

CHAPTER 5

Validity, Revocation and Monitoring of Provisional Attachment

This chapter discusses the audit findings on validity of an order under Section 281B, including extension thereof or revocation of Provisional Attachment of property. It also focusses on the monitoring of provisional attachment provisions by the prescribed authority and outcome of the proceeding(s) in terms of recovery of *post* assessment tax-demand.

Audit observed that in 297 (84.9 *per cent*) of the 350 audited cases, validity period of orders under Section 281B lapsed either before the tax demands raised were fully recovered or even before completion of the assessments, which was a violation of prescribed provisions and directions of the Board. Further, in 31 cases (8.9 *per cent*), orders under Section 281B were extended with a time gap ranging between two and 166 days from the date of expiry of the 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.

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

Audit also observed that absence of a prescribed time limit for issuing order of provisional attachment has an inherent risk exposure of delay in issue of orders under Section 281B and assessees taking advantage of the situation by alienating properties in the intervening period, that are being considered for provisional attachment. Also, provisional attachment order 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.

5.1 Provisions for validity of Provisional Attachment

Section 281B (2) of the Act prescribes that the validity of an initial order under Section 281B *shall cease to have effect after the expiry of six months* from the date of the order made under sub-Section (1). The proviso thereunder prescribes that the period of order under Section 281B may, for reasons to be

recorded in writing by the prescribed Authority⁵⁸, be extended for further period(s) as considered fit, so that the total period of extension shall not in any case exceed *two years or sixty days after the date of order of assessment or reassessment, whichever is later*. The Board further instructed⁵⁹ (September 2004) that in cases where the assessments are completed, if the provisional attachment cannot be continued till recovery, the same assets can be considered for attachment under Section 222/226 of the Act (*viz.*, regular attachment)⁶⁰.

Audit findings on the validity period of orders under Section 281B are elaborated in the following paragraphs.

5.1.1 Validity period of orders under Section 281B

1. Compliance of provisions relating to validity period of orders under Section 281B: Audit observed in 45 cases that the norms prescribed for the validity period were duly complied with, which are discussed below:

- i. In 28 cases, the order under Section 281B was valid as on the date of assessment and there was no need for further extension of these orders as the tax demand was fully recovered in four cases and in 22 cases, no demand was made by the Department on completion of assessments and in the remaining two cases, assessments were quashed by ITAT. Case-wise details are given in **Appendix 20**.
- ii. In 17 cases, (details given in **Appendix 21**) in which search assessments were pending during the period of audit (between November 2020 and March 2021), orders under Section 281B remained valid and hence no action was warranted from the Department. Subsequently, the assessments were completed in 12 of the 17 cases, details of the extension of provisional attachment under Section 281B during pendency of the assessments were awaited. (July, 2022).

In these cases, the assessments were completed within the validity period of order under Section 281B and also the tax demands, if any, were fully recovered from the assessee. Further, in those cases, where the assessments were yet to be completed the validity period of the related provisional attachment orders was intact. Thus, the provisional attachment process was followed as per the CBDT's instructions.

⁵⁸ The Principal Chief Commissioner (Pr. CCIT), Principal Commissioner of Income Tax (Pr.CIT), Principal Director General (Pr. DGIT) or Principal Director (Pr. DIT).

⁵⁹ CBDT Instruction No.8 dated 02/09/2004.

⁶⁰ Attachment (Regular) of property under Section 222: Certificate to Tax Recovery Officer and under Section 226: Other modes of recovery.

2. Lapsing of validity period of orders under Section 281B: Audit observed that in 297 cases, the AOs were not fully complying with the provisions of Section 281B in respect of validity of orders as in these cases, the order under Section 281B lapsed either before the tax demands, raised on completion of assessment, were fully recovered or even before completion of assessments, which was a violation of the prescribed provisions, as discussed below:

- i. **Validity of orders under Section 281B lapsed before completion of assessments:** In 87 cases, the validity period of orders under Section 281B had expired even before the completion of assessment and Audit could not find any documentary evidence of extensions of these orders on record for ensuring continued protection of the interest of revenue.
- ii. **Validity of orders under Section 281B lapsed after completion of assessments but before tax recovery:** In 210 cases, the orders under Section 281B remained valid as on the date of assessments but had lapsed subsequently before effecting complete recovery of the tax demands and no protective measure in the form of conversion of provisional attachment into regular attachment was taken in these cases, as indicated by the Ministry/CBDT. Two cases are illustrated below:

(a) In a search assessment case of Smt. L5 for AYs 2012-13 to 2018-19 assessed in Central Circle-2(2), Bengaluru under the Pr.CIT (Central), Bengaluru charge, the initial order under Section 281B was issued (October 2019) by indicating the quantum of undisclosed income as estimated by the Investigation Wing at around ₹ 9.67 crore (estimated tax liability worked out by Audit is ₹ 2.90 crore, excluding surcharge/cess/ interest/penalty) for provisionally attaching a property of value ₹ 2 crore, which was insufficient. The assessment orders for the said AYs were passed in December 2019 raising a cumulative demand of ₹ 9.83 crore. As on the date of audit (March 2021), after the remittance of just ₹ 0.06 crore by the banks in response to orders under Section 226(3) by the AO, a balance demand of ₹ 9.77 crore was still pending (July 2022). While the provisional attachment lapsed in April 2020, the assessee's case was referred (May 2020) to the Tax Recovery Officer (TRO) for pursuance of recovery of demand of ₹ 10.25 crore (including penalty). In reply to the audit observation (February 2021) regarding non-issuing of extension of order under Section 281B, the AO stated (June 2021) that the order under Section 281B was passed on 24/10/2019, and before expiry of six months, the assessment orders were framed. Further on conclusion of the assessment proceedings (31/12/2019), a detailed reference for the recovery of tax demand along with details of the assets was made to the TRO. The reply

of the AO was not tenable as the reference to the TRO was made in May 2020 after the expiry of the order under Section 281B (April 2020) and more than 99 *per cent* of the tax demand was outstanding. The TRO subsequently issued notice of demands (September 2020) in Form Income Tax Certificate Proceedings (ITCP) -1 and notice in Form ITCP-16 (December 2020) for attaching two properties of the assessee, while the assessee has filed an appeal with CIT(Appeals) on 31/01/2020, which is still pending (July 2022).

