

Report of the Comptroller and Auditor General of India



SUPREME AUDIT INSTITUTION OF INDIA
लोकहितार्थं सत्यनिष्ठा
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Subject Specific Compliance Audit on Attachment of Property of an assessee by ITD under Section 281B

Union Government
Department of Revenue - Direct Taxes
Report No. 4 of 2023

**Report of the
Comptroller and Auditor General of India
for the year ended March 2021**

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Laid on the table of Lok Sabha/Rajya Sabha on _____

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Preface

This Report for the year ended March 2021 has been prepared for submission to the President under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Department of Revenue-Direct Taxes of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of the test audit of the Section 281B process undertaken during the Financial Years (FYs) 2017-18 to 2019-20 conducted from November 2020 to March 2021 and further verification of records and documents produced by ITD, which continued till June 2022.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

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

There has been a steady increase (₹ 5,75,340 crore in FY 2013-14 to ₹ 11,14,182 crore in FY 2017-18) in the accumulation of arrears of tax demand during the past several years and the percentage of tax demand termed as 'difficult to recover' (categorised by the Department) over total arrear tax demands continued to be abnormally high ranging from 96 *per cent* in FY 2013-14 to 98.2 *per cent* in FY 2017-18. Hence, this topic was selected to assess the robustness and effectiveness of the procedures in place in the ITD with regard to provisional attachment.

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

The SSCA covered 350 Provisional Attachment orders issued during the Financial Years 2017-18 to 2019-20 by 72 Assessing Officers having assessment charges under the jurisdiction of the 18 Principal Commissioners of Income Tax (Central). Out of the above 350 cases, the scrutiny assessments had been completed in 291 cases as of July 2022, raising a net tax demand aggregating to ₹ 12,621.23 crore (comprising tax, interest and penalty). Out of this, in 103 cases, an amount of ₹ 407.09 crore (3.22 *per cent*) had been recovered (July 2022). The balance tax amounting to ₹ 12,214.14 crore was outstanding for various reasons viz. stay of demand, appeals etc.

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

provisions/rules. The AOs were not adequately establishing and documenting the basis/grounds for invoking these provisions and in the absence of documentation, Audit could not draw assurance whether the applicability of the provisions was justified in those cases. Notification of Provisional Attachment orders to Registering Authorities was found to be inadequate, which eventually defeated the purpose of such notification in a few cases. As per available records, the AOs did not comply with the Board's instructions of ascertaining details of all assets in the possession of assessees that could be considered for provisional attachment. In the majority of the cases for which records were made available, the list of assets prepared by the Investigation Wing as reflected in the Appraisal Report was not shared with Audit. Therefore, Audit could not verify the role of the Investigation Wing in supplementing the efforts of the AO in selection of appropriate property for provisional attachment. Audit also noticed deficiencies in respect of list of assets provided in the Appraisal Report which resulted in incorrect attachment of a property. The process of identification of assets was found to be deficient, thereby reducing the effectiveness of the provisional attachment. In certain cases, the savings/current bank accounts of assessees were provisionally attached by the jurisdictional AOs without establishing that they were attached only as a last resort. The AOs did not establish evaluation of property of assessees for their ownership requirements as well as for their non-encumbrance status before considering them for provisional attachment in majority of cases. Sufficiency of properties attached could be analysed only in certain cases, as proposals for Provisional Attachment under Section 281B did not indicate either estimated tax liability or value of the attached property or both. Audit also observed that the validity period of several orders under Section 281B lapsed either before the tax demands raised were fully recovered or even before completion of assessments, which was in violation of the prescribed provisions. We further observed that in certain cases, the orders under Section 281B were extended with a time gap ranging between two and 166 days from the date of expiry of previous order under Section 281B; Audit could not ascertain whether the concerned assessee had disposed off the attached property in the intervening period when there was no provisional attachment.

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

granted by the Courts or when cases are pending before the Settlement Commission.

Audit further observed that the time gap from the date of search to the date of initial order under Section 281B ranged between 208 days and 1220 days. Absence of a prescribed time limit for issuing order of provisional attachment has an inherent risk of the assessee alienating property(ies), which are being considered for attachment, in the intervening period in case of abnormal delay in issuance of orders under Section 281B. Further, provisional attachment orders not being issued within a reasonable time after the date of search proceedings could result in a perennial but indefinite risk hanging over the assessee, which is susceptible to misuse. Audit also noticed certain cases wherein the assessee was able to dispose off the attached property inspite of notification of the order under Section 281B to the concerned Registering authority.

Audit noticed that Notification of Provisional Attachment orders to Registering Authorities was found to be inadequate, which eventually defeated the purpose of such notification in a few cases.

Overall, the tax demands raised on completion of assessments continued to be in arrears and the provisional attachment of the assessee's property did not have a significant impact on actual recovery of tax *post*-assessment.

Thus, the primary objective of provisional attachment of properties of protecting the interest of revenue and to prevent further accumulation of tax arrears largely remained unfulfilled. Therefore, there is a need to revisit the provisions/rules relating to provisional attachment under Section 281B and strengthen the extant procedures/mechanism so that the intent of the legislation does not get defeated.

Based on the audit findings, we recommend that:

Recommendation No. 1:

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

In response, the Ministry stated (July 2022), "The provisions of Section 281B of the Income Tax Act, 1961 do not give any power to prescribe a form or format of the order. Therefore, any such proforma would only be a non-statutory proforma. However, the suggestion of the audit is noted and the proforma suggested by audit will be considered."

The provisions of Section 119(1) of the Act provide that the Board may, from time to time, issue orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of this Act. Thus, the CBDT may consider prescribing a suitable format of the provisional attachment order under Section 281B, so as to ensure uniformity in the application of the extant provisions, reducing arbitrariness, increasing transparency and facilitating the Assessing Officer (AO) as well as assessee for proper compliance to the orders. Audit will await the final outcome of action taken in this regard.

Recommendation No. 2:

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

In response, the Ministry stated (July 2022) inter alia, that Provisional attachments are made as per the provisions of Section 281B of the Income-tax Act which is as under: "281B (1) – [or for imposition of penalty under Section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds two crore rupees]¹". Hence, whenever the Assessing Officer, being a quasi-judicial authority is of the opinion that to protect the interests of revenue provisional attachment is needed, such attachment is made with the prior approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner. Principal Director General or Director General or Principal Director or Director, as the case may be. The legislative intent of the provision is that by provisionally attaching the assets for the specified time in suitable cases, the assessee is prevented from thwarting the ultimate collection of tax demand. As there are elaborate checks and balances embedded in the provisions itself, any further restriction on the action of AO is likely to defeat the legislative intent. Further, determining the exact tax liability at the stage of provisional attachment may not be possible and also may result in unnecessary litigation.

Audit noted that Section 281B was amended by the Finance Act, 2021 with effect from 01/04/2021 to include a specific circumstance with reference to penalty provisions under Section 271AAD. Through this amendment, the Act has facilitated the AOs to invoke the provisions of Section 281B in one of the defined circumstances, which is partially in line with the Audit recommendation. However, the fact remains that the term ‘Exceptional

¹ Sub-Section (1) of Section 281B was amended by the Finance Act, 2021 with effect from 01/04/2021.

circumstances' referred to in the Board's Instructions No.08 dated 02/09/2004 is yet to be defined or clarified, e.g. through examples, so as to fully achieve the intended objectives of the extant provisions. As a result, the provisions of Sections 281B were invoked in the majority of audited cases on the basis of standard reasons viz., 'protecting the interests of revenue' and 'likelihood of substantial tax demands after assessments' by the AO which were not in consonance with the Board's instructions and were also not consistent with the Bombay High Court's order of September 2019 that such powers cannot be exercised merely by repeating the phraseology used in the Section and recording the opinion of the officers passing such orders that he was satisfied for the purpose of protecting the interest of revenue, it was necessary to do so. Audit is of the opinion that broadly clarifying or illustrating the exceptional circumstances (as suggested by Audit in Appendix 14 of the Report) would facilitate the AOs in forming the opinion for invoking the provisions of provisional attachment and it would also be consistent and legally sustainable. The Ministry may reconsider its reply.

Recommendation No.3:

(i) The CBDT may consider issuing a comprehensive SOP for provisional attachment, including notification of Provisional Attachment order under Section 281B to the concerned authorities to ensure uniformity in implementation of relevant provisions of the Act and to protect the revenue of the Government.

In response, the Ministry stated (July 2022) that the CBDT has issued various instructions e.g., Instruction No. 1884 dated 07/06/1991, Instruction No. 8 dated 02/09/2004 and Instruction in F. No.404/22/2004-ITCC dated 05/11/2004. The legislative intent of the provision is that by provisionally attaching the assets for the specified time in suitable cases, the assessee is prevented from thwarting the ultimate collection of tax demand. As there are elaborate checks and balances embedded in the provisions itself, any further restriction on the action of AO is likely to defeat the legislative intent.

The Ministry reply is not in line with the audit recommendation, since it never intended putting restrictions on the AO. Rather, issuing an SOP would facilitate the AO in adequately complying with the provisional attachment order adequately. As could be seen in more than 50 per cent of audited cases (refer para 3.4.1), the notification to the concerned Authorities was either made without specific directions for making note of the provisional attachment in their records or varying directions were given to the notified authorities in respect of provisionally attached property resulting in non fulfilment of the objective of protecting the interests of revenue to that extent. Further, the

CBDT may consider reiterating instructions and monitor compliance to the provisions and instructions. The Ministry may reconsider its reply.

(ii) The CBDT may make it mandatory to notify the provisional attachment orders under Section 281B to the concerned Authorities, including CERSAI, with specific directions to the Authorities for making note of the provisional attachment and to monitor the assessee's compliance to the directions issued therein.

In response, the Ministry stated (July 2022) that in this regard, instruction in F. No. I (380)/DIT(R)/SARFAESI/17-18/669 dated 06/09/2017 has already been issued by DIT (Recovery & TDS).

Audit noted that though the instruction was issued by the Board in September 2017, it was not complied with by the AOs, particularly in the case of notifying CERSAI. Audit further noted that where the AOs notified the other concerned Authorities, complete details and action proposed to be taken by those Authorities were often not communicated in a timely manner. Furthermore, one of the AOs replied that the said Board's instructions were not applicable to provisional attachment. Thus, the CBDT may reiterate the extant instructions, clarifying the applicability to provisional attachments and also ensure that the extant instructions are being complied with.

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 assesseees 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.

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.

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.

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.

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 the 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 of 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.

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.

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.

CHAPTER

1

Introduction

1.1 Background

Provisional Attachment (PA) under Section 281B of the Income Tax Act, 1961 (Act) was introduced in the Taxation Laws (Amendment) Act, 1975 (vide Section 73). According to the Central Board of Direct Taxes (Board)'s Circular of September 1975¹, Section 281B was aimed at reducing tax arrears and ensuring that in future tax arrears do not accumulate. It was intended to be applied during the pendency of any proceedings in a case, where the Assessing Officer (AO)² is of the opinion that the assessee may *thwart the ultimate collection of demand* in specified circumstances, for protecting the interests of revenue by provisionally attaching the properties of the assessee before completion of assessment. It is unlike the Regular Attachment, applied by the Tax Recovery Officer at the *post*-assessment stage under Section³ 222/226 of the Act.

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

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

The provisions of the Act prescribe certain steps for initiating the process of Provisional Attachment under Section 281B, such as formation of an opinion necessitating provisional attachment, issue of orders thereon with prior approval from the Prescribed Authority⁴, time limits for initiating/extending

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

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

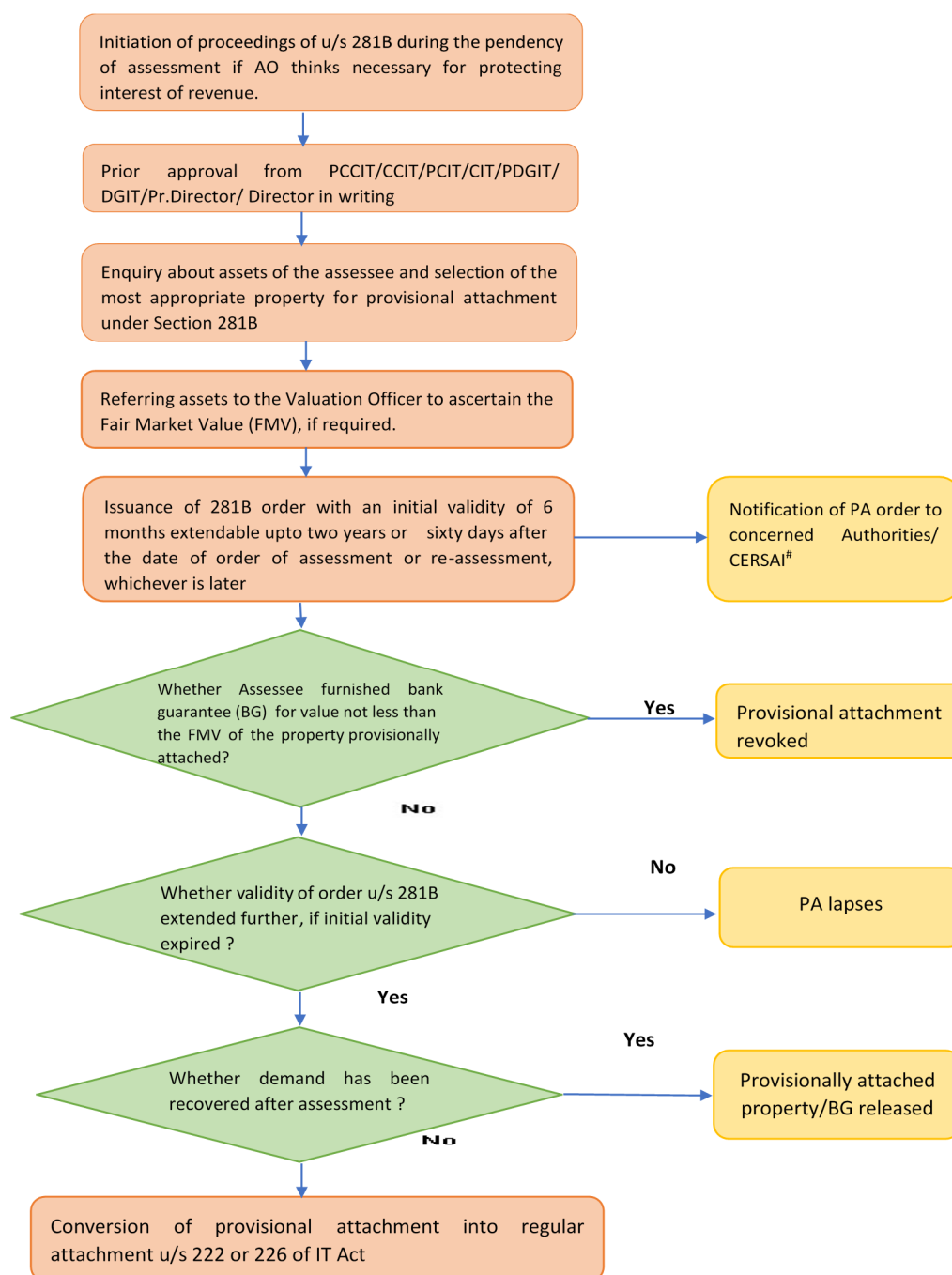
³ When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer shall proceed to recover from such assessee the specified amount by one or more of the modes mentioned below-
(a) attachment and sale of the assessee's movable property;
(b) attachment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

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

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

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

Chart 1 – Summary Process for Provisional Attachment



Central Registry of Securitisation Asset Reconstruction and Security Interest of India

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

1.2 Why we chose this topic

The trend of arrears of tax demand⁵ pending during the period FY 2013-14 to FY 2017-18 indicated in Table No. 01 below:

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

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

As could be seen from the table, there has been a steady increase (₹ 5,75,340 crore in FY 2013-14 to ₹ 11,14,182 crore in FY 2017-18) in the accumulation of arrears of tax demand during the past several years.

In addition, the percentage of tax demand termed as 'difficult to recover' (categorised by the Department) over total arrear tax demands continued to be abnormally high ranging from 96 *per cent* in FY 2013-14 to 98.2 *per cent* in FY 2017-18.

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

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

CHAPTER 2

Audit Approach

The audit approach encompassing the Audit Objectives, Scope of Audit and Audit sample are detailed below:

2.1 Audit Objectives

The objectives of conducting this Subject Specific Compliance Audit (SSCA) were:

- to examine whether there are policy or procedural gaps in the existing provisions of Section 281B applicable to property of an assessee; and
- to examine the extent of compliance or consistent application of the provisions of Section 281B of the Act in individual cases in relation to property of an assessee.

2.2 Audit Scope and Sources of Audit Criteria

The criteria for audit were primarily derived from the provisions of Section 281B of the Act and supporting circulars/instructions from the Board. In order to address the two audit objectives set out for the SSCA, the audit scope encompassed the 281B process undertaken during the Financial Years (FYs) 2017-18 to 2019-20 in the course of assessment/re-assessment proceedings, including the *post*-assessment status thereof. Details were updated as of July 2022 as per the records made available by the Department.

2.3 Audit Sample

In view of travelling and other restrictions caused by COVID-19 pandemic situation prevailing across the country, the sample selection was restricted to the cases of provisional attachment under Section 281B of the assessment units under the jurisdiction of the Principal Commissioner of Income Tax (Central) [Pr. CIT(Central)], which were covered by Audit between November 2020 and March 2021.

The AOs of Central Circles are vested with the powers of making assessments in the case of an assessee who has been subjected to search and seizure as per provisions of Section 132⁶ of the Act. A total of 354 cases were identified where orders under Section 281B were issued by AOs holding assessment charge of 72 Central Circles under the jurisdiction of the 18 Principal

⁶ Under Section 132, an Authorised Officer of the Investigation Wing of ITD can enter and search any building, vehicle etc and seize books of account, bullion etc. of an assessee under the prescribed circumstances, in cases where the assessee is suspected of evading tax.

Commissioner of Income Tax (Central) covering 14 States⁷ during FYs 2017-18 to 2019-20 which were selected for audit examination.

The year-wise Pr.CIT-wise break-up of cases of provisional attachment under Section 281B invoked by the respective assessing units that were selected for Audit is given in Table No. 02 below:

Table No. 02: Details of number of cases selected for Provisional Attachment – Central Commissionerate-wise					
Pr.CIT Jurisdiction	No. of AOs	No. of 281B cases (FY wise)			
		2017-18	2018-19	2019-20	Total
(1)	(2)	(3)	(4)	(5)	(6)
Pr.CIT (Central)-1, Delhi	4	4	2	5	11
Pr.CIT (Central)-2, Delhi	4	20	9	1	30
Pr.CIT (Central)-3, Delhi	6	4	11	26	41
Pr.CIT (Central), Bhopal	2	5	21	0	26
Pr.CIT (Central)-1, Kolkata	3	0	2	5	7
Pr.CIT (Central)- 2, Kolkata	1	0	0	6	6
Pr.CIT (Central)- 1, Mumbai	4	5	2	2	9
Pr.CIT (Central)- 3, Mumbai	5	11	1	0	12
Pr.CIT (Central)- 4, Mumbai	4	5	6	5	16
Pr.CIT (Central)- 1, Chennai	6	9	13	12	34
Pr.CIT (Central)- 2, Chennai	4	3	13	18	34
Pr.CIT (Central), Kochi	2	3	4	0	7
Pr.CIT (Central), Bengaluru	10	13	3	14	30
Pr.CIT (Central), Hyderabad	7	4	3	18	25
Pr.CIT (Central), Visakhapatnam	2	3	5	0	8
Pr.CIT (Central), Ahmedabad	5	20	9	4	33
Pr.CIT (Central), Rajasthan	1	0	3	0	3
Pr.CIT (Central), Chandigarh	2	4	14	4	22
Total	72	113	121	120	354

2.4 Audit methodology

(i) An entry conference was held by the Lead Office with the jurisdictional Pr. CIT (Central) during December 2020 wherein the audit objectives and methodology were explained. Audit methodology included capturing of data in audit checklists and collection of requisite information through audit requisitions along with questionnaire during field audit.

