of the whole or any part of the amount due from the defaulter at such price as may be agreed upon between the Assessing Officer and the defaulter. Alternatively, TRO may appoint Receiver to manage such property.

4. Steps to be taken for attachment:-

- (i) Attachment of immovable property is made as per Rule 48 of Second Schedule¹⁵⁴ for which an order is to be served by TRO in ITCP 16¹⁵⁵ on the defaulter. He should carefully fill this Form and it must contain clear and specific details of the property to be attached.
- (ii) Before issuing ITCP16, a noting should be made in order sheet stating the relevant facts and TRO's order for attachment.
- (iii) Service of this notice is to be made as per Rule 49 of Second Schedule by any one mode of service prescribed in Chapter IV(D) preferably making service on the defaulter himself or in his absence on any adult member living in his house. One copy of the ITCP16 is to be served on defaulter as mentioned above, another copy is to be affixed on any conspicuous part of the property, third copy is to be pasted on the notice board of TRO and the fourth copy is to be kept in the file of TRO.
- (iv) Once attachment is done, it will take effect from the date of service of ITCP1¹⁵⁶ on defaulter.

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¹⁵⁵ Appendix-36

¹⁵⁶ Appendix-21

- (vi) There is no provision to put an advertisement of attachment in newspaper. Second Schedule provides [under Rule 54(2)] for such advertisement only for proclamation of sale and the law provides for deeming only the cost of such publication as cost of sale. **Thus, it is clear that even if attachment is proclaimed by newspaper advertisement, its cost cannot be deemed as costs of sale and so it cannot be recovered from the defaulter. In view of this, attachment requires to be advertised only in appropriate cases and for this, the Department has to bear the cost.**
- (vii) Attachment will be proclaimed as per Rule 50 of Second Schedule¹⁵⁷ by beat of drum or other customary mode (like microphone) and by this, (a) the defaulter has to be prohibited from transferring/charging the property in any way and (b) all other persons have to be prohibited from taking any benefit from such transfer/charge.
- (viii) Proclamation has to be done in the language of the district. The following text, after necessary translation in the local language, may be used for such proclamation of attachment:-

Sample matter of proclamation for attachment of immovable property [To be proclaimed in the language of the district as per Rule 52(2)]

Repeated, quick, pulsating beating of drum for about half minute to attract attention of public.

An important announcement. Today on (date) it is being announced to the members of public that Shri (name), son of Shri (name), resident of (address) has not paid his income-tax dues of Rs..... (amount). TRO, (designation and place of posting) of Income Tax Department has initiated recovery proceedings under Second Schedule to the Income Tax Act, 1961 to recover the above outstanding demand.

Repeated, quick, pulsating beating of drum for about half minute to attract attention of public.

As per the order of the said TRO an immovable property in the nature of land/land and building (nature of the property like flat no., area in sq.ft. etc.) situated atbelonging to the said defaulter Shri (name) is being attached now.

Repeated, quick, pulsating beating of drum for about half minute to attract attention of public.

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In accordance with this order of attachment Shri (name) is hereby being ordered that he would not transfer this property in any manner. If this property is transferred in violation of this order, such transfer will be treated as void and the purchaser shall not get any right, title or interest in it. Further, for such violation the said Shri (defaulter) shall be liable to imprisonment up to one month and/or fine up to Rs.1000/- as per Section 188 of Indian Penal Code, 1860.

Repeated, quick, pulsating beating of drum for about half minute to attract attention of public.

Members of public are also being notified that they should not deal with this property in any manner and if they do so, it will be at their own risk and they will not get any right, title or interest in the said property. Further, they will also be liable to imprisonment up to one month and/or fine up to Rs.1000/- as per Section 188 of Indian Penal Code, 1860.

Repeated, quick, pulsating beating of drum for about half minute to attract attention of public.

- (ix) After beat of drum, panchnama¹⁵⁸ evidencing the proceedings of attachment is prepared. Panchnama should specifically highlight the fact that a copy of the order of attachment was served on defaulter; a copy was affixed on the property, drum was beaten and announcement was made in the language of the district.
- (x) After drawing panchnama, TRO/TRI has to return to his office, affix a copy of the order of attachment on the notice board and record an endorsement to that effect. If TRI has only gone for attachment, he has to submit a report to TRO. In this report, he must mention clearly that he has taken the above mentioned steps. TRO should countersign the report recording his satisfaction about compliance with all formalities. It is mandatory that TRI places on record a report of such attachment with the details of panchnama duly filled and a copy of ITCP served on defaulter. The panchnama should be attached to the TRO's report without fail.
- (xi) In case of immovable property being land or building, TRI must serve a copy of ITCP 16¹⁵⁹ on the jurisdictional Sub-Registrar immediately and obtain an encumbrance certificate. After the initial attachment, this certificate should be obtained every six months to keep attachment fresh in the records of the Registration Officials.

¹⁵⁸ Appendix-14

¹⁵⁹ Appendix-36

5. Important Points relating to Attachment and Precautions to be taken

Keeping in view decisions of various High Courts, TRO/TRI should take certain precautions while effecting attachment of immovable property. They are as under:-

5.1 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. [*Sahul Hameed Vs. Arunachalam 1956 AIR 120*] 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 [*Narayanappa Vs Akkulappa 1965 AIR 215 (AP)*]. A mere prohibitory order will not constitute a sufficient attachment unless the proclamation prescribed in Rule 50 is carried out [*Thakur Vs. Bagwat Prasad 1963 AIR 286 (Patna) & Jagannath Prasad Vs. Mahabir Ram 1955 AIR 231 (Patna)*]. A proclamation of attachment should be made by beat of drum at some place on or adjacent to the property attached. Entire procedure for such proclamation has been given in Chapter V(B). Omission to have the drum beaten is a material irregularity [*Rajendra Vs Gulzari 1933 AIR 747 (All), Narayanappa Vs. Akkulappa 1965 AIR 215 (AP)*]. Likewise, failure to affix a copy of the order of attachment on a conspicuous part of the property is a material irregularity [*Wishnath Vs. Rahmatullah 1923 AIR 671 (Lah)*]. Where several properties are ordered to be attached, a copy of the order must be affixed on each of the properties [*Murugappa Chettiar Vs. Thirumalai 1948 AIR 191 (Mad.)*]. But where the property is in several plots contiguous or otherwise, the copy of the order need not be affixed on each separate plot [*Sahul Hammed Vs. Arunachalan 1956 AIR 120 (JQC)*]. 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 property separately [*Rukminiamma Vs. Ramayya 1943 712 (Mad.)*]. Omission to affix a copy of the attachment order on the notice board of TRO is also a material irregularity [*Attar Singh Vs. Gulam Mohammed 1920 AIR 24(Lah)*]. Attachment will not be complete without a copy of attachment order being affixed on the notice board of TRO, even though all the other formalities might have been observed [*Govinda Prasad Vs. Brindaban 1937 AIR 7 (Cal.)*].

5.2 It is essential that the attachment order should show correct amount of arrears. 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 sale [*CIT Vs. Chittori Ramachandra Rao, 101 ITR 591 (AP)*].

5.3 An attachment order prohibits alienation or transfer of the immovable property by defaulter and such alienation becomes void under Rule 16 of Second Schedule¹⁶⁰. Attachment is a notice to all concerned so that any person who accepts a private transfer of the property by defaulter after an attachment cannot plead that he had no knowledge of attachment [*Sheoraj Singh Vs. Gajodhar Prasad 1942 AIR 465 (Oudh), Dhian Singh Vs. Secretary Of State, 1945 AIR 97 (Nagpur)*]. Attachment does not create any title and so it does not confer any title or interest on the holder of the certificate. It prevents private alienation [*Manickan Chettiar Vs. ITO 1938 AIR 180 (Mad Fill Bench)*] but does not prevent alienation by the process of law [*Raghunath Vs. Sunderdas, 1914 AIR 129 (Privy council)*]. The Income tax Act provides total protection from alienation of properties once proceedings are initiated. (Section 281 of the I.T. Act, 1961).

5.4 A receiver appointed by a court is an officer of the court. He cannot be termed as the legal representative of the defaulter [*K. Iswara Wariyar Vs. Commissioner of Agricultural I T, 72 ITR 722 (Kerela)*]. 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 property is attached by following the prescribe procedure as given in Second Schedule. The court, instead of granting leave, may make a "charging order" [*Pratapmal Vs. Chunilal, 1933 AIR 417 (Cal.)*]. Likewise, claims against a defaulter whose case has been adjudicated and an Official Liquidator (OL) appointed, are protected by filing a claim petition in Form 66 before the OL. This petition of claim must be regularly followed up to ascertain the date of declaration of dividend and the apportioning of such dividend by the OL.

5.5 Under Rule 51, the attachment takes effect from the date of service of ITCP1¹⁶¹ and not from the date of attachment [*Tax Recovery Commissioner Vs. K. Basavarajappa (1992) 97 ITR 398 (Kar.)*]. Any charge created before the attachment but after the service of ITCP 1 will have to give precedence to the attachment. Moreover, the claim of the Sovereign (Department) takes precedence in view of the provisions of Section 281 and Rule 16 of the Second Schedule of the Act.

5.6 Government of India has accepted recommendation of the Public Accounts Committee that the Income tax Department should take possession of title deeds in respect of immovable properties attached by

¹⁶⁰ Appendix-2

¹⁶¹ Appendix-21

TRO so that surreptitious sales or transfers of such immovable properties subsequent to attachment are forestalled. Therefore, all efforts should be made to obtain the title deeds of the attached property from the assessee, keep them in safe custody and get them digitized and stored.

6. The duties and responsibilities of a TRO/TRI making attachment:-

TRO must ensure that a list of all properties of defaulter is available on record. For this purpose, reference may be made to Chapter III on Source of Funds. In case, property is standing in the name of another person, say, defaulter's wife, he must ascertain whether the same is purchased out of defaulter's funds. TRO/TRI must incorporate all these particulars in ITCP 16¹⁶² and must ensure that the prescribed procedure is followed while effecting attachment, proclamation and sale.

B. PROCLAMATION FOR SALE OF MOVABLE AND IMMOVABLE PROPERTY

Once attachment of the movable or immovable properties of defaulter is completed, next stage in the recovery proceeding is to issue a proclamation of sale. Such proclamation should be made in effective manner so that adequate attention is focused upon the property to bring in more bidders at the stage of public auction. This chapter deals with the procedure to be followed in the matter of issuing a proclamation of sale of both movable and immovable properties.

2. Issue of warrant:- When a decision to sell a property is taken, reasons should be recorded in writing. After this, warrant for sale of property should be issued. Issue of warrant of sale of movable property is governed by Rule 37 of Second Schedule and in case of sale of immovable property by Rule 52(1) of Second Schedule. For both movable as well as immovable properties, warrant of sale is issued in Form No. ITCP12¹⁶³. This warrant is issued to TRI authorizing 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 authorizing him to sell the property by public auction. The warrant should indicate the time before which the auction must be completed.

3. Procedures involved in the proclamation of sale of movable and immovable properties:-

Proclamation of sale is governed by the Rules 38 and 39 of Second Schedule¹⁶⁴ for movable property and Rules 52 to 54 of Second Schedule

¹⁶² Appendix-36

¹⁶³ Appendix-32

¹⁶⁴ Appendix-2

for immovable property and Rule 16 of ITCP¹⁶⁵. Prescribed procedure is as under: -

3.1 Issue of Notice for proclamation of sale:- Proclamation of sale in Form No. ITCP 13¹⁶⁶ is to be issued both in case of movable as well as immovable property. Proclamation of sale is a notice to the public that certain properties will be sold by public auction on a certain day. In the proclamation, it is to be stated that:-

- (a) the sale will be held
- (b) at what time
- (c) on which date and
- (d) on which place.

In case of immovable property, before issuing notice in ITCP 13 for proclamation, a notice under ITCP 17¹⁶⁷ as per Rule 53 of Second Schedule¹⁶⁸ should be given to defaulter informing him about the proclamation.

3.2 How proclamation is made? - The proclamation shall be made by beat of drum or other customary mode which is a mandatory requirement. The Customary mode includes announcements through loudspeaker in public places, advertisements in the local newspapers, websites and similar other public media. A copy of the proclamation should invariably be affixed on the notice board of the Office of TRO. A sample of making proclamation is given in paragraph II of Chapter V(A). This may be adhered to.

3.3 Steps to be followed by TRIs/Authorized Govt. Auctioneer while actually making a proclamation.

First, the drum must be beaten or announcement made through a loudspeaker and then the proclamation of sale is to be read out. Thereafter, in the case of immovable properties, a copy of the proclamation must be affixed on a conspicuous part of the property. After this is done, a panchanama¹⁶⁹ in the presence of two independent witnesses, evidencing the fact that the proclamation has been duly made, must be drawn. The Panchnama should be prepared with caution and it should contain details of the steps taken for making proclamation, for example, it should state that a copy of the proclamation (in the local language) was served on the

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¹⁶⁶ Appendix-33

¹⁶⁷ Appendix-37

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¹⁶⁹ Appendix-14

defaulter, drum was beaten or announcement made through loud-speaker, the contents of the proclamation form were read and copy of proclamation form was affixed on a conspicuous part of the immovable property. The panchnama¹⁷⁰ should also record all significant incidents that took place during the process of proclamation. A copy of the proclamation should be affixed on the notice board of TRO.

Proclamation may be published in newspaper being widely circulated in the area where the auction of the property has to take place.

4. Ingredients of a valid proclamation. They are as follows:-

- (a) A proclamation should be made in the local language.
- (b) The amount of arrears, including interest, costs and expenses incurred in the process of such sale up to the intended date of sale, for the recovery of which the sale is ordered, must be clearly specified in the notice of proclamation.
- (c) The time and place of sale should be clearly indicated in the proclamation. 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 sale is to take place. If the date mentioned is vague, ambiguous or not legible, sale held under such a proclamation would be void. *Jatia Estates (Pvt.) Ltd. vs. Tax Recovery Officer and Others (1974) 95 ITR 343 (Cal)*, *Kishan Chand Aggarwal vs. Union of India (1975) 100 ITR 496 (P&H)*.
- (d) Sale by auction may be conducted at any place. Even in respect of immovable property, sale can be held at a place other than the site of the property.
- (e) The proclamation should state whether the sale is subject to confirmation or not. In case of movable properties, it is not necessary to subject the sale to confirmation but in case of valuable articles such as diamonds, gold jewellery etc., it is advisable that the sale must be subject to confirmation. In case of immovable property, sale is always subject to confirmation.
- (f) Exact description of property must be given. In case, proclamation of sale gives no details of property or the details given are vague and silent about material particulars of property, subsequent sale made would be liable to be set aside. **Kishenchand Aggarwal 100 ITR 496 (P&H)**.
- (g) Place and time of sale/auction should be clearly mentioned in the proclamation. Such omission is considered by the courts as

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material irregularity. **Ramakrishna vs. Sundaramma AIR 1961 AP.**

If there is any omission in the proclamation in respect of material particulars, namely, description of property, time and place of sale/auction, the entire proceeding is void. Sale should be held on the date and place as proclaimed and omission to do so will render the sale void – **Rajendra Vs Gulzari 1933 AIR 747 (All)**

Holding of a sale at a time or in place different from that mentioned in the proclamation is a material irregularity within the meaning of Rule 61 and is voidable. **Pathummal Kunju Vs. Shanker Panikkar AIR 1961 Ker, Dwarka Dass Vs. Bhagwan Prasad AIR 1960 (All.)**

- (h) A single proclamation combining two defaulters is invalid and contrary to Rule 53 of Second Schedule. **Precision Instrument (P) Ltd. Vs. UOI (1976) 104 ITR 723 (All.)**
- (i) Serial order in which the properties are to be sold must be indicated in the proclamation and at the time of conducting the auction, it should be strictly followed.
- (j) Name of TRI or a private person such as Government auctioneer authorized to conduct the auction must be given.
- (k) If defaulter dies, before the issue of the proclamation or in the course of recovery proceedings, his legal heir(s) must be brought on record. This is done by issuing a notice to legal heir(s) in Form No. ITCP 29¹⁷¹.

5. Proclamation for Movable Property

- (a) Rule 39 of Second Schedule¹⁷² deals with procedure of proclamation. It says that such proclamation shall be made by beat of drum or other customary mode in case of property attached by actual seizure in the village/locality in which property was seized or such other place as TRO may direct. In case of property attached otherwise than by actual seizure, such proclamation shall be made by beat of drum or other customary mode at a place decided by TRO. A copy of the proclamation shall be pasted on the notice board in the office of TRO.
- (b) Rule 40 of Second Schedule stipulates that there should be a gap of 15 days between the date of proclamation and the date of sale. This gap can be reduced in cases where defaulter gives consent

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in writing or where the property is subject to speedy and natural decay (e.g. perishables) or where expenses of keeping the property in custody is likely to exceed its value (e.g. livestock).

- (c) There is no restriction as to place where auction should be held in respect of movable property other than agricultural produce.
- (d) Rule 41 of Second Schedule provides that for growing crops, sale may be held at or near the land on which such crop has been grown and in case of crop that has been cut, at or near the threshing floor or fodder stack on which grain is deposited. TRO, instead of conducting sale at the above places, may direct the sale to be held at the nearest public place, namely, 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 owner of the produce applies for postponement of sale to the next market date, sale should be postponed accordingly so that fair price can be realized. In case of growing crops also, if owner applies for postponement of sale till crop is cut, sale should be held only after crop is cut. Crop may be sold before it is cut, if it may not fetch a higher price after being cut.