(b) In a search assessment case of related assesseees of M/s. D16 Group comprising of 14 assesseees *viz.*, Shri D3, Shri U1, Shri K9, Smt. J17, M/s. S18 Pvt. Ltd., M/s. R4 Pvt. Ltd., M/s. A21 Pvt. Ltd., Shri S40, Shri J12, Shri H3, Shri R11, M/s. R6 Pvt. Ltd., M/s. P28 Pvt. Ltd., and M/s. S37 Pvt. Ltd., assessed for AYs 2012-13 to 2018-19 in Central Circle -31 under Pr. CIT (Central) -3, Delhi charge, orders under Section 281B were issued in November 2019, without indicating either the value of immovable properties attached or the estimated tax liability. Out of these 14 cases, assessments were completed in December 2019 in six cases and an aggregate tax demand was raised to an extent of ₹ 47.80 crore. Audit noticed (March 2021) that while the tax demand was still pending recovery, the orders under Section 281B in these six cases lapsed in May 2020. Further, no evidence regarding extension of orders issued under Section 281B was available on record. Audit could not ascertain reasons and evidence for not extending the validity of these orders and for not referring the cases to the TRO.

In the other eight cases of the group, the assesseees' applications under Section 245C were pending with the Income Tax Settlement Commission (ITSC). Meanwhile, the orders issued under Section 281B had lapsed in these cases. The reply and details from the Ministry/CBDT for non-extension of Provisional Attachment orders and status of assesseees' applications before ITSC was awaited (July 2022).

Thus, in the cases illustrated *ibid*, the concerned AOs failed to ensure that the orders under Section 281B were kept current. Consequently, efforts to provisionally attach the assesseees' properties did not prove to be effective in protecting the interest of revenue, as the potential risk of assesseees disposing off the said properties before discharging their tax liabilities could not be ruled out.

3. Validity period not indicated in the extension orders: In another eight cases, where assessments were completed in five cases and were pending in three cases, Audit observed that the validity period was not indicated in the extension orders issued under Section 281B; as a result, status of the validity of the extension orders could not be ascertained (**Appendix 22**).

Thus, in the absence of validity period in the said extension orders, Audit could not ascertain whether the interest of revenue continued to be protected until completion of assessments or until full recovery of tax demands.

5.1.2 Validity period lapsing due to gap in extension of orders under Section 281B

As per the provisions of Section 281B (2) of the Act, an initial order under Section 281B shall be valid for a period of six months and the same can be extended for a maximum period of two years or sixty days after the date of assessment, whichever is later. However, it is crucial to ensure that the validity period of the original order under Section 281B is extended in time, as allowing a break in between the order under Section 281B and its subsequent extension has the potential risk of assessees attempting to dispose of the attached property in the intervening period.

Audit observed that in 31 cases (vide **Appendix 23**), the concerned AOs issued extension/s for order under Section 281B in respect of the property that had been originally attached after a time gap ranging between two and 166 days. Audit noted that reasons were not on record for the delay in issuing extension orders. In addition, Audit could not ascertain whether or not the concerned assessees had disposed off the attached property in the intervening period. Two cases are illustrated in the following paragraphs.

(a) In the search assessment case of Smt. Dr. M10 assessed for AYs 2012-13 to 2018-19 in Central Circle - 1(4) under Pr.CIT (Central)-1, Chennai charge, an initial order under Section 281B was issued (December 2019) for provisionally attaching seven immovable properties (value of the properties as well as the estimated tax liability were not found on record). The validity period of the said order was upto 25/06/2020, as per the time limits prescribed in the Act. Audit noticed that the extension order to the same was issued on 09/09/2020 after a gap of 74 days from the date of expiry of the initial order. Reason for delay in issuing extension order was not found on record. As on the date of the Audit (February 2021), the search assessment was still pending while the status of the extension of Provisional Attachment order issued under Section 281B was not ascertainable, since there was no indication of validity period therein.

The Ministry while accepting the audit observations stated (August 2022) that on the issue of gap of 74 days between two 281B attachments, the same happened due to the pandemic situation. This was regularised and all the immovable properties were brought under provisional attachment under Section 281B of the Act, subsequently (i.e. from 09/09/2020 onwards). As

regards not mentioning the validity period of order under Section 281B in the body of the order, the Ministry stated that validity of order under Section 281B is governed by sub-Section 2 of this Section. The Ministry further stated that the properties are still under 281B attachment, since the Hon'ble High Court had granted stay on completion of search assessments. The search assessments under Section 153A of the Act are pending for the AYs 2012-13 to 2018-19, as of now.

Final outcome in this case may be intimated to Audit.

