

## CHAPTER

## 1

## Introduction

## 1.1 Background

Provisional Attachment (PA) under Section 281B of the Income Tax Act, 1961 (Act) was introduced in the Taxation Laws (Amendment) Act, 1975 (vide Section 73). According to the Central Board of Direct Taxes (Board)'s Circular of September 1975<sup>1</sup>, Section 281B was aimed at reducing tax arrears and ensuring that in future tax arrears do not accumulate. It was intended to be applied during the pendency of any proceedings in a case, where the Assessing Officer (AO)<sup>2</sup> is of the opinion that the assessee may *thwart the ultimate collection of demand* in specified circumstances, for protecting the interests of revenue by provisionally attaching the properties of the assessee before completion of assessment. It is unlike the Regular Attachment, applied by the Tax Recovery Officer at the *post*-assessment stage under Section<sup>3</sup> 222/226 of the Act.

Provisional attachment of an assessee's property enables the Income-tax authorities to prevent the assessee from attempting to transfer/dispose off his assets with an intention to evade tax payments. These assets could, *post*-assessment, be disposed off, if required, by the Department by converting it into Regular Attachment and its proceeds be utilised for recovery of tax. Thus, provisional attachment serves as an important precautionary precursor before the assessee's case reaches the stage of regular attachment.

As pointed out in the Bombay High Court's judgement (Sl. No. 4 of *Appendix 3*) Section 281B gives drastic powers, and these are in the nature of attachment before judgement. Such powers must, therefore, be exercised in appropriate cases for proper reasons.

The provisions of the Act prescribe certain steps for initiating the process of Provisional Attachment under Section 281B, such as formation of an opinion necessitating provisional attachment, issue of orders thereon with prior approval from the Prescribed Authority<sup>4</sup>, time limits for initiating/extending

<sup>1</sup> Board's Circular No.179/1975 dated Sept. 30, 1975 - "Objects of the Act" given therein, describes the legislative intent behind inserting this Section (281B) in IT Act.

<sup>2</sup> *Assessing Officer* under Section 2 (7A) of the Act means the Assistant / Deputy Commissioner of Income Tax or the Income Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-Section (1) or (2) of Section 120 or any other provision of the Act.

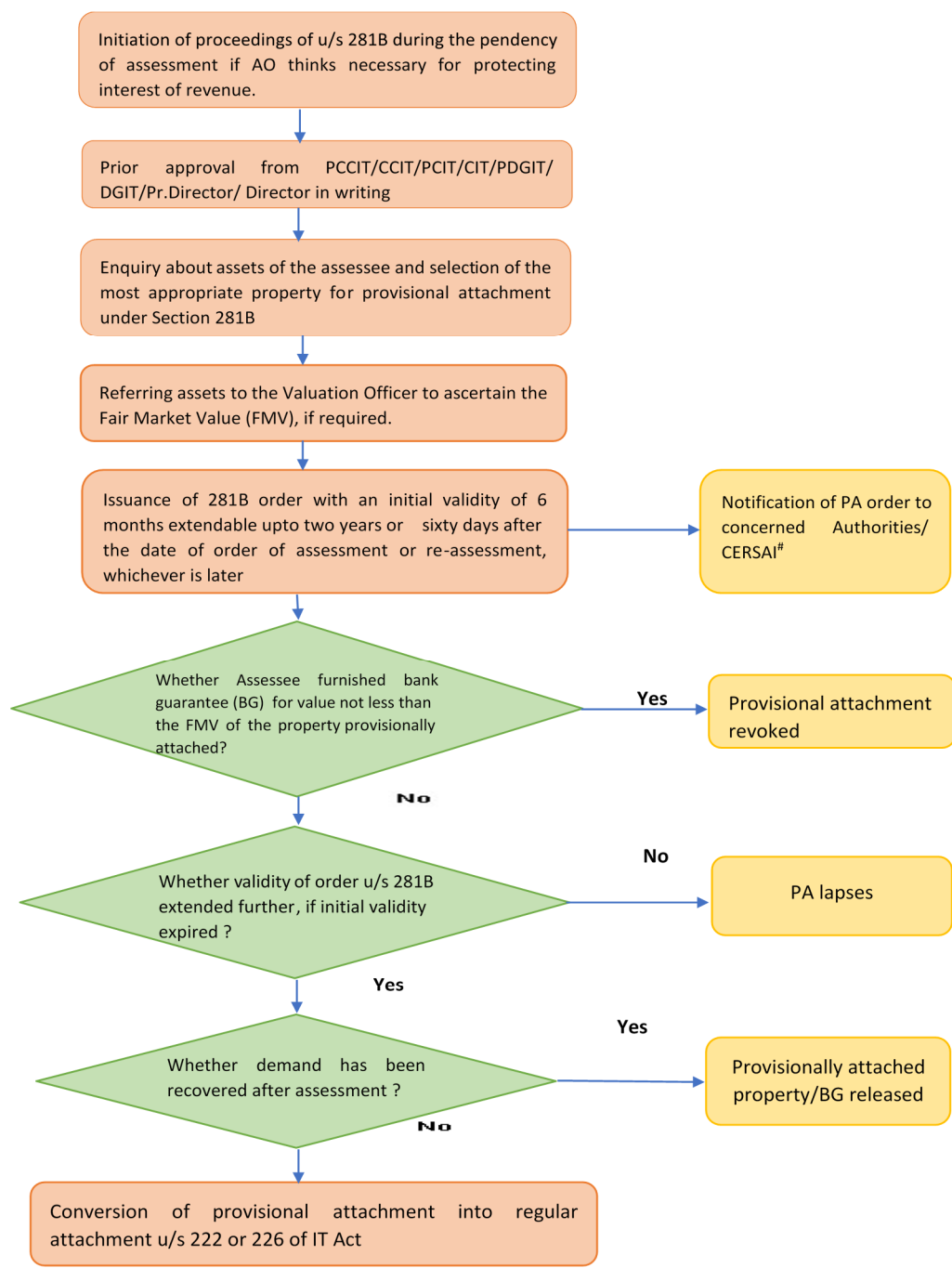
<sup>3</sup> When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer shall proceed to recover from such assessee the specified amount by one or more of the modes mentioned below-  
(a) attachment and sale of the assessee's movable property;  
(b) attachment and sale of the assessee's immovable property;