6. Proclamation for Immovable Property

- (a) For immovable properties, a proclamation in ITCP 13¹⁷³ can be issued only after giving notice to defaulter in ITCP 17¹⁷⁴. Firstly, it puts the defaulter on notice of the fact that sale of the properties has been ordered. Secondly, it calls upon him to disclose to TRO the encumbrances, charges, claims or liabilities attached to the properties.
- (b) In case of immovable property, encumbrances on the property to be sold should be specified to enable prospective purchasers to assess proper value of the interest that is being sold (**State Bank of Patiala Vs Union of India & ors 91 ITR 630**). Proclamation of sale of immovable property shall also specify the reserve price, if any, below which property may not be sold and no sale shall be made, if the amount bid by the highest bidder is less than the specified reserve price.
- (c) The fact whether the claims, charges etc. in respect of property has been accepted as correct or not by TRO must be clearly mentioned in the proclamation.
- (d) After proclamation of sale of immovable property is made by

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¹⁷⁴ Appendix-37

beat of drum or other customary mode, a copy of the proclamation should be affixed on a conspicuous part of the property and on the notice board of TRO. Omission to beat drum as required by the Rule is a "material irregularity within the meaning of Rule 61 [Rajendra vs. Gulzari (1933) 55 All 182]. Omission to comply with this requirement is a fatal defect. Where several properties are put up for sale, copy of the proclamation should be affixed on each property separately [Murugapa Chettiar vs. Ramayya (1948) A.M. 191]. However, if a single block of properties, bearing different Khasra numbers are put up for sale, a copy of the proclamation of sale need not be affixed on each khasra number; it is enough if it is affixed on one property [Shahul Hameed vs. Arunachalam 1955 Tr. C 1279].

- (e) Rule 55 of Second Schedule¹⁷⁵ requires that there should be a gap of 30 days between date of proclamation and date of sale in respect of immovable property. Sale can be held earlier only when defaulter agrees to it in writing.
- (f) Before warrant of sale of a building or land is being issued, the authenticated copy of sale deed pertaining to this property has to be obtained from the Sub Registrar Office along with latest copy of the encumbrance certificate. In case of difficulty in ascertaining the reserve price, TRO must refer the valuation of the property to a valuation officer to determine its value for fixing the reserve price.
- (g) TRO/TRI must inspect the property to ascertain special features or problems at the time of sale. Pending investigation regarding ownership dispute under Rule 11 must be completed by the TRO before the process of sale begins.

7. Case Laws on attachments and sale of properties

- i. The rules laid down in the Second Schedule to the Act contain procedure for recovery of tax by way of attachment and sale of the property. On transfer of property for recovery of dues, title to the property gets vested in transferee under Rule 6. Rule 11 provides that if any objection is raised to the attachment and sale, the same can be decided by TRO. Rule 11(6) provides that TRO decides the objections by which an objector is aggrieved, such objector can file a suit to establish his case and subject to result of such suit, the order of the TRO is conclusive. A perusal of above provisions show that the TRO is entitled to issue a certificate and recover the amount by way of attachment and sale of

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assessee's property. If such property is transferred during the pendency of proceedings, the same does not affect the recovery from the said property. The questions relating to validity of attachment and sale can be decided by TRO. Of course, such decision is final only subject to result of suit, if any, preferred by the objector. Section 222 clearly provides that where assessee is in default, TRO can issue the requisite certificate and proceed to recover the amount by attachment and sale or other modes specified therein. Section 281 statutorily declares creation of any charge or parting of possession to be void against any claim of tax except where such charge or transfer is for consideration without notice of pendency of proceedings or with the prior permission of the Assessing Officer. On plain reading of provisions of the Sections 222 and 281, it appears that the department can proceed under Section 222 by invoking Section 281 without filing the suit. In case attachment or sale or other proceedings are objected to, the TRO is required to decide the said objections under Rule 11 and if a party is aggrieved, a suit can be filed in civil court, in absence of which, order of the TRO is conclusive. **Karnail Singh vs. Union of India [2011] 11 Taxmann 323 (P&H).**

- ii In case of *Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh [1994] 1 SCC 131* Hon'ble Supreme Court observed that the auction purchaser gets a right only on confirmation of sale and till then his right is nebulous and has only right to consideration for confirmation of sale.
- iii. Proclamation of sale and holding a public auction are only the initial steps towards sale of immovable property of a tax defaulter to recover such amount through sale of his properties. The highest bidder, whose offer is accepted, during such public auction, has the responsibility to deposit 25% of the purchase money on spot, failing which, the acceptance of offer stands revoked. However, before the sale can be confirmed in favour of the highest bidder, several steps are to be completed and intervening factors to be taken into account. For example within fifteen days from the date of public auction, the purchaser has to pay remaining 75% of the amount. Even then the sale is subject to confirmation and the tax defaulter, at various stages, has right either to intervene, pay off the tax or question the very proclamation. For example, under Rule 60 he can apply to set aside the sale of immovable property upon deposit of the amount of tax dues, of course before the confirmation of sale. He also has a right to question any order that the Tax Recovery Officer may have passed under the schedule. Rule 86(1) provides for a statutory appeal against any such order

before the Chief Commissioner or the Commissioner. Sub-rule (3) empowers the appellate authority, pending its final decision in appeal, to stay the execution of the certificate. The auction purchaser gets a right only on confirmation of sale and till then his right is nebulous and has only right to consideration for confirmation of sale. Therefore, where a public auction is conducted to recover income-tax dues of defaulting assessee, highest bidder does not get a vested right in property sold during such auction till the sale is confirmed. **Jadeja Jitendrasinh Chandrasinh vs. Tax Recovery Officer, Range 3 & 2[2012] 27 Taxmann 10 (Guj.)**

- iv. If assessee provides furnish a bank guarantee to the extent of the liability till the conclusion of appeal, there is no need to do attachment **Avenue Supermarkets Ltd. vs. Assistant Commissioner of Commercial Tax, Flying Squad & 2 [2014] 41 Taxmann 301 (Gujarat).**

C. SALE OF MOVABLE AND IMMOVABLE PROPERTY

1. Sale of Movable Property

Rule 37 of Second Schedule¹⁷⁶ empowers TRO to sell any movable property or its part. This Rule corresponds to Rule 64, Order XXI, of CPC. TRO can direct sale of property which falls in his jurisdiction [**Ambika Vs. Manikagen, Loan Office (1929), 126 IC 43**], whether attached by him i.e. in respect of his own assessee or in respect of attachment made by another TRO and TRC transferred thereafter [**Manikkar Vs Loganatha (1929) AM 852**]. TRO cannot hold sale of defaulter's property without first attaching it. If any sale is so held, it is vitiated and is ab initio void. TRO has the discretion to order the sale of only a portion of the attached property, if in his opinion, the sale proceeds of such portion will be sufficient to satisfy the arrears in TRC together with cost of recovery. For sale of movable property, warrant of sale of property is to be issued in ITCP12¹⁷⁷.

1.1 Time of sale:- Sale shall take place only after the expiry of at least fifteen days from the date on which it was proclaimed under Rule 38 of Second Schedule¹⁷⁸.

However, sale can be held even before the expiry of the fifteen days in the following circumstances: -

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- (a) if the property is such that it is subject to speedy and natural decay; or
- (b) if the expenses of keeping the property are likely to exceed its value; or
- (c) if the defaulter himself consents for holding the sale earlier.

1.2. Sale of agricultural produce.

1.2.1 Procedure for sale:- Rule 41 of Second Schedule¹⁷⁹ deals with procedure to be followed in case of sale of agricultural produce.

- (1) Sale of agricultural produce has to be held as under;
 - (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 at or near the threshing floor, or at or near the place for treading the grain, or at or near the fodder-stack where the grain is deposited. TRO may direct that the sale may be held at the nearest public place, if in his opinion, the produce is likely to fetch a better price.

Rule 42 specifies the manner in which growing crops are to be sold, depending on whether such crop is capable of being stored (after harvesting) or not. Where crop can be stored after its harvest, it has to be sold in the manner laid down in sub-rule (1) where the crop cannot be stored or can be sold to a greater advantage in an unripe stage, it has to be sold in the manner laid down in sub-rule (2).

1.2.2 Postponement of Sale of agricultural produce:- As per provision of Rule 41(2), sale of agricultural produce can be postponed:-

- (a) Fair price is not offered for it or
- (b) The owner of the produce or a person authorised to act applies to have the sale postponed till the next day or on the next market day.

1.3 Mode of Sale:- Rule 43¹⁸⁰ prescribes that movable property shall be sold by public auction. Officer conducting sale is given the discretion to sell the property in one or more lots. TRO may direct that the bidders at an auction shall be restricted to a particular class of persons.

1.4 Who can conduct the sale? – TRO may authorise TRI or any person (other than TRI), if in TRO's opinion, it is advantageous to get the sale conducted through such person as being some Govt. approved auctioneer

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or a broker for selling negotiable instruments or shares in companies. Remuneration payable to such person other than TRI shall be fixed by TRO and the same shall be deemed to be cost of sale.

1.5 Acceptance of bid:- Under Rule 38¹⁸¹, when movable property is to be sold, TRO has to issue a proclamation, specifying therein, inter alia, whether the sale is subject to confirmation or not. TRO has to fix the 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. Reserve price is not a predetermined price but the minimum price below which no bid is acceptable. The highest bidder shall be declared to be the purchaser of any lot only in the following circumstances:-

- (i) The highest bidder should be legally competent to bid; and
- (ii) 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.

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, the sale of the remaining lots should be stopped immediately.

If two or more persons bid the same price for the property of which one of them is such co-owner, the bid of the co-owner shall get priority over the other bids.

1.6 Payment of Price:- Where property is sold by public auction in lots, price of each lot has to be paid at the time of sale. The expression “or as soon after”, gives a discretion to the officer holding sale to allow the price to be paid within a reasonable time after sale [**Shah Fareed Vs Sheo Charun (1872) 4 NWP HCR 37**].

If the purchaser does not pay the price, the property shall be resold forthwith. If loss arises on account of such resale, the defaulting purchaser shall be answerable for the loss under Rule 14 [**Ramdhani Vs Rajrani (1881) 5 Cal 337**].

1.7 Confirmation of Sale:- When the purchaser pays the purchase money, the officer conducting the sale shall grant him a receipt for the same thus, making the sale absolute.

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1.8 How to use amount realized on Sale?:- The officer conducting sale shall forthwith pay entire amount, received by him from the purchaser, into the Government Treasury and shall submit a report of the proceedings to TRO. Format of Certificate of sale of movable property is given in ITCP 14¹⁸².

1.9 Delivery of movable Property:- Rule 36 of ITCP¹⁸³ Rules which materially corresponds to Rule 79, Order XXI of the CPC lays down following procedure:-

- (i) Where movable property (attached by actual seizure, other than negotiable instruments) is sold, it shall be delivered to purchaser;
- (ii) Where such property is in the possession of a third person, he shall be prohibited from delivering possession to any person other than the purchaser and he should also be required to deliver such possession to the purchaser within a specified time. If the third party disobeys TRO's order, the property will be seized (as provided in Rules 35 and 36 of the Second Schedules) from such third party and delivered to the purchaser;
- (iii) Where such property is a debt (not secured by a negotiable instrument), 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 of such debt to anyone except the purchaser and also order that such payment must be made within a specified time. If the debtor fails to pay it in time as specified time, TRO shall recover the same from the debtor as if he was a defaulter for that amount within the meaning of Section 222 of the Act.

1.10 Transfer of Negotiable Instruments and Shares:- Rule 37 of ITCP¹⁸⁴ Rules which corresponds to Rule 80, Order XXI of the C.P.C, prescribes the manner in which a negotiable instrument or share in a company has to be transferred.

1.11 Vesting order in case of other movable property:- Rule 38 of ITCP¹⁸⁵ Rules (corresponding to Rule 81, Order XXI of the CPC) provides that in the case of any other movable property, for which no specific provision has been made by ITCP Rules, TRO has to pass an order vesting such property in the purchaser or any person as the purchaser may direct and the property vests accordingly.

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1.12 Irregularity not to vitiate sale:- Rule 45 of Second Schedule provides that any irregularity in publishing or conducting the sale of movable property shall not vitiate the sale but any person sustaining substantial injury by reason of such irregularity may initiate a suit in Civil Court.

In cases, where a sale of movable property is conducted by public auction without giving notice to defaulter, the same is without jurisdiction and is liable to be set aside under this Rule [**Manichand Vs Dhansukh Das 1953 Raj 288**].

Where because of irregularities in publishing or conducting a sale, the sale is effected for a consideration which is much less than market value, defaulter suffers substantial injury. In such case, on application by defaulter, the court may set aside the sale as held in **Babaji Krishna Chandrab vs. Dasarathi , AIR 1949 Orissa 149**. In view of this decision, TRO should remember that undervaluation of a property is a question of fact and may be established either by direct evidence or inference may be drawn from the nature of irregularity or the extent of undervaluation in sale price. Accordingly, TRO must ensure that the reserve price of the property is determined very carefully.

2. Sale of Immovable Property

2.1 Mode of sale:- Rule 56 of Second Schedule¹⁸⁶ provides that every sale shall be made by public auction. TRO has to fix a reserve price and make an order that any bid shall be accepted only on the condition that it is not less than the said reserve price. The reserve price is the minimum price below which no bid is acceptable. Entire procedure to sell the immovable property is described in sub-chapter V(D) and the same must be strictly followed by TRO. The sale of immovable property may be made by such persons as TRO, from time to time may direct and such person can be a TRI or a private person like a Government auctioneer. Rule 19 of the ITCP Rules¹⁸⁷ ordains that person conducting sale shall forthwith pay entire amount received by him into the Government treasury and shall submit a report of the sale to TRO.

2.2 Time Limit for sale of Immovable Property:- As per Rule 68B¹⁸⁸, time limit for sale of immovable property is fixed. No sale of immovable property shall be made after expiry of three years from the end of the financial year in which the order giving rise to certified demand became conclusive under Chapter-XX or Section 245-I of the Act. This period shall be extended by one year in case the property is required to be resold due to amount of highest bid being less than the reserve price or

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under the circumstances mentioned in Rule 57 or Rule 58 or where the sale is set aside under Rule 61¹⁸⁹. For computing the period of limitation for sale of property, TRO must refer to sub-rule (2) of Rule 68B.

Period of limitation was extended from 3 years to 4 years by the Board vide Notification No. 9995 dated 01.03.1996 but this extension was declared invalid by Andhra Pradesh High Court in **S.V. Gopala Rao Vs. CIT (2004) 270 ITR 433 (AP)**.

2.3 Payment of purchase money:- Rule 57¹⁹⁰ contains conditions for payment of purchase money. It is essential for the auction purchaser to ensure that the full purchase money reaches TRO within prescribed period of fifteen days. When a property is sold, it is mandatory that the purchaser should deposit 25% of the amount forthwith and pay the balance within 15 days. TRO will have no discretion to relax these conditions or grant time. If the conditions are not fulfilled, the sale becomes invalid and property should be resold. In the matter of forfeiture of the deposit, TRO has discretion. [**Pishorilal Sethi vs. TRO (1990) - 188 ITR 528, 531 (All.)**]. If the purchaser gives a cheque for the amount of the sale, it does not tantamount to payment within the meaning of this Rule because subsequently the purchaser may change his mind and advise his banker not to encash the cheque or the cheque may bounce for any other reason. (**Hiralal Vs Master Champa 1955 AIR 226(All.)**). On the other hand, where the purchaser applied within time to TRO for challan, and due to inaction on TRO's part, the money could not be deposited in time, TRO cannot later say that payment is not made in time.

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' [**Manilal Mohanlal Vs Sayed Ahmad 1954 SCJ 509 (SC)**]. TRO has no power to extend the time for payment [**Uttamchand Vs Balkrishna 1961 Bom 471**]. If the fifteenth day happens to be a closed holiday, payment can be made on the next day on which TRO's office is open.

2.4 Forfeiture of deposit:- TRO under Rule 58¹⁹¹ is given the discretion to forfeit deposit in appropriate cases. If the defaulting purchaser can satisfy him that he made the bid under a misapprehension, he may be allowed to withdraw the deposit. It should be noted that even though 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 in case of default of payment and consequent forfeiture of deposit.

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2.5 Provisions for Cancellation of Sale:- Under Rules 60 to 62 of Second Schedule, the sale of immovable property can be set aside in circumstances to, which are given below: -

Sl. No.	Rule 60	Rule 61	Rule 62
1	Grounds This rule deals with setting aside of sale on deposit	Grounds This rule deals with setting aside on the ground of non service of notice or material irregularity in publishing or conducting the sale.	Grounds This rule deals with setting aside on the ground that the defaulter had no saleable interest in the property.
2	Who can apply - The defaulter - Any other person whose interests are affected by the sale.	Who can apply - The defaulter - Any other person whose interests are affected by the sale. - An ITO authorized by the CCIT/CIT.	Who can apply - The purchaser
3.	Time limit within which application to be made. Within 30 days from the date of sale i.e. the date on which property is knocked down to the highest bidder.	Time limit within which application to be made. Within 30 days from the date of sale i.e. the date on which property is knocked down to the highest bidder.	Time limit within which application to be made. Within 30 days from the date of sale i.e. the date on which property is knocked down to the highest bidder.
4.	Amount to be deposited with the application. Amount specified in the sale proclamation plus interest @9% p.a. from the date of proclamation to the date of sale. Plus 5% of purchase money.	Amount to be deposited with the application. - In case of defaulter A m o u n t recoverable from him in execution of the certificate. - Other person - NIL	Amount to be deposited with the application. - NIL

It is clarified that defaulter or any other person who has made an application under Rule 61 for setting aside the sale, is barred from making an application under Rule 60.