(b) In a search assessment case of Shri V22 assessed for AYs 2011-12 to 2017-18 in Central Circle-2(4) Chennai under Pr.CIT (Central)-2, Chennai charge, an initial order under Section 281B was issued (12/03/2019) for attaching an immovable property. While notifying the said order to the jurisdictional Registrar, Ambattur, the AO, Central Circle-2(4) Chennai, informed that the assessee shall be prohibited/restricted from transferring or charging the property in any way until further orders. The 281B proposal (February 2019) quantified the quantum of undisclosed income at ₹ 17.29 crore and probable tax thereon as ₹ 8.65 crore. The order was valid for six months upto 11/09/2019. Audit observed that an extension order was issued on 26/02/2020 i.e., after a time gap of 166 days from the date of expiry of the initial order. Reason for delay in issuing extension order was not found on record. Meanwhile, the search assessment was completed on 03/02/2020 by raising a cumulative tax demand of ₹ 12.40 crore. The assessee preferred an appeal against the assessment order before CIT (Appeals). As on the date of audit (February 2021), the order issued under Section 281B had already lapsed and the demand was still pending recovery. In the meantime, the AO referred (January 2021) the case to the jurisdictional TRO for initiating the prescribed process of recovery.

The Ministry while accepting the audit observation stated (August 2022) that in this case, provisional attachment was made on 12/03/2019. Since the Assessing Officer was handling sensitive cases and due to heavy work pressure, the order under Section 281B was extended after a gap of 166 days. The assessments were completed on 03/02/2020 raising demand aggregating to ₹ 14.67 crore. After completion of assessment, the case was referred to TRO for recovery of taxes in January 2021. The concerned officer is being advised to be more careful in future.

Action taken by the TRO in this regard was awaited in Audit (September 2022).

Thus, allowing a time gap between the date of expiry of the order under Section 281B and the date of extension of the same order implies that the provisionally attached property has implicitly been released to the assessee's

discretion and the potential risk of assessee disposing off the said property(ies) could not be ruled out. Consequently, such cases may remain unprotected during the said time gap, which is not consistent with the provisions relating to Section 281B in respect of the validity period.

5.1.3 Validity of order under Section 281B during pendency of cases before Courts or Settlement Commission

The provisions of Section 281B (2) had contained a second and third *Proviso (up to September 2014)*, prescribing that the validity period of order under Section 281B shall be *excluded* for the purpose of reckoning time limits during the period when (a) assessee's application for settlement⁶¹ under Section 245 of the Act is pending before the Income Tax Settlement Commission (ITSC) and (b) proceedings for assessment/re-assessment are stayed by an order or injunction of any court. However, these provisos were omitted by the Finance Act, 2014, with effect from 01/10/2014.

Further, the provisions of the Act do not account for the *post-assessment* period in which the assessee has preferred an appeal against the assessment orders or has obtained a stay of demand from AO for a specified period and consequently during these periods, the AO would not be able to enforce recovery of the tax demands raised.

(i) Audit observed that in 31 cases, the related assessee had filed application for settlement under Section 245C of the Act which was pending before ITSC and in another seven cases, the jurisdictional Court had granted injunction/stay order against the assessment proceedings which was pending as on the date(s) of audit⁶² and the validity of order under Section 281B lapsed during the period (**Appendix 24**). The current status of the ITSC/appeal outcome in these cases was awaited from the Ministry/CBDT (October 2022). Three cases are illustrated:

(a) In the search assessment case of M/s. P25 Pvt. Ltd. for AYs 2008-09 to 2011-12 assessed in Central Circle, Panaji, Goa under Pr.CIT (Central), Bengaluru charge, a provisional attachment order was issued on 20/12/2017 attaching the movable property viz., Fixed Deposit in the bank having a value of ₹ 15.67 crore which was due to mature in December 2017, without indicating the estimated tax liability. The order was not notified to the Bank authority. The aforesaid order was extended further in June 2018 by the AO, Central Circle, Panaji, which was also not notified to the Bank authority.

⁶¹ That is the period between the date of application made before ITSC by the assessee for settlement under Section 245C⁶¹ and the date of order issued thereagainst under Section 245D (1) of the Act.

⁶² Between December 2020 and March 2021.

Audit observed that the Hon'ble High Court of Mumbai in Goa had granted a stay on the search assessments and subsequently, the Hon'ble High Court quashed the assessments, against which Department has preferred a SLP in Supreme Court which is pending (July 2022). During the pendency of the assessments due to stay granted by the Court, the extended provisional attachment order under Section 281B was allowed to lapse in December 2018. In response to the audit observation regarding status of further extension of order under Section 281B and operation of its validity period during the period of stay granted by the Court, the AO, Central Circle, Panaji stated (June 2021) that proceeding under Section 148 was initiated for AYs 2011-12 to 2013-14, and the provisional attachment was made based on these proceedings. Section 148 proceedings stayed by the High Court of Mumbai at Goa have been subsequently quashed. Thereafter, the assessee has filed a Special Leave Petition in the same court, which is pending decision (July 2022). However, the reply was not specific to the audit observation. Further, as the provisional attachment order lapsed in December 2018 and without any further extension of the order found on record, the interest of revenue seems to have remained unprotected during this period.

(b) In the search assessment case of A47 Group of related assesseees of Shri Y3, Shri R20, Smt.K7, Shri C10, Shri S45 and Smt. M15, assessed for AYs 2007-08 to 2013-14 in Central Circle -1(1), Ahmedabad under Pr. CIT (Central), Ahmedabad charge, the latest orders under Section 281B were issued in June 2018 without indicating the estimated tax liabilities of the assesseees. Audit noticed (February 2021) that the assessment proceedings were stayed by the Hon'ble Supreme Court and the orders under Section 281B lapsed in December 2018. Thus, due to absence of enabling provisions coupled with omission on the part of the AO in keeping the orders under Section 281B valid, the tax demands that may arise when the assessments are allowed to be completed by the Hon'ble Supreme Court would remain unprotected.