(ii) The draft SSCA report was issued to the Ministry on 10 June 2022. Replies on the audit recommendations and partial replies in respect of illustrated cases were received between July 2022 and September 2022. An Exit Conference was held on 28 September 2022 with the Ministry to discuss

⁷ New Delhi, Madhya Pradesh, Chhattisgarh, West Bengal, Maharashtra, Tamil Nadu, Kerala, Karnataka, Goa, Telangana, Orissa, Gujarat, Rajasthan and Chandigarh.

the issues incorporated in the Report and replies received from the Ministry. Response of the Ministry was suitably incorporated in the Report.

2.5 Non-production of records

Out of the 354 cases, records in respect of provisional attachment process under Section 281B pertaining to four cases (three cases assessed in Central Circle-1, Bhubaneswar under Pr.CIT (Central), Visakhapatnam charge and one case assessed in Central Circle 6(1), Mumbai under Pr.CIT (Central)-3, Mumbai charge) were not produced to Audit. Further, out of four non production cases, three cases in respect of Central Circle-1, Bhubaneswar under Pr.CIT (Central), Visakhapatnam charge, only part of information was provided in July 2022 much after the completion of field audit. Case-wise details are given in **Appendix 4A**.

Audit also requisitioned extract of the Appraisal Reports⁸ in these cases containing information relating to unaccounted/undisclosed income found during search and details of properties owned by the assessee that could be provisionally attached. However, the AOs did not make available extract of the Appraisal Reports in respect of 217 out of the audited 350 cases as detailed in **Appendix 4B**.

2.6 Acknowledgement

We acknowledge the cooperation of the Income Tax Department in facilitating the audit by providing the necessary records and information related to the conduct of SSCA, excepting the production of records relating to provisional attachment in certain cases under Section 281B and Appraisal Reports (stated in Para 2.5 *ibid*). On this account, Audit was constrained in examining the extent of compliance in these cases.

⁸ An appraisal report is a report which contains the investigation proceedings of the assessee. The concerned officer sends the appraisal report along with the seized material to the assessing officer who starts the assessment proceedings.

CHAPTER 3

Processing, Execution and Impact of Provisional Attachment orders

This chapter discusses the detailed audit findings on the outcome of provisional attachment as well as the processes envisaged for Assessing Officers (AOs) regarding forming an opinion to provisionally attach property of an assessee, issuance of the provisional attachment order and notification of the attached property to the concerned Authorities⁹ with whom the assessee's property is registered.

Audit of the provisional attachment cases involved an evaluation from both an outcome and a process perspective. While the outcome was determined by the extent of recovery of tax dues, the process rigour was evaluated by the extent of adherence to envisaged provisions and further by the extent of its documentation on record. While the extent of adherence to processes partly influenced the ultimate outcome, Audit also observed cases where tax dues were recovered even without full adherence to envisaged processes.

Audit observed that there was no prescribed format for the Provisional Attachment orders. Due to absence of a prescribed format, the Provisional Attachment orders varied widely both in their format and extent of information. Out of the 350 audited cases, in 47 cases (14.3 *per cent*), there was no reference to prior approval of Pr.CIT (Central). The validity period was not mentioned in 128 cases (36.6 *per cent*); in none of the audited cases, estimated tax liability was recorded. Also, the assessees were not provided with the option of furnishing Bank Guarantee in *lieu* of the attached property in any of the cases, which was not in conformity with the rules.

Audit analysed records¹⁰ relating to 350 provisional attachment cases and observed that in only 23 cases (6.6 *per cent*), there was adequate documentation to provide assurance that the respective AOs had formed their opinion in accordance with the conditions prescribed by the Board *viz.*, reasonable likelihood of the recovery becoming difficult due to 'inadequacy of assets' or 'under exceptional circumstances'. In 208 cases (59.4 *per cent*), standard reasons *viz.*, 'substantial tax demands likely' and 'protection of interests of revenue' were used to invoke provisions of Section 281B. As pointed out in the Bombay High Court order of September 2019, such powers (under Section 281B) can not be exercised merely by repeating the phraseology used in the Section and recording the opinion of the officer

⁹ Authorities empowered under the respective Acts to allow the assessee to dispose of the registered property by way of sale/transfer/gift or to mortgage the same for availing loans there against.

¹⁰ AO's Proposals under Section 281B, Order of approval from Pr.CIT(Central) and order under Section 281B issued by the AO & any file notings.

passing such order that he was satisfied for the purpose of protecting the interest of revenue, it was necessary to do so. In the remaining 119 cases (34 per cent), various other reasons were attributed which were not prescribed by the Board. As such, the basis for forming an opinion to invoke the provisions of provisional attachment was not being adequately established, since sufficient documentation was not brought on record to establish such an opinion, as prescribed.

We observed that in 346 out of 350 audited cases, the order issued under Section 281B was duly notified to the concerned Registering Authorities. However, the notification was inadequate in 189 cases. As a result, the objective of protecting the interests of revenue through provisional attachment remained under achieved. We further observed that in none of the 350 audited cases, the orders under Section 281B were notified to CERSAI. Since the provisional attachment has the potential to get converted into regular attachment *post*-assessment, in cases where the assessee actually defaults in payment of tax demand, notifying the order under Section 281B with CERSAI would ensure securing the interests of revenue at an early stage of the assessment proceeding. Failure on the part of AOs to notify the order under Section 281B to CERSAI had the risk of non-prioritisation of recovery of ITD tax arrears in cases where the attached property(ies) are to be liquidated for clearance of the assessee's secured and unsecured dues.

Audit findings both on the outcome of provisional attachment and on the processes followed are elaborated in the subsequent paragraphs and chapters of this report.

3.1 Outcome of Provisional Attachment

The process of provisional attachment is intended to serve as one of the tools for the AOs to ensure that the tax demands raised *post*-assessment are recovered from the concerned assessee. According to Section 156 of the Act, consequent upon passing of any order¹¹ under the Act, the AO shall serve a notice of demand on the assessee in the prescribed form specifying the sum payable. The assessee is required to pay the amount of tax/ interest/ penalty demand raised in the said notice within the time limit specified therein.

From an outcome perspective, Audit examined the *post*-assessment status of the audited sample of 350 provisional attachment cases. Scrutiny assessments were completed in 291 cases as of July 2022 and a net cumulative tax demand of ₹ 12,621.23 crore was raised after considering the effect of rectification orders due to enhancements/ reductions/appeals etc. Of these, based on information furnished to Audit, recoveries of tax have been effected either

¹¹ Order/s passed under Sections 143(3), 147, 153A, 153C, 154, 155, etc. of the Act.

fully/partially in only 103 cases amounting to ₹ 407.09 crore¹² (July 2022), which represented 3.22 per cent of the net tax demand and the balance tax (₹ 12,214.14 crore) was outstanding for various reasons viz. stay of demand, appeals etc. Further, five assesseees accounted for 82.4 per cent (₹ 335.67 crore) of the recoveries from these 103 assesseees. The Commissionerate-wise post assessment details of these 291 cases are given in Table No. 03 below:

Table No. 03: Details of 281B cases where assessments were completed, and tax demand raised and recovery thereagainst					
Pr.CIT jurisdiction (No. of AOs)	No. of scrutiny- completed 281B cases	Cumulative Tax demands raised for all AYs combined (₹ in crore)	Regular taxes paid		Balance tax outstanding (₹ in crore) (As of March 2022)
			No. of cases	Amount (₹ in crore)	
Pr.CIT (Central)-1 Delhi (03)	7	10.08	1	0.5	9.58
Pr.CIT (Central)-2 Delhi (04)	30	3,442.35	10	204.75	3,237.6
Pr.CIT (Central)-3 Delhi (06)	27	429.54	3	1	428.54
Pr.CIT (Central), Bhopal (02)	24	45.8	13	5.83	39.97
Pr.CIT (Central)-1, Kolkata (03)	7	150.3	2	0.13	150.17
Pr.CIT (Central)-2, Kolkata (01)	6	37.14	0	0	37.14
Pr.CIT (Central)-1, Mumbai (04)	9	171.66	1	86.85	84.81
Pr.CIT (Central)-3, Mumbai (05)	11	322.25	4	23.32	298.92
Pr.CIT (Central)-4, Mumbai (04)	16	278.16	3	19.23	258.93
Pr.CIT (Central)-1, Chennai (06)	31	2,158.78	12	3.79	2,155.00
Pr.CIT (Central)-2, Chennai (04)	25	2,353.89	9	11.05	2,342.84
Pr.CIT (Central). Kochi (02)	5	23.7	2	4.31	19.39
Pr.CIT (Central), Bengaluru (10)	27	475.46	15	19.59	455.87
Pr.CIT (Central), Hyderabad (06)	25	756.29	12	8.04	748.25
Pr.CIT (Central), Visakhapatnam (01)	5	51.93	5	13.38	38.55
Pr.CIT (Central), Ahmedabad (05)	25	1,572.80	8	4.36	1,568.44
Pr.CIT (Central), Rajasthan (01)	3	239.7	3	0.96	238.74
Pr.CIT (Central), Chandigarh (02)	8	101.4	0	0	101.4
Total (18 Pr.CsIT – 70 AOs)	291	12,621.23	103	407.09	12,214.14

¹² In 103 cases having cumulative tax demand at ₹ 6,531.33 crore & balance outstanding after this payment was ₹ 6124.24 crore.

Thus, from an outcome perspective, the provisional attachment of properties envisaged to protect the interests of revenue remained largely unfulfilled as the rate of recovery of tax demands was low. Audit, of course, notes that the reasons for non recovery of tax demands would go beyond the use of provisional attachments alone.

Audit findings emerging from evaluation of the provisional attachment orders from a process perspective are discussed in the subsequent paragraphs.

3.2 Format of Provisional Attachment order

According to Section 281B (1) of the Act, the Provisional Attachment order under Section 281B is required to be issued in writing by the AO, during the pendency of the assessment proceedings, for provisionally attaching the property of the assessee, after obtaining prior approval from the prescribed authority¹³ of ITD. Though the provisions of the Act do not prescribe a format for the order under Section 281B, considering that the order under Section 281B serves as the only means of communication between the Income Tax Department and the assessee on the envisaged provisional attachment of property, in Audit's opinion, the order should ideally contain essential information such as reference to prior approval of the prescribed authority, validity period of the order, estimated tax liability and description of the property attached along with value thereof.

The audit findings relating to lack of consistency and absence of essential information in the Provisional Attachment orders are elaborated in the subsequent paragraphs.

3.2.1 Lack of consistency in the orders issued under Section 281B

Audit observed from the 350 audited cases that in the absence of a prescribed format, the orders under Section 281B issued by AOs of different jurisdictions varied widely in their format and in terms of consistency with reference to the extent of information contained in them.

(i) Provisional Attachment orders not containing detailed information:

Out of 350 orders, 300 Provisional Attachment orders issued by all the 18 Central Commissionerates, provided reference to the order number and/or date of the previous approval of the prescribed authority (Commissionerate-wise details vide **Appendix 5**). In 47 cases (vide **Appendix 6A**) of the remaining 50 cases (constituting 14.3 *per cent* of 350 cases) from 10 Central Commissionerates, there was no specific reference to the order number and date of such approval and in three cases pertaining to Central Circle-2,

¹³ The Principal Chief Commissioner of Income Tax (Pr. CCIT), Principal Commissioner of Income Tax (Pr.CIT), Principal Director General of Income Tax (Pr. DGIT) or Principal Director of Income Tax (Pr. DIT).

Bhubaneshwar under Pr.CIT (Central), Visakhapatnam charge, there was no details of such approval found to be on record.

Audit noted that there was no consistency in the provisional attachment order under Section 281B in terms of recording of prior approval of the prescribed authority. Audit further noted that even the provisional attachment orders issued by the same AO were not uniform in terms of requisite information viz. date and order no. of Pr.CIT's approval (**Appendix 6B**). Further, non-recording of the above details in the provisional attachment order rendered these orders non transparent to the assessee and also made them susceptible to legal disputes.

(ii) Variation in content of orders under Section 281B

Audit also analysed orders under Section 281B pertaining to six Central Commissionerates with reference to the extent of variation, as indicated in Table No. 04 below.

Table No. 04: Statement showing variations in orders under Section 281B issued in different Central Commissionerates				
Central Commissionerate charge	Total No. of orders issued under Section 281B	Details recorded in orders under Section 281B		
		Reference to order number and / or date of the prior approval of prescribed Authority	Period of Validity	Value of attached property
Pr. CIT (Central), Ahmedabad	33	33	33	0
Pr. CIT (Central), Bengaluru	30	26	14	06
Pr. CIT (Central), Chandigarh	22	22	22	0
Pr. CIT (Central)-3, Mumbai	11	11	11	01
Pr. CIT (Central)-4, Mumbai	16	10	0	07
Pr. CIT (Central)-2, Kolkata	6	0	0	0
Pr. CIT (Central), Visakhapatnam	5	0	0	0
Sub Total	123	102	80	14

It could be seen from the above table that there was a high degree of variability in the format of the orders under Section 281B adopted by AOs. It is significant to note that in Central Commissionerate charges of Kolkata-2 and Visakhapatnam, none of the elements of essential information was recorded in any of the orders under Section 281B issued, whereas within the charges of Pr.CIT(Central), Bengaluru and Pr.CIT(Central)-4 Mumbai, recording of elements of essential information in the orders under Section 281B were widely varying between different assessment charges. Thus, in the absence of requisite details in the provisional attachment order, the Department as well as the notified authority (refer Para 3.4.1) would not be able to effectively monitor the attached property(ies) to achieve the intended objectives of protecting the interest of revenue.

(iii) Provisional Attachment orders issued without indicating estimated tax liability

Audit observed that out of 350 audited cases, only in seven cases, the AOs had included detailed information *viz.* reference to approval of prescribed authority, validity period, value of property attached etc. in the provisional attachment orders but did not record the estimated tax liability.

One case is illustrated below (the other six cases are detailed in **Appendix 7**):

In the search assessment case of M/s C4 Pvt. Ltd. assessed in Central Circle-2(2), Mumbai under Pr.CIT (Central)-1, Mumbai charge, the assessment proceedings for AY 2011-12 were reopened as the assessee had invested ₹ 2.15 crore in immovable properties and did not file the return of income for the relevant AY. As the assessee had not declared the said investment either in the returns or in the replies to the notices issued to the assessee under Section 142(1), the AO, considering the likelihood of a large demand of tax liability and protection of revenue, issued an order under Section 281B recording the requisite details i.e. undisclosed income and possibility of large additions in the assessed income, the value of the property attached, reference to Pr.CIT (Central)'s approval and the validity date up to which the attachment shall remain in force.

Audit observed that though the AO had mentioned most of the elements of essential information, he did not mention the estimated tax liability in the provisional attachment order, which indicated some lack of transparency in the order from the assessee's view point. Eventually, the re-assessment was completed in December 2018 with no additions to the returned income, and no demand was outstanding. The revocation order for the removal of the provisional attachment of properties was issued in April 2019.

Thus, on account of non-recording of estimated tax liability in the order under Section 281B, while detailed information was included in the order, it was not ascertainable whether the properties those were attached were sufficient for protecting the interests of revenue in the instant case. This did not fulfil one of the basic requirements of the Board's instructions of September 2004.

In the remaining 343 audited cases, however, the information contained in the orders under Section 281B not only varied from order to order but also lacked complete details including estimated tax liability.

In the absence of the complete details in the order under Section 281B, the assessee would not be able to fully comply with the requirements of the Department, especially regarding recovery of tax demands, that would be raised on completion of assessments.

Reply of the Ministry was awaited (October 2022).

In respect of two cases¹⁴ in Central Circle-1(3), Bengaluru under Pr.CIT (Central), Bengaluru charge, a specific audit query (December 2020) was raised that on account of absence of essential information, order(s) under Section 281B were vague and did not adhere to the rule of law. The AO replied (December 2020) that a standard format of Provisional Attachment order was used without, however, elaborating as to how the order that was issued conformed to a standard format of order under Section 281B.

3.2.2 Non-recording of essential information in Section 281B order

From an assessee's perspective, the essential information in a Provisional Attachment order (order under Section 281B) comprising the validity period of the order, estimated tax liability, value of property being attached and the option to execute bank guarantee in *lieu* of the attached property needs to be mentioned.

(i) Non-recording of validity period: Recording of validity period in the order not only serves as vital information to the assessee but also sensitises the concerned authority(ies) to whom the order is notified¹⁵ of the period for which the restriction applies. Audit observed that the validity period of the order was recorded in 222 out of 350 cases and stipulating that the assessee was prohibited from disposing off the attached property during the period. However, out of the remaining 128 cases (36.6 *per cent*), Audit noted that the validity period was not mentioned in 78 cases, and in 50 cases, it was mentioned that the order shall remain valid until further orders, appearing to be open ended and arbitrary, contrary to the legal provisions. One such case is illustrated below:

In the search assessment case of Shri C1 for AY 2012-13 to 2018-19, assessed in Central Circle-2(4), Chennai under Pr.CIT (Central) – 2, Chennai charge, the initial order under Section 281B issued in August 2019, indicated only the name of the assessee and the brief description of the attached property without recording the other essential information including the validity period. While notifying the initial order under Section 281B, the AO had ordered the Bank Managers not to allow the transfer or withdrawal of the money available in the provisionally attached bank accounts, until further direction by the AO.

However, in the absence of recording of validity period of the said order under Section 281B, the direction to the notified authority appeared to be for an indefinite period which was in contravention of the extant provisions of the Act. The order under Section 281B lapsed in February 2020 as per the provisions of the Act and no further extension order was issued, which

¹⁴ M/s. A41 Ltd. and Shri T1

¹⁵ Sub registrar in case of immovable property and Bank authorities, etc. in case of movable properties.

indicated inadequate monitoring of provisional attachment. As a result, the demand of ₹ 3.62 crore raised on completion of scrutiny assessment in December 2019 still outstanding (July 2022) remained unprotected. Reply and the current status of balance tax recovery was awaited from the Ministry/CBDT (October 2022).

Thus, in the absence of specific mention of the validity period of order under Section 281B, there is a risk of inadequate monitoring of the provisional attachment, which may eventually result in defeating the purpose of such provisional attachment.

(ii) Non-recording of estimated tax liability and value of property attached: The Board's instructions of September 2004 specify that the AO shall attach the property of an assessee that would be sufficient to cover the estimated tax liability likely to arise on completion of assessment(s). From an assessee's perspective, it is important to record both the estimated tax liability and value of attached property in the order under Section 281B to demonstrate that the value of property attached is fairly comparable with the value of the tax liability likely to arise on conclusion of scrutiny assessment.

