

CHAPTER 4

Identification of property to be attached provisionally

AO shall identify and attach provisionally the property that will best protect the interests of revenue. Identification and provisional attachment of property includes the processes of enquiring into the details of assets of assesseees, selection of the type of assets for attachment, verifying ownership/title of the assets by the assesseees and sufficiency of assets attached. This chapter discusses the audit findings with reference to the process and parameters for identification of property that is to be provisionally attached under Section 281B of the Act.

Audit observed that in 291 (83 *per cent*) of the audited cases, as seen from the documentations, the AOs did not comply with the Board's instructions of ascertaining details of all assets in the possession of assesseees that could be considered for provisional attachment. Further, in 124 (93.2 *per cent*) out of 133 cases where the Appraisal Report was furnished to Audit, list of assets prepared by the Investigation Wing 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.

We also observed that the process of identification of assets was deficient, thereby reducing the effectiveness of the provisional attachment.

Audit also observed that the extant provisions do not specify or suggest the priority of assets to consider for provisional attachment and as such, the selection of the property³⁶ for attachment is left completely to the discretion of the AO. Further, though judicial decisions have held³⁷ that provisional attachment of bank accounts should be done only as a last resort, Audit observed that in 32 cases (9.1 *per cent* of the audited 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.

Audit further observed that AOs did not establish evaluation of property of assesseees for their ownership requirements (349 cases) as well as for their non-encumbrance status (343 cases) before considering them for provisional attachment. In seven cases, where information was available, the provisionally attached property was either alienated or not owned by assesseees on the date

³⁶ Immovable property and Movable property such as Vehicles, Shares, FDs, etc.

³⁷ M/s Gandhi Trading vs. ACIT (239 ITR 337) dated 7 July 1999 Bombay(HC)

of provisional attachment. Similarly, in seven cases, where information was made available, the attached properties were either partially or fully encumbered before the date of such attachment.

We observed that sufficiency of properties attached could be analysed only in 60 out of the 350 audited cases, as proposals for Provisional Attachment under Section 281B did not indicate either estimated tax liability or value of the attached property or both in the remaining cases. In 27 (45 per cent) of these 60 cases, the value of assets attached vis-à-vis the estimated tax liability was grossly insufficient³⁸.

4.1 Enquiry into details of all assets of an assessee

The Board vide instructions³⁹ dated September 2004, envisaged that during the assessment proceedings itself, the AO shall be responsible for enquiring into all assets of the assessee and place suitable property under provisional attachment. Further, in search and seizure cases, the Ministry/CBDT in their instruction *ibid* stated that the Investigation Wing Officers shall particularly identify the properties of the assessee that could be attached and specifically mention them in the Appraisal Report⁴⁰. The Board further instructed that the AO should record in an office note to the assessment proceeding, the details of efforts made to locate the assessee's assets alongwith details of assets placed under provisional attachment. This would help in considering the same for regular attachment⁴¹, in cases where attachment under Section 281B cannot be continued till recovery *post*-assessment.

Audit findings on the process of ascertaining the details of assets in the possession of assessee are discussed in the following paragraphs.

(i) Ascertainment of details of assets by AOs: Audit noticed that out of 350 audited cases, only in 59 cases (17 per cent) in eight Central Commissionerate charges, AOs served notice⁴² to the assessee during assessment proceedings specifically seeking details of all assets belonging to the assessee. Out of these, the assessee furnished details of the assets in their possession in only 19 cases. In the remaining 291 cases (83 per cent), Audit observed that there was no documented evidence of the efforts made by the AO in ascertaining the details of available assets for provisional

³⁸ Audit considers the attachment to be 'grossly insufficient' if its value is less than 75 per cent of the estimated tax liability.

³⁹ CBDT Instruction No.8 dated 02/09/2004.

⁴⁰ Appraisal Report is prepared by the Investigation Wing Officers giving details of material/evidence seized during search.

⁴¹ *Post*-assessment recovery process prescribed under Section 222 and/or 226 of the IT Act.

⁴² Issued under Section 142(1) by the AO causing the assessee, selected for scrutiny assessment, to: (1) File Income Tax Returns; (2) Producing detailed accounts, supporting documents and (3) Any other information as desired by the AO.

attachment in all the relevant records pertaining to provisional attachment as well as the scrutiny assessments. Commissionerate-wise details of AOs' efforts in ascertaining the asset details are given in Table No. 06 below.

Table No. 06: Details of 281B cases wherein efforts made/no efforts made by AO in enquiring into all assets of assessee				
Pr.CIT jurisdiction (No. of AOs)	Total No. of cases	No. of cases wherein documented efforts made by AO to collect asset details		No. of cases wherein no documented evidence of efforts by AO to collect asset details
		No. of cases where notice under Section 142(1) was served on assessee, specifically seeking asset details	No. of cases where details of assets brought on record, as a result of AO's efforts	
Pr.CIT (Central) - 1, Delhi (04)	11	3	0	08
Pr.CIT (Central) - 2, Delhi (04)	30	5	0	25
Pr.CIT (Central) - 3, Delhi (06)	41	21	0	20
Pr.CIT (Central) - 1, Mumbai (04)	09	0	0	09
Pr.CIT (Central) - 3, Mumbai (05)	11	2	0	09
Pr.CIT (Central) - 4, Mumbai (04)	16	5	1	11
Pr.CIT (Central), Kochi (02)	07	4	0	03
Pr.CIT (Central), Bengaluru (10)	30	10	10	20
Pr.CIT (Central), Hyderabad (07)	25	9	8	16
Pr.CIT (Central) - 1, Kolkata (03)	07	0	0	07
Pr.CIT (Central) - 2, Kolkata (01)	06	0	0	06
Pr.CIT (Central) - 1, Chennai (06)	34	0	0	34
Pr.CIT (Central) - 2, Chennai (04)	34	0	0	34
Pr.CIT (Central), Bhopal (02)	26	0	0	26
Pr.CIT (Central), Vishakhapatnam (01)	05	0	0	05
Pr.CIT (Central), Chandigarh (02)	22	0	0	22
Pr.CIT (Central), Ahmedabad (05)	33	0	0	33
Pr.CIT (Central), Rajasthan (01)	03	0	0	3
Total	350	59	19	291

It could be seen from the above table that adequate efforts were not made by the AO in ascertaining assets details in Ahmedabad, Bhopal, Chandigarh, Chennai, Kolkata, Rajasthan and Vishakhapatnam charges.

One significant case is illustrated below:

(a) In the search assessment case of M/s. E Ltd. assessed for AYs 2011-12 to 2017-18 in Central Circle-8(1), Mumbai under Pr.CIT (Central)-4, Mumbai charge, the initial order under Section 281B was issued (05/11/2018) for attaching seven immovable properties having cumulative book value of ₹ 63.29 crore against the estimated tax liability of ₹ 13.89 crore (calculated at the minimum tax rate of 30 per cent of undisclosed income of ₹ 46.29 crore)

by obtaining details of all fixed assets held by the assessee (both single and jointly owned) including share of ownership in the name of the assessee.

Audit noticed that there was nothing on record to indicate the manner of selecting the properties that were attached from out of the available properties, which was more than sufficient to cover the tax liability, which is in contravention to the Board's instructions of September 2004. Further, the AO did not calculate the estimated tax liability in this case though the quantum of undisclosed income was known, which was essential to ensure the sufficient value of property to be attached as prescribed. The search assessments were completed on 27/12/2018, raising a cumulative demand of ₹ 85.20 crore, against which the assessee paid a sum of ₹ 0.20 crore and the balance demand of ₹ 85 crore is still pending (January 2021). Meanwhile, the order under Section 281B lapsed and incidentally, the assessee company filed (April 2019) a petition before the National Company Law Tribunal, Mumbai under Section 10 of Insolvency and Bankruptcy Code 2016 to declare itself insolvent, which is pending adjudication. The current status of the insolvency adjudication was awaited from the Ministry/CBDT (October 2022).

Thus, despite having details of all fixed assets held by the assessee, the AO attached immovable properties having book value much more than the estimated tax liability. By doing so, the AO not only failed to ensure appropriate selection of property that could be attached under Section 281B of the Act, but also violated the extant instructions of the Board.

Thus, not ascertaining details of assets in the majority of the cases might lead to either insufficient or excessive attachment of property with reference to the estimated tax liability which may have a risk of either inadequate protection of revenue or undue hardship to assessee.