(c) In the search assessment case of Shri A16 for AYs 2012-13 to 2017-18 assessed in Central Circle-1, Ernakulum under Pr.CIT(Central), Kochi charge, the AO had ascertained the encumbrance/nature of each of the 34 immovable properties that were provisionally attached (valued at ₹ 82 crore). Out of these, 14 properties were freehold (valued at ₹ 17.53 crore) and the remaining 20 properties (valued at ₹ 64.47 crore) were encumbered against bank loans. In the instant case, despite absence of enabling instructions, Audit noted that the AO ascertained the encumbrance status of the property before attachment. The order under Section 281B was issued on 06/08/2018 with two further extensions that was valid upto 05/02/2020. The search assessment was yet to be completed (February 2021), as the matter is pending with Income Tax

Settlement Commission (ITSC)⁶³, but the order under Section 281B lapsed without being extended further.

The Ministry, while not accepting the observation, stated (July 2022) that *“Assessment under Section 245D pending as assessee's application accepted by the Hon'ble ITSC. As per proviso to Section 281B(2), every provisional attachment shall cease to have effect after 6 months and which can be extended with the approval of PCIT for further period and the total period of extension shall not in any case exceed two years or 60 days after the date of order of assessment or reassessment whichever is later. When the order was in existence till 04/02/2020, during the pendency of assessment proceedings under Section 153A of the Act, the assessee filed application under Section 245C before the ITSC and assessee's application dated 30/12/2019 was accepted as per ITSC's order dated 13/01/2020. Quoting the provisions of Sections 245DD, 245F and 245HA which gives specific powers to ITSC, the Ministry stated that “only if the proceedings before Settlement Commission abates, the AO gets jurisdiction. Otherwise, AO ceases to be a functus officio. Therefore, in this case AO could not have extended the provisional attachment as the AO ceased to have jurisdiction over the assessee on the date on which the provisional attachment expired i.e. 05/02/2020 as the Settlement Commission had accepted the assessee's application on 13/01/2020. Therefore, there is no lapse on the part of the Assessing Officer and hence the objection is not acceptable.”*

Due to absence of enabling provisions in the Act, the validity period of the provisional attachment order lapsed in February 2020 in the instant case. Consequently, the intended objectives of continued protection of interests of revenue remained unachieved during the pendency of decision from the ITSC.

As a result of omission of the provisos with effect from 01/10/2014, validity of orders under Section 281B ran concurrently during pendency of the assessee's application before Income Tax Settlement Commission or during period of injunction/stay granted by Courts on assessment proceedings and lapsed, for which no enabling provisions presently exist in the Act to protect the interest of revenue. Therefore, an enabling provision may be considered to ensure that the validity period of the provisional attachment order does not get affected by the pendency of appeals, ITSC decision or Court's stay/injunction against assessments.

(ii) Further, Audit observed that in 63 cases wherein the assessments were completed, the assessees had filed appeal against the assessment orders and the validity period of the respective orders under Section 281B had

⁶³ ITSC is constituted by the Central Government under Section 245B of the Act, for settlement of assessment case filed by the assessee through an application under Section 245C.

expired during the pendency of appeal (Commissionerate-wise details vide **Appendix 25**).

As the extant provisions of the Act do not address the issue of validity of provisional attachment if the assessee prefers appeals against the assessment orders in the *post*-assessment period or assessee obtains a stay of demand from the AO for a specified period. The AOs would not be able to ensure recovery of the tax demands raised because of lapse of validity of orders under Section 281B.

5.1.4 Initiation of process of provisional attachment under Section 281B and issue of initial orders thereon

The provisions of Section 281B do not prescribe any time limit within which the provisional attachment orders have to be issued where the AO opines that it is necessary to do so. Incidentally, Section 132 (9A) of the Act prescribes a time limit of *sixty days* reckoned from the last date of search proceedings⁶⁴ for handing over the seized materials (*viz.*, books of account and/or other documents, money, bullion, jewellery, etc.) to the AO having jurisdiction over the person searched.

Audit collected information regarding time taken by the AOs for issuing order of provisional attachment from the date of search in respect of 237 cases out of 350 audited cases from the records of the Department during the course of audit. In the remaining 113 cases, the information relating to the date of search and/or date of initial order under Section 281B was not available on record provided to Audit. Audit observations are discussed below:

(i) The time gap from the date of search to the date of initial order under Section 281B ranged between 208 days and 1220 days (Commissionerate-wise details vide **Appendix 26**). Audit could not ascertain reason(s) for huge time gaps and variation in such time gap from the date of search to the date of issuing order of provisional attachment.

(ii) Audit also noted that in 67 (24.4 *per cent*) cases out of 275 cases⁶⁵, where assessments were completed, initial orders under Section 281B were issued within 0 to 15 days before the date of assessments whereas in another 52 cases (18.9 *per cent*), the initial orders for provisional attachment were issued within 16 to 60 days before the date of assessments. Thus, in the absence of prescribed time limits, the AOs issued initial orders under Section 281B within two months before the date of assessments, though the respective search was conducted much earlier. It appears that in the search

⁶⁴ Undertaken by the Investigation Officers in accordance with the provisions of Section 132(1).