Audit observed that in none of the 350 cases, the estimated tax liability was recorded in the order under Section 281B that was communicated to the concerned assessee. However, in 176 cases, the AOs had indicated either the estimated tax liability or the quantum of undisclosed/unaccounted income in their proposals of provisional attachment under Section 281B to Pr.CsIT/other documents on record *viz.*, office order notings. Further, in cases where only the quantum of undisclosed/unaccounted income had been recorded in the proposals/office notings pertaining to provisional attachment/scrutiny assessments, Audit worked out the estimated tax liability at the basic tax rate of 30 *per cent* (excluding surcharge/cess/interest/penalty) to facilitate comparison of the same with the value of provisionally attached property(ies), wherever available. In cases where the value of the property and /or the estimate tax liability (or at least the quantum of undisclosed income) are not available in the notings, the basis on which the competent authority approved the proposal for provisional attachment is not at all clear.

The value of the property attached was not indicated in 318 cases (91 *per cent*) in the orders under Section 281B. In 32 cases (vide **Appendix 8**) constituting nine *per cent* of 350 audited cases, the value of the property was mentioned, but without recording the estimated tax liability in the related orders under Section 281B. As a result, comparison of the estimated tax liability with the value of property attached was not feasible, including from an assessee's perspective. One case is illustrated below.

In the search assessment case of Shri R20 for AYs 2007-08 to 2013-14, assessed in Central Circle-1(1), Ahmedabad under Pr.CIT (Central), Ahmedabad charge, the order under Section 281B (June 2018) did not record the estimated tax liability and the value of attached property (viz., ₹ 5.83 crore that was indicated in the 281B proposal submitted for Pr.CIT (Central)'s approval). In his submission (July 2018), the assessee contended inter alia, that the AO had failed to estimate the possible demand which may arise out of assessment. The AO replied (July 2018) to the assessee that "as per provisions of Section 281B of the Act, it is not a pre-requisite that the demand should be estimated before making provisional attachment." In reply (June 2021) to an audit query (Feb 2021) on the issue of non-recording of estimated tax liability and the value of the property attached, the AO stated that the tax liability cannot be estimated and that there is no procedure to do so before the completion of the assessment. Further, since provisional attachment is done only on protective basis, fair market value of the attached properties is not required to be established.

The AO's contention is not tenable as the Board's instructions of September 2004 prescribe that 'the assets sufficient to cover the demand in question' which implies estimation of the possible demand that may arise out of assessment for comparison with the value of the attached property to ensure sufficiency thereof. Further, Section 281B(4) provides an option to the AO for referring the provisionally attached property to a Valuation Officer for determining its fair market value. As of February 2021, the assessment proceedings were stayed in this case by the Hon'ble Supreme Court and in the meantime, the provisional attachment lapsed (December 2018) without recovery of tax. The current status of the assessment proceedings was awaited from the CBDT (October 2022).

While the AO may have done due diligence to ensure that property with sufficient value was being attached, absence of sufficient details rendered the order under Section 281B opaque to the assessee as well as to the notified authorities, especially with reference to sufficiency or otherwise of the property attached.

(iii) Option of bank guarantee in lieu of provisional attachment not provided to the assessee: Section 281B (3) of the Act provides for revocation of the order under Section 281B and consequent release of the attached property, in cases where the assessee furnishes a bank guarantee for an amount of not less than the fair market value (FMV) of the property.

Audit noticed that the option of furnishing bank guarantee in lieu of the attached property for an amount equal to the fair market value of the property was not provided to the assessee in any of the 350 audited cases. In the

absence of providing such an option, the Department lost the opportunity of easily securing the interest of revenue without being forced into the cumbersome process of conversion of provisionally attached property for the purpose of adjustment of tax demand arrears. As can be seen in the subsequent findings, the fair market value of the property was not indicated at all in the vast majority of the audited orders, hence making it impossible for the assessee to offer a bank guarantee for a specific amount.

Reply of the Ministry was awaited (October 2022).

The procedure for issuing the said order does not have a provision for giving prior opportunity of hearing to the assessee. Since it is the only means of communication between the Department and the assessee regarding attachment of property in Audit's opinion, it is imperative that a self-contained order is issued by recording all the essential information so that the process of provisional attachment remains fair, objective and transparent. At the same time it would ensure that the primary objective of protecting the interests of revenue is achieved and avoid/minimising litigation for the Department.

Further, Audit compared the extant provisions of the Income Tax Act with the provisions of other Revenue Acts, particularly the recent Central Goods and Service Tax Act (CGST Act), 2017. Rule 159 of CGST Rules, 2017 has prescribed a format of Provisional Attachment order (Form No. DRC-22) containing details such as assessee's name, place of business, type/description of property owned, and restrictions placed on the attached property, whereas no such format is prescribed by the CBDT.

Therefore, a format for provisional attachment order could be devised considering the extant rule provisions of the Act to record all the essential details including the estimated tax liability and the value of the property attached which would not only demonstrate that the value of property attached is fairly comparable with the value of the tax liability likely to arise, but also facilitate the Department as well as the notified authority for effective monitoring of the provisional attachment. It would also enable the concerned assessee for a better and quick compliance. A sample format has been suggested by Audit (**Appendix 9**) for consideration by ITD.

Recommendation No.1:

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

In response, the Ministry stated (July 2022), "The provisions of Section 281B of the Income Tax Act, 1961 do not give any power to prescribe a form or format

of the order. Therefore, any such proforma would only be a non-statutory proforma. However, the suggestion of the audit is noted and the proforma suggested by audit will be considered.”

The provisions of Section 119(1) of the Act provide that the Board may, from time to time, issue orders, instructions and directions to other income tax authorities as it may deem fit for the proper administration of this Act. Thus, the CBDT may consider prescribing a suitable format of the provisional attachment order under Section 281B, so as to ensure uniformity in the application of the extant provisions, reducing arbitrariness, increasing transparency and facilitating the Assessing Officer (AO) as well as assessee for proper compliance to the orders. Audit will await the final outcome of action taken in this regard.

3.3 Formation of opinion to invoke provisional attachment

Section 281B (1) of the Act mandates that for the purpose of protecting the interests of revenue, the AO has to form an opinion as to whether it is necessary to issue a provisional attachment order for attaching any property of the assessee. The legislative intent behind inserting Section 281B in the Act in 1975 was explained (September 1975) by the Board¹⁶ by stating that these provisions shall be invoked in a case where the AO is of the opinion that the assessee may *thwart the ultimate collection of demand* in specified circumstances. The Board vide instructions¹⁷ of September 2004, also emphasised that the provisions of Section 281B are to be *sparingly applied* so as to prevent their indiscriminate use.

The provisions of Section 281B coupled with the instructions of the Board envisage two aspects (a) sparing application of the provisions of provisional attachment and (b) establishing the basis for formation of opinion by the AO. Audit observations on these two aspects of opinion formation are discussed in the following paragraphs:

3.3.1 Extent of use of provisions of provisional attachment

During FYs 2017-18 to 2019-20, 94,921 cases (including block assessments¹⁸) were selected for scrutiny assessments by 72 AOs under the jurisdiction of 18 Central Commissionerates. Further, Audit did not have data/information relating to number of assessees involved in above 94,921 assessment cases which were selected for scrutiny during these periods.

¹⁶ CBDT Circular No. 179 dated 30/09/1975.

¹⁷ CBDT Instruction No.8 dated 02/09/2004.

¹⁸ Section 153A (b), or Section 153C, prescribes that the AO shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which search under Section 132 is conducted and or the relevant assessment year or years.

In these 18 Central Commissionerates, Provisional Attachment orders under Section 281B were invoked in respect of 354 assessees¹⁹ during FYs 2017-18 to 2019-20 which were selected as a total sample for the SSCA. Commissionerate-wise details are given in **Appendix 10**.

Thus, in the absence of data relating to number of assessees which were selected for scrutiny assessments, Audit could not comment on whether the Department had sparingly invoked the provisions of Section 281B or not.

Reply of the Ministry was awaited (October 2022).

3.3.2 Establishment of the basis for opinion formation

To safeguard against indiscriminate use of the provisions of Section 281B, the Board instructed²⁰ (November 2004) that they should be resorted to only in cases *where there is a reasonable likelihood of the recovery becoming difficult due to 'inadequacy of assets' or 'under exceptional circumstances'*. It has also been judicially held in several cases²¹, that the AO's opinion should invariably be based on the apprehension that the assessee is likely to thwart the ultimate collection of demand.

Audit noted that in the case of Society for Integrated Development in Urban and Rural Areas vs Commissioner of Income Tax and Anr [2001] 252 ITR 642 (AP), the petitioner who is an income-tax assessee had filed a writ petition assailing the validity and legality of the order passed by the second respondent, viz. Deputy Commissioner of Income-tax, Circle 4(3), Hyderabad, dated May 29, 2001, made under Section 281B of the Income-tax Act, 1961. Hearing the petition, the Andhra High Court had noted (17/07/2001) that there must be *"reasonable apprehension that the assessee may default the ultimate collection of demand, i.e., likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution. It should not be exercised unless there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of his property with a view to thwarting the ultimate collection of the demand."* This decision was reiterated in a recent judicial decision viz., Shri Abul Kalam vs ACIT, Circle 8(1), Kolkata & Ors (27 January 2020), in which the order under Section 281B was issued on 26/12/2019, attaching the bank account of the assessee and on 29/12/2019 the scrutiny assessment was concluded by the AO by raising a tax demand of ₹ 35.96 crore. In connection with the assessee's petition both against the provisional attachment order and the assessment

¹⁹ Includes 04 Non-production cases referred to in Para 2.5 (viz. Appendix 4A).

²⁰ CBDT Instructions F. No.404/22/2004-ITCC, dated 05/11/2004.

²¹ (i) Abul Kalam vs ACIT, Circle 8(1), Kolkata & Ors – WP 25 of 2020(Calcutta) dated 27/01/2020; (ii) NDTV Ltd. vs DCIT WPC 9120 & 11638 of 2015(Delhi) dated 10/8/2017; (iii) VLS Finance vs Commissioner of Income Tax [2000] 246 ITR 707 (Delhi) dated 03/08/2000; (iv) Raghuram Grah Pvt. Ltd. and Another vs ITO [2006] 281 ITR 147 (All), the Allahabad High Court held (14/12/2005).

order passed by AO, the Calcutta High Court had rejected the Revenue's stand by holding that the *amount of tax being large, and therefore the provisional attachment was resorted to, is not a good enough reason* and if this reason was accepted then in all cases of high demands, provisional attachment would become the norm.

In another judgement²², the Bombay High Court held that the powers under Section 281B are *drastic powers permitting the AO to attach any property of an assessee even before the completion of assessment/ reassessment. Such powers must, therefore, be exercised in appropriate cases for proper reasons. Such powers cannot be exercised merely by repeating the phraseology used in the Section and recording the opinion of the officer passing such order that he was satisfied for the purpose of protecting the interest of revenue, it was necessary so to do.*

Detailed audit findings in this regard are discussed in the following paragraphs:

(i) Cases where opinion was established as prescribed by the Board:

Audit noticed that in 23 cases where the AOs had based their opinion in accordance with the prescribed conditions *viz.*, reasonable likelihood of the recovery becoming difficult due to 'inadequacy of assets' or 'under exceptional circumstances'. Two cases comprising of seven assessees are illustrated below and the remaining cases are shown in **Appendix 11**.

(a) In a group-related search cases of six related assessees *viz.*, Smt. S23, Shri A12, Shri S5, Shri M3, Smt. S26 and Shri M13 assessed for AYs 2010-11 to 2016-17 in Central Circle -1, Mangaluru under the jurisdiction of Pr.CIT (Central) Bengaluru, the AO had recorded his opinion in the proposal under Section 281B that the assessees had objected to the undisclosed income estimated in the Appraisal Report and it appeared that the prospects for recovery of tax may be difficult. As such, there was compliance to the Board's instructions on formation of opinion. In the proposal under Section 281B, the AO indicated the total undisclosed income at ₹ 20.25 crore (against which the estimated tax liability works out to ₹ 6.07 crore calculated at a minimum tax rate of 30 *per cent* excluding surcharge/ cess/ interest/ penalty). The AO issued provisional attachment orders in December 2017. The orders were further extended in June 2018 without indicating the validity period of extension orders. The assessments were completed in 2017 by raising a tax demand of ₹ 21.42 crore. Audit noted (July 2022) that the respective assessees' appeals against the scrutiny assessments were disposed off by CIT (Appeals) / ITAT in their favour resulting in significant reduction in tax demand (aggregating to

²² In the case of Vodafone Idea Limited vs DCIT WP 2036 of 2019 (Bombay) dated 03/09/2019.

₹ 7.01 crore). The current status of the recovery of outstanding tax demand was awaited from the CBDT (October 2022).

(b) In the case of Shri A20 assessed for AYs 2011-12 to 2017-18 in Central Circle-1(4), Chennai under the Pr.CIT (Central)-1, Chennai charge, the AO issued provisional attachment order under Section 281B in May 2018. The AO recorded, *inter alia*, in the proposal under Section 281B that “a proposal dated 21/03/2018 was sent to Pr.CIT (Central)-1, Chennai for launching of prosecution under Section 276C(2) of the Act against the assessee for wilful attempt to evade payment of taxes.” In the proposal under Section 281B, the AO indicated the total undisclosed income at ₹ 91.86 crore (against which the estimated tax liability works out to ₹ 27.56 crore calculated at a minimum tax rate of 30 per cent excluding surcharge/ cess/ interest/ penalty). Thus, the reasons attributed for forming an opinion in the instant case was as prescribed in the Board’s instructions of September 2004 *viz.*, the apprehension that the assessee is likely to thwart the ultimate collection of demand. The order under Section 281B was further extended thrice in October 2018, April 2019 and October 2019 without indicating the period of validity of the order. Audit noted (February 2021) that the search assessments were completed in December 2019 by raising a demand of ₹ 331.32 crore, which was fully outstanding. The current status of the recovery of outstanding tax demand was awaited from the CBDT (October 2022).

(ii) Cases where opinion was not established as prescribed by the Board:

In 206 cases, the concerned AOs had proposed provisional attachment of assessee’s property by recording the following two standard reasons:

- Substantial demand is likely to be raised on completion of search-related assessments.
- To protect the interest of revenue

Audit noted that in two other cases discussed below the AO also had recorded the reason as assessee not declaring the admitted income in their return of income filed in response to *post*-search notice.

While the first standard reason is usually prevalent in all search cases as it is an essential feature to carry out the search, the latter reason is the primary objective of the Income Tax provisions and is an intrinsic part of AOs’ responsibility towards any and all assessment proceedings. As such, the AOs attributing these standard reasons for provisional attachment was not in conformity with the Ministry/CBDT’s instructions²³. The Commissionerate-wise details of all these 350 cases are given in **Appendix 12**.

²³ No. 8 of 2004 dated 02/09/2004

In the search assessment cases of Shri V1 and M/s. C16 Ltd. for AYs 2011-12 to 2018-19 assessed in Central Circle-1(3), Bengaluru under Pr.CIT (Central), Bengaluru charge, provisional attachment orders were issued after approvals of Pr. CIT Central, Bengaluru, in January 2019 on the basis of only generic/standard reasons being recorded for opinion formation. On being pointed out by Audit, the AO replied (December 2020) that there were extraneous reasons viz., (a) assessee not declaring the admitted income in its return of income filed in response to *post*-search notice, (b) newspaper reports that the assessee was attempting to dispose of a high value property for which no prior permission of the Department was sought as prescribed²⁴ and (c) one of their group companies was a regular tax defaulter. The AO further stated that these were the *exceptional circumstances* that were considered for invoking the provisions of Section 281B. However, Audit observed that the reasons mentioned at (b) and (c) above were not found on the records provided to Audit.

(iii) In the remaining 119 cases, Audit noted that apart from standard reasons *ibid*, the AOs recorded certain additional reasons in the respective proposals of provisional attachment under Section 281B, as detailed in Table No. 05 below:

Description of additional reasons recorded (Opinion Formation)	Total number of 281B cases	Total estimated tax liability (₹ in crore)	Total value of property(ies) attached (₹ in crore)	Number of cases in different ranges of Estimated Tax Liability				
				Less than ₹ 10 crore	₹ 10 crore and upto ₹ 50 crore	More than ₹ 50 crore and upto ₹ 100 crore	More than ₹ 100	Not available
Assessee objecting to the estimated income quantified by the Investigation Wing during search and seizure proceedings.	08	0.57	Not available	01	--	--	--	07
For preventing assessee from parting with his/her property/s	29	72.81	36.39	12	02	--	--	15
Seized material insufficient to cover likely demand	06	80.26	Not available	02	04	--	--	--

²⁴ Under Section 281 of IT Act – After commencement of any proceedings under the Act, the assessee shall seek jurisdictional AO's permission for disposing off any owned property by way of transfer, sale, gift, mortgage, etc.

Table No. 05: Statement showing analysis of additional reasons recorded for invoking 281B provisions								
Description of additional reasons recorded (Opinion Formation)	Total number of 281B cases	Total estimated tax liability (₹ in crore)	Total value of property(ies) attached (₹ in crore)	Number of cases in different ranges of Estimated Tax Liability				
				Less than ₹ 10 crore	₹ 10 crore and upto ₹ 50 crore	More than ₹ 50 crore and upto ₹ 100 crore	More than ₹ 100	Not available
Specific recommendation of provisional attachment received from Investigation Wing	06	16.50	77.23	06	--	--	--	--
Various indications of 'non-cooperation' by the assessee	68	599.79	290.77	43	08	03	--	14
Ongoing civil/criminal proceedings against the assessee.	02	2,105.01	Not available	--	--	01	01	--
Total	119	2,874.94		64	14	04	01	36

As could be seen from the table *ibid*, in the maximum number of cases (68 having a cumulative estimated tax liability of ₹ 599.79 crore), the additional reasons attributed for invoking provisions of Section 281B were non-cooperation of the respective assessee in completing the investigation/assessment proceedings such as assessee not responding to various notices issued by the AOs; assessee retracting from the statements made during the course of search investigations; assessee not declaring the undisclosed income that was admitted during search investigations and so on. Significantly, the highest value of estimated tax liability (₹ 2,105.01 crore which was 73.2 per cent of the total estimated tax liability of all 119 cases) was found in two cases where civil/criminal cases were pending against the assessee²⁵ and these reasons were attributed for invoking provisions of Section 281B against their cases.

In the absence of specific criteria being fixed by the Board, Audit could not comment whether the above reasons could be treated as exceptional circumstances attracting provisions of Section 281B and could stand legal scrutiny also.

²⁵ ₹ 2,042 crore in respect of Smt.V2 in Central Circle-2(2), Chennai [Pr.CIT(Central)-2, Chennai charge] and ₹ 63.01 crore in respect of Shri A44 in Central Circle-28, Delhi [Pr. CIT (Central)-3, Delhi charge].

Thus, in 327 cases²⁶ (93.4 per cent), neither the proposal for provisional attachment nor the consequential provisional attachment order gave a clear indication that the AOs had established their opinion in the manner prescribed by the Ministry/CBDT.

Audit also raised (December 2020 - March 2021) a specific query regarding the establishment of opinion based on reasonable likelihood of the recovery becoming difficult in all the audited cases. In 113 cases in six Central Commissionerate charges (**Appendix 13**), the concerned AOs reiterated (December 2020 – June 2021) that only the standard reasons formed the basis for invoking the provisions of Section 281B.