(ii) Ascertainment of details of assets by Investigation Wing: Audit noticed that out of 133 cases (out of 350 audited cases) wherein the AOs made available extract of the Appraisal Reports to Audit, list of assets prepared by the Investigation Wing were shared only in nine cases. Two cases are illustrated below:

(a) In the group-related search assessments of A48 group, comprising six assesseees viz., Shri A27, Smt. A28, Shri A29, Shri A30, Smt. M16, and Smt. P18 assessed for AYs 2013-14 to 2018-19 in Central Circle-3(2) under Pr.CIT (Central), Hyderabad charge, the initial orders under Section 281B were issued (19/02/2020) for attaching immovable properties in the respective cases. The proposal for provisional attachment under Section 281B (February 2020) indicated a cumulative undisclosed income of ₹ 71.57 crore (estimated tax liability works out to ₹ 21.47 crore excluding applicable surcharge/cess/

interest/ penalty, calculated at a minimum tax rate of 30 per cent thereof). Audit noticed (January 2021) from the extract of the Appraisal report that it contained assessee-wise list of “properties that can be attached under Section 281B”, which included properties other than those attached (values not indicated). However, in the absence of the value of the attached properties, Audit could not ascertain whether the attached properties were sufficient and whether the list of assets given in the Appraisal Report was made use of by the AO for selecting the properties for attachment. Audit noted (July 2022) that the search assessments were completed in April 2021 in these cases and a cumulative demand of ₹ 34.12 crore was raised by the AO. However, the provisional attachment under Section 281B lapsed on 19/04/2021. The current status of recovery of tax was awaited from the CBDT (July 2022).

The Ministry, while not accepting the audit observation, stated (September 2022) that in these cases, the Assessing officer has examined the details of properties to be attached during the assessment proceedings and the likelihood of demand to be raised which was approximately to the tune of ₹ 25 crore. Accordingly, the AO has identified 29 properties (29 Flats) from the Appraisal Report having cumulative area of 60,900 sft and per square feet rate was taken at ₹ 4114/- on the basis of other properties sold by the assessee in the same building during the FY 2015-16. The total approx. value of attached properties worked out to ₹ 25.24 crore. After completion of assessments, a cumulative demand of ₹ 22.09 crore was raised. Therefore, the values of properties attached under Section 281B was sufficient to cover the tax liability raised. Hence, the audit objection is not tenable.

Further, appeals have been filed by the assessee before the CIT(A) against the above demands and are pending for disposal. Since the assessee has not paid any demand, the case referred to TRO and the TRO has also attached the properties under consideration.

The Ministry stated (September 2022) that cumulative area of 60,900 sft at the rate of ₹ 4,114 per sft was attached but no documentary evidence was furnished to Audit. Further, Audit noticed that cumulative demand of ₹ 34.12 crore was raised after completion of assessments, whereas as per the Ministry, a cumulative demand of ₹ 22.09 crore was raised. Audit could not verify the fact as no document was furnished to Audit in support of this fact.

Further, Audit noted that the audit concern was not addressed either in the AO's proposals (February 2020) seeking PCIT(C)'s approval under Section 281B or in the orders issued (February/March 2020). Thus, Audit could not obtain assurance regarding sufficiency of the value of the attached property to cover the estimated tax liability.

Further, the fact remains that despite the Investigation Wing providing details of attachable properties belonging to each of the assessee in the group, there was no recorded evidence that the AO had duly considered the same before selecting these properties for provisional attachment.

(b) In the group-related search assessments of A14 group comprising three assessees viz., Shri A14, Shri J11 and Shri V24 assessed for AYs 2012-13 to 2018-19 by Central Circle-3(2)(4) under Pr.CIT (Central), Hyderabad charge, the initial orders under Section 281B were issued on 23/02/2018 for provisionally attaching movable property (viz., RBI Bonds, Fixed Deposits and Equity Portfolio attached earlier (30/08/2017) by the Investigation wing under Section 132(9B)) having cumulative value of ₹ 17.54 crore against the estimated tax liability of ₹ 8.80 crore (calculated at 30 per cent of total quantum of undisclosed income ₹ 29.33 crore found in respect of all the the said assessees of the group). In the extract of the Appraisal Report, a separate list of “immovable properties that can be attached under Section 281B” was also available, detailing several commercial complexes and residential buildings, etc., having a cumulative value of ₹ 105 crore. However, Audit could not ascertain whether the AOs had taken cognizance of the list available in the Appraisal Report provided by the Investigation wing while selecting the property for attachment as there was no documentary evidence on record in this regard and especially since the value of the attached properties being sufficient to cover the estimated tax liability. In these cases, the assessments were completed in December 2019 and a cumulative demand of ₹ 13.90 crore was raised including the demand of ₹ 12.03 crore for Shri A14 of which he paid ₹ 0.18 crore only, while in the other two cases, no payment was made. Audit noted (July 2022) that the cumulative tax liability was finally reduced to ₹ 0.03 crore due to relief provided to the assessees by the ITAT, Hyderabad vide order dated 29/04/2021.

The Ministry, while not accepting the audit observation, stated (September 2022) that in these cases, the AO has examined the details of properties to be attached during the assessment proceedings and the likelihood of demand to be raised and found that it was approximately equal to the extent of the properties attached under Section 281B of the Act. After completion of assessments a cumulative demand of ₹ 13.90 crore was raised including demand of ₹ 12.03 crore of Shri A14. Therefore, the properties attached under Section 281B were sufficient to meet the tax demand raised and hence, no further properties were attached under Section 281B. In respect of current status of outstanding tax demand, it is stated that no demands are outstanding as on date since, the CIT(A)-11, Hyderabad has allowed the appeal of assessee.

Audit could not ascertain whether the AO had exercised due diligence in considering all the assets listed in the Appraisal Report by the Investigation Wing before selecting the properties for provisional attachment as there was no such documentary evidence found on record.

Thus, despite enabling instructions⁴³ by the Board for ascertaining the details of all the assets of the assessee, as seen from the documents, they were largely not being complied with either by the Investigation Wing Officers during search proceedings or by the AOs during assessment proceedings. Consequently, the process of identification of assets was deficient, thereby reducing the effectiveness of provisional attachment and also affecting the selection of properties for provisional attachment with reference to either their appropriateness or their sufficiency in comparison to the estimated tax liability, where indicated.

Further, extracts of Appraisal Report in the remaining 217 cases were not made available to Audit. Consequently, Audit could not ascertain the extent of compliance in these cases.

Recommendation No.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.

In response, the Ministry stated (July 2022) that the Departmental officers are bound by the instructions of the Board.

The Ministry's reply was not specific to the audit recommendation. Audit observed that as seen from the documents, the AOs are not complying with the Board's instructions of September 2004 for ascertaining the details of all assets in the possession of assessees that could be considered for provisional attachment. Further, the Investigation Wing also did not identify details of assets that were in the possession of the assessee at the time of search, thereby failing to supplement the efforts of the AO in selection of appropriate property for provisional attachment. Further, the CBDT may reiterate the relevant instructions for better compliance. The Ministry may reconsider its reply.

⁴³ CBDT Instruction no. 08 of Sept 2004

4.2 Selection of type of property to be attached

Section 281B (1) of the Act prescribes *inter alia*, that the AO may provisionally attach any property (movable and/or immovable) belonging to the assessee in the manner provided in the Second Schedule of the Act. The Second Schedule contains the procedure for attachment of different movable and immovable property under different Rules⁴⁴ but list out the properties that can be considered for provisional attachment or define its order of priority.

Table No. 07 below shows the details of the type of property provisionally attached in the 350 audited cases under the jurisdiction of 18 Central Commissionerates.

Pr.CIT jurisdiction (No. of AOs)	No. of orders under Section 281B	No. of 281B cases where movable property was attached	No. of 281B cases where immovable property was attached	No. of 281B cases where both types of property was attached
Pr.CIT (Central)-1, Delhi (04)	11	0	11	0
Pr.CIT (Central)-2, Delhi (04)	30	2	22	6
Pr.CIT (Central)-3, Delhi (06)	41	1	34	6
Pr.CIT (Central), Bhopal (02)	26	0	26	0
Pr.CIT (Central)-1, Kolkata (03)	7	2	0	5
Pr.CIT (Central)- 2, Kolkata (01)	6	6	0	0
Pr.CIT (Central)- 1, Mumbai (04)	9	0	9	0
Pr.CIT (Central)- 3, Mumbai (05)	11	1	7	3
Pr.CIT (Central)- 4, Mumbai (04)	16	0	16	0
Pr.CIT (Central)- 1, Chennai (06)	34	7	20	7
Pr.CIT (Central)- 2, Chennai (04)	34	4	26	4
Pr.CIT(Central), Kochi (02)	7	1	6	0
Pr.CIT (Central), Bengaluru (10)	30	7	19	4

⁴⁴ Rule 1(d), Rules 24 to 32 and 48.