Some of the decisions of various Courts relating to Rule 60, 61 & 62 for setting aside of sale are as follows:-

- (i) Where two applications are made, one by the defaulter and another by person whose interest is affected and each applicant deposits a portion of the aggregate amount required by this rule, the deposits and the application may be treated as made within this rule [**Maduri Sarain Vs. Bishambhar Dhar 102 IC 471**].
- (ii) Both the conditions of making application and deposit of money as provided under Rule 60 are cumulative. If there is only an application without deposit or vice versa, it is not enough [**Munna Lal Vs. Radha Kishan (1915) 30 IC 186, Dhari Jana Vs. Gauranga Charan Sahu (40) AP 87**].
- (iii) Time limits for making application under all three Rules 60, 61 & 62 are mandatory and TRO has no power to extend this period. The word "date of sale" means the date on which the property is knocked down to the highest bidder and not the date on which the sale is confirmed by TRO under Rule 63 [**Chowdhry Kesri Vs. Giani Roy (1902) 29 Cal 626**]. 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 [**Iqbal Narain Vs. Raj Kumar (1934) 147 IC 1077**]. An application filed beyond time is not maintainable [**Chunni Lal Vs. Santoo Lal, AIR 1984(All.)**].
- (iv) A person who has entered into an agreement to purchase an immovable property which has been attached under the provisions of Second Schedule is not a person competent to invoke Rule 61 [**D.V. Satyanarayan Vs. TRO (1992) 197 ITR 467 (Kar)**].
- (v) While deciding an application under Rule 61, TRO is not competent to decide whether TRC was obtained by fraud [**Khanendra Vs. Pram Nath (1902) 29 Cal. 395**] or whether he has jurisdiction to sell the property [**Shirin Vs. Agha Ali (1896) 18 All. 141**] or whether the sale is nullity [**Balwant Rai Vs. Amrit Kaur (1961)(1) Punj. 83**]. Also he cannot decide whether the sale being bad because of reason that it had been held after the property had vested in the state under a statute [**Virendra Kishore Vs. Kesrinandan Prasad 1962 A.P.410**].

2.6 Confirmation of sale under Rule 63¹⁹²:- Sale of immovable property

¹⁹² Appendix-2

becomes absolute when TRO makes an order confirming the sale under Rule 63 of Second Schedule. It is mandatory upon TRO to make an order confirming the sale, if no application is made for setting aside the sale under Rule 60, 61 or 62 of Second Schedule¹⁹³ or when such an application has been made and the same is disallowed by TRO and full amount of the purchase-money has been paid. Confirmation of sale under this rule does not require any application by the auction purchaser. If a confirmation order is passed before expiry of statutory period of 30 days for filing objection to the sale, such order is illegal. [**Sidha Veerappa Vs Jalal Khan (1953) A. Mys. 87**]. Similarly, an order confirming the sale while an application under Rule 60 is pending is illegal and void [**Ramakrishna Vs Parameshwara (1961) A. Mys. 59**]. Order of confirmation of sale of immovable property shall be in Form ITCP18¹⁹⁴.

2.7 Return of purchase money in certain cases [Rule 64¹⁹⁵]:- A suit for refund of purchase money lies at the instance of the purchaser on the ground that there is no saleable interest of the defaulter in the property. Before becoming eligible for refund under this rule, purchaser has to get the sale set aside under Rule 62.

2.8 Sale Certificate [Rule 65¹⁹⁶]:- Where sale of immovable property has become absolute, TRO shall grant a certificate, specifying the property sold, the name of the person declared as purchaser under Rule 57(1)¹⁹⁷ and the date on which the sale has become absolute.

2.9. Procedure for obtaining delivery:- Procedure for obtaining delivery of immovable property is prescribed under Rule 39¹⁹⁸ of ITCP rules. Rule 40 of the ITCP Rules¹⁹⁹ lays down the procedure for obtaining delivery of property which is in the occupancy of a tenant or others entitled to occupy the same.

D. PROCEDURE FOR AUCTION

Rules 43 and 44 of Second Schedule²⁰⁰ deal with auction. 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.

¹⁹³ Appendix-2

¹⁹⁴ Appendix-38

¹⁹⁵ Appendix-2

¹⁹⁶ Appendix-2

¹⁹⁷ Appendix-2

¹⁹⁸ Appendix-4

¹⁹⁹ Appendix-4

²⁰⁰ Appendix-2

2. REQUIREMENTS FOR CONDUCTING AUCTION

2.1 What can be auctioned?

A list of properties which can be auctioned after attachment is given in Chapter-V(A). All movable and immovable properties which are not monetized are liable for auction. It must be ensured that required particulars of the property are collected and kept ready for auction. Before going for auction of the property, it must be ensured that the said property has been properly attached and proclamation of sale has been made as discussed in preceding Chapters V(A) and V(B).

2.2 Particulars to be collected before auction

Particulars of property required to be collected before auctions are given below:-

- (i) **Movable property:-** Complete information pertaining to title, valuation, location and description of the property must be collected before it is put up to auction. If the property to be sold is, say, a motor car, TRO/TRI must have with him the registration certificate, the insurance policy and any other relevant information. Wherever possible, the estimate of the value of the properties may be obtained in writing from an approved valuer in the form of valuation report which will help TRO to fix the reserve price. TRO/TRI must prepare a list of all the articles to be auctioned with their reserve price and keep it ready at the time of the auction.
- (ii) **Immovable Property:-**
 - (a) Land - In the case of land, following documents will have to be collected:-
 - Title deed of the property;
 - Encumbrance certificate from Sub-Registrar;
 - Letter from municipality regarding arrears of municipal taxes;
 - Letter regarding arrears of land revenue;
 - Plan/Map of the entire property;
 - Details of 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 case of agricultural land, particulars of nature of soil, crops grown and type of tenancy will also have to be gathered.

- (c) House Property - In case of buildings, requisite data will include plinth area, number of rooms, age, type of construction, names of tenants alongwith rent paid by them and dates of commencement of tenancies.
- (d) Machinery - In respect of machinery, manufacturer's name, year of manufacture/purchase, estimated market value and other technical specifications must be collected.

The terms & conditions²⁰¹ of the auction must also be prepared before inviting bid.

2.3 Who can auction?:- Rule 13 of Second Schedule²⁰² mandates that sale of movable/immovable property may be made by such persons as TRO may direct and such person can be a TRI or a private person like a Government auctioneer. To authenticate the entire auction process, person conducting such auction must submit a report of the sale to TRO at the earliest. He should remit the money collected from the auction purchaser to the custody of TRO who must remit the same into Government account immediately.

3. PROCEDURE FOR AUCTION

3.1 Fixation of Reserve Price:- TRO should ascertain the reserve price to be fixed in respect of the property. As per Rule 53 of Second Schedule²⁰³, the reserve price has to be mentioned while drawing up a proclamation of sale. Moreover, as per ITCP13²⁰⁴, it is mandatory to mention the reserve price below which the property will not be sold. TRO may obtain valuation reports from authorized persons viz. Government approved valuers, registered valuers or the valuation cell of the Income Tax Department as the case may be.

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

3.2 Advertisement:- After making proclamation of sale of movable or immovable property, next step is advertisement. TRO may get an auction notice published in the official gazette. TRO shall issue proclamation of sale made in the language of the district where the sale is to be conducted in a local newspaper; this is mandatory. Depending upon the nature and value of the property put up for sale, extent of coverage of advertisement

²⁰¹ Appendix-17

²⁰² Appendix-2

²⁰³ Appendix-2

²⁰⁴ Appendix-33

is to be decided. 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, an insertion in local dailies will suffice. If the property is such that demand for it may emanate from all parts of India, it will certainly be advisable to get the auction advertised in widely circulated national dailies in addition to publication in local newspapers. The purpose is to attract as many bidders as possible. In addition to publication in local and national dailies, proclamation of sale can also be uploaded in www.incometaxindia.gov.in and any other websites maintained by the concerned Pr. CCIT/CCIT.

3.3 Inspection of property by bidders and mode of conducting Auction:-

At the commencement of auction, TRO/TRI must read out full description of the property as given in the proclamation of sale and also mention value of the property, its encumbrances, etc. If the bidders desire to inspect the property, movable or immovable, TRO/TRI must facilitate such inspection. For immovable property, it is necessary to provide at least two days (prior to the actual date of auction) to the prospective bidders to have opportunity to inspect the property under auction. The date for inspection of property may be mentioned in proclamation of sale itself. TRO must provide all facility to the prospective bidders to access and inspect the property under bid. If necessary, police protection may also be provided for such inspection.

3.4 Who may participate in the auction?:- The auction has to be commenced at the exact time indicated in proclamation of sale. If there is any delay, reasons for the same must be announced on the spot. TRO should exercise caution and restrict entry into the auction venue to only serious and intending bidders to keep the gathering in control and to expedite the process of auction. Entry may be restricted only to the prospective bidders alongwith assistant who produce the Earnest Money Deposit (EMD).

AO can also participate in 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)²⁰⁵ had been postponed for want of bids equal to or more than the reserve price; and
- (ii) The Principal CCIT/CCIT authorises AO to bid on behalf of the Central Government.

In such cases, the authorization issued by the Principal CCIT/CCIT should be deposited with TRO.

²⁰⁵ Appendix-2

3.5 Identification of the real bidder:- Rule 59(2)²⁰⁶ 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 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. TRO should also insist on EMD from all persons who intend to bid in the auction. In case of co-owned property, if a co-owner bids the same sum as the highest bidder has bid, the bid of co-owner should be accepted, [Rule 44 (3) and 68 of Second Schedule²⁰⁷].

3.6 Venue of auction:- Choice of venue is based on convenience and availability of space. Proper seating and lighting arrangements must be made in the auction hall and a public address system is 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. Cost of the beverages will be treated as auction expenses and recovered from defaulter.

3.7 Preparation of the bidding sheet²⁰⁸ and bidders list²⁰⁹:- A bidders' list contains names of the bidders, their age and profession and amounts deposited by them. Bidders' signatures are obtained on the list. Particulars of the public auction are stated at the top of the list.

A bidding sheet incorporates 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 thereafter, the bidding sheet is filled in as the auction progresses.

3.8. Adjournment of bidding:- If biddings are not concluded before close of the day, auction can be continued next day. There is no time limit for continuance of the auction. However, if it becomes 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 two 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 Second Schedule²¹⁰ provides the manner in which adjournment can be made. No adjournment can be made for a period beyond 30 days. However, where adjournment for a period longer than 30 days is required,

²⁰⁶ Appendix-2

²⁰⁷ Appendix-2

²⁰⁸ Appendix-19

²⁰⁹ Appendix-18

²¹⁰ Appendix-2

a fresh proclamation of sale under Second Schedule shall be made unless defaulter consents to waive it.

3.9 Knocking down of property:- A property is knocked down in favour of the highest bidder and this is indicated by fall of auctioneer's hammer. When the property is knocked down, TRI must announce that the property has been knocked down in favour of the successful bidder. Then, he should make endorsement on the bidding sheet²¹¹, sign it and obtain signatures of the auction purchaser and two witnesses, preferably two of the unsuccessful bidders.

4. PROCEDURE FOR PAYMENT OF PROCEEDS OF AUCTION:

4.1 Procedure for payment of proceeds in respect of both movable as well as immovable property is given below:-

- (i) **Movable property:-** Where movable property is sold by public auction, entire amount of price bid is to be paid on the spot together with poundage by the highest bidder. 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 ITCPI4²¹². 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 person conducting auction may allow the bidder some time for payment of the bid amount including poundage.
- (ii) **Immovable property:-** As per Rule 57 of Second Schedule²¹³, in case of immovable property, the successful bidder has to deposit 25% of the bid amount to TRO immediately at the end of the auction, failing which the property shall be brought to auction again. Balance 75% shall be remitted by the highest bidder within 15 days from end of sale of the property in auction [**Pishorilal Sethi vs. TRO (1990) - 188 ITR 528, 531 (All.)**]. TRO has no power to extend the time limit for payments. TRO has, however, the discretion not to forfeit the deposit for failure to pay balance of the purchase price. However, where the discretion to forfeit deposit is not exercised, deposit is required to be retained till subsequent sale by auction takes place for being appropriated in case of deficit in sale price of subsequent sale.

In case of no sale due to non-payment of purchase money, TRO is bound to put up the property for resale, as resale in such cases is obligatory [**Hiralal vs. Mst. Champa, 1955 AIR 226 (All.)**].

²¹¹ Appendix-19

²¹² Appendix-34

²¹³ Appendix-2

In cases where balance of amount is paid within the stipulated 15 days time, the sale can be confirmed by TRO after expiry of 30 days only if no petition for setting aside sale under rules 11, 60, 61 or 62²¹⁴ are filed. Where petitions are filed under the said rules, sale cannot be confirmed unless the petitions are considered and rejected. Whenever sale is confirmed, an order of confirmation must be issued in ITCP18²¹⁵, followed by a certificate of sale in ITCP20²¹⁶. Sale becomes absolute only on such confirmation.

4.2 Re-auction in case of default of payment:- On every sale of immovable property, the highest bidder declared as purchaser shall immediately pay a deposit of 25% of the amount of purchase money to the officer conducting the sale. The balance amount shall be paid by such purchaser within 15 days. In case, there is default of payment, TRO may, after defraying the expenses of the sale, forfeit the amount and the defaulting purchaser shall forfeit all claims to the property. Such property shall be resold by auction.

It may be mentioned that proceeds of auction are required to be appropriated against outstanding demand and interest u/s 220(2) upto date of receipt of sale proceeds as per law.

5. OTHER RELEVANT CASE LAWS:

1. Sale is not complete until the bid has been accepted by TRO and the deposit is made [**Ebadulla vs. Municipal Board (1950) A.A. 450**].
2. The word 'forthwith' means as expeditiously as the circumstances permit. The sale must be held within a reasonable time [**Madho Narayanrao Ghatati vs. Mst. Watsalabai, 1947 Nag 939**].
3. If there is any delay in re-sale, defaulting purchaser cannot be made liable for any loss resulting from such re-sale [**Lakshminarasimha vs. Alavandar, 1957(2) And W.R. 2151**].
4. For re-sale, proclamation is not called for. Re-sale on the same day immediately following the abortive sale should always be encouraged, if circumstances justify [**K.K. Shetty vs. Bhattageri, AIR (1976) Kar.31**].
5. 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' [**Manilal Mohanlal vs. Sayed Ahmed 1954 SCJ 509(S.C)**].
6. TRO has no power to extend the time for payment (**Uttamchand vs. Balkrishna 1961 Bom. 471**)

²¹⁴ Appendix-2

²¹⁵ Appendix-38

²¹⁶ Appendix-40

E. RECOVERY THROUGH APPOINTMENT OF RECEIVER

Section 222(1)(d)²¹⁷ of the Act gives power to TRO to appoint a receiver for management of defaulter's movable property, mainly his business and immovable properties for recovery of certified demand. For this purpose, he has to take necessary steps as per Rules 69 to 72 of Second Schedule²¹⁸ read with Rules 48 to 52 of ITCP Rules²¹⁹ that are analogous to section 51 and Rule 1 to 5 of Order-XL of CPC. However, unlike the provisions under CPC, provisions of Second Schedule permit appointment of a receiver only in respect of business and immovable property. Under Rule 32(1) of Second Schedule²²⁰, a receiver can also be appointed for partnership firm to receive the share of partner. The procedure for recovery of certified demand through receiver is described as under:-

- A. Appointment of Receiver for business and immovable property
- B. Powers of Receiver
- C. Duties of Receiver
- D. Withdrawal of Management
- E. Cases where recovery through receiver is preferred

A. APPOINTMENT OF RECEIVER FOR BUSINESS AND IMMOVABLE PROPERTY

1. Appointment of receiver for business:-

1.1 Rule 69²²¹ provides that where property of defaulter consists of a business, TRO may attach the business and appoint a person as receiver to manage the same. TRO has to first attach the business of the defaulter before he can proceed to appoint a receiver. Attachment of a business under this Rule shall be made by an order prohibiting 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. It shall also be affixed on a conspicuous part of the premises in which the business is carried on as well as on the notice board of office of TRO.

1.2 It is to be borne in mind that the object of appointing a receiver is not to perpetually deprive defaulter of his possession but to manage the affairs of his business or property in such a way as to enable the receiver

²¹⁷ Appendix-1

²¹⁸ Appendix-2

²¹⁹ Appendix-4

²²⁰ Appendix-2

²²¹ Appendix-2

to pay up the certified demand. As a result of attachment of the business, the assets of the business come under attachment. Provisions of Rule 16 of Second Schedule²²² prohibit private alienation (and issuance of process by a court) of individual assets comprised in the partnership. Disposal of particular assets comprised in the business may have to be done in accordance with Part II of Second Schedule.

1.3 Order of attaching business is issued in ITCP22²²³ and it should be served on the defaulter; second copy should be pasted on conspicuous part of the business premises; third copy should be placed on the notice board of TRO and fourth copy should be kept in TRO's file.

