

PRESS RELEASE

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**CAG's AUDIT REPORT ON DIRECT TAXES PRESENTED IN
PARLIAMENT**

CAG's Subject Specific Compliance Audit on "Attachment of Property of an assessee by ITD under Section 281B" Audit Report No. 4 of 2023 on Direct Taxes was presented in Parliament here today.

The Comptroller & Auditor General of India (C&AG) carried out a Subject Specific Compliance Audit (SSCA) on '**Attachment of Property of an assessee by ITD under Section 281B**'. The SSCA was carried out from November 2020 to March 2021; and further verification of records and documents produced by ITD continued till June 2022. Audit findings were discussed with the Central Board of Direct Taxes (CBDT) in September 2022.

Provisional Attachment of properties prior to the completion of assessment is a critical tool with the Income Tax Department to facilitate recovery of tax demands from those assesseees who attempt to evade tax and thwarting collection of tax demand by using unfair means and to prevent accumulation of arrears of tax demand. The provision of Provisional Attachment under Section 281B of the Income Tax Act 1961 (Act) was introduced in the Taxation Laws (Amendment) Act, 1975 with a view to protecting the interest of revenue. If the Assessing Officer (AO) of the Income Tax Department during the pendency of assessment proceedings is of the opinion that the concerned assesseees may *thwart the ultimate collection of tax demand*, he invokes this provision to protect the interest of revenue.

There has been a steady increase (₹ 5,75,340 crore in FY 2013-14 to ₹ 11,14,182 crore in FY 2017-18) in the accumulation of arrears of tax demand during the past several years and the percentage of tax demand termed as 'difficult to recover' (categorised by the Department) over total arrear tax demands continued to be

abnormally high ranging from 96 *per cent* in FY 2013-14 to 98.2 *per cent* in FY 2017-18.

A Subject Specific Compliance Audit (SSCA) on the subject was undertaken with a view to examining whether there are any policy or procedural gaps in the extant provisions of Section 281B of the Act and examining the extant of compliance or consistent application of the provisions of Section 281B in individual cases.

The SSCA covered 350 Provisional Attachment orders issued during the Financial Years 2017-18 to 2019-20 by 72 Assessing Officers having assessment charges under the jurisdiction of the 18 Principal Commissioners of Income Tax (Central).

Summary of audit findings is given below:

Audit observed that there was no prescribed format for issuing Provisional Attachment orders resulting in missing essential information such as estimated tax liability, validity period and not providing assessees with the option of furnishing Bank Guarantee in *lieu* of the attached property etc. from the Provisional Attachment orders which were not in conformity with the provisions/rules.

(Paragraph 3.2)

Audit observed that the AOs were not adequately establishing and documenting the basis/grounds for invoking these provisions and in the absence of documentation, Audit could not draw assurance whether the applicability of the provisions was justified in those cases. Notification of Provisional Attachment orders to Registering Authorities was found to be inadequate, which eventually defeated the purpose of such notification in a few cases.

(Paragraph 3.3)

Audit also observed that as per available records, the AOs did not comply with the Board's instructions of ascertaining details of all assets in the possession of assessees that could be considered for provisional attachment. In the majority of the cases for which records were made available, the list of assets prepared by the Investigation Wing as reflected in the Appraisal Report was not shared with Audit. Therefore, Audit could not verify the role of the Investigation Wing in supplementing the efforts of the AO in selection of appropriate property for provisional attachment. Audit also noticed deficiencies in respect of list of assets provided in the Appraisal Report which resulted in incorrect attachment of a property. The process of identification of assets was found to be deficient, thereby reducing the effectiveness of the provisional attachment. Audit also observed that

in certain cases, the savings/current bank accounts of assesseees were provisionally attached by the jurisdictional AOs without establishing that they were attached only as a last resort.

(Paragraph 4.1 and 4.2)

Audit observed that the AOs did not establish evaluation of property of assesseees for their ownership requirements as well as for their non-encumbrance status before considering them for provisional attachment in majority of cases. Audit further observed that the value of assets attached vis-à-vis the estimated tax liability was grossly insufficient.

(Paragraph 4.3 and 4.4)

Audit observed that the validity period of several orders under Section 281B lapsed either before the tax demands raised were fully recovered or even before completion of assessments, which was in violation of the prescribed provisions. Audit further observed that in certain cases, the orders under Section 281B were extended with a time gap ranging between two and 166 days from the date of expiry of previous order under Section 281B; Audit could not ascertain whether the concerned assessee had disposed off the attached property in the intervening period when there was no provisional attachment.