⁶⁵ In 16 cases out of 291 assessment cases, Audit did not have information regarding date of initial order under Section 281B.

cases, provisional attachment orders may have been issued as an after thought shortly before finalising the assessment.

(iii) In three⁶⁶ cases, the assessee had already disposed off some of their properties before being provisionally attached by the respective AOs which showed that delayed action by AO rendered the issue of order under Section 281B infructuous.

One case is discussed below.

In the search assessment case of Shri T1 assessed for AYs 2013-14 to 2019-20 in Central Circle- 1(3), Bengaluru under Pr.CIT (Central), Bengaluru charge, the AO issued an order under Section 281B on 15/07/2019 for provisionally attaching six immovable properties, without indicating estimated tax liability and value of the attached properties after a gap of 329 days from the date of search (16/08/2018). Audit noticed (December 2020) from the records of provisional attachment that a family agreement deed was executed on 12/07/2019, i.e., three days before the date of order issued under Section 281B, through which the assessee released his title and interest with respect to two of the immovable properties that were provisionally attached (July 2019). Audit further noticed that although this information was received by the AO from Sub-Registrar Officer (SRO) in August 2019 during the validity of initial order, the AO did not take cognizance of it and extended the provisional attachment of the same properties four times in January 2020, July 2020, January 2021 and July 2021 respectively. This led to violation of provisions of Section 281B, rendering the interest of revenue remaining unprotected.

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).

On being pointed out by Audit, the AO, Central Circle- 1(3), Bengaluru replied (January 2020 and July 2021), that *“the list of properties and their valuation has been populated in the attachment proposals, 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 it is not specific to the issue of attachment of previously alienated properties as also for the reason that such

⁶⁶ Shri T1–Central Circle-1(3), Bengaluru, G1 - Central Circle- 1(3), Chennai and M/s.R25 Ltd.–Central Circle-1(4), Ahmedabad.

an attachment would not be legally valid, thereby defeating the intended purpose of the provisional attachment.

Audit is of the opinion that fixing a reasonable time limit for the AO to form an opinion and issue the order under Section 281B after receiving the seized materials (*viz.*, books of account and/or other documents, money, bullion, jewellery, etc.) from the Investigation wing is essential. Firstly this would help to protect the interest of revenue. Secondly, not having such a time limit results in a perennial, but indefinite risk hanging over the taxpayer, which is susceptible to misuse.

Thus, due to failure in ensuring continuity in orders under Section 281B, the interest of revenue remained unprotected for the interim period(s) during which the provisional attachment order had lapsed or was not applicable. Further, the absence of provisions for prescribing a time limit for issuing order of provisional attachment has an inherent risk of delay in issue of orders under Section 281B, thereby providing an undue opportunity to the assessee(s) to dispose of their properties so as to thwart the recovery process of future tax demands and also results in a perennial, but indefinite risk hanging over the assessee, which is susceptible to misuse.

Reply of the Ministry was awaited (October 2022).

Recommendation No.8:

The CBDT may:

(i) 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.

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

(ii) 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.

In response, the Ministry stated (July 2022) stated that it is important to consider that the order under Section 281B of the Act is a preemptive measure to safeguard the interest of Revenue during the pendency of assessment or re-assessment proceedings. Since the measure is harsh on the taxpayers, the validity of an order under Section 281B of the Act is only 6 months (extendable

to a maximum of two years). Therefore, excluding the periods as mentioned in the suggestion from the validity of order under Section 281B of the Act will cause severe grievances to the taxpayers as the tax demand against which a property has been provisionally attached is pending finalization. Therefore, this suggestion is not feasible.

The Ministry's primary objective is to protect the interest of revenue as stated in the Board's Instruction No. 1884/1991 dated 07/06/1991. Further, the aforesaid provisions were already in place before October 2014. There is a need to address the issue judiciously so as to protect the interest of revenue without being unduly harsh on the tax payers. The Ministry may reconsider its reply.

(iii) Consider prescribing a reasonable time limit within which provisional attachment order is issued, especially in search-related cases.

In response, the Ministry stated (July 2022) that it is pertinent to note here that provisional attachment under Section 281B of the Act is intended to be resorted to for tax collection in some cases to safeguard the interest of Revenue. It cannot be prescribed as the general method of tax recovery. Whether a provisional attachment under Section 281B of the Act is required has to be ascertained by the Assessing Officer after due approval from the authorities. Since the demand against which a property has to be provisionally attached is pending finalization, prescribing time limits for such attachment will be detrimental to the taxpayers and result in grievances.

Audit is of the view that timely action in initiating the process of provisional attachment, especially in search related cases, is necessary to prevent assessee from thwarting the ultimate collection of demand by attempting to dispose of the property and ensure protection to the interest of revenue. Instances were noticed in Audit that due to considerable gap between the date of search and date of initial provisional attachment order, the concerned assesseees were able to dispose of their property(ies). Audit also noted that in 43.3 per cent of the cases, where assessments were completed, initial orders under Section 281B were issued within two months before the completion of assessments with the resultant risk of assessee(s) disposing off the property(ies) and thwarting the tax recovery process. Further, not prescribing a time limit results in a perennial, but indefinite risk hanging over the assessee, which is susceptible to misuse.

Therefore, the CBDT may consider prescribing judiciously a reasonable time limit for initiating the process of provisional attachment from the date of search to ensure maximum protection of interest of revenue, as intended by Section 281B of the Act, and also to reduce the possibility of misuse.