Audit, however, did not find the responses of AOs in consonance with the prescribed norms, which were also judicially upheld. The reasons stated by AOs were generic in nature and did not establish the basic premise of the 'likelihood of recovery becoming difficult'. Further, provisional attachment of a property/asset may result in the disruption of the business of a going concern, thereby making it difficult to recover the demand likely to be raised after completion of an assessment. The Bombay High Court also stated provisional attachment is a drastic power permitting the Assessing Officer to attach any property of an assessee even before the completion of assessment or reassessment. These powers are thus in the nature of attachment before judgment. They have provisional applicability and, in terms of sub-section (2) of Section 281B of the Act, a limited life. Such powers must, therefore, be exercised in appropriate cases for proper reasons. Such powers cannot be exercised merely by repeating the phraseology used in the section and recording the opinion of the officer passing such order that he was satisfied for the purpose of protecting the interest of revenue, it was necessary to do so. Therefore, powers under this provision must be exercised judiciously and after due application of mind.

Further, Audit compared provisions of the Income Tax Act with that of other Revenue Acts, particularly the recent Central Goods and Service Tax Act (CGST Act), 2017. Section 83 of the CGST Act prescribes that "*Opinion should be such that Taxable person shall not be available for recovery after the demand order has been issued*", by duly including a clear definition of the criteria, viz., if the assessee is a "*fly-by-night*" operator, habitual offender or does not have means to pay the dues that may arise upon assessment, or he is going to default.

²⁶ Excluding 23 cases discussed in the earlier part of the Paragraph, in which AO's opinion was as per prescribed norms.

Considering, the range of reasons cited in the audited orders, existing norms²⁷ for categorising outstanding demand cases and the provisions of CGST Act, a suggestive (but not all inclusive) list of exceptional circumstances which need to be established as giving rise to the 'reasonable likelihood of the recovery becoming difficult' is given in **Appendix 14**, which the Ministry/CBDT may suitably consider for adoption.

Recommendation No.2:

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

In response, the Ministry stated (July 2022) inter alia, that Provisional attachments are made as per the provisions of Section 281B of the Income-tax Act which is as under: "281B (1) – [or for imposition of penalty under Section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said Section exceeds two crore rupees]²⁸". Hence, whenever the Assessing Officer, being a quasi-judicial authority is of the opinion that to protect the interests of revenue provisional attachment is needed, such attachment is made with the prior approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner. Principal Director General or Director General or Principal Director or Director, as the case may be. The legislative intent of the provision is that by provisionally attaching the assets for the specified time in suitable cases, the assessee is prevented from thwarting the ultimate collection of tax demand. As there are elaborate checks and balances embedded in the provisions itself, any further restriction on the action of AO is likely to defeat the legislative intent. Further, determining the exact tax liability at the stage of provisional attachment may not be possible and also may result in unnecessary litigation.

Audit noted that Section 281B was amended by the Finance Act, 2021 with effect from 01/04/2021 to include a specific circumstance with reference to penalty provisions under Section 271AAD. Through this amendment, the Act has facilitated the AOs to invoke the provisions of Section 281B in one of the defined circumstances, which is partially in line with the Audit recommendation. However, the fact remains that the term 'Exceptional circumstances' referred to in the Board's Instructions No.08 dated 02/09/2004 is yet to be defined or clarified, e.g. through examples, so as to fully achieve the

²⁷ Under Clause 9 of Central Action Plan -I (CAP-I) Statement detailing AO-level monthly outstanding Tax Demand & Collection for submission to higher authorities upto the Board.

²⁸ Sub-Section (1) of Section 281B was amended by the Finance Act, 2021 with effect from 01/04/2021.

intended objectives of the extant provisions. As a result, the provisions of Sections 281B were invoked in the majority of audited cases on the basis of standard reasons, viz., 'protecting the interests of revenue' and 'likelihood of substantial tax demands after assessments' by the AO which was not in consonance with the Board's instructions and was also not consistent with the Bombay High Court's order of September 2019 that such powers cannot be exercised merely by repeating the phraseology used in the Section and recording the opinion of the officers passing such orders that he was satisfied for the purpose of protecting the interest of revenue, it was necessary to do so. Audit is of the opinion that broadly clarifying or illustrating the exceptional circumstances (as suggested by Audit in Appendix 14 of the Report) would facilitate the AOs in forming the opinion for invoking the provisions of provisional attachment, and it would also be consistent and legally sustainable. The Ministry may reconsider its reply.

3.4 Notification of Provisional Attachment order to the concerned authorities

The Provisional Attachment order issued under Section 281B is notified to the concerned authorities, comprising of the registering authorities and CERSAI,²⁹ to secure the interest of revenue so as to restrain assessee 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 analysed the extent to which the AOs adhered to the process of notifying the concerned authorities and the results are discussed in the following paragraphs.

3.4.1 Notification of Provisional Attachment order to Registering Authorities

Various authorities are empowered under the respective Acts to allow the assessee to dispose of the registered property by way of sale/transfer/gift or to mortgage the same for availing loans there against. For instance, immovable property belonging to an assessee is registered with the jurisdictional Sub-Registrar Office under the State Government's Department of Stamps and Registration, movable property with the respective authorities e.g. fixed deposits and other financial instruments with the Banking Authorities, stocks and shares with the recognised Stock Exchange/registered brokers, vehicles with the Regional Transport Authority and insurance policies with Insurance Companies. Since the assessee's property is provisionally attached for a specified period as prescribed under Section 281B, it is imperative that the concerned authorities are notified of the same

²⁹ Central Registry of Securitisation Asset Reconstruction and Security Interest of India

in a timely manner, so that the authorities can take note of the attachment and thwart any attempts of the assessee for disposing off the property during the period of attachment.

The variations in the notifications are described below:

(i) In 157 cases of orders issued under Section 281B by AOs under 10 Central Commissionerates located in six³⁰ stations, the notified Authorities were informed of the provisional attachment of the assessee's property(ies) with a specific request to restrain the assessee from parting with the possession of the attached property during the validity period of the order. Significant cases are illustrated below:

(a) In the search case of Shri N11; for AYs 2011-12 to 2017-18 assessed in Central Circle 1(4), Chennai under Pr.CIT(Central)-1, Chennai charge, the order under Section 281B (22/11/2018) attaching immovable properties (value not indicated) of the assessee against an estimated tax liability of ₹ 232.51 crore, was notified (22/11/2018) to the Sub-Registrar, Sanarpatti, giving details of the survey numbers of the land attached. Audit noticed that the Sub-Registrar responded (22/11/2018) to the said notification by stating that the notification of the said attachment was not possible without knowing the extent of the area under the specified survey numbers. Audit further noticed that there was no response to the Sub Registrar's letter by the AO. The assessment in the case was completed in December 2019 by raising a demand of ₹ 279.04 crore, against which no amount has been recovered, leaving the complete balance outstanding (March 2021).

The Ministry, while partially accepting the observation stated (July 2022), that *"the total extent of the lands 8.62 acres of land under various survey numbers in the name of Shri N11 was clearly mentioned in the 281B attachment order. Moreover, in this case the 281B attachment was made in November 2018 and had expired by February 2019, due to completion of search assessments. Since the 281B attachments were no longer valid as of July 2019, no response was given to the Sub-Registrar's letter dated 25/07/2019. Further the demands were referred to the Tax Recovery Officer and all the above said properties were brought under attachment by the Tax Recovery Officer. The attachment of eight acres and 62 cents of lands covering various survey numbers by the Income tax Department is also reflected in the Encumbrance Certificate (EC) of the Registration Department."*

The reply of the Ministry is partly not tenable on the following grounds that (i) according to Section 281B(2), the validity period of the initial provisional attachment order is upto six months, whether or not it is specifically indicated

³⁰ Bhopal (Raipur Central Range), Chandigarh, Delhi, Jaipur, Visakhapatnam & Mumbai.

in the order. In the instant case, provisional attachment order under Section 281B was issued on 22/11/2018. Therefore, the validity period of initial order was upto 21/05/2019 and not February 2019 as stated by the Ministry; (ii) With regard to no response to the Sub-Registrar's letter dated 25/07/2019, the Ministry stated that the search assessments had been completed and as the provisional attachment were no longer valid as of July 2019, no response was given to the said letter. However, as per available documents, the search assessments were completed only in December 2019 (i.e., seven months after the expiry of the order under Section 281B). Thus, not extending the validity period of the attachment order till sixty days after the completion of assessments as prescribed by the AO was not in conformity with provisions of Section 281B and/or the CBDT's extant instruction.

(b) In the search assessment case of Smt. M11 for AYs 2011-12 to 2017-18 assessed in Central Circle-8(1), Mumbai under Pr.CIT (Central)-4 Mumbai charge, the order under Section 281B (30/08/2018) attaching immovable properties (valuing ₹ 6.35 crore) of the assessee against an estimated tax liability of ₹ 14.58 crore (calculated by Audit) was notified to the concerned Sub-Registrars³¹. The AO requested them via order under Section 281B *"not to allow to create charge on, or part with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever in respect of the above properties."* Audit noticed that the assessment was completed in December 2018 by raising a demand of ₹ 0.98 crore, against which no amount was recovered leaving the whole balance outstanding (December 2020). The current status of recovery of outstanding tax demand was awaited from the CBDT (October 2022).

Thus, even though the properties were attached and properly notified to the concerned authorities, the Department failed to make use of it and allowed the order under Section 281B to lapse without recovery of tax.

(c) In the search assessment case of Shri A44 for AYs 2009-10 to 2018-19 assessed in Central Circle-28, Delhi under Pr.CIT (Central)-3, New Delhi charge, the AO issued the order under Section 281B (27/11/2019) to the Joint/Sub-Registrar, Noida, UP & Sub-Registrar, Nuh, Mewat with a further direction that non-compliance of the said restraining order by AO would place the notified Authority with a personal liability to the extent of tax dues of the assessee and recovery proceedings initiated as per law. The response from the concerned authority was not found on record in the file produced to Audit. The assessment in the case was completed in December 2019 by raising a demand of ₹ 133.08 crore, against which no amount was recovered leaving the full

³¹ Ambavadi, Ahmedabad; Mumbai City-1; Mumbai City-2; and Lonawala and Secretaries (Kanchandeeep Apartment, Ambavadi, Ahmedabad; and Navshantinagar CHS Limited, Malabar Hill, Mumbai)

balance outstanding (March 2021). The current status of recovery of outstanding tax demand was awaited from the CBDT (October 2022).

Thus, even though the order under Section 281B was issued to the concerned authority, the Department did not recover the demand and allowed the order under Section 281B to lapse without recovery of tax.

(ii) In 189 cases of orders issued under Section 281B by AOs under nine Central Commissionerates in seven³² stations, the notification was merely for information without any specific directions for statutory enforcement and responsibility.

(iii) In three of the remaining four cases, the orders under Section 281B were not notified at all to the Registering Authorities i.e., the Sub-Registrar Officer (two cases) and the Bank Manager (one case) and consequently the Authorities were not statutorily bound to restrain the assessee from disposing off the attached property. In the remaining one case, the AO attached the Income Tax (IT) Refund due to the assessee, and as the IT refund is within the control of the Department, no notification of the order was issued by the AO. Three cases are illustrated below:

(a) In the search assessment case of M/s. P25 Pvt. Ltd. for AYs 2008-09 to 2011-12 assessed in Central Circle, Panaji under Pr.CIT (Central), Bengaluru charge, the AO issued provisional attachment order on 20/12/2017 in respect of movable property viz., Fixed Deposits (FD) (valuing ₹ 15.67 crore) but did not notify the same to the concerned Banking Authority. Audit noticed that the provisional attachment was first issued by AO on 27/12/2016 during regular assessment for the same FD and further extended on 23/06/2017 with a validity upto 31/12/2017. Audit further noticed that the order under Section 281B issued in December 2017 was further extended twice in June 2018 and December 2018 as the assessment proceedings were pending on account of stay granted thereagainst by the Hon'ble High Court of Mumbai in Goa. Audit also noticed that the said FD had matured on 13/12/2017. As a result of non-notification to the concerned authority as well as maturity of FD, the provisional attachment was not protecting the interests of revenue because of the risk of encashment of the same by the assessee. Audit noted (July 2022) that the assessment proceedings were subsequently quashed by the Hon'ble High Court and further an SLP has been filed before the Supreme Court by the Department, which was pending (July 2022).

(b) In the search assessment case of Shri B2 for AYs 2012-13 to 2018-19 assessed in Central Circle-2(3), Bengaluru under Pr.CIT (Central), Bengaluru charge, the AO issued provisional attachment order on 10/12/2019, for

³² Ahmedabad, Bengaluru, Bhopal (Gwalior Central Range), Chennai, Hyderabad, Kochi and Kolkata

attaching the assessee's four immovable properties (valuing ₹ 2.88 crore) against the estimated tax liability of ₹ 5.26 crore (calculated at 30 *per cent* of the undisclosed income of ₹ 17.54 crore estimated by Investigation Wing), without notifying the concerned Sub- Registrar Officer. The assessment was completed in December 2019 raising a demand of ₹ 6.51 crore. There was no evidence relating to extension of provisional attachment order in the records provided to Audit after its expiry in May 2020. Audit noted that the entire demand was pending (December 2020). The assessee had filed an appeal before CIT(Appeals) against the assessment orders on 21/02/2020, which was pending (July 2022). As the provisional attachment order was not notified to the concerned authority, the purpose of the said attachment remained unfulfilled.

Reply of the Ministry was awaited (October 2022).

(c) In the search assessment case of Shri R19 assessed for AYs 2011-12 to 2017-18 in Central Circle-6(4), Mumbai under Pr.CIT (Central)-3, Mumbai charge, the order under Section 281B was issued (08/12/2017), with further extensions (08/05/2018 and 02/11/2018), for attaching the Income Tax (IT) Refund (₹ 15.07 crore) due to the assessee against the estimated tax liability of ₹ 47.64 crore (calculated at 30 *per cent* of the undisclosed income of ₹ 158.80 crore that was indicated in the order under Section 281B). Hence, no notification of the order was considered necessary or made by the AO. However, there was nothing on record to indicate that the AO had made efforts to ascertain the details of other assets in the possession of the assessee. Since, the IT refund was within the control of the AO, there was no apprehension that the assessee would attempt to dispose of the said "property" *viz.*, IT refund and as such there was no justification for attachment of the same. Audit observed from the details furnished by the assessee in his Income Tax Returns (ITR) filed (August 2016) for AY 2016-17, the assessee possessed other assets aggregating to around ₹ 10 crore (*viz.*, building worth ₹ 9 crore and movable assets such as jewellery and vehicles valuing about ₹ one crore) but there was nothing on record to suggest that the AO had considered these assets for attachment before selecting the IT refund for provisional attachment. As on the date of Audit (February 2021), the assessment was completed (28/12/2018) by raising a demand of ₹ 93.84 crore), against which ₹ 20.85 crore was recovered leaving a balance of ₹ 72.98 crore outstanding. However, in the absence of the source of tax recovery, reasons for pendency of balance tax and action taken by AO for its recovery, Audit could not ascertain the current status of the case (July 2022).

Reply of the Ministry was awaited (October 2022).

Thus, despite the fact that the AOs had notified the provisional attachment order to the concerned authority, in the majority of the audited cases, the contents of such notification were not uniform, consistent and adequate. In 56 *per cent* of the audited cases, no specific direction to the notified authority(ies) was given. In the absence of specific direction to the notified authority, the purpose of notification of the provisional attachment order was not fully addressed.

Audit noted that as per Rule 159 of the Central Goods and Services Tax (CGST) Rules 2017, where the Commissioner decides to attach any property, including bank account in accordance with the provisions of Section 83 of CGST Act, 2017, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached. Further, the Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on written instructions from the Commissioner to that effect.

Therefore, there is a need for a formal mechanism to be in place for notifying the provisional attachment order to the concerned authority(ies) on the lines of Rule 159 (Form GST DRC-22) under Section 83 of CGST Act, 2017.

Reply of the Ministry was awaited (October 2022).

3.4.2 Notification of order under Section 281B to CERSAI

According to Section 26-B (4) of the SARFAESI Act³³, it is mandatory for the secured creditors³⁴ and other creditors to file with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), any order or attachment of any property issued by every authority or officer of Central/State Government or local authority entrusted with the function of recovery of tax or other Government dues. CERSAI is a central online security interest registry of India, created under the SARFAESI Act to check frauds in lending against equitable mortgages, in which people would take multiple loans on the same asset from different banks. Filing with CERSAI also enables the lender and revenue authorities to secure precedence over the asset, which is of interest to multiple lenders/ revenue authorities. In this connection, the Board instructed (September 2017)³⁵ all its field formations to notify CERSAI of any attachment order already issued by endorsing a copy of the same so that

³³ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

³⁴ Section 2 (zd) (i) of SARFAESI Act defines "Secured creditor" as any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in Section 2 (l) thereunder.

³⁵ Instructions from the Board's Directorate of Income Tax (Recovery & TDS) vide letter dated September 06, 2017.

not only the value of the attached property remains intact but also the rights of the Department over the attached property remains at the top.

Audit observed that in none of the 350 audited cases, the orders under Section 281B were notified to CERSAI which was a clear violation of CBDT's direction. Since the provisional attachment has the potential to get converted into regular attachment *post*-assessment, in cases where the assessee actually defaults in payment of tax demand, notifying the order under Section 281B with CERSAI would ensure security of the interests of revenue at an early stage of the assessment proceeding. Failure on the part of AOs to notify the order under Section 281B to CERSAI had the risk of non-prioritisation of recovery of ITD tax arrears in cases where the attached property(ies) are to be liquidated for clearance of the assessee's secured and unsecured dues.

In reply to a specific Audit query (February 2021) on the issue, the AOs in-charge of Central Circles-1(1) to 1(4), Chennai under the jurisdiction of Pr.CIT (Central)-1, Chennai stated (March 2021) that *"the attachment under Section 281B is only a provisional attachment to protect the interest of revenue, in the event of any demand made in future. In the real sense, it is not an attachment to recover the tax dues of the assessee. If any attachment is made by the Department to recover the dues, the same would be filed before the Central Registry (CERSAI)."* The reply of the AO is not tenable since this is not in conformity with the Board's instructions of September 2017, which envisages notification of attachment orders to CERSAI. In addition, non-notification to CERSAI prevented the Department from securing the priority of tax arrears recovery over other secured/unsecured creditors of the assessee.

Thus, due to non/inadequate notification to the concerned Authorities, the objective of protecting the interests of revenue through provisional attachment would remain unfulfilled.

Recommendation No.3:

(i) The CBDT may consider issuing a comprehensive SOP for provisional attachment, including notification of Provisional Attachment order under Section 281B to the concerned authorities to ensure uniformity in implementation of relevant provisions of the Act and to protect the revenue of the Government.

In response, the Ministry stated (July 2022) that the CBDT has issued various instructions e.g., Instruction No. 1884 dated 07/06/1991, Instruction No. 8 dated 02/09/2004 and Instruction in F. No.404/22/2004-ITCC dated 05/11/2004. The legislative intent of the provision is that by provisionally attaching the assets for the specified time in suitable cases, the assessee is prevented from thwarting the ultimate collection of tax demand. As there are

elaborate checks and balances embedded in the provisions itself, any further restriction on the action of AO is likely to defeat the legislative intent.