1.4 At the outset, the nature of business should be examined to ascertain whether such business is amenable to this mode of recovery. In a large undertaking where management is mainly supervisory and calls for administrative abilities, it might not be difficult to get a suitable receiver. But for a business where thorough knowledge of the business and skill are required and day to day and hour to hour decisions have to be taken as to the deals to be struck or to be given up, it would be very difficult to get a competent and trustworthy receiver. It would be necessary for TRO to understand the business and have a breakup of the structure and confine the functions of the receiver to areas where business decisions are not frequent. Even if the business is a composite one, involving purchase, sale, processing etc., it may be worthwhile to confine the function of the receiver to areas where frequent decision-making is not involved.

1.5 Some of the businesses that may be suitable for this mode of recovery are:

- i. Cinema Theatres/Restaurants/Hospitals/Nursing Homes
- ii. Educational Institutions, Coaching Institutes
- iii. Rice Haulers and flour mills
- iv. Groundnut decorticating mills
- v. PCOs and cyber-cafe
- vi. Cotton ginning factories
- vii. Trade where the merchandise is having a ready market, Agency business where the business is one of distribution of products of one or more producers where the goods can command ready market.

²²² Appendix-2

²²³ Appendix-42

- viii. Toll tax collection business (in highways/ bridges)
- ix. Fair price shops, Petrol Pumps, Gas Agencies, etc.
- x. Tenanted immovable property
- xi. Immovable property which cannot be sold due to expiry of limitation under Rule 68B²²⁴.

The aforesaid list is illustrative and not exhaustive. Whether a case is fit for appointment of receiver or not depends upon the facts and circumstance of each case and has to be decided carefully.

1.6 TRO may seal the premises till the receiver takes charge. Otherwise the defaulter may transfer (by sale etc.) stock-in-trade, furniture and fixtures etc. But the business should not remain sealed for unduly long period and therefore time-gap between attachment of business by ITCP22²²⁵ and appointment of receiver by ITCP24²²⁶ should be as short as possible.

2. Appointment of receiver for immovable property:-

Where immovable property is attached, TRO may, instead of directing sale of the property, appoint a person as receiver to manage such property. Appointment of receiver for this purpose is governed by Rule70²²⁷. Attachment order for appointment of receiver for managing the immovable property is to be passed in ITCP16²²⁸ and served on defaulter, second copy of this order is required to be displayed on a conspicuous part of the property, third copy is to be placed on the notice board of TRO and fourth copy is to be kept in TRO's file.

In case of attachment of an immovable property, a public proclamation by beat of drum etc. has to be done as per Rule 50 of Second Schedule²²⁹ but such measure should not be adopted in case of attachment of business because the law does not provide so.

3. Appointment of Receiver to receive share of defaulter partner:-

Where recovery is to be made from partner of a firm, share of profit of that partner in the firm is attached by an order issued in ITCP11²³⁰ and served on defaulter. Second copy of this order is to be displayed on a conspicuous part of the property, third copy is to be pasted on the notice

²²⁴ Appendix-2

²²⁵ Appendix-42

²²⁶ Appendix-44

²²⁷ Appendix-2

²²⁸ Appendix-36

²²⁹ Appendix-2

²³⁰ Appendix-31

board of TRO and fourth copy is to be placed in TRO's file. Thereafter, TRO 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 as per Rule 32(1) of Second Schedule²³¹.

4. Procedure for appointment of Receiver:-

4.1 After defaulter's business is attached, necessary steps are to be taken by TRO to appoint a receiver. The receiver for business is not an officer under Second Schedule²³² within the meaning of the term as defined in Rule 1(e) thereof. He is merely a person appointed by TRO to manage the business of the defaulter. For this purpose, he is given considerable powers under Rule 48 of the ITCP Rules²³³. He exercises such other powers as TRO directs. It is thus evident that he acts under a delegated authority derived from section 2(17)(h) of the CPC and is remunerated by fees or commission for performance of public duty under the Schedule.

4.2 Unlike under the CPC, the receiver is not an officer of the Court. He is merely a person appointed by TRO to manage the business of defaulter. TRO can appoint any person as a receiver but care should be taken for appointing a suitable person who has experience of doing such work. For appointing a receiver, list of receivers appointed by the courts may be utilized. Such persons may be

- a) Any legal practitioner who is entitled to practice in any Civil court in India

OR

- b) A Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 [Legal/Accountancy firms having above type of partners/members are also eligible]

OR

- c) Retired TROs or Inspectors of Income-tax who have experience in recovery matters.

Such persons can also be identified by putting an advertisement in newspapers/official website. Candidates with previous experience of working as Receiver under any court/Tribunal may be preferred.

4.3 Terms and conditions for the appointment of a receiver should be prepared as per Rule 48 to 51 of ITCP Rules²³⁴ giving the details of

²³¹ Appendix-2

²³² Appendix-2

²³³ Appendix-4

²³⁴ Appendix-4

educational qualification and experience required for a person to be appointed as receiver, powers to be exercised by him for managing the business or property under attachment, duties of receiver towards TRO, details of business or property to be managed by him, outstanding demands for which recovery is to be made by managing the business or property and other terms and conditions to be put by TRO for having proper control over the receiver. Copies of terms and conditions should be given to prospective applicants.

4.4 After shortlisting suitable applicants for appointment as Receiver, terms and conditions may be discussed with them, especially the remuneration may be negotiated depending upon the amount of certified demand to be recovered. After such negotiation, if anybody is finalised to act as Receiver, an "Agreement" is to be executed with him. Agreement specifying the terms and conditions should be drafted with the help of departmental standing counsel. Receiver is formally appointed by issuing ITCP24²³⁵. After formal appointment and execution of agreement, defaulter will be intimated. In case of appointment of Receiver under Rule 32 (1)²³⁶, partnership firm as well as the defaulter partner will be intimated.

4.5 Once Receiver becomes functional, TRO has to ensure that the terms and conditions mentioned in agreement are scrupulously followed, payment is made towards collection of tax at the end of each month and accounts are furnished before him once in every three months.

B. POWERS OF RECEIVER:-

1.1 Powers of receiver are specified in Rule 48 of ITCP²³⁷ Rules and Rule 71 of Second Schedule²³⁸.

Under Rule 48 of ITCP Rules and Rule 71 of Second Schedule, receiver has all powers relating to:-

- bringing in and defending suits;
- realisation, management, protection and preservation of the property;
- collection of the rents and profits thereof, the application and disposal of such rents and profits;
- execution of documents as the owner himself has or
- such of those powers as TRO thinks fit.

²³⁵ Appendix-44

²³⁶ Appendix-2

²³⁷ Appendix-4

²³⁸ Appendix-2

Under Rule 71 of Second Schedule, the receiver is required to adjust the profits, or rents and profits, of such business or other property, after defraying the expenses of management towards discharge of arrears and the balance, if any, shall be paid to defaulter.

1.2 Receiver is an officer working on behalf of TRO. His powers are exercised subject to the control of TRO. Certain powers of management can be excluded by specific direction of TRO. It may be necessary, having regard to the nature of business, to restrict the functions of the receiver to particular segments of business and prevent him from performing functions for which he is not properly equipped. For example, while the receiver may be permitted to dispose of existing stock-in-trade, TRO may restrict the powers of receiver regarding new purchase or any other business function which may not be essential in relation to making of recovery of certified demand.

C. DUTIES OF RECEIVER

1.1 Duties of receiver are contained in Rules 50 to 51 of ITCP Rules²³⁹. Rule 50 requires receiver to:

- (i) furnish such security as TRO thinks fit, to account for what he shall receive in respect of the property;
- (ii) submit his accounts at such periods and in such form as TRO directs;
- (iii) pay the amount due from him as TRO directs;
- (iv) be responsible for any loss to the property by his wilful default or gross negligence.
- (v) maintain true and regular accounts of the receivership including a cash book in which day to day receipts and payments shall be entered; to maintain a ledger and counterfoil receipt book with the leaves numbered serially in print for issuing all receipts for payments made to the receiver.
- (vi) open an account, unless otherwise directed by TRO, in the name of the receivership in such bank as TRO may direct and to deposit therein all moneys received in the course of the receivership immediately on receipt thereof. If required, he may maintain minimum amount required for meeting day to day expenses. All payments by the receiver shall, as far as possible, be made by cheques drawn on the bank account.
- (vii) submit his accounts unless otherwise ordered by TRO, once in

²³⁹ Appendix-4

every three months and thereafter within 15 days upto expiry of the said period of three months.

1.2 Rule 51 provides for measures to be taken by TRO to enforce the duties of receiver. They are as under:-

- (i) Where a receiver fails to submit his accounts at such periods and in such form as TRO may direct receiver's property to be attached under sub-Rule(1) until such time as accounts are submitted to TRO.
- (ii) TRO may at any time make an enquiry in respect of amount due from receiver or an enquiry in respect of any loss to the property occasioned by his wilful default or gross negligence and may order the amount found due, if not already paid by the receiver under Rule 50²⁴⁰ or the amount of the loss so occasioned, to be paid by the receiver under sub-Rule(2) within a period specified by TRO.
- (iii) Where the receiver fails to pay any amount which he has been ordered to pay under sub-Rule (2) within the specified period, TRO 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 if his 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 any 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.
- (iv) If a receiver fails to submit his accounts at such periods and in such form as directed by TRO without reasonable cause or improperly retains any cash in his hands, TRO 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; he may also charge interest at a rate not exceeding 12 per cent per annum on the amount improperly retained by him for the period of such retention. All this is without prejudice to any other proceedings which might be taken against the receiver.

D. WITHDRAWAL OF RECEIVER

Rule 72²⁴¹ of Second Schedule provides that the attachment and management power provided to Receiver may be withdrawn at any time at the discretion of TRO or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

²⁴⁰ Appendix-4

²⁴¹ Appendix-2

E. CASES WHERE RECOVERY THROUGH RECEIVER IS PREFERRED:-

1.1 This method of recovery works as a good deterrent for non-payment of arrears of tax. It is common knowledge that profits made in business are much more than what are disclosed to the department and one would not normally allow management of the business to be put in the hands of outsiders.

1.2 After attachment order by TRO as mentioned above, the defaulter is prohibited from transferring (or charging) the business or immovable property in any way to any other person.

1.3 This mode of recovery is rarely invoked in the Income Tax Department because of non-availability of persons with necessary managerial competence to perform the duties of receiver. However, it has been found that this particular mode of recovery is preferable to the other modes in certain circumstances, e.g.:

- i. Defaulter might be withdrawing large amounts from the business or is otherwise dissipating the assets. Attachment and sale of immovable property in the business might do great harm to the business without corresponding benefit to revenue.
- ii. There might be prior encumbrances on individual assets of the business which may render the realisation through attachment and sale of individual property very difficult and unprofitable. At the same time, the business might be generating income, which quickly reaches the pockets of defaulter before the recovery machinery reaches it.
- iii. Attachment and sale of movable properties of business might present peculiar difficulties. For example, there might be substantial hypothecation of raw material and finished goods or there might be systematic crediting of the receipts to an overdraft account with the bank. In such circumstances unless the entire business machinery is taken possession of, it might not be possible to get hold of the income generated in the business.

G. RELEVANT CASE LAWS PERTAINING TO APPOINTMENT OF RECEIVER:

1. Power to appoint a receiver is not to be exercised as a matter of course or for the reason that no harm is done by the said appointment. TRO has to consider in each case whether special interference with possession of defaulter is called for as where it is apprehended (on reasonable grounds) that the defaulter is likely to dissipate the property or cause irreparable mischief to it [**Benoy Krishna vs. Satish Chandra (1928) 108 I.C. 348**].

2. Similarly, where TRO finds that defaulter had been withdrawing large funds from his business without any necessity for such withdrawals, he will be justified in appointing a receiver under this Rule (**Amodelal Burwan vs. Girija Sankar Chaudhury, AIR 1944 Cal 157**).
3. A receiver empowered to collect outstandings and do all the things necessary for realization and preservation of assets has no power to mortgage such assets [**Subramanian vs. Lutchman (1923) A.P.C. 50**].
4. A receiver empowered by TRO to raise a loan on mortgage of property in his possession can himself execute the mortgage bond [**Bhadrabati Devi vs. Jiban Mull Babu (1941) 194 I.C. 650**]
5. A company may be appointed as Receiver [**Kathreena vs. Trichur Cochin National Bank Ltd. AIR 1960 Ker 57**]
6. Where defaulter has right to income of property without power to alienate corpus, the right cannot be attached and sold but receiver can be appointed and total income should be paid to Tax Recovery Officer - (**S.C. Ammal V. A. Subramanian, AIR 1972 Mad. 348.**)
7. An impartial person has to be appointed. On appointment, the receiver becomes an officer of TRO -(**Sripati v. Bibhuti Bhushan AIR 1926 Cal. 593, Jadu Prasanna Bhattacharya v. Government of Union Territory of Tripura AIR 1968 Tripura 52; Jasoda V. Satyabhama, AIR 1965 Orissa 28.**)
8. There are certain well-settled principles which TRO should remember before appointing receiver. Appointment of a receiver is a matter of judicial discretion. TRO should be satisfied that the property may be frittered or wasted away and that in order to safeguard the rights of defaulter and department of Income Tax, the property should be managed by a receiver. He can then make the appointment - (**Jadu Prasanna Bhattacharya v. Government of Union Territory of Tripura AIR 1968 Tripura 52, Benoy Krishna vs. Satis Chandra (1928) 108 I.C. 348.**)
9. Appointment of receiver must not be a weapon of coercion and TRO should not exercise this discretion in absence of a strong case - (**Nihalchand L. Jai Narayan & Ors. Vs. Ram Niwas Munna Lal & Ors AIR 1968 Punj. 523.**)

F. ARREST AND DETENTION OF DEFAULTER IN PRISON

Section 222²⁴² of the Act gives power to TRO to arrest a defaulter. For this purpose, he has to take necessary steps as per the rules laid down in Second Schedule²⁴³ of the Act and also follow the relevant provisions

²⁴² Appendix-1

²⁴³ Appendix-2

of Criminal Procedure Code (Cr PC). Such steps are to be taken in five stages. These are as under:

- A. Show cause notice to defaulter;
- B. Enquiry before arrest;
- C. Arrest of defaulter;
- D. Detention of defaulter;
- E. Release of defaulter;

A. SHOW CAUSE NOTICE TO DEFAULTER:

1.1 After it has been found that the defaulter is not cooperating in payment of certified demand and all steps taken by TRO to persuade him have failed and other measures taken for recovery by attachment of his bank accounts and movable and immovable properties has not resulted in recovery of entire certified demand, this mode may be adopted. However, before taking this extreme step, TRO should ensure correctness of the certified demand after making all necessary verification from assessment record and giving credit for payment of taxes. Procedure laid down in Rule 73 of Second Schedule²⁴⁴ requires issuing show cause notice to the defaulter after recording of reasons for resorting to this mode of recovery.

1.2 As per Rule 73²⁴⁵, no order for the arrest and detention in Civil prison of a defaulter shall be made unless TRO has issued and served a notice under ITCP 25²⁴⁶ upon defaulter calling upon defaulter to appear before him on the date specified in the notice and to show cause why he should not be committed to civil prison. Before issuing this notice, TRO has to record reasons bringing out his satisfaction that:

- (i) defaulter with the object or effect of obstructing the execution of TRC, has dishonestly transferred, concealed, or removed any part of his property or
- (ii) defaulter has means to pay the arrears in full or in part and refuses or neglects to pay the same.

The show cause is not required if TRO is satisfied for reasons to be recorded in writing that defaulter is likely to abscond or leave local limits of jurisdiction of TRO for delaying the execution of TRC. In such circumstance, warrant for arrest of defaulter may be issued immediately.

1.3 Where defaulter does not appear in response to ITCP 25, TRO may issue a warrant for his arrest.

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²⁴⁶ Appendix-45

1.4 A warrant issued as per Rule 73 may also be executed by any other TRO within whose jurisdiction defaulter may be found. A person arrested in pursuance of a warrant of arrest under this Rule shall be brought before TRO 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). If 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 release him forthwith.

Under Rule 73 it has been clarified, where defaulter is a Hindu undivided family, its karta shall be deemed to be the defaulter.

1.5 A warrant of arrest is illegal unless it is preceded by show cause notice. Where defaulter does not appear before TRO on the fixed date, TRO has option to issue another show cause notice or warrant. According to Rule 73(1)²⁴⁷, If defaulter appears before TRO, he will not be arrested unless declared defaulter as per Rule 74²⁴⁸. It has been held by the Hon'ble Allahabad High Court in the case of *Dau Dayal Goyalvs. TRO [1989] 177 ITR 397 (ALL.)* that defaulter shall not be arrested or detained unless TRO proceeds in accordance with Rule 73 and records reasons for doing so.

It has been held by the Hon'ble Calcutta High Court in the case of *Hindustan Rubber Works Ltd. v. ITO [1971] 81 ITR 397 (CAL)* that show cause notice u/r 73 can be issued during the pendency of appeal also.

Where demand has been stayed earlier by the assessing officer under section 220(6), TRO cannot, without sufficient-cause (to be recorded in writing) refuse to continue the same as held in the case of **Vikrant Tyres Limited. vs S. M. Ajbanj, Recovery Officer And Other (1989) 182 ITR 413 (Gujarat)**. Therefore, it is desirable that TRO, before taking steps to start this mode of recovery, should ensure that a speaking order giving sufficient cause should be passed refusing to continue the stay. If any stay has been granted by the Assessing Officer u/s 220(6) or if any stay granted by the higher authority such as, Addl. CIT/JCIT or Pr. CIT, continues, then, the stay has to be revoked in consultation with them.