Pr.CIT jurisdiction (No. of AOs)	No. of orders under Section 281B	No. of 281B cases where movable property was attached	No. of 281B cases where immovable property was attached	No. of 281B cases where both types of property was attached
Pr.CIT (Central), Hyderabad(07)	25	4	21	0
Pr.CIT (Central), Visakhapatnam (01)	5	3	0	2
Pr.CIT (Central), Ahmedabad (05)	33	2	30	1
Pr.CIT (Central), Rajasthan(01)	3	0	3	0
Pr.CIT (Central), Chandigarh (02)	22	2	19	1
Total	350	42	269	39

It is evident from above that in 269 of 350 cases, the Department provisionally attached immovable properties; however, under Pr. CIT (Central-2) Kolkata and Pr. CIT (Central), Visakhapatnam charges, only movable properties were provisionally attached in all the test checked cases. Thus, it can be inferred that immovable property was largely preferred by the Department for provisional attachment for securing more protection to interests of revenue.

Audit findings on the process of selection of appropriate property for provisional attachment are discussed below:

(i) Comparative analysis of available properties: An analysis of the 350 Provisional Attachment cases indicated that AOs were by and large selecting property(ies) for Provisional Attachment, without establishing/documenting on record that the property was selected for attachment after a comparative analysis of all available properties. In 319 cases, no documentary evidence was found on record that assessee possessed properties in addition to those that were attached and in the remaining 31 cases, where such analysis was feasible, Audit observed that there was no record to suggest that the AOs had considered these assets (as detailed in **Appendix 15**) before selecting the property that was attached. The selection of properties for provisional attachment by the concerned AOs, therefore, was largely discretionary and in the absence of defined criteria, the selection also appeared arbitrary. Some significant cases are illustrated below:

(a) In the case of Shri V1, for AYs⁴⁵ 2012-13 to 2018-19 assessed by the Assessing Officer, Central Circle-1(3), Bengaluru under the jurisdiction of Pr.CIT

⁴⁵ In addition to Block AYs, the search period also included AY 2011-12, for which re-assessment under Section 147 was initiated and concluded along with the block assessments for AYs 2012-13 to 2018-19.

(Central) Bengaluru charge, a search under Section 132 of the Act was conducted on 21/09/2017. As per the extract of the Appraisal Report (date not indicated) furnished to Audit, undisclosed income of ₹ 299.56 crore pertaining to AYs 2011-12 to 2018-19 was detected during search. In order to protect the interest of revenue, the initial order under Section 281B was issued (25/01/2019) by the AO, after a gap of 16 months from the month in which search and seizure action took place, reasons for which are not recorded, for attaching 52.70 lakh equity shares of M/s M18 Ltd. worth ₹ 447.95 crore (@ ₹ 850 per share) which was sufficient to cover the estimated tax liability of ₹ 447.44 crore stated to be quantified in the Appraisal Report. As per the year-wise statement prepared as part of the AO's proposal (January 2019) of provisional attachment, an estimated tax liability of ₹ 172.26 crore (38.5 per cent) comprised of tax and interest and penalty leviable for concealment of income under Section 271(1)(c) of the Act to an extent of ₹ 275.18 crore (62.5 per cent) was worked out by the Department.

On receipt of the provisional attachment order issued under Section 281B dated 25/01/2019, the assessee informed (February 2019) the AO that the said shares had already been mortgaged against the institutional loans and requested for releasing the attachment of the said shares. Instead, the assessee offered (February 2019) two alternate properties viz., 46 lakh equity shares of his own company (M/s. C16 Ltd., a listed company) worth ₹ 125 crore (as per prevalent market rate i.e. @ ₹ 271.63 per share) and 2,220 acres of coffee estates (partly owned and partly leased from the other landowners) valued approximately at ₹ 645.60 crore. The AO acceded (February 2019) to the assessee's request and revoked the said provisional attachment order. Then, the AO, with the prior approval of the Pr.CIT (Central), Bengaluru, issued a fresh order under Section 281B on 13/02/2019 for attaching 46 lakh shares (valued at ₹ 125 crore) of M/s. C16 Ltd. held by the assessee. Since this was found to be insufficient to cover the estimated tax liability of ₹ 447.44 crore, the AO issued another order under Section 281B on 14/02/2019 for provisionally attaching an additional 2.04 crore shares of M/s. C16 Ltd. held by the assessee. Thus, a total of about 2.50 crore equity shares valuing ₹ 680.29 crore (@ ₹ 271.63 per share), as against the estimated tax liability of ₹ 447.44 crore, was attached. The aforesaid provisional attachment orders were further extended vide order dated 06/08/2019 for a period of six months which finally expired on 06/02/2020. Meanwhile, the related assessments⁴⁶ were completed in December 2019 and a cumulative tax demand of ₹ 89.75 crore (on addition to the returned income made for AYs 2013-14 to 2018-19) was raised, as against the originally estimated tax liability of

⁴⁶ Under Section 147 for AY 2011-12 and under Section 153A/143(3) for AYs 2012-13 to 2018-19.

₹ 447.44 crore. Further, the demand was subsequently reduced from ₹ 89.75 crore to ₹ 57.85 crore consequent to order under Section 154 passed in January 2020 for rectifying the assessment order for AY 2015-16. The assessee filed (January 2020) appeals before the CIT (Appeals) against these assessments, which were pending decision as of date (July 2022). However, in view of tax demands outstanding in full, the AO referred the case to the Tax Recovery Officer (Central), who in turn, continued the attachment of 2.50 crore equity shares of M/s.C16 Ltd. vide prohibitory order in Form ITCP-4 passed on 06/02/2020, as prescribed under the Second Schedule of the Act which is continuing as on date (July 2022). Based on examination of provisional attachment orders and assessment records furnished to Audit, the following observations were made:

(i) The Pr.CIT (Central), Bengaluru informed the DGIT (Investigation), Bengaluru, through a letter dated 22/04/2021 that “During search and post-search investigation, various issues pertaining to the assessee were found and raised before the assessee for explanation. The assessee admitted additional income of ₹ 362.11 crore. However, the assessee did not offer the admitted income in the return of income⁴⁷ filed in response to notices issued under Section 148 for AY 2011-12 and under Section 153A for AYs 2012-13 to 2017-18.” While quantifying the estimated tax liability (₹ 447.44 crore) for the purpose of provisional attachment, the undisclosed income was considered to be only ₹ 299.56 crore instead of ₹ 362.11 crore. Audit could not ascertain reasons for the shortfall (₹ 62.55 crore) in identifying the quantum of undisclosed income found during search, as the Appraisal Report containing detailed break-up of the income found during search was not provided to Audit, despite repeated requests (December 2020 and July 2022).

(ii) As against the estimated tax liability of ₹ 447.44 crore, the value of the property (equity shares of M/s M18 Ltd. worth ₹ 447.95 crore) which was initially attached and revoked on the basis of assessee’s information was sufficient to cover the estimated tax liability but the property that was finally attached viz. 2.50 crore equity shares of M/s. C16 Ltd., was significantly higher at ₹ 680.29 crore. However, specific reasons were not on record for provisionally attaching a property, which was not only of significantly higher value but also did not conform to the Board’s instructions of September 2004 i.e. the AO shall provisionally attach property(ies) that would be ‘sufficient’ to cover the estimated tax liability.

⁴⁷ For AY 2011-12: Return of income filed on 26/04/2018 in response to notice under Section 148 dated 29/03/2018 (served on the assessee on 03/04/2018); For AYs 2012-13 to 2017-18: Returns of income filed on 31/12/2018 in response to notice under Section 153A dated 14/11/2018; For AY 2018-19: Return of income filed on 31/08/2018 under Section 139 (1)

(iii) Audit further observed that apart from shares and securities (worth ₹ 840.10 crore), the assessee had submitted details of other assets owned by him such as coffee estates including buildings (₹ 92.49 crore) and movable property such as jewellery, archaeological collections, etc. (aggregating to ₹ 44 crore). The AO chose to provisionally attach (February 2019) the movable property (*viz.* equity shares). Incidentally, while approving the AO's proposal (13/02/2019) for revocation of original attachment order (25/01/2019) and for issuing fresh order under Section 281B, the Pr. CIT (Central), Bengaluru directed, (13/02/2019) *inter alia*, the AO "to consider the remaining shares (*viz.* 2.04 crore equity shares of M/s. C16 Ltd.) held by Shri V1 or any other asset available for further attachment under Section 281B, in view of AO's proposal for revocation of earlier attachment of M/s M18 Ltd. shares." However, Audit could not find any documentary evidence of compliance to the extant directions of Pr.CIT *viz.* a comparative analysis made by AO between the assets that was offered by the assessee himself for attachment and other assets available on record. Also, no specific reasons for finally selecting the equity shares of M/s. C16 Ltd. for attachment were recorded by the AO.