The Ministry reply is not in line with the audit recommendation, since it never intended putting restrictions on the AO. Rather, issuing an SOP would facilitate the AO in adequately complying with the provisional attachment order adequately. As could be seen in more than 50 per cent of audited cases (refer para 3.4.1), the notification to the concerned Authorities was either made without specific directions for making note of the provisional attachment in their records or varying directions were given to the notified authorities in respect of provisionally attached property resulting in non fulfilment of the objective of protecting the interests of revenue to that extent. Further, the CBDT may consider reiterating instructions and monitor compliance to the provisions and instructions. The Ministry may reconsider its reply.

(ii) The CBDT may make it mandatory to notify the provisional attachment orders under Section 281B to the concerned Authorities, including CERSAI, with specific directions to the Authorities for making note of the provisional attachment and to monitor the assessee's compliance to the directions issued therein.

In response, the Ministry stated (July 2022) that in this regard, instruction in F. No. I (380)/DIT(R)/SARFAESI/17-18/669 dated 06/09/2017 has already been issued by DIT (Recovery & TDS).

Audit noted that though the instruction was issued by the Board in September 2017, it was not complied with by the AOs, particularly in the case of notifying CERSAI. Audit further noted that where the AOs notified the other concerned Authorities, complete details and action proposed to be taken by those Authorities were often not communicated in a timely manner. Furthermore, one of the AOs replied that the said Board's instructions were not applicable to provisional attachment. Thus, the CBDT may reiterate the extant instructions, clarifying the applicability to provisional attachments and also ensure that the extant instructions are being complied with.

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 assessees, selection of the type of assets for attachment, verifying ownership/title of the assets by the assessees 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 assessees 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 assessees 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 assessees 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 assessees 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.

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 assessees of M/s. D16 Group comprising of 14 assessees *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 assessees' 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 assessees' 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 assessees' properties did not prove to be effective in protecting the interest of revenue, as the potential risk of assessees 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 assessee 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 assessees 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 assessees. 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

APPENDICES

Appendix 1 (Refer Chapter - 1)

Gist of relevant provisions of the Act/Rule

Section/ Rule	Contents/Summary
Section 281B of the Income Tax Act, 1961.	
Sub-Section(1)	Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
Sub-Section(2)	Prescribes the <u>time limit of six months</u> for the currency of such provisional attachment, extendable for a maximum period of two years or sixty days⁷⁵ after the conclusion of the assessment , whichever is later.
Sub-Section(3)⁷⁶	Provisional attachment can be revoked by the Assessing Officer (AO), in writing, if the assessee furnishes a bank guarantee for an amount not less than FMV of the property.
Sub-Section(4)	The AO can refer the provisionally attached property to the specified Valuation Officer for determining FMV of the same, who shall submit a report within 30 days from receipt of reference.
Sub-Section(5)	Revocation order to be passed within 45 days from the receipt of bank guarantee in cases where reference is made to the Valuation Officer and 15 days in other cases.
Sub-Section(6)	Bank guarantee may be invoked to recover whole or partial tax demand, if the assessee fails to pay the same within the time specified in demand notice.
Sub-Section(7)	Bank guarantee shall be invoked in cases where the assessee fails to renew the existing bank guarantee or fails to furnish a fresh bank guarantee, within 15 days before its expiry.
Sub-Section(8)	The amount realized by invoking the bank guarantee shall be adjusted against the existing demand payable by the assessee and balance amount shall be deposited in PD account of Pr.CIT.
Sub-Section(9)	The bank guarantee may be released, where the AO is satisfied that the same is no more required to protect the interests of the revenue.
Second Schedule of the Income Tax Act, 1961 (applicable Rules)	
Rule 1 (d)	Definitions: "Movable property" includes growing crops.
Rule 10	Property exempt from attachment.
Rule 12	Removal of attachment on satisfaction (<i>viz.</i> , payment of amount due alongwith costs and all charges & expenses resulting from the attachment).
Rule 25	Provisions as to agricultural produce under attachment.
Rule 26	Attachment of debts and shares, etc.
Rule 27	Attachment of decree.
Rule 28	Share in movable property
Rule 30	Attachment of negotiable instrument.
Rule 31	Attachment of property in custody of court or public officer.
Rule 32	Attachment of partnership property.
Rule 48	Attachment of immovable property

⁷⁵ Inserted by the Finance (No.2) Act, 2014 w.e.f 01/10/2014.

⁷⁶ Sub-Sections (3) to (9) of Section 281B inserted by the Finance Act, 2016, w.e.f. 01/06/2016.

Section/ Rule	Contents/Summary
Other relevant provisions of the Act	
Section 132 (1) / (4) / (9B)	Empowers an authorised Officer of the ITD's Investigation Wing to conduct search and seizure operations on a particular group of assessees, based on the information received regarding likely concealment of income, record statements of the assessee and also provisionally attach assessee's property for a period upto six months.
Section 245C	Allows an assessee to file application before the Income Tax Settlement Commission (ITSC) for settlement of pending assessment cases, if any.
Section 143(3) r.w.s. 153A/153C	Scrutiny assessments in Search and Seizure cases.

Appendix 2

(Refer: Chapter - 1)

Gist of Circulars / Instructions issued by Ministry/CBDT pertaining to Provisional Attachment

Sl. No.	Circular/ Instructions	Contents
1	Circular No.175 dt. 14/08/1975	New Sec.281B inserted vide Taxation Laws (Amendment) Act, 1975.
2	Circular No.179 dt. 30/09/1975	Explanatory notes on the provisions coming into force w.e.f 01/10/1975 – W.r.t Sec.281B of IT Act, 1961 (vide Sec.74 of Amendment Act, 1975).
3	Instruction No.1884 dt. 07/06/1991	The Board desire that the Assessing Officers should always bear in mind the provisions of the aforesaid Section and resort to provisional attachment in all suitable cases.
4	Instruction No.8 dt. 02/09/2004	Steps to secure recovery of demand in high demand cases: (a) Monetary limits (Metros & non-metros); (b) Conversion of Provisional Attachment to regular Attachment under Section 222 / 226; (c) Details of assets to be noted by AOs (& also in the Appraisal Reports by Inv. Wing Officers in search & seizure cases); (d) to comment on Provisional Attachment by Pr.CsIT in their periodical review of scrutiny cases.
5	Instruction F. No. 404/22/2004-ITCC, dt. 5/11/2004.	Clarification to Instruction.No.8 of 02/09/2004 – Provisions of Sec.281B to be resorted to only in cases where there is a reasonable likelihood of the recovery becoming difficult due to inadequacy of assets . In other cases, exceptional circumstances should warrant the same.
6	Circular No.01 dt. 21/01/2015.	Explanatory Notes to provisions of Finance Act, 2014 w.e.f. 01/10/2014 –Amendment to Proviso under Section 281B (2) – Extension of period of provisional attachment to a maximum of two years or upto sixty days after the date of assessment or reassessment, whichever is later .
7	Circular No.03 dt. 20/01/2017.	Explanatory Notes to provisions of Finance Act, 2016 w.e.f. 01/06/2016 –Insertion of sub-Sections (3) to (9) under Section 281B – (a) Provision of Bank Guarantee in lieu of revocation of provisional attachment, reference to Valuation Officer to determine Fair Market Value of attached property, invoking BG in cases of default in payment of tax demand, non-renewal or non-submission of BG afresh and release of BG; (b) Omission of <i>Explanation</i> under Section 281B(1) reg. applicability of Sec.281B only to assessment proceedings under Section 132(5).
8	Ltr. from Directorate of Income Tax (Recovery & TDS) to all Pr.CCsIT dt. 06/09/2017	Changes in SARFAESI Act, 2002 (Amended in Aug. 2016) – Mandatory to file with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), any order or attachment of any property issued by them (vide Sec.26B (4) of SARFAESI Act).

Appendix 3

(Refer Chapter - 1)

Gist of Case Laws / Judicial Decisions pertaining to Provisional Attachment

Sl. No.	Case laws no.	Authority	Gist of judicial decision.
1	Duo Meadows (P.) Ltd. Vs Income Tax Officer	Karnataka High Court	The Court held that the order passed by the Assessing Officer under Section 281B of the Act has ceased to have effect after the expiry of six months from the date of the order of the assessment (contrary to law).
2	Sivanandha Mills Ltd. Vs ACIT, Company Circle - 4(2), Coimbatore	Madras High Court (10/03/2020)	In the order, it is specifically stated that the said order would be valid only for a period of six months. When such being the position, this Court is of the opinion that nothing survives for adjudication in this writ petition as of now.
3	Sarathi Majumdar vs Income Tax Officer &Ors	Calcutta High Court (27/04/2015)	There is no merit in the petition as the Assessing Officer had due authority to pass the order of provisional attachment simultaneously with raising the demand upon completing the assessment of the petitioner's income . Indeed, the concerned official must be commended for having taken the right step in protecting the interest of the revenue till such time that the demand is honoured. However, notwithstanding this order, it will be open to the petitioning assessee to approach the concerned Income Tax Officer for the limited purpose of allowing the bank to honour the cheque covering the payment demanded.
4	Vodafone Idea Ltd. Vs DCIT, CPC	Bombay High Court (03/09/2019)	Section 281B gives drastic powers permitting the Assessing Officer to attach any property of an assessee even before the completion of assessment or reassessment. These powers are thus in the nature of attachment before judgment. Such powers must, therefore, be exercised in appropriate cases for proper reasons. Such powers cannot be exercised merely by repeating the phraseology used in the Section and recording the opinion of the Officer passing such order that he was satisfied for the purpose of protecting the interest of revenue, it was necessary so to do.
5	C Ramasubramaniam Vs DCIT	NCLT, Single Bench, Chennai (02/07/2019)	The time period of six months has expired. The assessee/corporate debtor is under liquidation. Thus, the attachment order cannot be extended.
6	Dabur Invest Corp Vs Addl. CIT	Delhi High Court (31/07/2019)	Ministry/CBDT Circular No.179 dated 30th September 1975 setting out the purpose for insertion of Section 281-B of the Act, it was explained as under: -"This provision has been made in order to protect the interests of the revenue in cases where the raising of demand is likely to take time because of investigations and there is apprehension that the assessee may thwart the ultimate collection of that demand. "

Sl. No.	Case laws no.	Authority	Gist of judicial decision.
			<p>The impugned order does not talk of any time being taken for completion of investigation. On the other hand, as explained in Motorola Solutions India Pvt. Ltd. v. CIT (supra) once the assessment is complete there would be no justification for continuing with the order under Section 281-B of the Act.</p> <p>This supports the interpretation that it is only till actual demand is created by passing an assessment order that the provisional attachment order will remain in operation.</p>
7	Abul Kalam vs ACIT, Circle 8(1), Kolkata & Ors	Calcutta High Court (27/01/2020)	<p>In the present factual matrix, it is crystal clear that the taxability of ₹ 74.5 crore is a debatable issue. The Income Tax officer has himself changed the goal <i>post</i> by first charging the amount under Section 28(iv), and thereafter, under Section 28(ii)(a). In a situation wherein the officer is himself not certain of the taxability, the use of a drastic provision such as Section 281B is not tenable. Moreover, no reasons have been provided in the attachment notice. Submission of Mr. Trivedi that the amount of tax being large, and therefore, the provisional attachment was resorted to, is not a good enough reason and is rejected by this Court. If the above reason were accepted then in all cases of high demands, provisional attachment would become the norm. I am unable to accept the logic, and therefore, the attachment order is quashed and set aside.</p>
8	CIT vs T. Senthil Kumar	Madras High Court– Madurai Bench (28/03/2019)	<p>The Provisions contained under Sections 220 to 232 of the Act, are different from the provisions in Chapter XXIII of the Income Tax Act, 1961, which deals with 'Miscellaneous' in Sections 281 to 298. The provisions in Chapter XXIII under the head 'Miscellaneous' assist in the effective implementation of the other provisions of the Act. Therefore, the learned Single Judge, with great respect, appears to have erred in holding that provisional attachment under Section 281B of the Act also could not be made without serving a Notice for Demand under Section 156 of the Act. To this extent, the contention of the learned counsel for the appellant/Revenue deserves to be accepted and the order under appeal deserves to be set aside.</p>
9	JSR Infra Devlprs vs ACIT	Madras High Court (06/08/2019)	<p>This Court, considering the order of the Hon'ble Full Bench of this Court, has no difficulty in accepting the submission made by learned Revenue Counsel that it is clear that order of Hon'ble Full Bench does not place any fetters on the rights of the Income Tax Department to attach a property which has already been securitised if the Income Tax Department chooses to attach a property which is already securitised. Post attachment, anything that is realized from the attachment by Income Tax Department is subject to such securitisation and the creditor thereunder.</p>
10	KSIIDC Ltd. vs CIT	Karnataka High Court (13/03/2013)	<p>Although learned counsel for the respondent points to Rule 93 of the Second Schedule of the Income Tax Act, 1961, which contemplates that nothing in the said Schedule shall affect any provision of the Act whereunder tax is a first charge upon any asset, he is unable to refer to any provision of Income Tax Act, whereunder income-tax due can be treated as a first charge on the assets of the</p>

Sl. No.	Case laws no.	Authority	Gist of judicial decision.
			<p>assessee. So also, reference made to Section 281 of the Act too is not in the direction of establishing creation of a prior charge in favour of the Income Tax Department over the assets of the assessee, since what is contemplated under the Section is in relation to certain transactions of transfer being void during the pendency of an assessment proceeding.</p>

Appendix 4A

(Refer Para 2.5)

List of Cases where orders under Section 281B were not produced

Sl. No.	Name of the assessee	AYs	Pr.CIT Jurisdiction [AO Jurisdiction]
1	Shri S51	2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam [Central Circle -1, Bhubaneswar]
2	Shri S52	2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam [Central Circle -1, Bhubaneswar]
3	Smt. B16	2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam [Central Circle -1, Bhubaneswar]
4	M/s E1	2015-16	Pr.CIT (Central)-3, Mumbai [Central Circle 6(1), Mumbai]

Appendix 4B

(Refer Para 2.5)

Number of cases in which Appraisal Reports were not produced

Pr.CIT Jurisdiction	No. of AOs	No. of orders under Section 281B issued during the review period	No. of orders under Section 281B in which appraisal reports were not made available to Audit:
(1)	(2)	(3)	(4)
Pr.CIT (Central)-1, Delhi	04	11	09
Pr.CIT (Central)-2, Delhi	04	30	30
Pr.CIT (Central)-3, Delhi	06	41	29
Pr.CIT (Central), Bhopal	02	26	26
Pr.CIT (Central)-1, Kolkata	03	07	05
Pr.CIT (Central)- 2, Kolkata	01	06	06
Pr.CIT (Central)- 1, Mumbai	04	09	09
Pr.CIT (Central)- 3, Mumbai	05	11	11
Pr.CIT (Central)- 4, Mumbai	04	16	16
Pr.CIT (Central)- 1, Chennai	06	34	01
Pr.CIT (Central)- 2, Chennai	04	34	34
Pr.CIT(Central), Kochi	02	07	04
Pr.CIT (Central), Bengaluru	10	30	09
Pr.CIT (Central), Hyderabad	07	25	00
Pr.CIT (Central), Visakhapatnam	01	05	05
Pr.CIT (Central), Ahmedabad	05	33	04
Pr.CIT (Central), Rajasthan	01	03	03
Pr.CIT (Central), Chandigarh	02	22	16
Total	71	350	217

Appendix 5

(Refer Para 3.2.1(i))

Details of PCIT's where Section 281B orders contained the PCIT approval date/order number

Pr.CIT Jurisdiction	No. of AOs	Total No. of 281B Orders issued	No. of 281B Orders contained PCIT's Approval Date/ Order No.
(1)	(2)	(3)	(4)
Pr.CIT (Central)-1, Delhi	4	11	11
Pr.CIT (Central)-2, Delhi	4	30	30
Pr.CIT (Central)-3, Delhi	6	41	36
Pr.CIT (Central), Bhopal	2	26	26
Pr.CIT (Central)-1, Kolkata	3	7	1
Pr.CIT (Central)- 2, Kolkata	1	6	0
Pr.CIT (Central)- 1, Mumbai	4	9	8
Pr.CIT (Central)- 3, Mumbai	5	11	11
Pr.CIT (Central)- 4, Mumbai	4	16	10
Pr.CIT (Central)- 1, Chennai	6	34	34
Pr.CIT (Central)- 2, Chennai	4	34	29
Pr.CIT (Central), Kochi	2	7	1
Pr.CIT (Central), Bengaluru	10	30	27
Pr.CIT (Central), Hyderabad	7	25	18
Pr.CIT (Central), Visakhapatnam	1	5	0
Pr.CIT (Central), Ahmedabad	5	33	33
Pr.CIT (Central), Rajasthan	1	3	3
Pr.CIT (Central), Chandigarh	2	22	22
Total	71	350	300

Appendix 6A**[Refer Para 3.2.1(ii)]****Orders under Section 281B in which Pr.CIT's Approval with reference to Date and/ or Order number not recorded**

Sl. No.	Assessee name	AYs	Pr.CIT Jurisdiction (AO Jurisdiction)
(i) Three Cases where reference to PCIT's Approval was not indicated in the 281B Order(s).			
1	M/s. B8 Ltd.	2010-11 to 2016-17	Pr.CIT (Central) Visakhapatnam (Central Circle-2, Bhubaneswar)
2	M/s. B7	2010-11 to 2016-17	Pr.CIT (Central) Visakhapatnam (Central Circle-2, Bhubaneswar)
3	M/s. S32	2010-11 to 2016-17	Pr.CIT (Central) Visakhapatnam (Central Circle-2, Bhubaneswar)
(ii) 47 Cases where only reference to PCIT's Approval was available in the 281B Orders without giving details i.e. Order No./ Date of such approval			
4	Smt. V2	2012-13 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle-2(2), Chennai)
5	M/s. B16 Pvt. Ltd	2012-13 to 2018-19	Pr.CIT (Central)-2, Chennai (Central Circle-2(2), Chennai)
6	Shri V22	2011-12 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle-2(4), Chennai)
7	Shri C1	2012-13 to 2018-19	Pr.CIT (Central)-2, Chennai (Central Circle-2(4), Chennai)
8	M/s. A35 Pvt. Ltd.	2012-13 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle-2(2), Chennai)
9	Smt. R24	2010-11 to 2016-17	Pr.CIT (Central)-3 Delhi (Central Circle - 26, Delhi)
10	Smt. R23	2010-11 to 2016-17	Pr.CIT (Central)-3 Delhi (Central Circle - 26, Delhi)
11	Shri A18	2010-11 to 2016-17	Pr.CIT (Central)-3 Delhi (Central Circle - 26, Delhi)
12	Shri N10	2010-11 to 2016-17	Pr.CIT (Central)-3 Delhi (Central Circle - 26, Delhi)
13	Shri A44	2009-10 to 2018-19	Pr.CIT (Central)-3 Delhi (Central Circle - 28, Delhi)
14	Shri P2	2011-12 to 2014-15	Pr.CIT(Central) Kochi (Central Circle – 2, Ernakulam)
15	Shri P1	2011-12 to 2014-15	Pr.CIT(Central) Kochi (Central Circle – 2, Ernakulam)
16	Shri A1	2010-11 to 2014-15	Pr.CIT(Central) Kochi (Central Circle – 2, Ernakulam)
17	M/s. J15 Pvt Ltd	2010-11 to 2014-15	Pr.CIT(Central) Kochi (Central Circle -1, Ernakulam)
18	Shri A16	2010-11 to 2014-15	Pr.CIT(Central) Kochi (Central Circle – 1, Ernakulam)
19	Shri J13	2010-11 to 2014-15	Pr.CIT(Central) Kochi (Central Circle – 2, Ernakulam)
20	Shri B13	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-2(3), Kolkata)
21	Shri N9	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-2(3), Kolkata)
22	Smt. N16	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-2(3), Kolkata)