5.2 Review on Scrutiny assessments to contain specific comment on Provisional Attachment

The Board instructed, *inter alia*, vide Instruction of September 2004⁶⁷, that while making a review of scrutiny assessments, the prescribed Authority⁶⁸ shall make a specific comment on the aspect of Provisional Attachment under Section 281B. Subsequently, the Board, vide Instructions of November 2008⁶⁹, laid down new guidelines for review of the assessment work of Officers having assessment jurisdiction. Accordingly, the Board designated Pr.CsIT as the Reviewing Officer for monitoring the quality of assessment work being done during the year by AOs under their supervisory control and to make specific observations on a selection of atleast three cases per AO for each quarter.

Audit noted that scrutiny assessments were concluded in 291 cases out of the 350 audited cases. Audit called for information relating to assessment cases reviewed by the respective Pr.CsIT (Central) and comments made on the aspect of Provisional Attachment under Section 281B. The Department furnished replies in respect of 177 cases only. Commissionerate-wise details are given in Table No. 09 below:

Table No.09: Commissionerate-wise details of review of assessments done by Pr.CIT				
Pr.CIT (Central) jurisdiction (No. of AOs)	Total No. of 281B cases in which scrutiny assessments were completed	No. of cases in which AO replied to specific audit query	No. of cases subjected to review by Pr.CIT (Central) (Out of cases in Col.3)	No. of cases in which Pr.CIT (Central) commented on 281B process (Out of cases in Col. 4)
(1)	(2)	(3)	(4)	(5)
Pr.CIT (Central)-1, Delhi (03)	07	07	0	0
Pr.CIT (Central)-2, Delhi (04)	30	30	0	0
Pr.CIT (Central)-3, Delhi (06)	27	27	02	0
Pr.CIT (Central), Bhopal (02)	24	24	0	0
Pr.CIT (Central)-1, Kolkata (03)	07	0	-	-
Pr.CIT (Central)-2, Kolkata (01)	06	0	-	-
Pr.CIT (Central)-1, Mumbai (04)	09	0	-	-
Pr.CIT (Central)-3, Mumbai (05)	11	0	-	-
Pr.CIT (Central)-4, Mumbai (04)	16	01	01	01
Pr.CIT (Central)-1, Chennai (06)	31	09	0	0
Pr.CIT (Central)-2, Chennai (04)	25	0	-	-
Pr.CIT(Central), Kochi (02)	05	02	01	0
Pr.CIT (Central), Bengaluru (10)	27	22	0	0
Pr.CIT (Central), Hyderabad (07)	25	25	02	0
Pr.CIT(Central), Visakhapatnam (01)	05	0	-	-
Pr.CIT (Central), Ahmedabad (05)	25	19	0	0
Pr.CIT (Central), Rajasthan (01)	03	03	0	0
Pr.CIT (Central), Chandigarh (02)	08	08	0	0
Total	291	177	06	01

⁶⁷ The Board's Instruction No.8 of 2004 dated September 02, 2004.

⁶⁸ The Principal Chief Commissioner (Pr. CCIT), Principal Commissioner of Income Tax (Pr.CIT), Principal Director General (Pr. DGIT) or Principal Director (Pr. DIT).

⁶⁹ Instruction No.15/2008 dated November 04, 2008.

1. As evident from the table above, only six cases pertaining to four Central Commissionerates were reviewed by the respective Pr.CsIT (Central). In five of these six cases, the AOs stated that the prescribed Authority did not make any comment on the process of provisional attachment thereon. In the remaining one case in which Pr.CIT (Central-4) Mumbai had commented on the process of provisional attachment under Section 281B, however, the comments were not made available to Audit despite repeated requests (July 2022).

In the remaining 114 cases where the Department did not furnish any reply, Audit could not ascertain whether the Provisional Attachment process was reviewed by the respective Pr.CsIT (Central) in compliance to the Board's instructions.

Thus, the CBDT's instructions of September 2004 on the issue of commenting on aspects of provisional attachment during review of scrutiny assessments largely remained unfulfilled.

Reply of the Ministry was awaited (October 2022).

Recommendation No.9:

The CBDT may ensure compliance of extant instructions of the CBDT in this regard so as to monitor the quality of assessment done by the AO.

5.3 Deficiencies in Appraisal Reports of Investigation Wing

The CBDT vide instructions⁷⁰ of September 2004 states that in search and seizure cases, huge demands are raised under block assessment and the recovery of the same is tedious and time-consuming. The CBDT further states that it is extremely important for Assessing Officers in Central Charges to explore the possibility of invoking the provisions of Section 281B. At the time of preparation of Appraisal Report, the DDIT(Inv.)/ADIT(Inv.) should take particular care in identifying the properties of the assessee which could be attached under this Section and make a specific mention of the same in the Appraisal Report itself.

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 {Refer para 4.1 (ii) of this Report}. Audit could not verify completeness of list of assets prepared by the Investigation wing in the remaining cases.

Further, Audit noticed that in one case, provisional attachment of a flat was made based on the information contained in the Appraisal Report which

⁷⁰ CBDT Instruction No.8 dated 02/09/2004.

resulted in attachment of such property which did not belong to the assessee at the time of attachment. The case is illustrated below:

In the search assessment case of Shri V18, assessed for AYs 2011-12 to 2017-18 in Central Circle-1(3), Ahmedabad under Pr.CIT (Central), Ahmedabad charge, the AO issued (22/02/2018) an order under Section 281B for attaching two immovable properties viz., Flat Nos. 303 and 304 in an apartment in Gandhinagar (value not indicated). Subsequently, the assessee informed (March 2018) that he had never been the owner of Flat No. 304 and that the other flat (No. 303) had already been sold (April 2015) by him much before the date of search (06/02/2017). The AO reported (07/05/2018) that as per records obtained from the Sub-Registrar, Gandhinagar, that the Flat No. 304 actually belonged to the assessee and that the said property had also been mortgaged by the assessee for obtaining bank loan.