In case of stay by CIT(A), Tribunal or High Court, no warrant for arrest can be issued. However, if any information is gathered by TRO that defaulter is using such stay period, to dispose of his assets to show that he has become man of no means to avoid payment of any tax in future, immediate steps should be taken by TRO to make application to the concerned authority/ court that has granted stay to get it vacated

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and then immediately start recovery proceeding under this mode after vacation of stay order.

2. When Notice under Rule 73(1)²⁴⁹ can be dispensed with:- Rule 73(2) provides for issue of show cause notice under Rule 73(1) to be dispensed with if TRO is satisfied, (by an affidavit or otherwise) that-

- (i) defaulter is likely to abscond or
- (ii) defaulter is likely to leave the local limits of TRO's jurisdiction and
- (iii) such likelihood is with the object or has effect of delaying execution of the certificate, TRO may dispense with the notice under Rule 73(1) and a warrant of arrest.

3. Proclamation for person absconding:- A person is said to be absconding, if he hides himself to avoid service of notice. It has been held in **M. Srinivasa Ayyargarv. Queen, 4 Mad. 393** that if a person concealed himself before the process was issued and continued to remain so thereafter, he absconds. Absconding to avoid service of notice is offence under section 172 of the Indian Penal Code.

If TRO is satisfied that the defaulter is absconding, he should publish a written proclamation under Section 87 of Criminal Procedure Code (herein after referred as CrPC), 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 as held in **Jogdav Khan vs. Emperor, AIR 1948, Lah.151**

After publishing the proclamation in the aforesaid manner, TRO has to record a statement in writing to the effect that the proclamation was duly published on a specified day. Such a statement shall be conclusive evidence that the requirements of Section 87 (Cr PC) have been complied with and that the proclamation was published on such a day [sub-Sec. (3), Sec. 87]. If TRO fails to record the statement about due publishing of the proclamation, there will be no proclamation according to law. Strict compliance with the provisions is necessary [**Parmar Lajubha Karnubha vs. State A.I.R. 1954 Sau. 145**].

Failure to appear in response to the proclamation is an offence punishable under section 174 of the I.P.C. [**Allah Baksh vs. Empress 28 P.R. 1890**].

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B. CONDUCTING ENQUIRY BEFORE ARREST:

1.1 Under Rule 74 of Second Schedule²⁵⁰, TRO shall give defaulter an opportunity to show cause why he should not be committed to the civil prison. As per Rule 75 of Second Schedule²⁵¹, pending the conclusion of the inquiry, TRO may, in his discretion, order the defaulter to be detained in the custody of such officer as TRO may think fit or release him on his furnishing security to the satisfaction of TRO for his appearance when required. An enquiry is required to be conducted as per the information provided by him to ascertain his financial position to find out whether he is in position to pay taxes in arrears.

1.2 Giving of hearing to defaulter and making of enquiry to ascertain his financial position before arrest is a must. It has been held **by the Hon'ble Allahabad High Court in the case of S.K. Agarwal vs. TRO (1980) - 125 ITR 389 (All.)**] that where a defaulter appears in response to the notice under Rule 73(1), detention cannot be ordered till the enquiry under Rule 74 is over or conditions under Rule 73(2) & 73(3) are fulfilled.

However, pending conclusion of enquiry, TRO may in his discretion, detain the defaulter as provided in Rule 75 but he cannot be formally arrested.

C. WARRANT AND ARREST:

1.1 Second Schedule has not prescribed the procedure for making an arrest under any of Rules contained therein. In absence of specific provisions in that behalf, the procedure as laid down in the Cr PC should be followed. Section 46 of the Cr PC reads as under:-

“Section 46(1)

- (i) *In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*
- (ii) *If such person forcibly resists the endeavour to arrest him or attempts to evade the Arrest, such police officer or other person may use all means necessary to effect the arrest.*
- (iii) *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.”*

(a) **Who could be Arrested:-** Under this rule, arrest is normally possible only if defaulter is a natural person, i.e., a human being. In the case of dissolved firm, discontinuance of business by a firm or disruption of

²⁵⁰ Appendix-2

²⁵¹ Appendix-2

HUF, the Act fixes the tax liability on partners of 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) may also be arrested to recover the demand to the extent they are made personally liable for payment.

In no circumstance, Manager or any employee of a company or firm or HUF can be arrested for recovery of tax arrear even if he is looking after the financial matter of such entities as held in **Kapurchand Shrimal v. TRO [1969] 72 ITR 623 (SC)**.

In case of a firm or LLP, a partner is vulnerable to all the processes of recovery which can be taken as if it was his personal debt. It is open to the recovering authority to proceed by way of arrest of the partner. Accordingly, it was held by the Hon'ble Allahabad High Court in the case of **Ram Das Jaiswal vs. Income-tax Officer [1971] 79 ITR 570 (ALL.)** that the partner is not immune from arrest in the proceedings for recovery of the income-tax dues of a firm even if no notice was served upon him for assessment proceedings of said firm because he is jointly and severally liable for all the debts of firm.

As regards recovery from private limited company, it has been held by the Allahabad High Court in the case of **Arvind Kumar Gupta vs. TRO [2005] 146 TAXMAN 579 (ALL.)** that Section 179 imposes a vicarious liability on the directors of private limited companies. Their liability is co-extensive with the company and a director is liable only in respect of arrears of tax for the assessment year when he was functioning as a director. For invoking Section 179(1), it is a sine qua non that TRO must record a finding that the tax due from the company cannot be recovered from the company. In the absence of such a finding, TRO has no jurisdiction to invoke Section 179(1).

(b) Person exempt from Arrest:

- (i) By virtue of Rule 81²⁵² of Second Schedule, women, minors and persons of unsound mind are exempt from arrest.
- (ii) Entities other than individuals as defined in Section 2(31) of the Act unless specifically made responsible under the Act for discharging the tax liability.
- (iii) If the individual defaulter has died after the commencement of recovery proceedings, his legal heir(s) cannot be arrested as per Rule 85²⁵³ of Second Schedule.

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²⁵³ Appendix-2

- (iv) Under Section 135 of the CPC (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 CPC to the judgment-debtor.

(c) When Arrest can be made:

- (i) **Non- Compliance of Show Cause Notice:-** If a defaulter does not appear before TRO, he may issue a warrant of arrest as per Rule 73(3)²⁵⁴. Failure to appear in response to the proclamation is an offence punishable under Section 174 of the I.P.C. [**Allah Baksh vs. Empress 28 P.R. 1890**].
- (ii) **Non- Cooperation during Hearing to make arrangement for payment of taxes:-** When a defaulter appears before TRO in response to a show cause notice or is brought before TRO under Rule 73²⁵⁵, TRO shall give defaulter an opportunity of making payment of certified demands, failing which TRO may issue a warrant of arrest as per Rule 73(3).

Kerala High Court in the case of *Antonitto vs. TRO [1988] 171 ITR 456 (Kerala)* has held that a person should be held liable for arrest after prescribed procedure in Rule 73 to Rule 76²⁵⁶ has been followed.

(d) Procedure for Preparation of Arrest Warrant:

- (i) **Relevant Form & its filling:-** Warrant of arrest under this sub-rule shall be issued in **ITCP 26**²⁵⁷. It must bear the seal and signature of TRO. It is a public document and affects the personal liberty of the subject; as such, any laxity of proof might have serious consequences. A warrant must clearly identify the person to be arrested. It must also specify the offence charged. It should not be general (as to say, authorizing all defaulters to be arrested). 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 defaulter cannot be executed.

A warrant cancelled cannot be re-issued (**In Re Guru Charan Aich 1 CWN 650**).

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²⁵⁶ Appendix-2

²⁵⁷ Appendix-46

- (ii) **To whom a warrant of arrest should be addressed-** A warrant of arrest must show the name and designation of the person to whom it is issued for execution. If it 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 IPC²⁵⁸. Liability under the Act being of a civil nature, TRO can address warrant of arrest to any person, not necessarily a police officer. It is, however, desirable that such warrants are addressed to TRI. Where the judgment-debtor is to be arrested under Rule 37, (Order XXI of CPC), warrant is addressed for being executed by the bailiff of the court.

The officer executing 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. 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 authorized.

(e) How Arrest should be made:- Second schedule has not prescribed procedure for making arrest. Therefore, procedure as laid down in Section 80 of Cr PC should be followed. It is reproduced as under:-

“Under Rule 80-(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.”

Procedure for securing entry in premises should be strictly complied with by the person executing warrant of arrest. Before entry, it must be ensured that defaulter is present in the premises. An outer door can be broken only if entry has been refused. Notice should be given to the

²⁵⁸ Appendix-6

females that they are at liberty to withdraw from the premises intended to be entered into and reasonable time should be allowed for withdrawal. An oral announcement is sufficient notice in this regard.

If arrest is to be made from other places e.g. shop, godown, hotel, private or public conveyance, the person executing warrant of arrest may make the arrest by measures as may be convenient, prudent and reasonable depending on the circumstances. No specific restriction is laid down for entry into such places.

Section 82 of the Cr PC provides that a warrant of arrest may be executed at any place in India. Where a defaulter resides outside the jurisdiction of TRO who issues warrant, he would forward the warrant to TRO in whose jurisdiction defaulter was residing. TRO to whom such warrant is so forwarded shall endorse his name on the warrant and cause it to be executed against defaulter. [Sub- Rule (3A) of Rule 73²⁵⁹]

When after making a valid arrest, the arrested person is produced before TRO, under Rule 73(4)²⁶⁰, the warrant gets automatically exhausted.

Resistance or obstruction to lawful arrest of a person is an offence punishable under Sections 224, 225 and 225B of the I.P.C²⁶¹. Where the person to be arrested offers resistance, law authorizes the arresting officers to “ use all means necessary to affect an arrest”. The words “all means” are very wide and include taking of assistance from others in effecting the arrest but do not include power to shoot the defaulter dead. Vide Instruction No.1259 dated 18.05.1979, the Board while reiterating the legal position in regard to arrest and detention, has however directed that if circumstances warrant use of force, the force should be limited to the minimum extent possible. If defaulter acquiesces in the arrest, there is no need to tie up or confine him.

If TRO is satisfied that defaulter is absconding, he should publish a written proclamation under Section 87 of the Cr. PC, requiring 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 of proclamation; otherwise, the proclamation would be illegal.

Proclamation shall be publicly read in conspicuous place of the town or village in which such person (defaulter) ordinarily resides; it shall be affixed to some conspicuous part of the house in which such person ordinary resides or to some conspicuous place of such town or village and a copy shall also be affixed on conspicuous part of TRO's office.

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²⁶⁰ Appendix-2

²⁶¹ Appendix-6

After publishing the proclamation in the aforesaid manner, TRO has to record a statement in writing to the effect that the proclamation was duly published on a specified day. Such a statement shall be conclusive evidence that requirements of Sec.87 of CrPC have been complied with and that the proclamation was published on such a day [sub-sec. (3), Sec.87]. If TRO fails to record the statement about publishing of the proclamation, there will be no proclamation according to law.

(f) Action to be taken after arrest of defaulter:- Under Rule 38 Order XXI of the CPC, the person arrested shall be brought before TRO as soon as practicable and in any case within 24 hours from the time of arrest. The provisions of Rule are imperative and TRO is duty bound to ensure compliance.

Rule 74 has to be read along with Rule 73(1) & (2)²⁶². No order for committing the arrested defaulter to civil prison can be passed unless TRO is satisfied that on any of the grounds set forth in Rule 73(1) or (2), defaulter requires to be sent to civil prison. Burden of proof in this regard lies on TRO.

If defaulter pays the amount shown as payable in the arrest warrant, together with the cost of arrest, the arresting officer shall at once release him from custody.

Pending conclusion of inquiry, TRO may order defaulter to be detained in custody of such person as TRO thinks fit or release him on his furnishing security to his satisfaction for defaulter's appearance.

D. DETENTION AND IMPRISONMENT:

After arrest of defaulter and completing enquiry under Rule 74²⁶³, if TRO is satisfied that detention of the defaulter is required, he will proceed under Rule 76²⁶⁴.

No final order of detention in civil prison could be passed against defaulter unless both or either of conditions laid down in Rule 73(1)(a) or (b)²⁶⁵ are satisfied. Satisfaction for ordering interim arrest of defaulter under Rule 73(2)²⁶⁶ is of an entirely different type. While exercising powers of interim arrest under Rule 73(2), all that TRO has to be satisfied about is the fact that the assessee is a defaulter and that, with the object or effect of delaying the execution of the TRC, defaulter is likely to abscond or leave the local limits of the jurisdiction of TRO. This satisfaction can be

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reached by him on affidavit or even otherwise. [**Mahmed Akhtar Husein (alias) Khadar Bhatti vs. State of Gujarat and others - 198 ITR 229(Guj)**].

Defaulter has right to cross-examine the persons whose statements, books of accounts and evidence are to be relied upon in support of execution of certificate (by arrest) and the refusal to allow such cross-examination vitiates the proceeding - [**K. T. Shaduli V. State of Kerala, 1972 Tax LR 1659 Ker.**].

Proviso of Rule 76 gives one last opportunity to defaulter to pay the certified demand before decision to send him to civil prison is taken. In order to enable him to satisfy the arrears, TRO may leave him in custody of the arresting officer, or any other officer for a period not exceeding fifteen days, or in the alternative, he may release the defaulter on his furnishing adequate security (not his personal security) for his appearance on expiry of the said period. The defaulter may pay the amount within this period; if not, TRO will pass an order for detention of the defaulter in civil prison.

5. Release from Prison:- Procedure for release of defaulter are given in Rules 77 to 79²⁶⁷. Defaulter may be re-arrested and sent to civil prison if TRO has reasons to believe that the disclosure of property made by defaulter under Rule 78(1)²⁶⁸ was untrue or an act of bad faith. But total period of imprisonment should be limited to the period prescribed in Rule 77(1)²⁶⁹. A defaulter released on ground of illness under Rule 79²⁷⁰ may be rearrested and put to prison subject to the condition that the period of total imprisonment does not exceed the period prescribed in Rule 77(1).

6. Miscellaneous provisions:-

(1) While exercising power under this mode of recovery, TRO should take care to follow due process of law as enshrined in Rule 73 to 81 of Second Schedule²⁷¹ of the Act. On proof of damage caused by gross violation of prescribed procedure, he is personally liable and is not entitled to get any protection under Section 293 of the Act or under Rule 82. [**Jwala Prasad V. S. N. Verma, (1970) 78 ITR 352 All.**]

(2) Recording of Reasons is mandatory for following:-

- a) issue of a show cause notice;
- b) issue of an arrest warrant; and
- c) ordering detention in Civil prison.

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²⁷⁰ Appendix-2

²⁷¹ Appendix-2

- (3) Procedure on death of defaulter.** Under Rule 85²⁷², if at any time after the TRC is drawn by TRO, defaulter dies, proceedings under Second Schedule (except arrest and detention) may be continued against the legal heir(s) of defaulter and these provisions shall apply as if legal representative were defaulter.
- (4) Subsistence allowance.** Rule 90²⁷³ of Second Schedule provides:-
- (a) When a defaulter is arrested or detained in the civil prison, the sum payable for subsistence of defaulter shall be borne by TRO from the time of arrest until he is released;
 - (b) Such sum shall be calculated on scale fixed by the State Government for subsistence of judgment-debtors arrested in execution of a decree of a Civil Court;
 - (c) Sums payable under this Rule shall be deemed to be costs of the proceeding but the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

In this regard, Rule 54²⁷⁴ of ITCP Rule states that the subsistence allowance shall be supplied by TRO by monthly instalments in advance before the first day of each month. First payment shall be released to TRO for such portion of current month as remains unexpired before the defaulter is committed to the civil prison, and subsequent payment (if any) shall be made to the officer in charge of the civil prison.

(5) Prison in which defaulter may be detained.

Rule 53²⁷⁵ of ITCP Rules states that a person against whom an order of detention has been passed under Part V of Second Schedule may be detained in civil prison of district in which office of TRO ordering detention is situated or where such civil prison does not have suitable accommodation, in any other place which the State Government may specify for detention of such persons by the civil courts of such district.

(7) Forms.

As per Rule 55²⁷⁶ of ITCP Rules, the following forms, which may be so varied as circumstances of each case may require, shall be used as under:-

- (i) Form No. ITCP 25²⁷⁷, for issuing a notice to show cause why a

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²⁷³ Appendix-2

²⁷⁴ Appendix-4

²⁷⁵ Appendix-4

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warrant of arrest should not issue under Rule 73 of the principal Rules;

- (ii) Form No. ITCP 26²⁷⁸, for issuing a warrant of arrest under Part V of the principal Rules;
- (iii) Form No. ITCP 27²⁷⁹, for issuing a warrant of detention under Part V of the principal Rules;
- (iv) Form No. ITCP 28²⁸⁰, for issuing an order of release under Rule 77 or Rule 78 or Rule 79 of the principal Rules.

G. OTHER MODES OF RECOVERY

(I) Modes of Recovery under section 226 of the Act:

Section 226 deals with modes of recovery normally available to AO. However, in respect of certified demand, TRO steps into shoes of AO and may resort to any method of recovery available to AO. These are discussed as under:

1. Recovery from salary-

Section 226(2)²⁸¹ provides collection and recovery by attachment of salary. After drawing of TRC, TRO is competent to collect certified demand from salary of the defaulter subject to limitation imposed by Section 60 of CPC.