In reply to the audit observation, the AO stated (December 2020) *inter alia* that "as per assessee's own claim, part of the estates offered are neither owned by him or M/s C16 Ltd. Mere submission of no objection certificates does not satisfy ownership requirements. As income tax proceedings and authorities are rule bound, such alternative ownership proposal cannot be entertained. The valuation done by the assessee puts value of an acre of estate around ₹ 27 lakh which is not acceptable as per the prevailing market conditions. Part of the estates belong to partnership firms and the said estates are already encumbered. Further, assets in the form of shares have been already attached to the extent of estimated tax liability, part of such assets are freehold in nature. As per rules, there is no hierarchy attributed a group of assets, the AO has decided based on facts and practical limitations." The reply of the AO was not supported by records as there was no documentary evidence that the assessee's offer of coffee estates was adequately evaluated for ownership requirements and valuation *vis-à-vis* the realisable value of equity shares of M/s. C16 Ltd., given the context of the prevailing financial position of M/s. C16 Ltd. Audit accepts the fact that the selection of the property for attachment is at the discretion of the AO. However, a comparative analysis of the potential properties would have demonstrated that the process of attaching the most appropriate property was on a rational basis and that the interest of revenue is protected as prescribed.

(iv) Audit observed that against the original estimated tax liability of ₹ 172.26 crore (tax and interest) (excluding penalty of ₹ 275.18 crore), the

cumulative tax demand of ₹ 57.85 crore (net of rectification order) was finally raised in December 2019/January 2020, which is much lower than the estimated liability, based on which provisional attachment was made. Audit further observed that as against the estimated penalty amount of ₹ 275.18 crore, no demand on account of the same was raised.

On an Audit query (July 2022) seeking specific reasons for the huge gap between the estimated tax liability and the demand actually raised, the AO replied (July 2022) inter alia, that “the estimation made in the Appraisal Report is only indicative and findings in the Appraisal Report are not conclusive in nature. The exact quantum of addition is arrived at during the course of assessment, after examining the incriminating material along with the assessee reply”. The AO also stated that the undisclosed income of ₹ 299.56 crore (cumulative for AYs 2011-12 to 2018-19) mainly comprised of interest payments made in cash to the assessee by one group company⁴⁸ (during the financial years relevant to AYs 2011-12 to 2018-19) and purchase of shares during financial year relevant to AY 2012-13 at a consideration ₹ 204.69 crore at less than the fair market value. As regards levying of penalty, the AO stated that the levy of penalty was kept in abeyance as the assessee is in CIT (Appeals). The AO further stated that as per the CBDT guidelines⁴⁹ dated 22/12/2006 issued for search assessments, if the AO is not in agreement with any findings/conclusion drawn in the Appraisal Report, a deviation note should be written to the Investigation wing, who shall resolve it with the concerned Investigation Officer/s. Accordingly, the AO had submitted deviation notes in December 2018 (AY 2011-12), in September & December 2019 (AY 2012-13), in December 2018 & December 2019 (AY 2013-14) and in November 2019 (AY 2015-16)). However, reasons for the time-gap of more than 14 months between the date of search (September 2017) and the date of the first of the deviation notes (December 2018) were not on record, for justifying either no additions in AYs 2011-12 and 2012-13 or for making partial additions in AYs 2013-14 and 2015-16).

As suggested by the Investigation Wing (December 2018), the assessee’s case was referred (28/12/2018) to Special Audit as prescribed under Section 142(2A) of the Act. It may be noted that the initial order under Section 281B issued on 25/01/2019 was issued after the deviation note and referral to Special Audit (December 2018), but pending the results of the Special Audit. In the Special Audit Report dated 22/06/2019, it was concluded that there was no liability arising in the hands of either the assessee or M/s. M17 Ltd. for any of the assessment years. Further, on receipt of response from the

⁴⁸ M/s M17 Ltd.

⁴⁹ CBDT Guidelines for assessments in search and seizure cases dated 22/12/2006 in F. No. 286/161/2006-IT (Inv.II)

Investigation Wing (December 2018/ October and November 2019), the assessments were concluded (December 2019) without any addition on the issues of undisclosed income found during the search proceedings for AYs 2011-12, 2012-13, 2013-14 and 2015-16. Audit noted that in respect of AYs 2014-15, 2016-17, 2017-18 and 2018-19, the AO had made additions in excess of the amounts of undisclosed income found during search, based on the details available on record. However, copy of the said deviation notes or the Investigation Wing's response thereof and the Special Audit Report were not furnished to Audit despite repeated requests, for stated reasons of confidentiality.

Thus, Audit is of the opinion that the action of the AO in invoking the provisions of Section 281B and provisionally attaching the property of the assessee on the basis of findings of Investigation Wing (vide Appraisal Report) was consistent with the legislative intent. However, in the absence of production of supporting documents viz. copy of the Appraisal Report, copy of Special Audit Report and deviation notes or Investigation Wing's response thereof, Audit could not seek assurance in respect of the following aspects:

(A) The reasons for the time gap between the conduct of the search and seizure (21/09/2017) and the issue of the initial order under Section 281B on 25/01/2019, and the detailed sequence of events upto the issue of the first deviation note (December 2018) are not clear to Audit. Further, Audit could not verify the reasons for the time taken to finalise the Appraisal Report and forwarding it to the concerned PCIT (Central), as relevant documents were not made available to Audit.

(B) Specific reasons for reduction of quantum of undisclosed income found during search from ₹ 362.11 crore to ₹ 299.56 crore, based on which the estimated tax liability of ₹ 447.44 crore was arrived at while initiating the process of provisional attachment;

(C) Evaluation and comparative analysis of various assets offered by the assessee for provisional attachment/available on record as prescribed by the Board and also as per directions of Pr.CIT (Central), Bengaluru for considering any other asset available for attachment under Section 281B;

(D) Justification for attaching property worth ₹ 680.29 crore as against the estimated tax liability of ₹ 447.44 crore, which was excessive and also in violation of relevant instructions of the Board (September 2004);

(E) Justification for concluding as 'non-taxable' or 'no liability arising in the hands of the assessee' for the undisclosed income aggregating to ₹ 218.13 crore found for AYs 2011-12 (₹ 0.81 crore), 2012-13 (₹ 207.30 crore),

2013-14 (₹ 7.23 crore)⁵⁰ and 2015-16 (₹ 2.79 crore) by the AO that finally resulted in reduction (₹ 114.41 crore) of the assessee's tax liability estimated at ₹ 172.26 crore (excluding penalty) to assessed tax demand of just ₹ 57.85 crore.

Thus, considering the significant reduction of estimated tax liability *vis-à-vis* final tax demand that remained unrecovered till date (August 2022) due to pendency of appeal, invoking the provisions of provisional attachment of ₹ 680.29 crore under Section 281B of the Act in this case did not appear to be justified, based on the records produced to Audit. Further, in view of the non-production of relevant documents *viz.* copy of the deviation notes and Investigation Wing's response thereof and the Special Audit Report, Audit could not draw an assurance that the actions taken by the Department were in the interest of protecting revenue.

(b) In the search assessment cases of M/s. S7 Pvt. Ltd. assessed for AYs 2012-13 to 2017-18 in Central Circle, Panaji, Goa under the jurisdiction of Pr.CIT (Central) Bengaluru, the order under Section 281B was initially issued in March 2020 for attaching movable properties *viz.*, Mutual Funds totalling ₹ 2.88 crore against the estimated tax liability of ₹ 31.13 crore. Another order under Section 281B was issued in August 2020 for attaching 10 immovable properties worth ₹ 52.90 crore. Audit observed that in the subsequent extension order (October 2020) only the movable properties of Mutual Funds continued to be provisionally attached. However, the attachment order in respect of immovable properties, which was initially issued in August 2020, was not extended despite taking approval from the prescribed authority. On being pointed out by Audit (March 2021), the AO replied (June 2021) that the attachments of immovable property and Mutual Funds were further extended in February and April 2021 respectively. However, neither any document in its support was furnished by the AO nor was it available on records. Audit observed from the assessee's financial statements for the year ended 31 March 2019, the assessee possessed non-current assets valuing ₹ 110.42 crore. However, there was no record to suggest that the AO had considered the suitability of these assets before selecting the Mutual Funds for attachment. Audit noted (July 2022) that the assessments were completed in this case in June 2021 and cumulative demand of ₹ 0.14 crore was raised, which was reduced to ₹ 0.04 lakh only after a rectification order was passed in February 2022. The current status of recovery of balance tax was awaited from CBDT (October 2022).