The AO further reported that the other flat was indeed sold by the assessee in April 2015 to a third-party assessed under a different jurisdiction. Accordingly, the AO proposed modification of the order under Section 281B by revoking the attachment of Flat No. 303 and for continuing with the attachment of Flat No. 304. The Pr.CIT(Central), Ahmedabad, sought (25/05/2018) reasons from the Range-head as to why Flat No. 303 was recommended for attachment and also accorded approval on the same day for cancelling the provisional attachment of Flat No. 303 and for continuing with the provisional attachment of Flat No. 304. The AO through the Range-head submitted (12/06/2018) a factual report stating that according to information contained in the Appraisal Report of the related Group cases, the Flat No. 303 was stated to belong to the assessee and this fact was also evidenced by the copy of the mortgage deed that the assessee had entered into (28/08/2014) with a banking institution and based on these materials on record, the order under Section 281B was issued for the said property.

Audit opines that as there was almost four-year gap between the mortgage deed and the order under Section 281B, the AO could have verified the status of the ownership of the property(ies) being considered for attachment. Consequently, a fresh order under Section 281B was issued on 25/05/2018 for continuing with the provisional attachment of Flat No. 304. However, the validity period was stated to be six months from the date of earlier order viz., 22/02/2018. Further, the AO issued (13/07/2018) another order under Section 281B for attaching another immovable property (valid upto 12/01/2019), which was *pre*-verified from the concerned Sub-Registrar and found to be in possession of the assessee.

Audit noted (February 2021) that the search assessments were completed in December 2018, raising a cumulative tax demand of ₹ 341.51 crore. It was reported by the AO that the case was subsequently reopened and assessment order was passed under Section 144 r.w.s. 147 on 10/02/2022 and the demand was revised to ₹ 397.5 crore which remained outstanding as of July 2022. The assessee's appeal thereagainst is pending (July 2022). Reply of the Ministry was awaited (October 2022).

5.4 Action during the validity of the provisional attachment

The Provisional Attachment order issued under Section 281B is notified to the concerned authorities, comprising of the registering authorities and CERSAI to secure the interest of revenue so as to restrain assesseees from attempting to dispose of the attached property and also to secure a confirmation that the title of the property is in the name of the assessee.

Audit noticed that the assessee had disposed off the property even after notifying the order under Section 281B to Sub Registrar. The case is illustrated below:

In search assessment case of Shri A5 assessed for AYs 2015-16 to 2017-18 in Central Circle-1(2), Chennai under Pr.CIT (Central)-1, Chennai charge, the AO issued order under Section 281B in December 2017 for attaching 11 immovable properties (agricultural lands, flats, etc.) having aggregate value of ₹ 2.68 crore against the estimated tax liability of ₹ 19.50 crore. The order under Section 281B was notified on the same date to the Sub-Registrar Officers of Villanur (Puducherry), Salem West (Salem), Kodambakkam (Chennai), Chengalpattu, Guntur and Kanchipuram jurisdictions requesting to note the fact of provisional attachment and make an entry for creating encumbrance on the ITD in the relevant register. On independent verification⁷¹, Audit observed (March 2021) that eight days later the assessee sold one of the properties (Salem district) and the AO was not made aware of the sale of the attached property. Subsequently, without verifying these facts, the AO issued (May 2018) extension to the order under Section 281B rendering the attachment infructuous since the attached property was no longer in the possession of the assessee. Thus, continuation of attachment of the same through extension, effectively left the case unprotected to this extent during the pendency of the assessment proceedings.

The Ministry while accepting the case partially stated (July 2022) that *“Out of eleven properties, the assessee had transferred the Salem property to his wife, Smt. A49, even before the service of the 281B attachment order, to the*

⁷¹ Through Tamil Nadu Government's Registration Department's website viz., “tnreginet”.

concerned Sub Registrar. This was not intimated by the assessee to the Assessing Officer. Hence, renewal of attachment under Section 281B of the Act was made on the eleven properties. However, the Salem property was attached by the TRO, Salem, against the arrears of Smt. A49 on 19/04/2018. The regular assessment order was completed on 28/12/2018 under Section 144 read with Section 153C of the Act raising the demands of ₹ 14.88 crore, ₹ 36.24 crore and ₹ 7.87 crore in respect of AYs 2015-16, 2016-17 and 2017-18 respectively. Subsequently, first appellate order of the CIT(A) in ITA No. 392, 393 & 394 /18-19 dated 30/09/2019 was given effect to and net payable demand was reduced to NIL for AYs 2015-16 and 2016-17. For the AY 2017-18, the outstanding demand was ₹ 2.48 lakh only.

The reply of the Ministry is not tenable as the assessee had sold the property situated in Salem District on 13/12/2017 i.e. within a period of eight days from the date of issue of provisional attachment order under Section 281B (05/12/2017) and not before the service of the 281B attachment order, to the concerned Sub Registrar. Further, as the Sub-Registrar failed to discharge his duties to thwart the assessee from disposing off the said property, Audit could not ascertain action taken by the ITD against the concerned SRO in the instant case.

Recommendation No. 10:

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.

5.5 Irregular revocation of attached property

As per Section 281B(3) provides that where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached under sub-section (1), the Assessing Officer shall, by an order in writing, revoke such attachment.