Section 60 exempts following amounts of salary:-

- First Rs. 400.
- 2/3rd of the remainder

To give an illustration, if a person's salary is only Rs.400, it cannot be attached. However, if a person's salary is more than Rs. 400, the first 400 requires to be excluded for finding out the principle amount, 2/3rd of which will be exempt and remaining 1/3rd can be attached.

Moreover, if any particular allowance is notified by the Government to be exempt from attachment, that component of salary has to be left out. No attempt should be made to recover Income tax from pension in view of provisions of Sec. 11 of the Pension Act which provides that pension shall not be liable to attachment at the instance of a creditor for any demand against the pensioner.

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²⁸¹ Appendix-1

2. Recovery from debtors/banks -

2.1 Section 226(3)²⁸² provides that TRO may by notice in writing require any debtor (including bank, post office, insurance company etc.) to pay certified demand in full or part to the extent of debt/deposit. A copy of notice shall be forwarded to defaulter at his last address known to the Assessing Officer or TRO, and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or TRO. It shall be duty of debtor to comply with such notice. However, the debtor may object to such notice by stating on oath that:-

- the sum demanded or any part thereof is not due to defaulter or
- that he does not hold any money for or on account of defaulter.

In case the objection is found to be wrong, liability of debtor shall continue. TRO may amend or revoke any notice issued or extend the time for making any payment in pursuance of such notice. TRO shall grant a receipt for any amount collected from the debtor and the debtor shall be discharged from his liability to defaulter accordingly.

2.2 226(3)(x)²⁸³ provides that if a debtor does not comply with the notice issued by TRO, 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.

2.3 Under the mode of recovery provided u/s 226(3)²⁸⁴, TRO can attach and recover the certified demand from the credit balance in the bank account of the defaulter. This requires collection of details of bank accounts, disclosed and undisclosed, of the defaulter and the concerns where the defaulter may be having financial interests. Disclosed bank accounts can be found out from latest assessment records. Undisclosed bank accounts may exist in benami names, of the family members, servants, trusted employees. Such bank accounts may be located by making discreet enquiries and keeping a close watch over movements of defaulter and his close confidants.

Case Laws on Sec. 226(3)²⁸⁵:

- i. In *Golam Momen v. Asstt. CIT* [2003] 263 ITR 69 (Cal.), it is held that mere filing an appeal does not tantamount to stay of the recovery proceedings. Section 226(3) contemplates the notice to be issued to the assessee but it does not say that prior notice before taking course

²⁸² Appendix-1

²⁸³ Appendix-1

²⁸⁴ Appendix-1

²⁸⁵ Appendix-1

to the aforesaid provision is required to the assessee. The section does not postulate that before an action is set into motion, a notice is required to be served on the assessee but what is held is that if such an action is contemplated, the notice should also be served to the assessee and, therefore, the judgment rendered in the case of *Golam Momen* (supra) depicts the correct proposition of law.

- ii. Where an objection is filed against notice u/s 226(3), it is mandatory for TRO/AO to give notice and hold an inquiry for the purpose of determining whether the statement on oath made on behalf of the garnishee is false and in which material particular and what amount is in fact due from the garnishee to the assessee and in this inquiry, he would have to follow the principles of natural justice and reach an objective decision - **Beharilal Ramcharan. V. ITO (1981) 131 ITR 129 (SC)**
- iii. The burden of showing that the statement on oath is false in any material particular would be on revenue, as held by the Apex Court in *Beharilal Ramcharan v. ITO* [1981] 131 ITR 129. Revenue would be bound to disclose to garnishee all such material or evidence on which it proposes to rely. It would have to be shown by the revenue on the basis of relevant evidence or material that the statement on oath is false in any material particular and that a certain definite amount is due from the garnishee to the assessee. It is only then that personal liability for payment can be imposed on the garnishee under Section 226(3)(vi) of the Act. Here the words "false in any material particular" are important. The word 'false' is stronger word than the word 'wrong'. Some kind of intention of making a wrong statement is essential to construe a statement as false. *S.K. Agarwal vs. Union of India* [2013] 35 taxmann.com 503 (Allahabad)
- iv. In the case of *S.K. Agarwal vs. Union of India* [2013] 35 taxmann.com 503 (Allahabad), a bank manager was issued notice u/s 226(3) asking him to pay amount due from a proprietorship concern of the assessee. In the bank, the proprietorship concern was having open cash credit limit and there was debit balance. The assessee was also having a saving bank account in the bank in his individual capacity in which some credit balance was lying. The Bank Manager replied that there is debit balance of proprietorship concern. In the notice issued to Bank, the AO mentioned about the bank account of proprietorship concern and name of the proprietor concern only as defaulter. The TRO by not agreeing with the reply of the Bank Manager, held him deemed to be an assessee in default and passed an order having the same effect as attachment of debt by the Tax Recovery Officer in exercise of his powers under section 222 of the Income Tax Act, 1961.

On filing of writ petition by the Bank manager, it has been held that the saving bank account belonging to proprietor cannot be clubbed with the bank account of its proprietorship concern which was mentioned as assessee in default in notice issued u/s 226(3) and bank manager could only say that the defaulter as mentioned in the notice, has no money as due from it (bank) to the defaulter assessee because of debit balance in open cash credit limit account.

Earlier the rule of English law that the Bank has a lien or more appropriately, a right to set off against all monies of his customers in his hands has been accepted as the rule in India. According to this rule, when monies are held by the Bank in one account and the depositor owes the Bank on another account, the Banker by virtue of his lien has a charge on all monies of the depositor in his hands and is at liberty to transfer the monies to whatever account the banker may like, with a view to set off or liquidate the debts *Lloyds Bank Ltd. v. Administrator-General of Burma* AIR 1934 Rang. 66 and *Devendrakumar Lalchandji v. Gulabsingh* AIR 1946 Nag. 114.

It may be mentioned that the above decision of Hon'ble Allahabad High Court was rendered on specific fact of the case which clearly distinguishes it from earlier position of law on this point and shows that when name of bank account of proprietorship concern was only mentioned in the notice issued to garnishee; it was held that bank account of proprietary concern cannot be clubbed with the individual saving bank account of the assessee. Therefore, while issuing notice to garnishee for recovery of demand care should be taken to mention all bank accounts held by the assessee.

- v. AO/ TRO has jurisdiction to attach fixed deposits and bank is under obligation to make payment of amount even before maturity of the fixed deposits receipt- C.B.D.T.'s letter F. No. : 385/14/99-IT (B) dt. 23.08.1999 - **Vysya Bank Ltd v. JCIT & TRO, Global Trust Bank v. JCIT & TRO - 241 ITR 178 (Karnataka).**
- vi. An AO or a TRO cannot freeze overdraft account to order the bank to pay u/s 226(3), the difference between the limit of the overdraft allowed and the amount overdrawn - **K.M. Adam v. ITO (1958) 33 ITR 26 (Mad), Karnataka Bank Ltd. V. CCT (1999) 114 STC 19, 21 (Karn).**
- vii. Whether if a garnishee payment or one made u/s 46(5A) of 1922 Act [corresponding to Section 226(3) of the Act] has been legally made out of Court in full and final discharge of liability under a decree, judgment debtor can move court for getting adjustment of payment certified- Held, yes **Soorajmal Nagarmal v. Collector of Customs, Calcutta - 74 ITR 459, 463 (SC).**

Procedural Guidelines for TRO:

1. If a person to whom a notice u/s 226(3)²⁸⁶ is issued denies his liability, intimation in form of a simple letter should not be recognised and garnishee in such cases should be advised to file a proper objection in form of a statement on oath before he is allowed not to pay the tax covered by the proceedings. If such statement is not forthcoming within about a fortnight after the due date, further steps must be taken to recover amount due from garnishee.
2. The words, “at any time or from time to time” in Sec. 226 (3)²⁸⁷ ensure that garnishee notice may be issued at any time or from time to time, i.e., there may be more than one such notice issued to the same debtor, or different debtors, or the assessee.
3. TRO should co-ordinate with CIT’s office for recovery of money lying in P.D. A/c.
4. If bank says that certain sum cannot be remitted for being minimum balance, TRO should cite Rule 60 of CPC²⁸⁸ to the effect that “minimum balance” is not exempt from attachment under any law.
5. If there is bank guarantee facility provided by bank, TRO should collect address of relevant parties from bank guarantee papers and attach bills receivable. TRO should find out the security offered for obtaining bank guarantee and take steps as per law for appropriating the same towards outstanding demand.
6. TRO should observe whether “by Tr” or “to Tr” entries are there. If any, find out whether this source/ destination accounts are assessee’s own or related A/cs.
7. In case of Cash Credit account, TRO should find out details of hypothecated stock (from stock statement) and collateral securities from bank.
8. To find out account number of assessee, giving any cheque no., date of transaction, month, amount, payee’s name etc. are helpful and if bank refuses to attach for want of specific account number, TRO may find out the same from cheque book issue register, day book etc.
9. As per Bankers’ Book Evidence Act, 1891 whenever evidences are collected from the bank, it is to be ensured that such evidences, etc. bear a proper certificate as required u/s2(8) of the said Act. Otherwise,

²⁸⁶ Appendix-1

²⁸⁷ Appendix-1

²⁸⁸ Appendix-5

there will be no evidentiary value of such evidence before a court of law.

10. An assessee may have a cash credit/overdraft account from which money cannot be available for attachment. In such cases, TRO should collect photocopies of both sides of pay-in-slips of last 3 months and collect bank particulars of parties from whom assessee has received payments. Then TRO can require those parties to furnish details of full value of transaction, amount paid so far and balance yet to be paid. Eventually, this will enable TRO to attach bills receivable by assessee before it reaches such O.D. A/c.
11. Notices u/s 226(3)²⁸⁹ in original should invariably be sent along with a covering letter. At the time of attachment of account with bank or post office etc., it becomes important to know exact balance available at the time of service of attachment notice. The authorities at the bank, post office etc. may insist that they will strictly go by the notice u/s 226(3) which requires only not paying any amount to the account holder (and instead paying to the Central Government account) and does not require informing the balance amount at the time of service. This may prove to be very harmful to the cause of recovery. Therefore, TRO under Rule 83 of Second Schedule²⁹⁰ should require the bank to inform the balance available at the time of service of the notice. This is extremely important to protect the interest of revenue. Further, TRO must direct TRI to serve notice immediately and not to disclose name of the garnishee or other particulars to the bank official prior to service of notice u/s 226(3) on him. It should be ensured that the official who receives the notice puts his signature, date, time and seal. As per law laid down by the Calcutta High Court in the case of *Golam Momen v. Asstt. CIT [2003] 263 ITR 69 (Cal.)* that the Section 226(3) does not postulate that before an action is set into motion, a notice is required to be served on the assessee but what is required is that if such an action is contemplated, the notice should also be served to the assessee.
12. **U/S 226(4)291:** TRO 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 arrears of tax.

Case Law: Under Section 226(4), AO has power to attach any money due to the assessee but lying in a court. If an assessee objects to recovery proceeding taken under Section 226(4) on the ground that

²⁸⁹ Appendix-1

²⁹⁰ Appendix-2

there has been no valid service of a notice of demand and that, therefore, no debt is due, the court must decide the objection, and if it upholds the objection, it cannot permit recovery of the tax claimed **Manmohanlal and Others vs ITO (1987) 168 ITR 616 (SC)**

13. **U/S 226(5)**²⁹²: TRO may, if so authorised by the Pr. CCIT/CCIT or Pr. CIT/CIT by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in manner laid down in the Third Schedule²⁹³. By virtue of this provision, AO/ TRO may seize movable property of defaulter and sell it in the manner provided in the Third Schedule which says that the manner will be that what is stated in Second Schedule²⁹⁴. By distraint and sale, AO/ TRO can sell only those movable properties which he can actually and not merely constructively seize (like debt, mortgaged property etc. not in possession of assessee).

Case Law: Movable property cannot be attached u/s 226(5)²⁹⁵ of Second Schedule²⁹⁶, if attachment notice is not served on the defaulter personally as required under Rule 21 of Second Schedule. The definition of “defaulter” in the Act does not extend to a person who is managing property of the defaulter. Therefore, it is not enough to show the demand in writing to the superintendent. It should have been shown to the defaulter. **Mrs. Mariamma Antony vs. Tahsildar (1976) 102 ITR 327 (Ker).**

(II) Survey u/s 133A(6) for recovery of taxes:

The power of survey u/s.133A of Income Tax Act, 1961 was made available to TRO w.e.f. 1.6.2003 vide the Finance Act, 2003 by amending Explanation (a) to sub-section (6) of Sec. 133A. Before survey operation is mounted, TRO should make necessary preparation with a view to identify the sources of recovery. It is expected that defaulter and his close confidants should be kept under watch for a given period of time to ensure optimum results in this regard. The latest assessment records and records of other agencies and web sites discussed in Chapter III should be perused. For successful outcome, survey team should be led by TRO himself as he is expected to know the case well and can also exercise the powers with regard to counting of cash, impounding of books of accounts, documents etc. and recording of statement. With regard to action points during the course of such surveys, reference may be

²⁹¹ Appendix-1

²⁹² Appendix-1

²⁹³ Appendix-3

²⁹⁴ Appendix-2

²⁹⁵ Appendix-1

²⁹⁶ Appendix-2

made to survey manual with necessary modifications in so far as they are relevant for recovery.

(III) Recovery through ROC as per Section 248 of the Companies Act 2013 in case of companies being considered for removal from register of ROC

Section 248 empowers ROC to strike off name of a company from register of ROC if ROC is satisfied that the prescribed conditions are fulfilled. The ROC should also obtain the views of Income Tax Authorities regarding pendency of dues from the concerned company. In view of this, in respect of defaulter corporate assessee claiming closure of business and liquidation of liabilities, claim of department about outstanding dues should be brought to notice of ROC immediately after it is noticed that the defaulter company is avoiding payment of outstanding dues.

CHAPTER-VI

DUTIES OF TAX RECOVERY INSPECTOR

TRI plays a crucial role in collection and recovery of arrear demands by assisting TRO. His duties entail more of field work than desk work. Conducting enquiries is the most significant aspect of his work as discreet enquiries are most important means to find out undisclosed assets and source of funds. Rule 1(e) of Second Schedule²⁹⁷ of the Income Tax Act empowers TRO to authorize TRI working under him to act on his behalf. TRI provides assistance to TRO in the discharge of his following functions under Second Schedule

- i. Attachment and sale of defaulter's movable property
- ii. Attachment and sale of defaulter's immovable property
- iii. Appointment of a Receiver
- iv. Arrest and detention of defaulter

Attachment and sale of defaulter's movable property includes attachment of bank accounts and debtors and similar movable property in form of cash for recovery.

Duties relating to Tax Recovery and related functions of TRIs

1. Handling of TRC assigned by TRO and service of notices;
2. While assisting TRO in recovery work, the TRI may be called upon to perform the **following statutory and non-statutory functions** -
 - a. Functions for attachment of immovable property;
 - b. Duties in proclamation of sale of movable and immovable properties;
 - c. Delivery of possession of property to the auction purchaser;
 - d. Executing warrants of arrest and assistance in the arrest proceedings;
 - e. Miscellaneous enquiries relating to identification of assets and recovery of certified tax arrears.
3. Reconciliation of arrear demands and checking of interest charged in respect of certified demands;
4. Maintenance of different registers

²⁹⁷ Appendix-2

5. For performing the duties effectively as listed in paragraph 2, the TRI is required to perform these duties as under:-

1. Handling of TRCs and service of notices:- It is duty of TRI to verify correct figure of demand as well as other details of defaulter as reported by AO before drawing up of TRC by TRO. For this purpose, he must make reference to:-

- assessment records and
- Demand and Collection register.

All the notices issued by TRO shall be served upon defaulter either by post or otherwise. The service of notice otherwise than by post shall be effected by TRI as under:-

- Service to defaulter in person;
- service on any adult member of family as per Rule 15 of Order-V of the CPC;
- service by affixture under Rule 17, 18 & 19 of Order-V of the CPC²⁹⁸ when defaulter or his agent refuses to take the notice or defaulter is not found in the premises and
- substituted service as per Rule 20 of Order-V of CPC²⁹⁹ when the assessee keeps himself away for avoiding service and notice cannot be served in ordinary way. In such circumstances, TRO has to pass an order under Rule 20 of Order V of the CPC and copy of this order is affixed by TRI at some conspicuous part of premises in which the defaulter is known to have last resided or carried out business or personally worked for gain.

2(a) Functions relating to attachment of immovable property:- TRI must find out from AO all the properties including land shown by defaulter in his Wealth Tax Returns or any Balance Sheet filed along with Return of Income. He should also make efforts and collect information from local enquiries to find out any other property of defaulter not disclosed to the Department which may be useful for making recovery as well for making further assessment about his undisclosed investment as well any income from such property. For the purpose of recovery, agricultural land should not be taken into account; however, crops standing on such land are relevant for recovery. After identifying properties, he must obtain complete description of property with boundaries

²⁹⁸ Appendix-5

²⁹⁹ Appendix-5

etc, if necessary, by personal visit to the site. In case, property is registered in name of another person, say, defaulter's wife or any person related to him, he must find out whether the said property really belonged to that person and was acquired from his own fund or the said property is just held by him or her as benamidar and defaulter is real owner by virtue of making of payment from his own fund to acquire the said property. Recovery from such property can be made only when property belongs to defaulter either in his own name or acquired from his funds but is in the name of other person. TRI must incorporate all these particulars in ITCP 16³⁰⁰. After making all necessary enquiries, TRI shall first serve the order in Form No. ITCP 16 on defaulter and then a copy of the order is fixed on a conspicuous portion of the property. Thereafter, TRI has to get the drum beaten, proclaiming the attachment of the immovable property. After this, a Panchnama³⁰¹ evidencing the proceedings is prepared. TRI has then to return to his office, affix a copy of the order of Attachment on notice board and record an endorsement to that effect.