⁵⁰ AY 2013-14 : Undisclosed income (₹ 19.69 crore) *minus* assessed income (₹ 12.46 crore)

Thus, as could be seen from the cases discussed *ibid*, in cases where there was evidence of the concerned assessee possessing other properties than those that were provisionally attached, the AOs were not making documentary comparative analysis of all the available properties so as to select the most appropriate as well as sufficient properties for ensuring adequate coverage of the estimated tax liability.

(ii) Attachment of Bank Accounts: Courts through several case laws have struck down the Department's action of provisionally attaching the assessee's bank accounts. In one of the cases, viz., M/s. Gandhi Trading versus Asst. Commissioner of Income Tax⁵¹, the Hon'ble Bombay High Court held *inter alia*, that "*attachment of bank accounts and trading assets should be resorted to only as a last resort*". Audit observed that in 32 cases, the bank accounts of the concerned assessee had been provisionally attached (Details are given in **Appendix 16**). Audit further observed that in 14 cases out of 32 cases, only the Bank Accounts of the assessee were provisionally attached. Audit also noticed that in two⁵² of these 14 cases, other properties were also available on record. However, Audit could not ascertain from the available records whether those properties were considered for the purpose of provisional attachment. In the remaining 18 cases, the AOs had attached Bank Accounts in addition to other properties (movable and/or immovable).

Audit could not ascertain from the documents available on record that the bank account of the assessee in the above 32 cases were provisionally attached only as a last resort. Significant cases are illustrated below.

(a) In the search assessment case of Shri R1 assessed for AY 2010-11 in Central Circle -1(3), Bengaluru under the jurisdiction of Pr.CIT (Central), Bengaluru, the initial order under Section 281B was issued (December 2017), for provisionally attaching three bank accounts having cumulative credit balance of ₹ 3.90 crore *plus* 37 immovable properties, of which the value was recorded for only 32 properties aggregating to ₹ 14.69 crore. Thus, against the recorded estimated tax liability of more than ₹ 8 crore (including tax *plus* interest but excluding penalty), the aggregate value of the movable and immovable properties attached was ₹ 18.59 crore. From this, it appears that the properties whose value was recorded was itself more than sufficient to cover the estimated tax liability and there was no apparent necessity for attaching the bank accounts as also the remaining five properties (value not recorded), thereby indicates the attachment to be excessive. In this case, the assessment was completed (December 2017) by raising a tax demand of

⁵¹ Case law No. 239 ITR 337 dated 7 July 1999.

⁵² M7 Trust – Central Circle 1(4), Ahmedabad under the jurisdiction of Pr.CIT (Central), Ahmedabad and Shri V3 – Central Circle 1(1), Chennai under the jurisdiction of Pr.CIT (Central) -1, Chennai

₹ 10.68 crore, excluding penalty. As of February 2021, the entire tax demand was pending recovery, reasons for which were not on record. In reply to the audit observation, the AO stated (June 2021) that the estimated tax liability considered by the Audit arising out of the Appraisal report estimation does not take into consideration the possible penalty during the assessment proceedings. Also, the actual demand raised during the assessment proceedings will not and should not influence the proceedings under Section 281B. While Audit accepts the fact that *post*-assessment tax demand would not have a bearing on the pre-assessment 281B process, the fact remains that Board's instructions (September 2004) envisage comparing the value of the attached property with the tax liability that is estimated on that date for determining sufficiency or otherwise of the attached property. In the instant case, attachment of more than sufficient value was beyond the scope and intent of the law. Also, attachment of bank accounts was contrary to judicial decisions and also impacted the assessee's ability to clear his tax liability, if any. The assessee had preferred an appeal to the CIT (Appeals) against the assessment orders on 22/01/2018, which is still pending (July 2022).

Reply of the Ministry was awaited (October 2022).

(b) In the search assessment case of M/s. M7 Trust assessed for AYS 2009-10 to 2015-16 in Central Circle-1(4) Ahmedabad, under the jurisdiction of Pr.CIT (Central) Ahmedabad, the order under Section 281B was issued (August 2017) for attaching five bank accounts having a balance of ₹ 0.58 crore. The records relating to provisional attachment under Section 281B contained neither the estimated tax liability nor the quantum of undisclosed income. A cumulative tax demand of ₹ 1,248.71 crore was raised on completion of search assessment in September 2017. On the assessee's appeal against the assessments, relief was allowed by the appellate authority, reducing the net tax demand to ₹ 288.06 crore. As per the financial statements for the year ending in March 2015, Audit observed that the assessee had in its possession other movable and immovable assets (book value of ₹ 1.59 crore) but they were not considered for attachment. There is no documentary evidence on record establishing justification for selecting bank accounts for attachment despite availability of other properties. Audit noticed (February 2021) that the order under Section 281B had lapsed and the tax demand after appellate decisions (March–September 2019) against the assessments was still outstanding to an extent of ₹ 286.33 crore, after recovery of ₹ 1.73 crore from the assessee. Reply and the current status of recovery of outstanding tax demands was awaited from the Ministry/CBDT (October 2022).

Thus, in the cases discussed *ibid*, due diligence on the part of the AOs was not documented to show that the bank accounts had been attached as a last

resort. This was not only contrary to judicial decisions but also hampered the assessee's ability to continue with their business activities as well as their financial capacity to discharge tax liabilities. Also, it is apparent that there is no institutional guidance for either defining the types of property that could be provisionally attached or laying down the hierarchy/priority of assets for selection.

Recommendation No.5:

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.

In response, the Ministry stated (July 2022) that the CBDT has already issued Instruction No.8 of 02/09/2004. However, the suggestion of the Audit is noted and will be examined further.

Audit will await the final outcome of action taken in this regard.

4.3 Deficiencies in identification of assessee-owned properties for provisional attachment

Section 281B (1) of the Act, inter alia, prescribes that any property belonging to the assessee may be provisionally attached for protection of the revenue. It is therefore necessary for the CBDT and its formations to ensure that the property being selected for provisional attachment belongs to the assessee. For this purpose, the AOs should be able to rely on the details of properties listed in the Appraisal Report issued by the Investigation Wing. Further, the AO currently does not have any time limit for issue of provisional attachment from the date of search (although Audit has made in para 5.1.4 a recommendation for introduction of a reasonable time limit). The AO thus has opportunity to conduct further due diligence in proper identification of assessee-owned properties for attachment.

Audit findings relating to deficiencies in identification of assessee-owned properties for provisional attachment are elaborated in the subsequent paragraphs.

(i) **Ownership of property:** Out of the 350 audited cases, Audit observed that in 278 cases under Central Commissionerate charges, the concerned AOs had made specific mention in the records relating to Provisional Attachment under Section 281B that the attached property was in the name of the assessee, either fully or partially, as on the date of attachment. In one of these cases, the AO had obtained a confirmation of ownership from the registering

authorities, while in the other 277 cases, there was no other documentary evidence of confirmation of ownership. Audit notes that efforts to confirm the ownership (or encumbrance thereof) from the registering authorities or other authorities (e.g. banking authorities) carries a risk that the assessee may suspect the possibility of impending provisional attachment and immediately sell or transfer the property to render such attachment redundant; this is especially so when there is a large time gap from the date of the search proceedings. Therefore, the accuracy and reliability of information relating to properties in the Appraisal Report is of utmost importance, as is the need for quick action after the search proceedings to minimize the risk of sale or transfer of properties in the intervening period.

Audit further observed that in seven out of 278 audited cases *ibid*, the respective assessees did not own the attached property as on the date of provisional attachment. One case is illustrated below:

(a) In a search assessment case of Shri T1 assessed for AYs 2013-14 to 2018-19 by the Central Circle-1(3), Bengaluru under Pr.CIT (Central), Bengaluru charge, the initial order under Section 281B was issued on 15/07/2019 for provisionally attaching six immovable properties without indicating the values of the properties attached against the estimated tax liability of ₹ 3.75 crore. Audit observed from the records of provisional attachment that four out of above six attached properties were either not in the name of the assessee or not having sole ownership. It is noticed that one of these four properties was sold on 06/01/2014 much before the issue of order under Section 281B. It is also noticed that another attached property, a residential building, having several units of which some units had already been sold to other parties much before the date of the 281B proposal.

Audit further noticed that title and interest of the remaining two of these four properties was released by executing a family agreement deed on 12/07/2019 three days before issuing order under Section 281B. Even though this information was received from the Sub-Registrar Officer Indiranagar, Bengaluru on 20/08/2019, the AO extended the order under Section 281B four times (January 2020, July 2020, January 2021 and July 2021). Lack of due diligence, while extending the validity of order under Section 281B by the AO resulted in continuation of provisional attachment of such properties which did not belong to the assessees.