Sl. No.	Assessee name	AYs	Pr.CIT Jurisdiction (AO Jurisdiction)
23	Shri A39	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-2(3), Kolkata)
24	M/s. S49 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-1(1), Kolkata)
25	Shri R10	2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle-1(1), Kolkata)
26	M/s. A15 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
27	Shri M8	2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
28	Shri P23	2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
29	M/s. C14 Pvt. Ltd.	2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
30	Shri P11	2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
31	M/s. S47 Pvt. Ltd.	2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle-3(3), Kolkata)
32	Shri H9	2012-13 to 2018-19	Pr.CIT (Central) - 4, Mumbai (Central Circle-7(2), Mumbai)
33	Shri N8	2012-13 to 2018-19	Pr.CIT (Central) - 4, Mumbai (Central Circle-7(2), Mumbai)
34	Shri K14	2012-13 to 2018-19	Pr.CIT (Central) - 4, Mumbai (Central Circle-7(2), Mumbai)
35	Shri R7	2012-13 to 2018-19	Pr.CIT (Central) - 4, Mumbai (Central Circle-7(2), Mumbai)
36	M/s. C13 Ltd.	2014-15	Pr.CIT (Central) - 1, Mumbai (Central Circle-1(2), Mumbai)
37	Shri J9	2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle-8(2), Mumbai)
38	Shri D7	2012-13 to 2018-19	Pr.CIT (Central) - 4, Mumbai (Central Circle-7(2), Mumbai)
39	Smt. S9	2011-12 to 2017-18	Pr.CIT (Central) Visakhapatnam (Central Circle-2, Bhubaneswar)
40	Shri S36	2011-12 to 2017-18	Pr.CIT (Central) Visakhapatnam (Central Circle-2, Bhubaneswar)
41	Shri B2	2012-13 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 2(3), Bengaluru)
42	Shri T1	2013-14 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 1(3), Bengaluru)
43	Smt. L5	2012-13 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 2(2), Bengaluru)
44	M/s. T11 Pvt. Ltd.,	2010-11 to 2016-17	Pr.CIT (Central), Hyderabad (Central Circle - 1(2), Hyderabad)
45	M/s. V7 Pvt. Ltd.,	2011-12 to 2017-18	Pr.CIT (Central), Hyderabad (Central Circle - 1(4), Hyderabad)
46	M/s. V23 Ltd.	2012-13 to 2017-18	Pr.CIT (Central), Hyderabad (Central Circle - 2(3), Hyderabad)
47	M/s. G6	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(3), Hyderabad)

Sl. No.	Assessee name	AYs	Pr.CIT Jurisdiction (AO Jurisdiction)
48	Shri A14	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(4), Hyderabad)
49	Shri J11	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(4), Hyderabad)
50	Shri V24	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(4), Hyderabad)

Appendix 6B

(Refer Para 3.2.1(i))

Details of PCIT's with inconsistency where all Section 281B orders did not contain PCIT approval date/order number

Pr.CIT Jurisdiction	Total No. of AOs	AO Charges with inconsistency	No. of Section 281B orders issued during the review period for the AO's discussed	Contained Pr.CIT approval Order No./ Date	Not containing Pr.CIT approval Order No./ Date
(1)	(2)	(3)	(4)	(5)	(6)
Pr.CIT (Central)-2, Chennai	04	Central Circle-2(2), Chennai	5	3	2
		Central Circle-2(4), Chennai	5	2	3
Pr.CIT (Central), Bengaluru	10	Central Circle - 2(3), Bengaluru	2	1	1
		Central Circle - 1(3), Bengaluru	5	4	1
		Central Circle - 2(2), Bengaluru	3	2	1
Pr.CIT (Central) Kochi	02	Central Circle - 2, Ernakulum	5	1	4
Pr.CIT (Central), Hyderabad	07	Central Circle - 2(3), Hyderabad	2	1	1

Appendix 7

[Refer Para 3.2.1(iii)]

Cases highlighting adequate information contained in order under Section 281B

Sl. No.	Name of assessee / AYs	Pr.CIT Jurisdiction (AO jurisdiction)	Date of order under Section 281B	Description
1	Smt. N15, and Shri S31/ 2011-12 to 2017-18	Pr.CIT (Central)-2, Delhi [Central Circle-20, Delhi]	18/01/2018 (Extension order)	The order under Section 281B provided details of prior approval (letter no and date of the competent authority), the value of property of ₹ 6.59 crore and validity period of six months i.e. up to 17/06/2019.
2	Shri R19 / 2011-12 to 2017-18	Pr.CIT (Central) - 3, Mumbai [Central Circle - 6(4), Mumbai]	01/11/2018	The order under Section 281B provided reference to prior approval, the value of property of ₹ 15.07 crore and the validity period of six months i.e. up to 08/05/2019.
3	Shri S25 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle - 2(2), Bengaluru]	30/11/2017	The order under Section 281B provided reference to prior approval, the value of property of ₹ 0.09 crore and the validity period of six months i.e. up to 01/12/2017.
4	Shri G3/ 2013-14 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle - 2(1), Bengaluru]	11/06/2019	The order under Section 281B provided reference to prior approval, the value of property of ₹ 17.00 crore and the validity period of six months i.e. up to 26/07/2019.
5	Smt. S42/ 2012-13 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle - 2(2), Bengaluru]	24/11/2017	The order under Section 281B provided reference to prior approval, the value of property of ₹ 40 crore and validity period of six months i.e. up to 23/05/2018.

Appendix 8

(Refer Para 3.2.2(ii))

Provisional Attachment order in which Value of Property recorded

Sl. No.	Assessee name	Block Assessment Years	Pr.CIT Jurisdiction	AO Jurisdiction	Value of the property attached (₹ in crore)
1	Smt. N15	2011-12 to 2017-18	Pr.CIT (Central)- 2, Delhi	Central Circle- 20, Delhi	6.59
2	Shri S31	2011-12 to 2017-18	Pr.CIT (Central)- 2, Delhi	Central Circle- 20, Delhi	0.79
3	Shri M14	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle - 2(3), Hyderabad	63.48
4	Shri A14	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle - 3(4), Hyderabad	0.29
5	Shri J11	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle - 3(4), Hyderabad	0.25
6	Shri V24	2012-13 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle - 3(4), Hyderabad	1.84
7	M/s. A8 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	2.77
8	M/s. L1 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	0.52
9	Smt. M4	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	4.57
10	M/s. P12 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	0.02
11	Shri S24	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	0.09
12	Shri S10	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	1.75
13	Shri A23	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	3.66
14	M/s. L8	2011-12 to 2017-18	Pr.CIT (Central) Bhopal	Central Circle - 1, Raipur	1.75
15	Shri P7	2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(4), Mumbai	6.34
16	Smt. M11	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	2.65
17	Smt. H8	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	15.07
18	Shri R19	2011-12 to 2017-18	Pr.CIT (Central) - 3, Mumbai	Central Circle 6(4), Mumbai	0.04
19	Smt. S43	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	63.29
20	M/s. E Ltd.	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	

Sl. No.	Assessee name	Block Assessment Years	Pr.CIT Jurisdiction	AO Jurisdiction	Value of the property attached (₹ in crore)
21	M/s. J16 Pvt Ltd.	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	9.20
22	M/s. K8 Pvt. Ltd.	2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai	Central Circle 8(1), Mumbai	422.80
23	M/s. C4 Pvt. Ltd.	2011-12	Pr.CIT (Central) - 1, Mumbai	Central Circle 2(2), Mumbai	2.15
24	Shri K12	2011-12 to 2017-18	Pr.CIT (Central)- 2, Chennai	Central Circle - 2 (1), Chennai	101.50
25	Shri C3	2012-13 to 2017-18	Pr.CIT (Central)- 2, Chennai	Central Circle - 2 (1), Chennai	052
26	Shri B2	2012-13 to 2018-19	Pr.CIT (Central), Bengaluru	Central Circle - 2(3), Bengaluru	2.89
27	Shri S25	2010-11 to 2016-17	Pr.CIT (Central), Bengaluru	Central Circle - 2(2), Bengaluru	0.09
28	Shri G3	2013-14 to 2018-19	Pr.CIT (Central), Bengaluru	Central Circle - 2(1), Bengaluru	17.00
29	Shri S41	2012-13 to 2018-19	Pr.CIT (Central), Bengaluru	Central Circle - 2(4), Bengaluru	0.62
30	Smt. L5	2012-13 to 2018-19	Pr.CIT (Central), Bengaluru	Central Circle - 2(2), Bengaluru	2.00
31	Smt. S42	2010-11, 2012-13 & 2014-15 to 2016-17	Pr.CIT (Central), Bengaluru	Central Circle - 2(2), Bengaluru	40.00
32	Shri A16	2012-13 to 2017-18	Pr.CIT(Central), Kochi	Central Circle-1, Ernakulum	82.00

Appendix 9

(Refer Para 3.2.2)

Suggested Format of Provisional Attachment Order under Section 281B

<p>OFFICE OF THE ASSISTANT / DEPUTY COMMISSIONER OF INCOME TAX, _____ CIRCLE. OFFICE ADDRESS: _____ Email ID: _____ ; Contact No: _____ _____ _____</p>
--

F. No. _____ Date: _____

**PROCEEDINGS UNDER SECTION 281B OF THE
INCOME TAX ACT, 1961.**

NAME & DESIGNATION OF THE ASSESSING OFFICER:

To,

NAME OF THE ASSESSEE: _____;
ADDRESS: _____;
ASST. YEAR/S: _____;
PAN: _____;

Subject: Provisional Attachment under Section 281B of the Income Tax Act, 1961 in the case of _____ (Assessee name & PAN) – AY/s _____ - reg.

Reference: Pr.CIT (_____) Memorandum’s F. No. _____ dated _____.

**ORDER UNDER SECTION 281B OF THE INCOME TAX
ACT, 1961.**

1. Preamble: As seen during search / survey proceedings / verification of return/s of income / verification from other sources such as _____
 [Brief description of the type of assessment proceedings pending in the Assessee’s case and details of material/evidence forming the basis for initiating the Provisional Attachment proceedings in the case.]

2. Specific reasons for which the Provisional Attachment has been initiated in the case
[Authority: Section 281B (1) of the Act read with Ministry/CBDT’s Instruction in No. 8 of 2004, dated September 2, 2004 (F.No.404/22/2004-ITCC)].

3. Type and brief description of the provisionally attached Property as follows:
[Authority: Section 281B (1) of the Act read with Ministry/CBDT’s Instruction in F.No.404/22/2004-ITCC, dated 05/11/2004].

Sl. No.	Name of the Property	Brief description of the Property (viz., Location, Identification No. & Date, etc.)	Extent of Ownership of the Assessee (Source of verification)	Value of the Property (Book Value / Fair Value as per records available)

4. Estimated tax liability likely to arise on completion of assessment/s: _____ **[Authority:** Section 281B (1) of the Act read with Ministry/CBDT's Instruction in F.No.404/22/2004-ITCC, dated 05/11/2004]. (Note: this is only an indicative estimate.)

5. Validity period of the order: This order is valid for a period of _____ (days/months) from _____ (Start date) till _____ (End date) or Sixty days after the completion of assessment/s, whichever is later **[Authority: Section 281B (2) read with Proviso thereunder of the Act read with Ministry/CBDT's Instruction in F.No.404/22/2004-ITCC, dated November 5, 2004]**. This order shall cease to have effect after the expiry of the period stated above. The period may be extended with the proper reasons and prior approval of the competent authority.

It is ordered that you are hereby prohibited and restrained until further orders of the undersigned from transferring or charging the above-mentioned property/s in any way and that all persons be and hereby are prohibited from taking any benefit under such transfer or charge.

6. In terms of Section 281B (3) of the Income Tax Act, 1961, you have the option of furnishing a Bank Guarantee from a scheduled bank for an amount not less than the fair market value of the provisionally attached property under sub-Section (1). On receipt of the same, the undersigned shall, by an order in writing, revoke the attachment.

7. This order is passed after obtaining the prior approval of the Principal Commissioner of Income Tax, _____ vide Memorandum in F. No. _____ dated _____.

Kindly acknowledge the receipt of this order.

Yours faithfully,

(NAME & DESIGNATION OF AO).

Copy to:

- 1) The Principal Commissioner of Income Tax, _____;
- 2) The Joint/Additional Commissioner of Income Tax, _____;
- 3) The concerned Revenue Authority – (Name of the Authority to whom this order is to be notified).

- In terms of Section 133 (6) of the Income Tax Act, 1961, you are requested to furnish the undersigned a copy of the details of the property now attached i.e., _____.
- After completion of assessment/s, the demand on account of Income tax/penalty/interest/fine shall be communicated to you immediately with further course of action or direction in order to liquidate the demand of tax/penalty/interest/fine raised against the assessee, out of the property/s attached in the name of the aforementioned person/s held by you or registered in your office.
- Please note that if you discharge any liability to the assessee after receipt of this notice you will be personally liable to me as Assessing Officer to the extent of the liability discharged, or to the extent of the liability of the assessee for tax/penalty/interest/fine raised against the assessee referred to in the preceding para, whichever is less.

4) Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) – With a request to kindly make note of the Provisional Attachment and register in your records the security interest thereagainst of the Income Tax Department [Authority: Ministry/CBDT's in the Directorate of Income Tax (Recovery & TDS) Instruction in F.No.1(380)/DIT(R)/SARFAESI/17-18, dated September 06, 2017].

(NAME & DESIGNATION OF AO).

Date:

Appendix 10

(Refer Para 3.3.1)

Details of Section. 281B cases *vis-à-vis* Scrutiny Assessment cases (FYs 2017-18 to 2019-20)

Pr.CIT Jurisdiction	No. of AOs	Total no. of Scrutiny Assessment cases	No. of order under Section 281Bs issued during the review period
(1)	(2)	(3)	(4)
Pr.CIT (Central)-1, Delhi	04	5,157	11
Pr.CIT (Central)-2, Delhi	04	5,450	30
Pr.CIT (Central)-3, Delhi	06	8,014	41
Pr.CIT (Central), Bhopal	02	12,607	26
Pr.CIT (Central)-1, Kolkata	03	10,541	7
Pr.CIT (Central)- 2, Kolkata	01	9,359	6
Pr.CIT (Central)- 1, Mumbai	04	1,094	9
Pr.CIT (Central)- 3, Mumbai	05	3,855	12
Pr.CIT (Central)- 4, Mumbai	04	3,280	16
Pr.CIT (Central)- 1, Chennai	06	2,786	34
Pr.CIT (Central)- 2, Chennai	04	3,420	34
Pr.CIT(Central), Kochi	02	2,373	7
Pr.CIT (Central), Bengaluru	10	6,848	30
Pr.CIT (Central), Hyderabad	07	3,505	25
Pr.CIT (Central), Visakhapatnam	02	1,001	8
Pr.CIT (Central), Ahmedabad	05	4,097	33
Pr.CIT (Central),Rajasthan	01	9,955	3
Pr.CIT (Central), Chandigarh	02	1,579	22
Total	72*	94,921	354**

*Includes 2 AOs of Pr.CIT (Central), Visakhapatnam where reply was awaited.

**Includes 04 Non-production cases referred to in Para 2.5 (*viz.* Appendix 4A).

Appendix 11

[Refer Para 3.3.2 (i)]

Details of 281B cases where AO had opined “demand becoming difficult to recover” for reasons prescribed by the Board

Sl. No	Name of the Assessee /AYs	Pr.CIT jurisdiction (AO jurisdiction)	Date of AO’s 281B Proposal and order <u>Estimated Tax Liability (₹ in crore)</u>	Description given by the AO in the 281B proposals and/or 281B order for holding “Demand difficult to recover”
1	Smt. L5 / 2012-13 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 2(2), Mangaluru)	<u>October 2017</u> 2.90	Assessee stated that she was unable to discharge the tax liability, estimated to be ₹ 2.90 crore. As it stands on the date of Audit (February 2021), the search assessment was completed on 31/12/2019 by raising a demand of ₹ 10.32 crore. An amount of ₹ 0.40 crore was recovered leaving a balance of ₹ 9.92 crore outstanding (February 2021). The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
2	Smt. S9 / 2011-12 to 2017-18		<u>December 2018</u> 5.74	The AO recorded that ‘there is every possibility that the assessee will not cooperate in payment of demand when raised on completion of assessment.’
3	Shri S36/ 2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	<u>December 2018</u> 30.35	As it stands on the date of the audit (December 2020), the search assessment was completed on 27/12/2017, by raising a cumulative demand of ₹ 36.09 crore. An amount of ₹ 10.98 crore has been recovered from both the assessees, leaving an amount of ₹ 25.11 crore outstanding. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
4	M/s B8 Ltd. / 2011-12 to 2016-17	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	<u>November 2017</u> 10.49	The AO recorded that ‘there is every possibility that the assessee will not cooperate in payment of demand when raised on completion of assessment.’ As it stands on the date of the audit (December 2020), the search assessment was completed on 30/11/2017, by raising a cumulative demand of ₹ 14.89 crore against which no tax recoveries were made from both the assessees as on the

Sl. No	Name of the Assessee /Ays	Pr.CIT jurisdiction (AO jurisdiction)	Date of AO's 281B Proposal and order	Description given by the AO in the 281B proposals and/or 281B order for holding "Demand difficult to recover"
			Estimated Tax Liability (₹ in crore)	
5	M/s B7 / 2011-12 to 2016-17		<u>November 2017</u> 4.40	date of Audit(December 2020). The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
6	Shri M5/ 2010-11 to 2016-17			The AO had recorded his opinion in the respective 281B orders, without indicating the value of property attached, that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i> .
7	Smt. P19/ 2010-11 to 2016-17)	Pr.CIT (Central)-4, Mumbai (Central Circle-8(1), Mumbai)	<u>November and December 2017</u> 11.65	As it stands on the date of audit (February 2021), the assessment was completed (December 2017) by raising a tax demand of ₹ 22.14 crore, which was fully outstanding. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
8	Shri V12/ 2010-11 to 2016-17			The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 1.75 crore, that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i> .
9	Shri P7/ 2010-11 to 2016-17	Pr.CIT(Central)-4, Mumbai (Central Circle-8(4))	<u>December 2017</u> 30.00	As on the date of Audit (December 2020), the assessments were completed in December, 2017, raising a demand of ₹ 34.80 crore and no amount has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
10	Smt. M11/ 2011-12 to 2017-18	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>August 2018</u> 1.45	The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 6.35 crore against the estimated tax liability of ₹ 1.45 crore (calculated at 30 per cent of undisclosed income of ₹ 4.86 crore), that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i> . As on the date of Audit (December 2020), the assessments were completed in December 2018, raising