Audit noticed that the AO revoked the order under Section 281B without obtaining bank guarantee as per provision *ibid* and provisionally attached another property of significantly lower value which was not sufficient to cover the estimated tax liability. The case is illustrated below:

In search assessment case of M/s. R25 Ltd., assessed for AYs 2013-14 to 2019-20 in Central Circle-1(4), Ahmedabad under Pr. CIT (Central), Ahmedabad charge, the AO issued (05/12/2019) an order under Section 281B for attaching one of the immovable properties (57,596 Sq.mts.) of the assessee valued

approximately at ₹ 18.95 crore⁷². Subsequently, the assessee informed (December 2019) the AO that 35,398 Sq.mts. of the attached property (61 per cent) was already sold in November 2019. Audit also noticed that the AO reported (10/12/2019) to Pr.CIT (Central), Ahmedabad that the said property was already under provisional attachment under Section 132(9B) of the Act during which period the assessee had sold part of the property, without seeking permission from the AO before disposing off the property as required under Section 281 of the Act⁷³ and the AO held the sale to be void. However, no action from the AO was on record to get the sale transaction cancelled. Despite this, the AO recommended for revoking in full, the attachment of the property that was still partially owned by the assessee. No specific reasons for such a recommendation were attributed by the AO. Though the Additional CIT (Central), Range-1, Ahmedabad recommended (10/12/2019) continuation of order under Section 281B for the remaining portion (22,198 Sq.mts.) of the property that was still owned by the assessee, the Pr.CIT (Central), Ahmedabad approved (13/12/2019) the AO's proposal of revoking the order under Section 281B and the entire area of the attached property was released by the AO by a revocation order dated 13/12/2019. On the same day, the AO issued a fresh order under Section 281B for attaching another property worth ₹ 1.47 crore, which was not sufficient to cover the estimated tax liability (₹ 8.16 crore)⁷⁴ that was expected on assessment of unaccounted income/cash of ₹ 27.20 crore found during search.

Audit observed (February 2021) that the assessment was yet to be completed but the order under Section 281B had already lapsed (June 2020) without further extension.

Thus, lack of due diligence in getting void of sale transaction of the property and revoking of a property of higher value (₹ 11.65 crore) and invoking the attachment of a property far lesser value (₹ 1.47 crore) which was also lapsed before completion of assessment resulted in lower protection/non-protection of interests of revenue. Reply and the current status of assessment proceedings from the Ministry/CBDT was awaited (October 2022).

⁷² The value for entire land of 57,596 Sqmts. has been arrived by extrapolating the rate of ₹ 3,291.14 per Sq. mt. derived on the sale of 35,398 Sqmts. of land that had been sold by the assessee.

⁷³ Section 281(1) prescribes that during the pendency of any proceedings under the Act, the assessee shall not create charge or otherwise dispose of any property without first obtaining permission from AO, failing which the said transaction shall be void.

⁷⁴ Calculated at a minimum tax rate of 30 per cent (excluding surcharge/cess/interest/penalty) on the unaccounted income of ₹ 27.20 crore.

5.6 Issues requiring strengthening of monitoring mechanism by the Income Tax Department in respect of Provisional Attachment

During the course of the subject specific compliance audit on 'Attachment of a property of an assessee under Section 281B by Income Tax Department', we came across certain issues relating to monitoring of provisional attachment process where the ITD may like to focus on so as to make the system robust and effective to achieve the intended objectives of the provisions of the Act. These issues are indicated below in brief:

Audit noticed that:

- (i) in the majority of the audited cases, there was absence of essential information viz. validity period, estimated tax liability, value of property attached etc. in the provisional attachment orders or in the order notings and similarly in a majority of cases, there was lack of specific directions to the notified authorities which would facilitate the assessee as well as the notified authorities to comply with the orders;
- (ii) there was no uniformity in the orders issued under Section 281B by the AOs due to not having any prescribed format, which would result in ineffective monitoring of the entire process by the Competent Authority;
- (iii) in more than 90 *per cent* of the audited cases, the recorded opinion of the jurisdictional AOs for invoking the provisions of provisional attachment was not conforming to the circumstances prescribed by the CBDT;
- (iv) there was non-compliance to the CBDT's instructions by AOs based on available documentation, regarding ascertaining/recording details of all assets available in the possession of the concerned assessee which resulted in inadequate selection of property with regard to sufficiency in certain cases;
- (v) in certain cases, there were deficiencies in selection of properties for provisional attachment;
- (vi) nearly 85 *per cent* of the audited cases were not complying with the validity provisions of Section 281B i.e., the orders either lapsed before the assessed tax demands were fully recovered or even before completion of the respective scrutiny assessments.

(Para 3.2.1, 3.2.2, 3.3, 3.4, 4.1 to 4.4 and 5.1)

Therefore, the order under Section 281B containing all requisite information and uniformity in the orders will not only streamline the entire process of provisional attachment but also facilitate in adequate monitoring by the Competent Authority and bring consistency as well as transparency.

Further, the CBDT is required to ensure that reasons cited for opinion formation are appropriate, specific and as per the intent of the Legislation so as to avoid unnecessary litigation/harassment to the assessee. Thus, it is also required to strengthen its monitoring mechanism to ensure strict compliance to the provisions of Section 281B laid down in the Act/instructions.



New Delhi
Dated: 27 February 2023

(Monika Verma)
Director General (Direct Taxes-I)

Countersigned



New Delhi
Dated: 01 March 2023

(Girish Chandra Murmu)
Comptroller and Auditor General of India