(Paragraph 5.1.1 and 5.1.2)

Audit also observed that absence of enabling provisions under Section 281B to exclude periods of pendency of assessee's application before the Settlement Commission or during a Court stay against an assessment while reckoning the validity period of order under Section 281B (as available prior to 01/10/2014) or during the assessee's appeal, has led to a situation where the interest of revenue remain unprotected during the periods of appeal and injunction/stay granted by the Courts or when cases are pending before the Settlement Commission.

(Paragraph 5.1.3)

Audit further observed that the time gap from the date of search to the date of initial order under Section 281B ranged between 208 days and 1220 days. Absence of a prescribed time limit for issuing order of provisional attachment has an inherent risk of the assessee alienating property(ies), which are being considered for attachment, in the intervening period in case of abnormal delay in issuance of orders under Section 281B. Further, provisional attachment orders not being issued within a reasonable time after the date of search proceedings could

result in a perennial but indefinite risk hanging over the assessee, which is susceptible to misuse.

(Paragraph 5.1.4)

Audit also noticed certain cases wherein the assessee was able to dispose off the attached property inspite of notification of the order under Section 281B to the concerned Registering Authority.

(Paragraph 5.4)

Summary of Recommendations

Audit recommends that:

- The CBDT may prescribe a format for the order under Section 281B to include all the elements of essential information required for Provisional Attachment to ensure consistency and legal sustainability. A sample format suggested by Audit is enclosed (*Appendix 9*) for consideration by the CBDT.

(Paragraph 3.2)

- The CBDT may frame specific criteria for opinion formation, perhaps with illustrative examples, and clarify “Exceptional circumstances” to facilitate the AOs in initiating Provisional Attachment proceedings in an effective, transparent and legally sustainable manner.

(Paragraph 3.3)

- The CBDT may:
 - consider issuing a comprehensive SOP for provisional attachment, including notification of Provisional Attachment order under Section 281B to the concerned authorities to ensure uniformity in implementation of relevant provisions of the Act and to protect the revenue of the Government.
 - make it mandatory to notify the provisional attachment orders under Section 281B to the concerned Authorities, including CERSAI, with specific directions to the Authorities for making note of the provisional attachment and to monitor the assessee’s compliance to the directions issued therein.

(Paragraph 3.4)

- The CBDT may enforce the extant instructions for enquiry into all assets of the assessee during search and seizure by devising or suggesting appropriate guidelines for selecting the appropriate assets for provisional attachment to ensure maximum coverage of likely tax demand and thereby achieve

optimum protection of revenue, as intended. Further, such enquiry should be appropriately documented.

(Paragraph 4.1)

- The CBDT may bring out specific guidelines to facilitate AOs in ascertaining details of and record all the property(ies) available with the assessee to facilitate selection of appropriate and sufficient property for the purpose of maximising the interest of revenue.

(Paragraph 4.2)

- The CBDT may devise an appropriate mechanism for ensuring the verification of ownership status of the property to be attached. If enquiries have been made from the concerned registering or other authorities for confirmation of ownership/ non-encumbrance, in such cases where properties are sold or transferred shortly before the issue of the attachment order, necessary penal action against the assessee may need to be considered.

(Paragraph 4.3)

- The CBDT may ensure compliance to the provisions of Section 281B of the IT Act and the CBDT's Instruction of September 2004 regarding adequacy of provisional attachment of a property by determining its Fair Market Value (FMV), where found necessary, for ensuring appropriate protection of interests of revenue.

(Paragraph 4.4)

- The CBDT may:
 - enforce implementation of extant provisions relating to validity period of order under Section 281B to ensure that the cases remain continuously protected till the tax demand(s) on assessment is fully recovered.
 - consider initiating measures for excluding the validity period of order under Section 281B during the period of pendency of cases on account of Settlement Commission/Court stay or injunction against assessments or appeals against assessments.
 - consider prescribing a reasonable time limit within which provisional attachment order is issued, especially in search-related cases.

(Paragraph 5.1)

- The CBDT may consider investigating from a penal perspective, changes in ownership after the issue of the attachment order, to evade the consequences thereof including any role of the registering authorities.

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