The AO replied (June 2021), that *“as populated in detail in the attachment proposals, the list of properties and their valuation has been populated, the intent of attachment is to create a lien on the existing properties of the assessee. The assessee is in the business of real estate and has held and sold some of his assets as capital assets, the same are in various stages of*

registration and transactions, accordingly, the revenue attempted to create a primary or second lien on the known properties on an urgent basis in order to protect the interests of revenue."

The reply is not tenable since the properties attached in the order under Section 281B including their extension orders did not belong to the assessee *ab-initio* and as such did not afford any protection to the interests of revenue in the instant case.

Audit further noted that the assessments were completed in July 2021, raising a cumulative demand of ₹ 91.83 crore, against which assessee preferred an appeal on 30/04/2022, which was pending (July 2022).

The other six cases of provisional attachment made without ensuring assessee's ownership over the attached properties are given in **Appendix 17**.

Thus, absence of the required verification of the ownership status of the properties that were selected for provisional attachment in these cases, resulted in attachment of properties that were not in possession of the respective assessee, thereby not fulfilling the purpose of attaching these properties.

Reply of the Ministry was awaited (October 2022).

(ii) **Non-encumbrance and nature of property:** Audit observed that in 343 cases, the status of encumbrance of property was not ascertainable from the records. Efforts to ascertain the encumbrance of the property(ies) could be verified by Audit only in seven cases. Audit further observed that property(ies) attached in these cases was partially (two cases)/fully (five cases) encumbered before the date of Provisional Attachment under Section 281B. Out of seven cases, the details of five cases are given in **Appendix 18** and two cases are illustrated below:

(a) In a search assessment case of Shri P8 and his wife Smt. R29 assessed for AYs 2013-14 to 2018-19 by the Central Circle-1(2), Bengaluru under Pr.CIT (Central), Bengaluru charge, the initial orders under Section 281B were issued (July 2019) for provisionally attaching their respective movable properties *viz.*, Fixed Deposits (FDs) and credit balance in the Savings Bank (SB) account, having a cumulative value of ₹ 2.01 crore, against the aggregate estimated tax liability of ₹ 3.07 crore (*including Penalty and excluding interest*) as indicated in the proposal for order under Section 281B. In December 2019, Shri P8 requested the AO to revoke the attachment order and release the FD and SB accounts to enable him to clear his outstanding tax. The assessee's request was not acceded to and the orders under Section 281B were further extended twice (January and September 2020) by the AO. However, the notified authority *viz.*, the Bank Manager intimated (September 2020) the AO of the

encumbrance status of the FDs and expressed inability to remit the balance amounts against the tax dues considering the prevailing attachment of these accounts by the GST Department (March 2018).

Thus, it is evident from the above that the AO while attaching a property did not verify the encumbrance status of the property which resulted in non-protection of interest of revenue.

On being pointed out by Audit, the AO stated (September 2021) that *“the fact that some of the provisionally attached properties were subject to attachment by GST authorities does not in any way dilute the action taken under Section 281B to provisionally attach the properties to safeguard the interest of revenue. By resorting to the provisional attachment, the Department can stake a claim before a competent authority to recover the assets as per the set procedure.”*

The reply of the AO is not tenable as it is not clear that this provisional attachment can override a prevailing attachment. The assessments in the case of Shri P8 were pending while a tax demand of ₹ 0.48 crore was raised in the case of Smt R29 against which the assessee had paid ₹ 0.28 lakh only (July 2022).

Reply of the Ministry was awaited (October 2022).

As could be seen from above illustrations that the AO did not ascertain the encumbrance status of the property(ies) to be provisionally attached.

Thus, non-verification of ownership of the attached property in the majority of cases was not in consonance with the provisions of the Act. Audit opines that verification of nature of attached property, even after attaching the property under Section 281B, where such verification prior to attachment is not practicable, will not only provide an assurance as to the robustness of the provisional attachment process but also serve its purpose of protecting the interest of revenue.

Recommendation No. 6:

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.

4.4 Sufficiency and valuation of properties attached

The Board's Instructions⁵³ of September 2004 *inter alia*, states that the AO shall be responsible, during the assessment proceeding itself, to enquire into all assets of the assessee and place under provisional attachment, *the assets sufficient to cover the demand in question (or to the maximum extent, as the case may be)*. Further, Section 281B (4) prescribes that if the AO deems necessary, the provisionally attached property can be referred to the designated Valuation Officer for determining fair market value (FMV) of the same, to ensure that the value of the property is sufficient to cover the tax liability, either fully or to the maximum extent possible.

Audit findings on sufficiency and valuation of properties attached are elaborated below:

4.4.1 Sufficiency of value of property attached: The estimated tax liability and value of attached property are two essential parameters that are required to be established for determining sufficiency of assets provisionally attached. As discussed in Chapter 3 vide para 3.2.2(ii), the estimated tax liability and value of property attached are not being recorded in most of the provisional attachment orders. A review of Section 281B proposals by AO and other records *viz.*, office order notings⁵⁴ relating to Provisional Attachment disclosed the following:

(i) The AOs had recorded the estimated tax liability and value of property attached only in 60 cases out of 350 cases. In 25 out of 60 such cases assessed under nine Central Commissionerates, the value of the provisionally attached property (₹ 2,010.05 crore) was found to be sufficient to cover the estimated tax liability (₹ 897.71 crore). The percentage of coverage ranged from 100 *per cent* to 500 *per cent* in 16 cases, 501 *per cent* to 2000 *per cent* in four cases and more than 2000 *per cent* in five cases.

Audit noticed that in 18 of the 25 cases, the value of attached property was found highly excessive ranging from 203.6 *per cent* to 11,723.9 *per cent* of the estimated tax liability (**Appendix 19A**). Two such cases are illustrated in the following paragraphs.

(a) In the search assessment case of Shri K12 assessed for AYs 2011-12 to 2017-18 in Central Circle-2(1), Chennai under Pr.CIT (Central)-2, Chennai charge, two orders under Section 281B were issued (September 2018) for provisionally attaching several properties aggregating to a value of ₹ 207.55 crore (comprising of 27 immovable properties (₹ 206.84 crore) and four movable properties of the assessee (₹ 0.71 crore) respectively) against

⁵³ CBDT Instruction no. 8 of Sept 2004.

⁵⁴ AO's 281B proposal + Pr.CIT's approval thereon + order under Section 281B + Office notings, if any.

the estimated tax liability of ₹ 2.08 crore (excluding surcharge/cess/interest/penalty, calculated at the minimum rate of 30 *per cent* on the unaccounted income of ₹ 6.93 crore found during the search). Audit observed that the value of attached properties was far in excess of the estimated tax liability (9980.2 *per cent*). The assessments were completed (January 2019) by raising a demand of ₹ 2.65 crore and the case is pending with ITSC for settlement. This was pointed out by Audit (June 2021). Reply and the current status of the ITSC decision and recovery of outstanding tax demand is awaited from the Ministry/CBDT (July 2022).

(b) In the search assessment case of M/s. K8 Pvt. Ltd., assessed for AYS 2011-12 to 2017-18 in Central Circle-8(1), Mumbai under Pr.CIT (Central)-4, Mumbai charge, the initial order under Section 281B was issued (October 2018) for provisionally attaching a total of 16 immovable properties of the assessee having aggregate value of ₹ 422.80 crore against the estimated tax liability of ₹ 3.61 crore, (calculated at minimum rate of 30 *per cent* excluding surcharge/cess/interest/penalty, on the concealed income of ₹ 12.02 crore quantified by the Investigation wing in the Appraisal Report issued in June 2017). Audit observed that the reason recorded by the AO in the order under Section 281B was that *“the tax and interest which may become payable by the assessee is likely to exceed the value of the assets held by the assessee”*, which was contrary to the quantum of properties attached thereagainst (11,723.9 *per cent*). The assessments were completed (December 2018) by raising a demand of ₹ 6.41 crore. The entire tax demand was pending recovery (February 2021). The AO did not furnish a reply to the Audit query (February 2021). Reply and the current status of the recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).

Thus, attachment of properties far in excess of requirements, which is largely due to failure on part of the AO to estimate the tax liability at the time of provisional attachment under Section 281B, is in clear violation of the Board's instructions and also causes undue harassment of the concerned assessee.

(ii) Audit observed in 35 out of 60 cases assessed under eight Central Commissionerates, the value of the property attached (₹121.29 crore) was found insufficient to cover the estimated tax liability (₹ 698.57 crore). The percentage of coverage vis-à-vis the estimated tax liability was in the range of 0.1 *per cent* to 10 *per cent* in nine cases, 10.1 *per cent* to 25 *per cent* in four cases, 25.1 *per cent* to 50 *per cent* in seven cases and 50.1 *per cent* to 95 *per cent* in 15 cases. Out of these, in 27 cases where the type of property attached included immovable property, Audit observed that the book value

(₹ 119.65 crore) of the attached property, was grossly insufficient⁵⁵ to cover fully (or to the maximum extent) the estimated tax liability (₹ 640.69 crore) (**Appendix 19B**). One case is illustrated below.