2(b) Duties pertaining to proclamation of sale of movable and immovable properties: On coming to conclusion that a particular property is to be sold, TRO after making necessary entries in order sheet, shall issue a warrant of sale of property in Form No. ITCP 12³⁰² to TRI in appropriate cases, authorizing him to sell the property by public auction. While making a proclamation, TRI must first beat drum or make announcement through a loudspeaker and then the proclamation of sale is read out. In case of sale of movable property, the date of sale of movable properties 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. In the case of immovable property, a copy of proclamation must be affixed on a conspicuous part of the property. Thereafter, Panchnama³⁰³ evidencing the fact that the proclamation has been duly made, must be drawn by TRI with the help of the witnesses. In Panchnama, TRI should record all the significant incidents that took place during the proclamation. A copy of the proclamation should be affixed on notice board of TRO and one copy should also be placed in the file of TRO.

2(c) Duties pertaining to delivery of possession of property: TRI also performs following functions:-

³⁰⁰ Appendix-36

³⁰¹ Appendix-14

³⁰² Appendix-32

³⁰³ Appendix-13

1. Delivery of possession of movable property attached by actual seizure is complete when it is physically handed over to auction purchaser.
2. Rule 39 to 45 of the ITCP Rules, 1962³⁰⁴ contain the relevant provisions with regard to power of TRO to eject defaulter or occupant of property.
3. For effecting delivery of possession in a case where the occupant refuses to vacate the property, TRO will issue a warrant in name of TRI, mentioning the circumstances of the case and ordering delivery of the immovable property to the auction purchaser by ejecting the occupant. In such a situation, TRI has the authority to remove occupant from the property.
4. 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, TRO may, after giving an opportunity to the occupier of the premises, issue a warrant in the name of TRI to remove the persons who are resisting the auction purchaser.
5. **Symbolic delivery-** Rule 40 of the ITCP Rules³⁰⁵ 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 a case, a warrant is issued in the name of TRI for handing over symbolic possession of the property.

2(d) Duties pertaining to Arrest and detention of defaulter

Arrest of defaulter and his detention in civil prison is one of the prescribed modes of recovery of arrears and can be done by TRO himself with or without the help of TRI or can be delegated to TRI. Here action is directed against the person of the defaulter.

2(e) Conducting enquiries: Certain types of enquiries that are required to be conducted by the TRI are as under:

1. **Enquiry relating to properties of the defaulter-** Attachment and sale of the properties, movable and immovable, of the defaulter is essential to recovery proceedings. Therefore, TRI must have a correct and complete picture of the properties owned by defaulter. For this purpose, both open and discreet enquiries are required to be conducted.

³⁰⁴ Appendix-4

³⁰⁵ Appendix-4

2. **Enquiries about absconding defaulter**- When the defaulter facing recovery is difficult to locate, it becomes the duty of TRI to ascertain defaulter's where about.
3. **Enquiries relating to write off of arrears**- Enquiries made in context of a proposal to write off the arrears must essentially be directed towards the objective of ascertaining the capacity of defaulter to pay arrears.
4. It is common knowledge that arrears of tax can be recovered not only from the defaulter but in certain circumstances from others too. Therefore, TRI should also make efforts to identify such persons from whom any money is due to the defaulter. For example, any sum due from defaulter may, on his death, be recovered from his legal heir(s). If defaulter is doing any business, recovery can also be made from debtors of defaulter. Recovery can also be made from any person to whom loan or any advance has been given by defaulter. These instances are illustrative and not exhaustive.
5. Enquiries should be made from the Banks in the vicinity of the residence as well as the business premises of defaulter to find out if any bank account or FDR or any other type of investment including any locker not disclosed to the Department are held in the name of defaulter or any of his family members or benamidar.
6. Surveillance on defaulter may also be carried out to find out if he is visiting any particular place frequently and then his business interest in that place to be enquired into to ascertain whether in that place any undisclosed business of defaulter is being carried out. He should also look for any bank account in the area where the place frequently visited by defaulter is located. Such information may be useful for recovery as well as assessment proceeding.
7. Recovery can also be made from:-
 - Sureties
 - Defaulter's interest in the properties of the HUF in which he is a member.
 - Shares allotted to the member on the partition of a defaulting HUF
 - Benamidars of the defaulter
 - The properties transferred by defaulter, directly or indirectly, to his spouse, minor child or any person functioning as his benamidars.

In certain circumstances, directors of the defaulting company which is a private limited company can be made liable to pay arrears of taxes after passing order u/s 179 of the Act. For this, information may be collected by TRI and given to TRO.

3. **Reconciliation of arrear demands and checking of interest charged in respect of certified demands:** All the cases in which correctness of demand specified in the NOD³⁰⁶ is not accepted by the defaulter should be marked by TRO to TRI for verification and reconciliation. It shall be duty of TRI to carry out this work and report correct demand to TRO.
4. **Maintenance of different registers:** Besides performing the above duties, TRI is also required to maintain the following registers under the supervision of TRO:-
 1. Cash Book,
 2. Register of movable³⁰⁷ and immovable³⁰⁸ properties,
 3. Execution Register³⁰⁹
 4. Register of Daily Reduction/collection³¹⁰ of certified demand
 5. Stay Register³¹¹
 6. Instalments Register³¹²
 7. Disposal Register³¹³
 8. Closed Certificates Register³¹⁴
 9. Custody Register
 10. Daily Diary
 11. Register of Recovery in case of companies in liquidation or before BIFR³¹⁵.

The TRI should ensure that all these registers are maintained regularly and updated every month.

From the above, it would be seen that TRI is mandated with the task to assist TRO in recovery of certified demands and his role is extremely important.

³⁰⁶ Appendix-21

³⁰⁷ Appendix-57

³⁰⁸ Appendix-58

³⁰⁹ Appendix-53

³¹⁰ Appendix-54

³¹¹ Appendix-61

³¹² Appendix-56

³¹³ Appendix-59

³¹⁴ Appendix-60

³¹⁵ Appendix-55

CHAPTER-VII

BEST PRACTICES

Best practice No. 1

This best practice pertains to sale of immovable property in a public auction at Kolkata. The first attempt to sell this property failed in the immediately preceding financial year because of disruption of auction proceedings by hooligans at the behest of defaulter. The unsuccessful public auction was conducted by a TRI who was heckled during auction and public properties were ransacked by hooligans to stop sale through public auction.

After this unsuccessful attempt, the next TRO conducted discreet enquiries with a view to ascertain the impediments to auction. It came to his notice that defaulter was trying to stall the auction by resorting to litigation and taking help of hooligans to disrupt the proceedings. Accordingly, TRO paid personal attention to litigation and security aspects. During the course of inspection of the property, one miscreant came and challenged TRO that he will not allow the auction to take place.

Three writ petitions and one appeal were filed in Calcutta High Court against the sale of property. One writ petition was dismissed by the High Court one day before the date of public auction. Department won all other cases within six months because of personal interest taken in follow up of litigation.

On the day of public auction, TRO requisitioned services of state police and police were present in adequate numbers to provide security; the auction was conducted and though there were sixteen bidders, including the one who had challenged TRO with dire consequences and fifty onlookers, the property was sold in public auction and miscreants and hooligans could not stop it.

This best practice highlights the need to study the case history and foresee the impediment in successful conclusion of public auction. Successful efforts like this also establish government authority and show that government means business.

Best Practice No. 2

This best practice pertains to the collection of more than 15 year's old demand in case of a transporter of Kolkata by selling immovable property in public auction. TRO found that one flat owned by the defaulter was attached long back but no follow up action was taken. TRO got spot

enquiry conducted through TRI who visited the spot and Municipal Corporation and reported that this flat was in name of defaulter and there were arrears of society charges and municipal taxes payable by him. Letters were sent to defaulter on the last known address but these were returned by postal authorities with remarks "closed", "not found" etc. Discreet enquiries by TRO showed that most of the partners of the firm, against which demand existed, had expired and their legal heirs had settled in Mumbai; only one of partners was alive and was staying in Kolkata. TRO sent letters to legal heirs at Mumbai but no response was received.

TRO gave opportunity to defaulter to pay the demand and defaulter failed to do so. Accordingly, TRO wrote to AO and the valuation cell of the department to find out market value of the property.

Armed with reserve price and after obtaining administrative approval, the sale proclamation was published in widely circulated English, Hindi and Bengali local newspapers. Seeing the proclamation in newspapers, the living partner and the heirs of deceased partners appeared before TRO and filed objection to the proposed sale. TRO rejected their objections by passing a speaking order. The next day, the living partners and legal heir(s) of deceased partners filed an application before the CIT who called for report from TRO and after considering the report of TRO, dismissed defaulter's application to stop sale. Thereafter, defaulter carried the matter to the High Court of Calcutta and the Single Judge bench refused to grant any stay or injunction against sale proceedings. After this, defaulter filed appeal before the Division Bench. The Division Bench fixed the date of hearing which coincided with the date of public auction fixed by TRO. TRO discussed the matter with Standing Counsel who advised him not to adjourn the sale in public auction and wait upto 4 p.m. to know the decision of the court. At 4 pm, Standing Counsel informed TRO that the High Court has refused to grant any stay and dismissed the appeal. The auction was started and the successful bid was settled at Rs. 18,55,000. Necessary order of sale was passed in favour of successful bidder with instruction to pay 25% bid money immediately and to pay the balance amount within due time. Other formalities were finished quickly. Since the successful bidder paid 25% in cash, it was kept in safe custody and deposited in RBI the next day. The balance money was paid shortly thereafter and this included interest, cost and poundage. Sale certificate was issued after a month.

This best practice highlights the efforts made by TRO to obtain the market valuation of the property, to do necessary follow up in litigation and to make arrangement for safe custody of cash to be deposited to RBI on the next working day.

Best practice No.3

This best practice shows effective use of arrest for bringing defaulter to justice. At Kolkata, there were two defaulters who did not comply with notices issued by earlier TROs for recovery. The new incumbent decided to closely follow up these defaulters and issued summons under Rule 83 to both. Both defaulters refused to accept the service of summons and uttered derogatory words against the office of TRO.

TRO brought the conduct of defaulters to the notice of the Range head who advised TRO to effectively use arrest in both cases. As a result, after recording reasons, show cause notice under Rule 73(1) of Second Schedule was issued to both defaulters by TRO. Both defaulters did not respond to the notice and TRO issued warrant of arrest in name of both defaulters namely 'X' and 'Y'.

TRO met the concerned police authorities for taking assistance of police and also contacted authorities from Alipore Central Jail for committing the defaulters to the civil prison. In the morning of 23.02.1996, TRO accompanied by the local police reached residence of both defaulters one by one and served warrant of arrest on them. They were requested to clear the demand but they refused. Hence, both were arrested and brought to the office by TRO.

At office of TRO, both defaulters were handed over to the custody of the police officer present there pending hearing under rule 75 of Second Schedule. Since the defaulter refused to pay the demand and he also failed to furnish the security to TRO's satisfaction, Sh. Banthia's statement was recorded by TRO and after this, TRO passed order under Rule 76(1) of Second Schedule for his detention for a period of six months with effect from 23.02.1996 and he was taken to the Alipore Central Jail under police protection for being committed to the Civil Prison. Seeing this, 'Y' started crying bitterly and he agreed to pay Rs. One lakh on 23.07.1996 itself and agreed to deposit balance demand in instalments granted by TRO. He was then released after obtaining satisfactory security for his appearance as and when required.

After two days, 'X' feigned illness and got a medical report (from the Medical officer of Jail) forwarded to TRO. This medical report certified that 'X' was suffering from pericardial pain and palpitation. TRO consulted a leading doctor who was TRO's friend and he opined that it was tension generated pain and not related to heart ailment. TRO requested the jail superintended to send 'X' to SSKM Hospital for medical checkup.

Realizing that this ploy had failed, a writ petition was filed in Calcutta High Court for release of 'X' by his son. TRO and Range head briefed the Standing Counsel and the High Court rejected the request for defaulter's

release and adjourned the case for a week. On the next hearing also, 'X' could not get bail. On 13.03.96, i.e. after 20 days of his detention, High Court ordered his release.

This best practice illustrates what commitment and hard work by TRO and guidance by his supervisor officers can achieve. It also shows that arrest is a potent weapon in the armoury of TRO.

Best Practices No. 4

A demand of more than Rs. 100 crore was outstanding for over 20 years in a case at Ahmedabad. It was admitted demand in as much as it pertained to order of the Settlement Commission. There were no records available with the AO or TRO as records were destroyed due to fire in the office.

Faced with the aforesaid situation, the TRO contacted the defaulter, sweet talked with him and persuaded him to be cooperative. He recorded his statement about present status of earning his livelihood, his business activities and his personal friends. He also conducted discreet enquiries regarding the defaulter. TRO with guidance from his Supervisory Officers was able to persuade one of defaulter's close acquaintances to become/turn informant for lure of money. The Supervisory Officers utilised secret funds for purchasing information regarding defaulters' assets and obtained details of several plots of land with realisable value far in excess of outstanding demand. These plots of land have been attached to secure the interest of Revenue.

Best Practice No.5 :-

This best practice brings out the successful attempt of TRO to collect outstanding demand from defaulter by making use of second lien on property.

In case of a defaulter from Chennai, there was certified demand in excess of Rs. 50 lacs. The assessee had been in business of manufacture and trading of leather goods and its business had to be closed to comply with order of the Supreme Court which imposed certain conditions which could not be complied with by the assessee.

During the course of attachment proceedings, TRO identified three properties of the defaulter, which were already mortgaged for availing loan. TRO attached these properties after following the prescribed procedure and encumbrance certificate was obtained.

During the course of recovery proceedings, TRO came to know of an advertisement for sale of these properties by Assets Recovery Management Branch of Indian Bank.

Immediately thereafter, TRO wrote to manager of Assets Recovery Management Branch of Indian Bank bringing to his notice tax dues of the Income Tax Department and attachment of the properties by TRO. It was also clearly conveyed to the Manager that even if the auction goes through, still the Income Tax Department will continue to hold encumbrance to the properties as the demands were still unsettled, thereby conveying the idea that no clear title can be conveyed by the Bank to any of the successful bidders at the auction pending clearance of Income Tax Department. The Bank cancelled the auction through a public notice and approached TRO to amicably settle the issue. However, it was clearly conveyed to the Bank that demand was outstanding and the same was collectible through Second Schedule.

Even though the department had only second lien, the concept that no clear title could be passed by the first lien holder i.e. lending bank unless department lifted attachment, came handy and bank agreed to pay outstanding demand out of sale proceeds of flats on which it had first lien. In conclusion, the insistence on persisting with the right to second lien resulted in recovery of the entire tax dues in this case despite the first lien holder having a better right.

Best practice No. 6

This best practice from the region of Bihar & Jharkhand brings out the successful collection of nine year old demand by selling immovable property in public auction. In this case, unattached property of 21 kathas land and two blocks of apartments under construction were identified. Attachment notice in ITCP 1 was served in June 2005. However in September, 2005, assessee entered into a development agreement under fake and changed address. This property was earlier purchased in the name of relatives and defaulter and it was first attached in August, 2013. Against this attachment, there were series of objections, appeals, complaints and even writ petition before Hon'ble High Court of Patna. These objections were mainly on the ground that the property was acquired by persons other than the defaulter and that there was encumbrance by way of development agreement. This place of defaulter were contested by the department.

The first round of proclamation of sale of the 18 vacant flats was stalled by an order of Hon'ble High Court in March, 2014. On 11.09.2014, Hon'ble High Court allowed auction proceedings but directed to pass a speaking order rejecting the claim of ownership by relatives of assessee.

Thereafter, a government approved auctioneer from Delhi was engaged for the purpose of auction and share of 18 flats of the assessee in default was put to auction on 12.09.2014. 15 flats were auctioned in

first round to the highest bidders who deposited 25% of the said price. The remaining 75% of the sale price has been paid to the Department subsequently within 15 days.

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 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 movable 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 manner 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) Where 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 60 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) so 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 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.

[*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.]

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

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) 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;
 - (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 prescribed-
 - (i) an undertaking in the prescribed form 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 prescribed authority shall, on receipt of the under, taking immediately given to such person a no objection certificate, 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 Indian at the time of his departure, shall furnish, in prescribed form to the income-tax authority or such other authority as may be prescribed-

(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 prescribed 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 certificate from the income-tax authority 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 therefore 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) [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.

(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.

(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.

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

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 authorized 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 subsection (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 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) as 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 may be 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 transfer or 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 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 [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-

- (c) 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 ;
- (d) 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 [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 lithe 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 by 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 whereunder 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 the 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 a part 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. ITCP-1 [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. P.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. I 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. I 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 (1), 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 it 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 be 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 deliver 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 warned 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 Recover 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 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 specified period 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, if 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 be 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 endeavour 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.

(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

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 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)

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

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 (it 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.