<sup>4</sup> The Principal Chief Commissioner of Income Tax (Pr. CCIT), Chief Commissioner of Income Tax (CCIT), Principal Commissioner of Income Tax (Pr.CIT), Commissioner of Income Tax (CIT), Principal Director General of Income Tax (Pr. DGIT) or Principal Director (Pr. DIT), Director (DIT).

provisional attachment, obtaining Bank Guarantee (BG) from the assessee in lieu of provisionally attached property, reference to the Valuation Officer for determining fair value of the attached property, invoking BG for default in tax payments, revocation of provisional attachment, etc. The Act further prescribes that the manner of attachment is provided in the Second Schedule of the Act.

A flowchart summarizing the entire Provisional Attachment process is given below:

**Chart 1 – Summary Process for Provisional Attachment**



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The gist of the relevant provisions of the Act are detailed in **Appendix 1**. Furthermore, to enable the AO in implementing these provisions in a fair, objective and effective manner, several circular/instructions have been issued by the Board as detailed in **Appendix 2**. Through these circulars/instructions, the Board has reiterated and issued clarification on the intent and methodology of 281B provisions. These provisions/circulars are also supported by several judicial decisions which are summarised in **Appendix 3**.

## 1.2 Why we chose this topic

The trend of arrears of tax demand<sup>5</sup> pending during the period FY 2013-14 to FY 2017-18 indicated in Table No. 01 below:

Financial Year	Arrears of earlier year's demand	Arrears of current year's demand	Total arrears of demand	Demand classified by ITD as difficult to recover	Per centage over Total arrears	Year-on-year increase in arrears of demand	
						Amount	Per centage
2013-14	4,80,066	95,274	5,75,340	5,52,538	96.04	--	--
2014-15	5,68,724	1,31,424	7,00,148	6,73,032	96.13	1,24,808	21.69
2015-16	6,67,855	1,56,356	8,24,211	8,02,256	97.34	1,24,063	17.72
2016-17	7,33,229	3,11,459	10,44,688	10,29,725	98.57	2,20,477	26.75
2017-18	7,36,975	3,77,207	11,14,182	10,94,023	98.19	69,494	6.65

Source: Directorate of Income Tax (Organisation & Management Services)

As could be seen from the table, 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.

In addition, 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.

Section 281B of the Act empowers the Assessing Officer to use provisional attachment of property as a tool/deterrence to pre-empt the possibility of default in tax payment raised after an assessment/re-assessment. This topic was selected to assess the robustness and effectiveness of the procedures in place, including invoking of provisions of Section 281B to facilitate recovery of demand likely to be raised in future, to avoid addition under the category of 'demand difficult to recover'.

<sup>5</sup> Source: CAG's Union Report No.09 of 2019 (Direct Taxes) – Chapter 1 – Direct Taxes Administration – Para 1.8 - Arrears of Demand.