(a) In the S50 Group of cases comprising of M/s. S7 Pvt. Ltd., also discussed in Chapter 4 vide Para 4.2 (i) (b), assessed for AYs 2012-13 to 2018-19 in the Central Circle, Panaji under Pr. CIT (Central), Bengaluru charge, orders under Section 281B were initially issued (February and August 2020) for attaching movable and immovable properties whose value aggregated to ₹ 55.78 crore and covered upto 179.18 *per cent* of the estimated tax liability of ₹ 31.13 crore. Subsequently, however, only the orders attaching the movable properties viz., Mutual Funds (₹ 2.88 crore) were extended whereas the orders under Section 281B attaching the immovable properties (₹ 52.90 crore) were allowed to lapse, reasons for which were not on record, even though, the approval for the attachment of the same was accorded by the Pr.CIT(Central), Bengaluru. Consequently, the percentage of coverage of attachment (in the form of only movable property viz., Mutual Funds) decreased to 9.2 *per cent* which proved to be grossly insufficient. On this being pointed out in Audit (March 2021), the AO replied (June 2021) that the attachment of immovable property and Mutual Funds was further extended in February and April 2021 respectively and the search assessments were yet to be completed. However, no documentary evidence in support of extending the order of attachment of the immovable properties was furnished to Audit. Audit observed from the assessee's financial statements for the year ended 31 March 2019, the assessee had non-current assets valuing ₹ 110.42 crore. However, there was no record to suggest that AO had considered the suitability of these assets before selecting the Mutual Funds for attachment. The fact remains that the value of property that remained attached through the selective extension orders in these cases proved to be insufficient to cover the estimated tax liability. After the completion of assessments (June 2021) and passing of rectification order (February 2022), the demand was reduced to ₹ 0.04 lakh, which was pending recovery (July 2022).

Reply of the Ministry was awaited (October 2022).

(b) In the search assessment case of Shri M14 assessed for AYs 2013-14 to 2018-19 in Central Circle-2(3), Hyderabad under Pr.CIT (Central), Hyderabad charge, the initial order under Section 281B issued on 25/01/2020 as well as subsequent extension order dated 17/09/2020, for provisionally attaching the movable properties of the assessee i.e. fixed deposits valuing ₹ 0.79 crore against an estimated tax liability of ₹ 3.49 crore (reckoned at 30 *per cent* of the

⁵⁵ Audit considers the attachment to be 'grossly insufficient' if its value is less than 75 *per cent* of the estimated tax liability.

undisclosed income of ₹ 11.62 crore admitted by the assessee) was insufficient (22.6 per cent). However, there was no evidence on record that the AO had made efforts to ascertain whether the assessee owned other properties, as instructed by the Board. To a specific audit query (January 2021) regarding the value of property attached being insufficient to cover the estimated tax liability, the DCIT, Central Circle 2(3), Hyderabad replied (January 2021) that there was no such stipulation in the Act that value of asset has to match the demand likely to be raised. The search assessments were completed in April 2021 by raising a cumulative tax demand of ₹ 4.01 crore. Further, it was observed that the same was adjusted against the credit balance available in the PD account of the individual and balance of ₹ 0.76 crore was outstanding as of July 2022.

The Ministry, while not accepting the audit observation, stated (September 2022) that by order under Section 281B, an amount of ₹ 73 lakh was attached. In addition to this, an amount of ₹ 4.17 crore was seized during search and the same was lying in the PD account of Pr.CIT(C), Hyderabad. Thereafter assessment was completed and demand of ₹ 4.94 crore (including interest) was raised. Therefore, the aggregate amount of ₹ 4.90 crore (attached bank balance under Section 281B plus seized cash) in the custody of Department was sufficient to meet the tax liability of ₹ 4.94 crore. It can be seen that sufficient assets were under attachment/custody to meet the estimated tax liability and the audit was not correct in pointing that the assets attached by the Department 'were insufficient to cover the estimated tax liability. As on date, ₹ 4.17 crore has been adjusted against the demand of ₹ 4.94 crore and first appeal of assessee is pending before the CIT(A) for disposal. More than 20 per cent of outstanding demand has been collected as per the CBDT guidelines.

Considering the availability of seized cash of ₹ 4.17 crore with the ITD as stated in the Ministry's reply, the action of the AO provisionally attaching a fixed deposits valuing ₹ 0.79 crore against the estimated tax liability of ₹ 3.49 crore (less than seized cash) is not found in order as the seized cash was sufficient to recover the estimated tax liability. Therefore, the reply of the Ministry to the audit observation seems to be an after-thought.

(c) In the case of Shri C3 assessed for AYs 2012-13 to 2017-18 in Central Circle – 2(1), Chennai under the Pr. CIT (Central)-2, Chennai charge, the initial order under Section 281B was issued on 28/09/2018 attaching 47 immovable properties, having a cumulative purchase value of ₹ 0.53 crore, which proved to be insufficient to cover the estimated tax liability of ₹ 108.45 crore (calculated at a minimum tax rate of 30 per cent of the undisclosed income of ₹ 361.50 crore indicated in the proposal under Section 281B dated

17/09/2018). The said provisional attachment order was extended twice in March 2019 and September 2019. No further extension of order of the provisional attachment was issued.

Audit could not ascertain whether the assessee had other assets in possession as no documentary evidence was found available on record. Also, Audit could not ascertain that whether the Investigation Wing had prepared list of assets and provided to the jurisdictional AO to supplement the AO in selection of property for provisional attachment as copy of the Appraisal Report was not made available to Audit.

The Ministry while not accepting the audit observation stated (August 2022) that the assessments under Section 143(3) read with Section 153A of the Act have been completed on 27/12/2019 for the AYs 2012-13 to 2014-15 and on 27/09/2021 for AYs 2015-16 to 2017-18 raising demand aggregating to ₹187.61 crore. The provisional attachment was made for all the movable and immovable properties available on record. Provisional attachment of all the property was last made on 11/03/2021. Now the case is in the process of certification to TRO for recovery of tax.

The reply of the Ministry is not tenable as no documentary evidence was available on record with regards to efforts made by the AO for locating assets of the assessee which was in violation of the CBDT Instruction no. 8/2004 dated 02 September 2004. Further, the aforesaid instruction also states that after completion of the assessment, if the provisional attachment cannot be continued till recovery, the same assets can be considered for attachment under Section 222/226. However, it was noted that the TRO made attachment of the property only on 20/10/2022 i.e. after a gap of more than one year from completion of assessment whereas provisional attachment order lapsed in 10/09/2021. Further, Audit noted from the records of the Sub-Registrar that most of these properties attached were either already mortgaged or leased.

(iii) In the remaining 290 cases (82.8 per cent), due to non-recording of either the estimated tax liability (46 cases) or the value of the attached property (116 cases) or both (128 cases) in the 281B records⁵⁶, Audit could not ascertain the sufficiency or otherwise of the value of the attached property. Commissionerate-wise details are given in Table No.08.

⁵⁶ AO's 281B proposal + Pr.CIT's approval thereon + order under Section 281B + Office notings, if any.

Table No. 08: Cases where the sufficiency of attached property is not ascertainable					
Pr.CIT jurisdiction (No. of AOs)	Estimated tax liability not available, while value of property is available		Value of property not available, while estimated tax liability is available		Both not available
	No. of cases	Value of property (₹ in crore)	No. of cases	Estimated tax Liability (₹ in crore)	No. of cases
(1)	(2)	(3)	(4)	(5)	(6)
Pr.CIT (Central)-1, Delhi (04)	1	0.62	2	6.93	6
Pr.CIT (Central)-2, Delhi (04)	6	144.31	3	732.45	19
Pr.CIT (Central)-3, Delhi (06)	9	34.49	1	63.01	30
Pr.CIT (Central)-1, Mumbai (04)	0	0	5	251.89	3
Pr.CIT (Central)-3, Mumbai (05)	0	0	2	107.01	1
Pr.CIT (Central)-4, Mumbai (04)	3	36.03	5	95.65	1
Pr.CIT (Central), Kochi (02)	4	70.01	0	0	2
Pr.CIT (Central), Bengaluru (10)	1	0.89	7	41.75	0
Pr.CIT (Central), Hyderabad (07)	0	0	17	84.36	2
Pr.CIT (Central)-1, Kolkata (03)	0	0	5	6.12	2
Pr.CIT (Central)-2, Kolkata (01)	0	0	0	0	6
Pr.CIT (Central)-1, Chennai (06)	0	0	31	1,960.73	1
Pr.CIT (Central)-2, Chennai (04)	1	849.17	22	3,503.08	7
Pr.CIT (Central), Bhopal (02)	2	3.76	2	9.02	18
Pr.CIT (Central), Visakhapatnam (01)	0	0	4	28.03	1
Pr.CIT (Central), Chandigarh (02)	0	0	7	81.11	15
Pr.CIT (Central), Ahmedabad (05)	19	52.89	0	0	14
Pr.CIT (Central), Rajasthan (01)	0	0	3	117.44	0
Total	46	1192.17	116	7088.55	128

As could be seen from the above table, absence of estimated tax liability in the respective orders under Section 281B was highest (19 cases) under the Pr.CIT (Central), Ahmedabad charge followed by Pr.CIT (Central)-3, Delhi (09 cases) and Pr. CIT (Central)-2, Delhi (06 cases) charges. On the other hand, the value of property was not recorded in the maximum number of cases in Pr. CIT

(Central)-1, Chennai (31 cases) and Pr. CIT (Central)-2, Chennai (22 cases) respectively.