Sl. No	Name of the Assessee /Ays	Pr.CIT jurisdiction (AO jurisdiction)	Date of AO's 281B Proposal and order	Description given by the AO in the 281B proposals and/or 281B order for holding "Demand difficult to recover"
			Estimated Tax Liability (₹ in crore)	
				a demand of ₹ 0.98 crore and no amount has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
11	Shri H8/ 2011-12 to 2017-18	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>August 2018</u> 1.48	The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 2.65 crore against the estimated tax liability of ₹ 1.48 crore (calculated at 30 per cent of the undisclosed income of ₹ 4.93 crore), that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i> . As on the date of Audit (December 2020), the assessments were completed in December 2018, raising a demand of ₹ 1.21 crore and no amount has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
12	Smt. S43/ 2011-12 to 2017-18	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>August 2018</u> 1.15	The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 0.04 crore, that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i> . As on the date of Audit (February 2021), the assessments were completed in December 2018, raising a demand of ₹ 0.81 crore and no amount has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).
13	M/s. E Pvt. Ltd. / 2011-12 to 2017-18)	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>October 2018 and November 2018</u> 13.88	The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 63.29 crore against the estimated tax liability of ₹ 13.88 crore (calculated at 30 per cent of the undisclosed income of ₹ 46.29 crore), that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets</i>

Sl. No	Name of the Assessee /Ays	Pr.CIT jurisdiction (AO jurisdiction)	Date of AO's 281B Proposal and order Estimated Tax Liability (₹ in crore)	Description given by the AO in the 281B proposals and/or 281B order for holding "Demand difficult to recover"
				<p><i>held by the assesseees".</i></p> <p>As on the date of Audit (January 2021), the assessments were completed in December 2018, raising a demand of ₹ 85.20 crore, out of which only ₹ 0.20 crore has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).</p>
14	M/s. J16 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>August 2018</u> 52.80	<p>The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 9.21 crore, that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i>.</p> <p>As on the date of Audit (February 2021), the assessments were completed in December 2018, raising a demand of ₹ 38.73 crore, out of which only ₹ 13.62 crore has been paid by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).</p>
15	M/s. K8 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT(Central)-4, Mumbai (Central Circle-8(1))	<u>August 2018 and October 2018</u> 3.61	<p>The AO had recorded his opinion in the respective 281B orders, attaching properties having value of ₹ 422.80 crore against the estimated tax liability of ₹ 3.61 crore (calculated at 30 per cent of the undisclosed income of ₹ 12.02 crore), that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i>.</p> <p>As on the date of Audit (February 2021), the assessments were completed in December 2018, raising a demand of ₹ 6.40 crore and no payment has been made by the assessee. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).</p>

Sl. No	Name of the Assessee /Ays	Pr.CIT jurisdiction (AO jurisdiction)	Date of AO's 281B Proposal and order	Description given by the AO in the 281B proposals and/or 281B order for holding "Demand difficult to recover"
			Estimated Tax Liability (₹ in crore)	
16	Shri J9 / 2010-11 to 2016-17	Pr.CIT(Central)-4, Mumbai (Central Circle-8(2))	<u>December 2017</u> 60.0	<p>The AO had recorded his opinion in the respective 281B orders, without indicating the value of property attached, that <i>"the tax and interest payable by the assesseees is likely to exceed the value of assets held by the assesseees"</i>.</p> <p>As it stands on the date of audit (February 2021), the assessment was completed (December 2017) by raising a tax demand of ₹ 81.83 crore, against which assessee has only paid ₹ 5.41 crore. The current status of recovery of outstanding tax demand was awaited from the Ministry/CBDT (October 2022).</p>

Appendix 12

[Refer Para 3.3.2 (ii)]

Details of Section 281B cases indicating different types of reasons recorded by AOs for Opinion Formation

Pr.CIT Jurisdiction	No. of AOs	No. of orders under Section 281B issued.	No. of 281B cases having "Opinion Formation" on account of			
			Only Standard Reasons	Reasons in addition to the Standard Reasons	<i>Demand difficult to recover</i>	<i>Inadequacy of assets</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Pr.CIT(Central)-1, Delhi	04	11	11	0	0	0
Pr.CIT(Central)-2, Delhi	04	30	24	06	0	0
Pr.CIT(Central)-3, Delhi	06	41	35	06	0	0
Pr.CIT(Central), Bhopal	02	26	11	15	0	0
Pr.CIT(Central)-1, Kolkata	03	07	0	07	0	0
Pr.CIT(Central)-2, Kolkata	01	06	0	06	0	0
Pr.CIT(Central)-1, Mumbai	04	09	04	05	0	0
Pr.CIT(Central)-3, Mumbai	05	11	01	10	0	0
Pr.CIT(Central)-4, Mumbai	04	16	05	0	0	11
Pr.CIT(Central)-1, Chennai	06	34	23	10	01	0
Pr.CIT(Central)-2, Chennai	04	34	32	02	0	0
Pr.CIT (Central), Kochi	02	07	04	03	0	0
Pr.CIT (Central), Bengaluru	10	30	08	15	07	0
Pr.CIT (Central), Hyderabad	07	25	0	25	0	0
Pr.CIT (Central), Visakhapatnam	01	05	01	0	04	0
Pr.CIT (Central) Ahmedabad	05	33	30	03	0	0
Pr.CIT (Central), Rajasthan	01	03	03	0	0	0
Pr.CIT (Central), Chandigarh	02	22	16	06	0	0
Total	71	350	208**	119	12	11

** Includes 02 cases of Central Circle-1(3), Bengaluru under Pr.CIT (Central), Bengaluru charge (viz., Shri V1 and M/s.C16 Pvt. Ltd.) where only standard reasons were recorded in the 281B proposals but "additional reasons" were stated by AO in reply to a specific Audit query as discussed in the Para.

Appendix 13

[Refer Para 3.3.2(ii)]

Gist of Audit query on “Opinion Formation” and AOs’ reply thereagainst

Sl. No.	Pr.CIT jurisdiction	Gist of Audit query	No. of Section 281B cases in which AOs furnished reply	Gist of AO’s reply
1	Pr.CIT (Central), Ahmedabad		29 out of 33 cases	There was no violation of instructions as the provisional attachment was done to protect the interest of revenue. No reply received for 4 cases.
2	Pr.CIT (Central)-4, Mumbai	Opinion regarding "reasonable likelihood of the recovery becoming difficult due to inadequacy of assets or under any exceptional circumstances" has not been established in any of the proposals. This was in violation of Ministry/CBDT's Instructions dated 05/11/2004.	02 out of 11 cases	<p>In the case of Shri R7 to a specific query, the reply received from AO is "As per the provisions of Income Tax Act, 1961, if the AO is satisfied the substantial demand is going to be raised, then AO can invoke Section 281B after approval of jurisdictional Pr.CIT."</p> <p>In the case of Shri M5, to a specific query, the Assessing officer replied that "Section 281B of the Act gives discretion that for the purpose of protecting the interest of revenue, it is necessary to provisionally attach any property belonging to the assessee."</p> <p>In other cases, reply was awaited (October 2022).</p>
3	Pr.CIT (Central), Bengaluru		29 (All cases)	<p><u>Pr.CIT (Central)'s Reply dated 06/07/2021 to draft Report:</u> On going through the observation it is understood that in the opinion of the audit, the assessment proceedings resulting in substantial demands and protecting the interests of revenue does not constitute sufficiency of reasons for applying provisions of Section 281B. The AOs in their proposals clearly state that there is a need to protect the interests of revenue as assessment proceedings are pending and there are possibilities of raising huge demands on completion of assessments. Such possibilities exist due to facts and evidences discovered during the course of search and seizure proceedings.</p>

Sl. No.	Pr.CIT jurisdiction	Gist of Audit query	No. of Section 281B cases in which AOs furnished reply	Gist of AO's reply
4	Pr.CsIT (Central)-1 & 2, Kolkata		06 out of 13 cases	In reply to specific query raised by Audit in 6 cases, the AO stated that opinion regarding "reasonable likelihood....." had already been established due to highlighting possibilities of raising huge demands on completion of assessments. In reply to specific query raised by Audit in 5 cases (Jain group), the AO replied that "Assessee was non-compliant and in view of huge demand expected to arise, it would be difficult to recover." In other cases, reply was awaited (October 2022).
5	Pr.CIT (Central), Hyderabad		25 (All cases)	The AO replied that Pr.CIT (Central), Hyderabad has accorded approval after satisfying himself with the proceedings.
6	Pr.CIT (Central), Chandigarh		22 (All cases)	In reply to specific query raised by Audit in all order under Section 281B cases, the AO did not furnish a specific reply regarding "reasonable likelihood of the recovery becoming difficult". Rather, the AO/s replied that the order under Section 281B was initiated in all the cases for reasons of "substantial tax demand likely to arise" due to undisclosed income found during search proceedings.
Total			113	

Appendix 14

(Refer Para 3.3.2)

Suggested indicative list of exceptional circumstances which can enable the AO to form an opinion to initiate provisional attachment proceedings

Sl. No.	Suggested list of exceptional circumstances
1	Indications of non-/poor response of the assessee to notices issued by AOs
2	Cases in which assessee has not paid demand raised in previous assessments completed earlier
3	If the assessee has appealed against the assessment order against previous assessments completed earlier but the likelihood of appeal being decided in the department's favour is very high
4	There is very strong evidence such as newspaper report/ third party source that the assessee is planning to transfer his/ her property
5	If assessee is a "fly-by-night" operator, habitual offender
6	Cases of previous assessments already under recovery proceedings through Tax Recovery Officer (TRO)
7	Assessee not traceable
8	Notified persons under the special court (trial of offences relating to securities act, 1992)
9	Assessee has case pending before NCLT under IBC- 2016
10	Company in liquidation
11	Assets jointly attached with other agencies except BIFR
12	Appeal pending against attachment of properties
13	Any other exceptional circumstances defined anywhere in the Act/ Rules.

Note: Some of these exceptional circumstances suggested above have been drawn from Clause 9 of the Central Action Plan-I (CAP-I) statement that is prepared by the Assessing Officers at prescribed frequency and submitted to higher authorities.

Appendix 15

[Refer Para 4.2(i)]

List of Assesseees possessing other assets in addition to provisionally attached property

Sl. No.	Name of the assessee / AYS	Pr.CIT jurisdiction [AO jurisdiction]	Type of additional property	Nature of additional property	Estimated Tax Liability (₹ in crore)/ Value, if available (₹ in crore)
1	Shri O / 2002-03 to 2008-09	Pr.CIT(Central), Kochi [Central Circle- 2, Ernakulam]	Immovable	Total 124 properties (except the properties provisionally attached) including Residential plots, Commercial plots, coastal belts and wetlands as per the list provided by the Sub-Registrar	5.34/ Not Ascertainable
2	Shri P7 / 2010-11 to 2015-16	Pr.CIT (Central) - 4, Mumbai [Central Circle - 8(4), Mumbai]	Both	Agricultural land, Flats, Investment in Shares, Mutual Funds etc. as per Balance Sheet	2.17/24.72
3	Shri M5 / 2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(1), Mumbai)	Both	Car, Investment in Shares and Bonds etc., FD and CDs as per the Balance Sheet	6.30/3.25
4	M/s. E Ltd. / 2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(1), Mumbai)	Both	land, buildings, vehicles and furniture excluding computers as per the Balance Sheet	13.89/61.83
5	Smt. P19 / 2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(1), Mumbai)	Both	FDs, Investment in Shares, Bonds etc., Car as per the Balance Sheet	5.36/3.27
6	M/s. J16 Pvt. Ltd. / 2011-12 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(1), Mumbai)	Both	Land, Furniture and Fixtures, Vehicles and Office Equipment (except computers) as per Balance Sheet (AY 2017-18)	52.80/89.26
7	M/s. A41 Ltd., Bengaluru / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle- 1(3), Bengaluru]	Both	Lands, Factory Buildings, Plant and Equipment, Furniture and Fixtures, Motor and Goods Vehicles, Computers and Electrical Installations	40.00/38.30

Sl. No.	Name of the assessee / AYS	Pr.CIT jurisdiction [AO jurisdiction]	Type of additional property	Nature of additional property	Estimated Tax Liability (₹ in crore)/ Value, if available (₹ in crore)
8	Shri V1 / 2011-12 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-1(3), Bengaluru]	Both	Coffee Estate Land and Buildings, Jewellery etc., archaeological and painting collections etc., vehicles and boats etc., shares and securities (excluding shares of M/s.M18 Ltd. and M/s. C16 Ltd.)	447.44/105.67
9	M/s. C16 Ltd./ 2011-12 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-1(3), Bengaluru]	Both	Property plant and equipment (₹ 5.15 crore), Equity and Share Capital (except M/s M18 Ltd. shares) as per Balance Sheets	188.70/1,753.92
10	Shri S25 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-2(2), Bengaluru]	Both	Land and Jewellery (as per voluntary admission by the assessee during search	0.99/0.32 (Jewellery only)
11	Shri B2 / 2012-13 to 2017-18 and 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-2(3), Bengaluru]	Both	Agricultural Land, Sites and Residential Building, Vehicles	5.26/1.15 (Vehicles Only)
12	Shri D1 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-2(3), Bengaluru]	NA	NA	30.00/ NA
13	Shri M12 / 2012-13 to 2017-18 and 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	Immovable	Lands and Houses	8.42/0.86
14	Smt. S23 / 2010-11 to 2015-16	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	Both	Lands, Properties and Vehicles as per Balance Sheet	1.30/2.31
15	Shri A12 / 2010-11 to 2015-16	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	NA	NA	0.18/ NA
16	Shri M3 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	Both	Lands and Buildings, Furniture and Fixtures, Plant and Machinery	1.76/0.94
17	Shri S5 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	NA	NA	0.29/ NA

Sl. No.	Name of the assessee / AYs	Pr.CIT jurisdiction [AO jurisdiction]	Type of additional property	Nature of additional property	Estimated Tax Liability (₹ in crore)/ Value, if available (₹ in crore)
18	Smt. S26 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-1, Mangaluru]	Both	Properties and Buildings, Vehicles etc. as per Balance Sheet	1.40/0.82
19	M/s. B3 Pvt. Ltd./ 2012-13 to 2017-18	Pr.CIT (Central), Bengaluru [Central Circle, Panaji, Goa]	Both	Freehold land, Buildings, vehicles and Office Equipment	NA/89.47
20	M/s. S6 Pvt. Ltd./ 2012-13 to 2017-18	Pr.CIT (Central), Bengaluru [Central Circle, Panaji, Goa]	Immovable	Property, plant and Machinery as per Balance Sheet	151.42/51.63
21	M/s. S7 Pvt. Ltd./ 2012-13 to 2017-18	Pr.CIT (Central), Bengaluru [Central Circle, Panaji, Goa]	Immovable	Property, plant and Machinery as per Balance Sheet	31.13/311.70
22	Shri S15 / 2008-09 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle, Hubballi]	NA	NA	2.02/ NA
23	M/s. P25 Pvt. Ltd / 2013-14	Pr.CIT (Central), Bengaluru [Central Circle, Panaji, Goa]	Both	Fixed Assets as per Balance Sheet	26.91/123.71
24	Shri C12 / 2012-13 to 2017-18	Pr.CIT (Central), Bengaluru [Central Circle, Panaji, Goa]	Immovable	Land and Properties	2.00/0.50
25	Shri H1 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru [Central Circle-1(2), Bengaluru]	Both	Agricultural and Non Agri. Land, Car, Jewellery etc. as per the statement of affairs	3.75/16.03
26	Smt. L5 / 2012-13 to 2017-18	Pr.CIT (Central), Bengaluru [Central Circle-2(2), Bengaluru]	Immovable	Flats	2.90/4.96
27	Smt. S42 / 2014-15	Pr.CIT (Central), Bengaluru [Central Circle-2(2), Bengaluru]	Immovable	Properties, House and Apartments	4.74/ Not Ascertainable
28	Shri G3 / 2013-14 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-2(1), Bengaluru]	NA	NA	31.41/ NA
29	M/s. M7 Trust / 2009-10 to 2015-16	Pr.CIT (Central), Bengaluru [Central Circle-1(4), Ahmedabad]	Both	Shares and MFs, Movable and Immovable properties as per Balance Sheets	Not available/0.99

Sl. No.	Name of the assessee / AYs	Pr.CIT jurisdiction [AO jurisdiction]	Type of additional property	Nature of additional property	Estimated Tax Liability (₹ in crore)/ Value, if available (₹ in crore)
30	Shri P13 / 2012-13 to 2018-19	Pr.CIT (Central), Bengaluru [Central Circle-2(2), Ahmedabad]	NA	Vehicle (Car and Motor Bike)	Not available/0.89
31	Shri V3 / 2017-18	Pr. CIT (Central)-1, Chennai [Central Circle-1(1), Chennai]	NA	Fixed Deposits	1.82/5.77

Appendix 16

(Refer Para 4.2(ii))

Orders under Section 281B in which bank accounts had been provisionally attached

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
1	Shri A38/ 2010-11 to 2016-17	Pr.CIT (Central) - 3, Mumbai (Central Circle - 6(2), Mumbai)	7.50	0.70 (FDs), & Bank Accounts (Credit Balance not indicated)	Value Not Indicated	Not Ascertainable
2	Shri D12/ 2010-11 to 2016-17	Pr.CIT (Central) – 3, Mumbai (Central Circle – 6(2), Mumbai)	11.56	0.06 (FDs), & Bank Accounts (Credit Balance not indicated)	Value Not Indicated	Not Ascertainable
3	Smt. S9/ 2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	0.48	Value not Indicated, Lien of ₹ 0.50 crore as reported by the bank manager in response to the order under Section 281B.	0	Not Ascertainable
4	Shri S36/ 2011-12 to 2017-18	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	17.82	Value not Indicated, ₹ 0.06 crore as replied by two of the Bank Mangers in response to the order under Section 281B.	0	Not Ascertainable
5	M/s B8 Ltd./ 2010-11 to 2016-17	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	5.70	Value Not Indicated	Value not Indicated	Not Ascertainable

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
6	M/s B7/ 2010-11 to 2016-17	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	4.03	Value not Indicated	0	Not Ascertainable
7	M/s S32/ 2010-11 to 2016-17	Pr.CIT (Central), Visakhapatnam (Central Circle-2, Bhubaneswar)	Not Indicated	Value not Indicated	Value not Indicated	Not Ascertainable
8	Shri P10/ 2010-11 to 2017-18	Pr.CIT (Central)- 2, Delhi, (Central Circle-20, Delhi)	453.37	Value not Indicated	Value not Indicated	As per the statement of the assessee during the search under Section 33, one of the property attached was bought at a value of ₹ 4 crore nearly 20 years ago. Yes, Other properties (not attached) available in the name of the assessee as per the submission: 1. A plot at Anandram Diary, New Delhi bought at ₹ 50,000, 10 years ago. 2. A plot at Electronic City, Noida bought at a price of ₹ 2.5 core, 8 years ago. 3. Farmland in Ghitorni of nearly 106 acre, purchased