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 (L.S.), 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, 1925]

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

- 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.
 - 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.
 - 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.
 - 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 willful 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 gazette 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, as such officer, 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

60. 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 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 [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this, behalf, and political pension;
- (h) the wages of 'labourers and domestic servants, whether payable in money or in kind
- (i) salary to the extent of [the first [[one thousand rupees]] two— thirds of the remainder] [in execution of any decree other than a decree for maintenance]:

[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 of twenty-four months, be finally exempt from attachment in execution of that decree;]

- [(ia) one-third of the salary in execution of any decree for maintenance;]
- [(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, [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;
- [(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;]
- [(l) any allowance forming part of the emoluments of any [servant of the Government] or of any servant of a railway company or local authority which the [appropriate Government] may by notification, in the Official Gazette declare to be exempt from

attachment, and any subsistence grant for allowance made to [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 [any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and
- (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.

[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.]

[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.

[Explanation [III].—In clause (1) “appropriate Government” means—

- (i) as respect any [person] in the service of the Central Government, or any servant of [a Railway Administration or of a cantonment authority or of the port authority of a major, port, the Central Government; [***]
- (iii) as respects any other servant of the Government or a servant of any other 29[***] local authority, the State Government.]

[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
- (c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.]

[(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) 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 lot 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 subsections, 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-6**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] 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;

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-7

RULE-112, SCHEDULE TO THE LIMITATION ACT, 1963

Description of suit Period of Limitation Time from which period limitation 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 similar suit by a private person

Description of suit	Period of Limitation	Time from which period limitation 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 Govt. of the State of Jammu and Kashmir.	Thirty Years	When the period of limitation would begin to run under this Act against a similar suit by a private person

APPENDIX-8

**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

(1)	(2)	(3)
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
	PART- II Attachment and sale of movable property Attachment	
r.23	Property in defaulter 's possession	r.43 of Order 21
r.24	Agricultural produce	r.44 of Order 21
r.25	Provisions as to agricultural produce under attachment.	r.45 of Order 21
r.26	Attachment of debt, share and other moveable property not in possession of the defaulter	r.46 of Order 21
r.27	Attachment of decree	r.53 of Order 21
r.28	Attachment of share in movables	r.47 of Order 21
r.29	Attachment of salary or allowances of servant of the Government or railway company or local authority.	r.48 of Order 21
r.30	Attachment of negotiable instruments	r.51 of Order 21
r.31	Attachment of property in custody of Court or Public Officer.	r.52 of Order 21
r.32	Attachment of partnership property	r 49 of Order 21
	Sale	
r.37	Sale	r.64 of Order 21
r.38	Issue of proclamation	r.66 of Order 21
r.39	Proclamation how made	r.67 of Order 21
r.40	Sale after fifteen days	r.68 of Order 21
r.41	Sale of agricultural produce	r.74 of Order 21
r.42	Special provisions relating to growing crops	r.75 of Order 21
r.44	Sale by public auction	r.77 of Order 21

(1)	(2)	(3)
r.45	Irregularity not to vitiate sale, but any person injured may sue.	r.78 of Order 21
r.46	Negotiable instruments and shares in corporation.	r.76 of Order 21
r.47	Order for payment of coin or currency to the Income-tax Officer.	r.56 of Order 21
	PART- III Attachment and sale of immovable property Attachment	
r.48	Attachment	r.54(1) 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

(1)	(2)	(3)
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
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-9

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, -
- (a) 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;
 - (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

DEATILS OF AMOUNT IN ARREARS

	Rupees			Assessment 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 _____ +				
7. Any other sum (give details)				
8. Interest u/s 220(2) from the day the amount became due				
9. Total				

APPENDIX-10

(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 intent 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 11

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)
r.16	PART-I Preliminary	Rule 66 of Order XXI
r.17	*****	Rule 65 of Order XXI
r.36	PART-II General Procedure	Rule 79 of Order XXI
r.37	*****	Rule 80 of Order XXI
r.38	PART-III Attachment and sale of Property	Rule 81 of Order XXI
r.39	Proclamation of sale	Rule 95 of Order XXI
	Sale to be held by whom and his remuneration.	
	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	

	PART-V	
	Delivery of property sold and execution of Document or endorsement of negotiable Instrument or share in a corporation.	
	Delivery of movable property, debts and shares.	
	Transfer of negotiable instruments and shares.	

(1)	(2)	(3)
r.40	Vesting order in case of other property Delivery of immovable property in occupancy of defaulter. Delivery of immovable property in occupancy of tenant. PART-VI Resistance or obstruction to delivery of Possession to purchaser.	Rule 96 of Order XXI
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. PART-VII Appointment, powers and duties of a receiver *****	Rule 102 of Order XXI
r. 54	PART-VIII Arrest and detention Subsistence allowance PART- VIIIA Appeals to Tax Recovery Commissioners ***** PART-IX Scale of fees for processes, charges for other the proceeding and poundage fees etc. *****	Rule 39 of order XXI

APPENDIX-12**CERTIFICATE OF IRRECOVERABILITY****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-13**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.O.

APPENDIX-14
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 realization 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-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.O.

APPENDIX-16**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-17**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 cannot 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 affixed on the property and the proclamation will be made by beat of drum. The tenant will automatically become the tenant of the new purchaser and from the date of purchase if 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-18

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 _____

SI. No.	Name	Father's name	Age	Occupation	Full address	Amt. deposited	Signature	Amt. deposited	Signature	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-19

**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-20

File No. _____ Office of the Tax Recovery Officer,
Income tax Department
Dated: 20

CERTIFICATE OF PAYMENT OR REDUCTION OF TAX

Certified 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-21**'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			Assessment 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:				

APPENXI-22

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 ___20 ___ 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.

APPENDIX-24

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.

APPENDIX-24

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.

APPENDIX-25

FORM NO. I.T.C.P. 5

[See rule 26(1)(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*.

APPENDIX 26

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 court

Office 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* subsection (1) of section 222 of the Income-tax Act, 1961, fill in the name of the person referred to in that *Explanation*.

APPENDIX 27

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.

APPENDIX 28

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.

APPENDIX 29**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.

APPENDIX 30

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-tar 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.

APPENDIX 31**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.

APPENDIX 32**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.

APPENDIX 33**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.

APPENDIX 34**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.

APPENDIX 36**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 propertyOffice 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.

APPENDIX 37
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 proclamation

Office 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.

APPENDIX 38**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 bill 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.

APPENDIX 39
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 _____

[defaulter]

by virtue of the Explanation to sub-section (1) of section 222 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.

APPENDIX 40**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 property

Office 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.

APPENDIX 41

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.

APPENDIX 42**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.

APPENDIX 43**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.

ANNEXURE 44

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.

APPENDIX 45

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.

APPENDIX 46**FORM NO. I.T.C.P. 26**

[See Part V of the Second Schedule to the Income-tax Act, 1961]

Warrant of arrestOffice of the Tax Recovery Officer,
_____To:

Whereas certificate No. _____ dated _____ was
[drawn up by the *undersigned the Tax Recovery Officer for recovery of
arrears from _____ of _____],
[defaulter] [address]

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 the
said defaulter in respect of the said certificate:

	Rs.	P.
+ Certificate amount/Specified amount	—	
Cost and charges	—	
Interest up to the date of issue of this warrant	—	
	Total	_____

and whereas the said sum of Rs. _____ has not been paid in
satisfaction of the said certificate;

These are to command you to arrest the said defaulter and bring him
before the undersigned as soon as practicable and in any event within 24
hours of his arrest (exclusive of the time required for the journey) unless
the defaulter pays to you the said amount of Rs. _____ 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 and Rs. _____ for
the cost of executing this process.

You are hereby further commanded to return the warrant on or before
the _____ day of _____ 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. In case the defaulter is not found within the jurisdiction of the undersigned, you are hereby authorised to move 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.

APPENDIX 47

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 prison

Office 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.

APPENDIX 48

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

APPENDIX 49**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.

ANNEXURE 50

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]

1. 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).

ANNEXURE 51**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-52**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, Ahemdabad, 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 Head clerk/Inspector with the cheque and the challan and countersigned the Head clerk/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 unrealized. (v) No. of cheques sent back to assesseees.

(v) Balance, if any, carried over with reasons.

(vi) 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/Head clerk to the ITO In-charge 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 In-charge in his safe custody.

(Refer Instruction No. 13, from F.No. 16/5/69-ITCC dated 10/11th February, 1969)

**APPENDIX-57
REGISTER OF MOVABLES ATTACHED AND SOLD**

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-58
REGISTER OF IMMOVABLES ATTACHED AND SOLD

Sl. No.	File No.	Name & address of the defaulter	Amount of arrear	Date of issue of Form No.16	Date of Attachment	Description of Properties attached with Survey No.	Estimated Value of each Property	Amount of Proceeds in full suspense Realisation	Date of Confirmation	Date of issue of sale confirmation	Date of Lamination Under rule 63B of Schedule-II	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

**APPENDIX-59
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
				Service ITCP-1		Attached (Yes/No)	Realised (Yes/No)	Attached (Yes/No)	Sold (Yes/No)	Attached (Yes/No)	Proclaimed (Yes/No)	Sold (Yes/No)		ITCP	ITCP	ITCP		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	

APPENDIX-60
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-61
STAY REGISTER

Sl. No.	File No.	Name and address of the defaulter	Amount of arrear	Authority granting stay	Particulars of stay	Remarks

APPENDIX - 62
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.R.S. 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 totaling 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 Certificates 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-63
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-64
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-65
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 assesseees 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-66
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-67
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 issue 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 organizing 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.1.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.

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.

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-68
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 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 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-69

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-70**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 Certificates 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 authorized 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 authorized 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 authorized 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-71

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-72

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 assessees.
4. In some cases, stay petitions filed by the assessees 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 assessees 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-73

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-74**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-75

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-76

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-77

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-78

**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-79

**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-80

**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-81

**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-82**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-83

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-84**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 CBDT 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 proforma 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 CLEARANCE 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-85

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-86

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 Ceilingsfor 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 Commi-ssioner 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-87

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 assessees 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 assessee 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-88**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-89**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-90**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-91**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 assessee has 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 TROs 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-92**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 assessee 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-93**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.
1. When the amount mentioned in the warrant has been paid to the officer incharge of the civil prison, the defaulter shall be released.
 2. 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-94**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-95**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-96**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-97**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-98**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.

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 assesseees 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)).

2. 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.

3. 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.

4. These instructions should be brought to the notice of all the Income Tax Officers in each charge.

APPENDIX-99**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).
2. 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-100**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 send 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:- I 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-101**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-102**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-103**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-104**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-105**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-106**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 without their passing through account.

APPENDIX-107**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-108**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-109**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-110**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-111**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-112**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 intimation 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-113**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-114**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-115**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-116**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-117**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-118**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 assesseees in whose cases the demands have already been paid. This can be avoided by properly verifying the correctness of the arrears from the assesseees 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 assesseees 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-119**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-120**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-121**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-122**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-123**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-124**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 lower 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 for 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 whole 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 liable for arrest and detention in a civil prison, where the family is a defaulter. [Section 81 of the Amending Act].

APPENDIX-125

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 other 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 served 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 server 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 served 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 and 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 served under Rule 20. However, before substituted service can be effected, the Court has to pass an order under Rule 20 to that effect.

- (i) That the Court is satisfied as to the 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-126**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-127

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-128**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-pane 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-129**CBDT letter F. No. 404/02/2011-ITCC dated 29.09.2011**

All Pr. Chief Commissioners of Income Tax/CCIT

All Pr. Directors General of Income Tax/DGIT

Sir/Madam,

Sub : Publication of names of tax defaulters in Public Domain - reg-

Reference is invited to the Board's letter F.No. 404/02/2011-ITCC dated 29.09.2011 on the subject, "Recovery of outstanding tax dues classified under the categories "Assessee not traceable" and "No assets/inadequate assets for recovery" as amended by Board's letter of even number dated 27.12.2011.

Vide Para 3 of the above referred letter, decision of the CBDT and procedure to be adopted for putting up the names of tax defaulters in public domain has been communicated.

The Central Board of Direct Taxes has reviewed the matter and in supersession of para 3 of above letter, new procedure is being prescribed for publication of names of tax defaulters in public domain.

3.2 It is decided that the following categories of tax defaulters would be considered for publication of names in public domain:

The assessee is not traceable; There are no/inadequate assets for recovery.

Cases where self assessment tax is outstanding for more than 6 months.

Cases where TDS has been deducted but not deposited for more than 6 months.

3.3 Further, the names of only those defaulters in above categories would be considered for publication in whose cases, following conditions are also satisfied:

- (i) Demand/tax is outstanding as on last day of the Financial Year.
- (ii) Demand/tax is undisputed.
- (iii) No appeal is pending.
- (iv) No stay is granted by any court /IT. Authority

4. In the first phase the undisputed outstanding demand/tax should be Rs. 25 crore and above for category (a) & (b) and Rs. 10 crore and above

for category (c) and (d) as on 31.03.2014 . A list of such cases along with verification as per Annexure 'A' and particulars as per Annexure B'' is required to be submitted to the Directorate of Recovery by 15.10.2014.

In the next phase, cases with demand/tax of Rs. 10 cr & above (but below Rs. 25 cr.) in category (a) & (b) and Rs. 5 crore in category (c) and (d) as on 31.03.2014 should be identified and a list of such cases alongwith requisite information in Annexure A' & B' is to be submitted by 30.11.2014.

From F.Y. 2015-16 onwards, this exercise would be undertaken every year to identify defaulters as on 31 of March in cases where undisputed outstanding demand/tax exceeds Rs.5 crore in all category of cases specified in para 3 for publication of names by 31st July.

5. After approval of the Competent Authority u/s 287 of the I.T. Act 1961, the names would be published in the manner prescribed below:

- (i) Names will be placed in specified portion of the official website of the department.
- (ii) These names will also be published in National newspapers by the DGIT(Admn.) and in local newspapers by the Pr. CCsIT/ CCsIT concerned in order to give maximum publicity.

6 This matter is being monitored at the highest level and the Pr. CCsIT/ CCsIT / Pr. DGIT/DGIT may ensure that they comply with the timelines stipulated and complete & correct.

Information is submitted under their signatures.

Director (ITCC)
CBDT

ANNEXURE- 'A'

PROFORMA FOR INFORMATION TO BE SUBMITTED AND UNDERTAKING BY THE CCIT/DGIT IN CASES PROPOSED FOR PUBLICATION

1.	CCIT/DGIT	
2	CIT/DIT	
3	Name of the Assessee	
4	Date of birth/date of incorporation.	
5	Father's Name (In case of firm, Company, AOP etc., the names of the partners of the firms, directors, managing agents, secretaries and treasurers or managers of the company or the members of the AOP, etc.	
6	PAN	
7	Last known address	
8	Last known source of income	
9	Amount of arrears (Rs.)	
10	Assessment Years	
11	Verification	
	i) PAN enquiry showed jurisdiction of the assessee with the AO and not some other officer.	
	ii) The range head did not find any Individual Transaction Statement (ITS-populated from AIR/CIB/TDS etc. databases) for the assessee or enquiries made based on ITS information met with a dead end.	
	iii) Internet search made to get clues on the present whereabouts of the assessee and either no clues were available or further enquiries from the clues so obtained did not result in locating the assessee.	

	iv) Enquiries made from banks where the assessee's last known bank accounts were maintained did not yield any result.	
	v) Enquiries made with local Police did not yield any result regarding the whereabouts of the assessee.	
	vi) This being a company case, verification was done from the Registrar of Companies and MCS 21, which did not result in tracing the company or finding assets.	
	vii) This being a company case, enquiries did not indicate that there had been any merger/demerger/amalgamation.	
	viii) In case information from FIU-IND/CIB/AIR/FT&TR Division is received and utilized in locating the assets(Y/N), result thereof	
12	Notice to assessee for publication	
	i) Notice for publishing of name given to assessee(Y/N)	
	ii) Reply received and considered (Y/N)	

Place
Date

(Commissioner of Income Tax)
(Signature with stamp)

UNDERTAKING

This is to confirm that all efforts for recovery of arrear demand as indicated above have been undertaken.

2. It is certified that the demand is undisputed and no appeal is pending.
3. It is also certified that a notice to the assessee for publication of name has been issued, the reply received and considered and it is a fit case for publication of name.

Place
Date

(CCIT/DGIT)
(Signature with stamp)

FORMAT IN WHICH NAMES OF INCOME TAX DEFAULTERS SHALL BE PUBLISHED

Sr. No.	Name	Date of birth/ incorporation	Father's Name (In case of firm, Company, AOP etc., the names of the partners of the firms, directors, managing agents, secretaries and treasurers or managers of the company or the members of the AOP, etc.	PAN	Last known address	Last known source of income	Amount of tax arrear (Rs.)	Assessment years(s)	Category of assessee, (i.e. Not traceable, No/inadequate assets for recovery etc.)	Income tax authority to whom information may be provided (i.e. concerned commissioner of income tax)
1	2	3	4	5	6	7	8	9	10	11

APPENDIX-130

INSTRUCTION NO 400 DATED 1.4.1972 OF THE BOARD

Attachment of Government Securities – Notices Issued by the Income-tax Officers under Sections 46(5A) and 226(3) of the Income-tax Act, 1922/1961 – Instructions Regarding

I/400 – F. No. 404/38/72 – ITCC, dated the 1st April, 1972 from CBDT – CBDT Bulletin No. XVIII/I/172, page No. 295.

The Board desire that notices under sections 46(5A) and 226(3) should not be issued on the Bank to attach the principal or face value of the Government securities.

The securities themselves can be attached by the Tax Recovery Officer in exercise of the powers conferred on him.

I/400 – F. No. 404/38/72 – ITCC, dated the 1st April, 1972 from CBDT – CBDT Bulletin No. XVIII/I/172, page No. 295.