Thus, non-recording of the estimated tax liability and/or the value of attached property is a clear violation of Board's instructions.

Reply of the Ministry was awaited (October 2022).

4.4.2 Valuation of properties attached: Sub-Section (4) of Section 281B⁵⁷ of the Act prescribes, "*the Assessing Officer may, for the purposes of determining the value of the property provisionally attached under sub-Section (1), make a reference to the Valuation Officer referred to in Section 142A, who shall estimate the fair market value of the property in the manner provided under that Section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference*". This provision is specifically applicable to those cases where immovable property(ies) is/are provisionally attached whose value(s) may be recorded in the books of the assessee at rates lesser than fair market value (FMV).

Audit examination revealed that out of 308 audited cases in which immovable properties had been attached (with/without other movable properties) (*Refer Table No.07 of Para No.4.2*), in only 12 cases (3.9 per cent), the concerned AOs had referred the attached property to the designated Valuation Officer (VO) to ascertain the fair market value (FMV) thereof to ensure higher coverage of the estimated tax liability. Assessee-wise details are given in **Appendix 19C**, and findings thereof are discussed as follows:

Out of these 12 cases, in eight cases, the AOs referred the attached property to the respective VOs well before the date(s) of issue of orders under Section 281B. Out of these, in six cases, the report from the VO was also received in advance of the respective orders under Section 281B, which showed that FMV of the attached properties was higher when compared to the value originally indicated. In respect of the remaining two cases, the valuation report was not available on record in one case, whereas in the other case the valuation report was submitted by the VO after issue of order under Section 281B by the AO. In the remaining four out of 12 cases, the concerned AOs referred the attached property to the VO only after the issue of orders under Section 281B.

Audit further noticed that in six out of these 12 cases, the valuation report was furnished belatedly by the VO and the delay ranged from nine days to 235 days reckoned from the end of the 30-day limit prescribed in the provisions *ibid*.

In 296 cases (96.1 per cent) of the 308 cases, the concerned AOs had not made any reference to a Valuation Officer, for determining FMV of the attached

⁵⁷ Sub-Section (4) under Section 281B of the Act.

properties. Thus, in the majority of cases, Audit could not obtain adequate assurance that the respective AOs had attempted to ensure that the attached properties were of sufficient realisable value to cover estimated tax liability to the maximum extent as prescribed by the Board vide its Instructions of September 2004, thereby adequately protecting the interests of revenue. Two cases are illustrated below:

(a) In the search assessment case of Shri S25 assessed for AYs 2010-11 to 2016-17 by Central Circle-2(2), Bengaluru under Pr.CIT (Central), Bengaluru charge, the initial order under Section 281B was issued (December 2017) for attaching a single property having value of ₹ 0.09 crore against the estimated tax liability of ₹ 0.99 crore (calculated at 30 *per cent*, excluding surcharge/cess/interest/penalty, of the undisclosed income of ₹ 3.30 crore admitted by the assessee during the search proceedings vide a statement under Section 132(4)). Audit noted that the assessee had multiple immovable properties in Bengaluru Urban area (value not indicated) and also gold jewellery having value of ₹ 0.32 crore. The AO, while passing the order under Section 281B, did not consider these multiple properties, including gold jewellery, but attached a single property of value which was insufficient to cover the estimated tax liability. On being pointed out (February 2021) by Audit, the AO, Central Circle-2(2), Bengaluru replied (June 2021), *"The 281B proposal and extension orders had clearly populated the location of the properties along with the area measurement and that all the properties belong to Bangalore Urban area in significant localities; in view of the same, the dynamic market value of the properties with respect to the prescribed guidance rate needs to be taken into consideration."* The reply of the AO is neither specific to the audit observation nor tenable as market dynamics notwithstanding, the extant rules/instructions prescribe that the property attached should be sufficient to cover the demand in question to the maximum extent, as the case may be. Further, sub-Section (4) of Section 281B clearly prescribes that the attached property may be referred to the Valuation Officer to ascertain its fair market value to aid such comparison, which was not done in the instant case and the value of the attached property was grossly insufficient to cover the estimated tax liability. The search assessments were completed on 22/12/2017 raising a demand of 7.56 crore against which no payment has been made by the assessee. The case was referred to the TRO and TRO issued notices of demand in Form ITCP-1 on 01/11/2018 for all AYs. Subsequently, the TRO attached the same property. The assessee has filed appeal before CIT(A) on 09/08/2018 which is pending. (July 2022).

Reply of the Ministry was awaited (October 2022).

(b) In a group case of Shri N13 and Smt. S19, assessed for AYs 2012-13 to 2018-19 in Central Circle-01, Delhi under the Pr.CIT (Central)-1, Delhi charge, the initial orders under Section 281B were issued on 22/10/2019 for attaching 11 immovable properties jointly owned by the assesseees and one property solely owned by Smt S19, without indicating essential information (*viz.*, the period of validity, and the estimated tax liability) to cover the likely tax demand on the expected addition of ₹ 230 crore (mentioned in the proposal for provisional attachment) to the incomes of assesseees.

Audit observed from the records that value of 10 attached properties was indicated at ₹ 5.91 crore, being the cost incurred by the assesseees during their acquisition between October 2008 and August 2015. The remaining two properties had been inherited by the assesseees and hence no values were indicated. Since the value of attached property was insufficient to cover the estimated tax liability of ₹ 69 crore calculated at a minimum tax rate of 30 *per cent*, excluding surcharge/ cess/ interest/ penalty, it was imperative on the part of the AO to refer the properties to the Valuation Officer to ascertain the fair market value so as to ensure adequate coverage of estimated tax liability by the provisionally attached property, which was not done.

In response to an audit query (January 2021) seeking, *inter alia*, whether a reference to the Valuation Officer was made, the AO, Central Circle-01, Delhi replied (February 2021) in the negative without attributing any reasons for the same.

In the case of Smt. S19, the search assessments were completed in December 2019 by raising a cumulative tax demand of ₹ 1.01 crore, which was pending recovery since the assessee had filed an appeal against the assessments. However, in the case of Shri N13, in response to the AO's proposal to make additions to the income to an extent of ₹ 262.92 crore and also a penalty of ₹ 562.68 crore, the assessee filed (December 2019) an application for settlement under Section 245D before ITSC, which was pending decision (July 2022). Also, as of March, 2021, the provisional attachment order (October 2019) under Section 281B lapsed without being extended till the date of settlement of the case/ recovery of tax- Reply and the current status of balance tax recovery/ settlement of the case was awaited from the Ministry/CBDT (October 2022).

Thus, in the existing mechanism, the process of ensuring sufficiency of properties attached was not effective as the AOs were not recording the estimated tax liability and/or value of properties attached in the proposals for Provisional Attachment under Section 281B. In the limited cases where requisite information was available, the value of attachment was either excessive or insufficient as compared to the estimated tax liability, which may

have resulted in either undue harassment to the concerned assesseees or insufficient coverage of the estimated tax liability. Also, the AOs did not ascertain the fair market value of properties in the majority of the cases, as prescribed in the Act. As a result, the probability of achieving the primary objective of protecting the interest of revenue seems remote.

Recommendation No.7:

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.

In response, the Ministry stated (July 2022) that the Departmental officers are bound by the Provisions of Income-tax Act. 1961 and instructions of the Board.

Though there are clear provisions in the Act and instructions of the Board, the AOs are not implementing the relevant provisions and following the instructions of the Board. Thus, Audit is of the opinion that there is a need for the CBDT to reiterate the instructions and also strengthen the monitoring mechanism to ensure compliance to the provisions of the Act/Board's instructions effectively with regard to adequacy of provisional attachment of a property.