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
						at ₹ 50,000 nearly 20 years ago. 4. Flat at Dehradun bought for ₹ 50 lakhs, bought 3 years ago. 5. Ancestral home at Sujangarh, Rajasthan of value approx. ₹ 1 crore. 6. Land at Tangra. 7. Five cars – one Audi car bought at a price of ₹ 0.55 crore. 8. Shareholding in 7 companies
9	Shri S13/ 2012-13 to 2018-19	Pr.CIT (Central), Chandigarh (Central Circle-2, Chandigarh)	38.34	Value not Indicated	Value not Indicated	Not Ascertainable
10	Shri S4 / 2012-13 to 2018-19	Pr.CIT (Central), Chandigarh (Central Circle-2, Chandigarh)	4.73	Value not Indicated	Value not Indicated	Not Ascertainable
11	Shri R1/ 2010-11	Pr.CIT (Central), Bengaluru (Central Circle-1(3), Bengaluru)	8.0	3.90	14.69	Not Ascertainable, As per the PA proposal; total 19 sites at (7 locations)and 30 flats in one another site were attached;

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
						<ol style="list-style-type: none"> Cumulative value of two properties of ₹ 5.69 crores 30 flats having value of 30 lakhs each, cumulative value ₹ 9 crore. Value of remaining properties were not available
12	Shri K18 / 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 2(1), Kolkata)	1.36	Not Indicated	0.58	Multiple Fixed assets having cumulative value of ₹ 22 crore as on 31 March 2019
13	Smt. B13 / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 2(3), Kolkata)	0.65	Not Indicated		Not Ascertainable
14	Smt. N16 / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 2(3), Kolkata)	0.87	Not Indicated	0.32	Not Ascertainable
15	Shri N9 / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 2(3), Kolkata)	1.19	Not Indicated	3.85	Only 2 out of four properties were attached after approval.
16	Shri A39 / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 2(3), Kolkata)	2.06	0.01	Not available	An immovable property approved for attachment but was later not attached.
17	M/s. S49 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 1(1), Kolkata)	Not Indicated	Not Indicated	Not Indicated	Not Ascertainable

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
18	Shri R10 / 2011-12 to 2017-18	Pr.CIT (Central)-1, Kolkata (Central Circle - 1(1), Kolkata)	Not Indicated	Not Indicated	Not Indicated	₹ 0.18 crore worth of fixed assets or buildings
19	M/s. A15 Pvt. Ltd. / 2011-12 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3), Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable
20	Shri M8 / 2012-13 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3), Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable
21	Shri P23 / 2011-12 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3), Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable
22	M/s. C14 Pvt. Ltd. / 2011-12 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3) , Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable
23	Shri P11 / 2011-12 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3), Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
24	M/s. S47 Pvt. Ltd. / 2011-12 to 2018-19	Pr.CIT (Central)-2, Kolkata (Central Circle - 3(3) , Kolkata)	Not Indicated	Not Indicated	0	Not Ascertainable
25	M/s. M7 Trust / 2009-10 TO 2015-16	Pr.CIT (Central), Ahmedabad (Central Circle-1(4), Ahmedabad)	Not Indicated	0.58	0	Yes, 1. Shares and Mutual Funds uncovered during search 2. Movable Properties of ₹ 78.75 lakhs as per balance sheets, & 3. Immovable properties of ₹ 20.35 lakhs
26	Shri V3 / 2017-18	Pr.CIT (Central)-1, Chennai (Central Circle-1(1), Chennai)	20.40	Not Indicated	0	Yes, Fixed Deposit having value of ₹ 5.77 crore
27	Shri R17 / 2012-13 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle - 2 (1), Chennai)	Not Indicated	Not Indicated	Not Indicated	Not Ascertainable
28	Shri C1 / 2012-13 to 2018-19	Pr.CIT (Central)-2, Chennai (Central Circle - 2(4), Chennai)	1.68	Not Indicated	0	Not Ascertainable

Sl. No.	Name of the Assessee/ AY(s)	Pr.CIT jurisdiction (AO jurisdiction)	Estimated tax liability (₹ in crore)	Value of Property attached		Whether records of other properties not attached were available? If Yes, what was the value? (₹ in Crores)
				Movable (₹ in crore)	Immovable (₹ in crore)	
29	M/s. A6 Pvt. Ltd / 2015-16 to 2018-19	Pr.CIT (Central) -1, Chennai (Central Circle - 3(1), Chennai)	83.50	Not Indicated	Value not Indicated	Not Ascertainable
30	Shri V17 / 2012-13 to 2017-18	Pr.CIT (Central)-1, Chennai (Central circle 3(3), Chennai)	1.68	Not Indicated	Not Indicated	Not Ascertainable
31	M/s S48 Pvt. Ltd. / 2012-13 to 2018-19	Pr. CIT (Central) -2, Chennia (Central Circle 2(4), Chennai)	54.96	9.32	0	Not Ascertainable
32	M/s N12 / 2018-19	Pr. CIT (Central) -2, Chennia (Central Circle 2(4), Chennai)	81.02	7.57	0	Not Ascertainable

Appendix 17

[Refer Para 4.3(i)]

Details of cases where the attached property did not belong to assessee

Sl. No.	Name of the assessee / AYS	Pr.CIT (Central) jurisdiction (AO jurisdiction)	Description and Further Action taken by Department
1	M/s E Ltd./ 2011-12 to 2017-18	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(1), Mumbai)	As per the assessee's submission of 20/11/2018, two of the seven immovable properties (value aggregating to ₹ 63.29 crore against the estimated tax liability of ₹ 13.89 crore) that was provisionally attached on 05/11/2018 had already been disposed off by the assessee after the issue of notice under section 153A dated 07/11/2017. Another one property that was provisionally attached belonged to a different company and was not owned by the assessee in question. An order under Section 281 of the Act was passed on 29/11/2018 cancelling the sale of these three properties. Also, a revocation order under section 281B was issued on 18/03/2019 to release the attached property that was not owned by the assessee, while the provisional attachment of the remaining properties continued. As it stands on the date of Audit (January, 2021), the assessment was completed (27/12/2018) raising a tax demand of ₹ 85.20 crore and the balance tax was outstanding to an extent of ₹ 85.00 crore (January 2021). Reply to an Audit query (January 2021) as well as the current status of outstanding tax recovery was awaited from the Ministry/CBDT(October 2022).
2	Shri P7 / 2010-11 to 2016-17	Pr.CIT (Central) - 4, Mumbai (Central Circle - 8(4), Mumbai)	Audit observed that a property actually belonging to a person other than the assessee had been attached the order under Section 281B dated 11/12/2017. This fact came to the notice of the AO only when the actual owner of the property informed (vide letter dated 21/12/2017) the AO. Consequently, a revised order under Section 281B was issued (27/12/2017) for attaching the correct property of the assessee (valued at ₹ 1.75 crore against an estimated tax liability of ₹ 2.17 crore. As it stands on the date of Audit (December 2020), the assessment was completed (December 2017) raising a tax demand of ₹ 34.80 crore and the entire tax demand was outstanding (December 2020). Reply to an Audit query (December 2020) as well as the current status of outstanding tax recovery was awaited from the Ministry/CBDT(October 2022).

Sl. No.	Name of the assessee / AYS	Pr.CIT (Central jurisdiction (AO jurisdiction))	Description and Further Action taken by Department
3	Smt. M10/ 2012-2013 to 2018-2019	Pr.CIT (Central)- 1, Chennai (Central Circle - 1(4), Chennai)	An order under Section 281B was issued by the AO on 26/12/2019 by attaching seven properties (value not indicated) to cover an estimated tax liability of ₹ 2.18 crore. This was further extended on 09/09/2020. On 25/09/2020, a letter was received by the AO from a person claiming that one of the attached properties had already been sold to her by the assessee in July 2005 itself. The AO accepted the representation and lifted the attachment of the property in question through order dated 28/09/2020. The attachment of remaining six properties continued. As it stands on the date of Audit (February 2021), the assessment was not completed (February 2021). Reply to an Audit query (February 2021) as well as the current status of assessments was awaited from the Ministry/CBDT (October 2022).
4	Shri S5 / 2010-11 to 2016-17	Pr.CIT Bengaluru (Central Circle- 1 Mangaluru)	On verification of the assessee's computation of capital gains for AY 2016-17, Audit observed (January 2021) that property attached (value not available on record) in the order under Section 281B dated 18/12/2017 and also extended on 18/06/2018 had already been sold by the assessee in 23/03/2016 i.e., much before the date of order under Section 281B. The estimated tax liability was ₹ 0.29 crore. No further action taken as on the date of reply from the AO (January 2021). As such the primary objective of protecting the interests of revenue was defeated in the instant case. As it stands on the date of Audit (January 2021), the assessment was completed (29/12/2017) raising a tax demand of ₹ 0.03 crore, which was pending recovery (February, 2021). To a specific Audit query (June 2021), AO's reply as well as the current status of outstanding tax recovery was awaited from the Ministry/CBDT(October 2022).
5	Smt.S42 / 2010-11, 2012-13 & 2014-15 to 2016-17	Pr.CIT Bengaluru (Central Circle- 2(2), Bengaluru)	On verification of final accounts of the assessee, Audit observed (February 2021) that due to mistaken identity, a wrong property (worth ₹ 40.00 crore) had been selected for provisional attachment on order dated 24/11/2017, against an estimated tax liability of ₹ 4.74 crore. No further remedial action was taken by the AO. As it stands on the date of Audit (February, 2021), the assessment was completed (December 2017) raising a tax demand of ₹ 22.39 crore and the balance tax was outstanding to an extent of ₹ 21.48 crore (February, 2021). The case has been referred to the TRO for recovery with corrected list of assets of the assessee. In the reply (June'21) to an Audit query (February 2021), the AO replied that there is no provision in the statute to ascertain whether the property is in lien or not. This reply is not acceptable, because the intended objective of safeguarding the interest of revenue remains unachieved. The current status of the outstanding tax recovery was awaited from the Ministry/CBDT (October 2022).

Sl. No.	Name of the assessee / AYs	Pr.CIT (Central) jurisdiction (AO jurisdiction)	Description and Further Action taken by Department
6	Smt.G1 / 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle-1(3), Chennai)	The AO issued initial order under Section 281B in 24/12/2018 for attaching two immovable properties (value not indicated), against an estimated tax liability of ₹ 10.42 crore. Audit scrutiny revealed that the property was sold by the assessee on 05/04/2018, much before the date of issue of order under section 281B, proving that no pre-verification of the property ownership was made by AO. The attachment made under order under Section 281B was subsequently lifted on 05/11/2019 as it was not in the name of the assessee. As such the primary objective of provisional attachment of the property was defeated in the instant case. As it stands on the date of Audit (February 2021), the assessment was completed (31/12/2018) raising a tax demand of ₹ 20.97 crore. A balance tax demand of ₹ 20.97 crore is still outstanding (February 2021) and the case was referred to TRO for recovery. On this being pointed out in Audit (June 2021), AO's reply as well as the current status of outstanding tax recovery was awaited from the Ministry/CBDT (October 2022).

Appendix 18

[Refer Para 4.3(ii)]

Details of cases which was fully/ partially encumbered

Sl. No.	Name of the assessee /AYs	Pr.CIT (Central) jurisdiction (AO jurisdiction)	Encumbrance Status	Brief facts of the case
			Estimated tax liability / Property Value (₹ in crore)	
1	Smt. S9 2011-12 to 2017-18	Pr.CIT (Central) Visakhapatnam (Central Circle Bhubaneswar)	Full 0.54 / NA	The initial order under Section 281B was issued (December 2018) for attaching two Bank Accounts of the assessee. In response to the order under Section 281B received, one of the notified authorities (<i>viz.</i> , Bank Manager) intimated (24/12/2018) the AO that the attached account was already <i>pre</i> -encumbered by stating that “Already <i>lien</i> to Bank guarantee” with principal amount of ₹ 0.50 crore as on the date of receipt of order under Section 281B. This was pointed out in Audit (December 2020). As on the date of the Audit (December 2020), the assessment was completed (27/12/2018) raising a demand of ₹ 5.74 crore of which assessee had paid ₹ 0.46 crore, leaving a balance tax of ₹ 5.28 crore outstanding. The current status of the tax recovery was awaited from the CBDT (October 2022).
2	Shri V1 2011-12 and 2012-13 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 1(3) , Bengaluru)	Partial 447.44 / 576.03	As previously discussed in Chapters 3 and 4 vide Paras 3.3.2 (ii) and 4.2 (i) respectively, the initial order under Section 281B was issued on 25/01/2019. The assessee voluntarily informed (January 2019) the AO about the encumbrance status of the provisionally attached property i.e.52.70 lakh of equity shares of M/s M18 Ltd. which were already on <i>lien</i> against institutional loans taken from Banks. There was no evidence on record that the AO considered the alternate two properties offered by the assessee. Instead, he issued (February 2019) a fresh order under Section 281B by revoking the earlier order under Section 281B (February 2019) and attaching the assessee’s equity shares (2.05 crore equity shares) owned in his own company <i>viz.</i> , M/s. C16 Ltd. In the notings to 281B proposals (February 2019), the AO also stated that the fact of encumbrance status came to his knowledge only after the order under Section 281B had been issued.

Sl. No.	Name of the assessee /Ays	Pr.CIT (Central) jurisdiction (AO jurisdiction)	Encumbrance Status	Brief facts of the case
3	M/s.C16 Ltd. 2011-12 and 2012-13 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle - 1(3), Bengaluru)	Full (Shares of M/s M18 Ltd.) 188.70 / 188.70	The initial order under Section 281B was issued on 24/01/2019. The assessee voluntarily informed (January 2019) the AO about the encumbrance status of the provisionally attached property i.e. 22.20 lakh of equity shares of M/s M18 Limited which were already on <i>lien</i> against institutional loans taken from Banks. In the notings to 281B proposals (February 2019), the AO also stated that the fact of encumbrance status came to his knowledge only after the order under Section 281B had been issued. Also, Audit noticed that no fresh order under Section 281B was issued for attaching alternate property after a revocation order was issued (February 2019) for releasing the shares of M/s. M18 Ltd. attached earlier. Thus, the case remained unprotected after the revocation of initial attachment order, which defeated the primary objective of 281B provisions. Reply was awaited (October 2022) to a specific Audit query (December 2020) regarding non-issue of fresh order under Section 281B after revocation. As it stands on the date of Audit (December 2020), the assessments were completed in (December 2019), raising a cumulative tax demand of ₹ 6.21 crore against which a tax recovery of ₹ 0.01 crore was made leaving a balance tax outstanding at ₹ 6.20 crore, which remained fully outstanding with recovery, as the assessments were under appeal. The current status of the appeal proceedings was awaited from the CBDT (October 2022).
4	Shri J2 / AY 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle - 1(3) , Chennai)	Full 1.49 / NA	Initial order under Section 281B was issued (December 2018) for attaching an immovable property. The order under Section 281B was further extended in June and December 2019. The records showed that the attached property was <i>pre</i> -encumbered, which came to the knowledge of the AO only after the issue of order under Section 281B. As on the date of the Audit (March 2021), the assessment was completed (28/12/2017) raising a demand of ₹ 1.49 crore of which assessee had paid ₹ 0.29 crore, leaving a balance tax of ₹ 1.19 crore outstanding. The current status of the appeal proceedings was awaited from the CBDT (October 2022).
5	Shri V18 / 2011-12 to 2017-18	Pr.CIT (Central), Ahmedabad (Central Circle-	Partial (One of the properties was pre-	As discussed earlier under Para 4.3 (i), the initial order under Section 281B was issued (22/02/2018) for attaching two immovable properties viz., Flat Nos.303 and 304 in an apartment in Gandhinagar (value not indicated). The AO reported (07/05/2018) that as per records obtained from the Sub-Registrar, Gandhinagar, that the Flat No.304 actually

Sl. No.	Name of the assessee /Ays	Pr.CIT (Central) jurisdiction (AO jurisdiction)	Encumbrance Status	Brief facts of the case
		1(3), Ahmedabad)	mortgaged against bank loan)	belonged to the assessee and that the said property had also been mortgaged by the assessee for obtaining bank loan. Audit observed that the verification of the encumbrance statues was done by AO only after the property was provisionally attached.
			NA / NA	As it stands on the date of Audit (February 2021), the search assessments were completed in December 2018, raising a cumulative tax demand of ₹ 341.51 crore. Subsequently, the case was 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 and appeal is currently pending (July 2022).

Appendix 19A

[Refer Para 4.4.1 (i)]

Details of cases where value of properties provisionally attached was found excessive

Sl. No.	Name of the Assessee / Ays	AO Charge	Estimated tax liability (₹ in crore)	Type of property attached	Value of Property Attached (₹ in crore)	Percentage of attached property value over estimated tax liability	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (January-March 2021) (₹ in crore)	Regular Tax paid (January-March 2021) (₹ in crore)
Pr.CIT (Central), Bengaluru									
1	Shri A12 / 2010-11 to 2016-17	Central Circle-1, Mangaluru	0.18	Immovable	5.83	3264.8	29/12/2017	0.14	0.02
2	Smt. S42 / 2010-11, 2012-13 & 2014-15 to 2016-17	Central Circle-2(2), Bengaluru	4.74	Immovable	40.00	843.9	22/12/2017	22.39	0.14
3	Shri R1 / 2010-11	Central Circle-1(3), Bengaluru	8.00	Both	18.59	232.4	31/12/2017	10.68	0
4	Smt. S23 / 2010-11 to 2016-17	Central Circle-1, Mangaluru	1.30	Immovable	2.80	214.8	29/12/2017	0.60	0.16
5	M/s. A41 Ltd./ 2013-14 to 2016-17	Central Circle-1(3), Bengaluru	40.00	Immovable	81.42	203.6	29/12/2017	50.91	16.85
Pr.CIT (Central)-1, Mumbai									
6	M/s. C4 Pvt. Ltd./ 2011-12	Central Circle-2(2), Mumbai	0.65	Immovable	2.15	333.3	22/12/2018	0	0
Pr.CIT (Central)-3, Mumbai									
7	Smt. N17 / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	3.73	Immovable	8.85	237.3	29/12/2017	6.31	0

Sl. No.	Name of the Assessee / AYs	AO Charge	Estimated tax liability (₹ in crore)	Type of property attached	Value of Property Attached (₹ in crore)	Percentage of attached property value over estimated tax liability	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (January-March 2021) (₹ in crore)	Regular Tax paid (January-March 2021) (₹ in crore)
Pr.CIT (Central)-4, Mumbai									
8	M/s. K8 Pvt. Ltd. / 2011-12 to 2017-18	Central Circle-8(1), Mumbai	3.61	Immovable	422.81	11723.9	21/12/2018	6.41	0
9	M/s. E Ltd. / 2011-12 to 2017-18	Central Circle-8(1), Mumbai	13.88	Immovable	63.29	455.7	27/12/2018	85.20	0.20
Pr.CIT (Central), Hyderabad									
10	Shri J11 / 2012-13 to 2018-19	Central Circle-3(4), Hyderabad	0.05	Movable	0.30	651.9	28/12/2019	0.03	0.11
11	Shri V24 / 2012-13 to 2018-19	Central Circle-3(4), Hyderabad	0.10	Movable	0.25	239.5	28/12/2019	0	0
12	G6 / 2012-13 to 2018-19	Central Circle – 3(3), Hyderabad	2.94	Immovable	60.09	2043.87	12/12/2019	35.76	0.60
Pr.CIT (Central)-2, Chennai									
13	Shri K12 / 2011-12 to 2017-18	Central Circle-2(1), Chennai	2.08	Both	207.55	9980.20	22/01/2019	2.65	0
Pr. CIT (Central), Kochi									
14	Shri O / 2002-03 to 2008-09	Central Circle – 2(2), Ernakulam	5.34	Immovable	21.15	396.07	Assessment pending	Assessment pending	Assessment pending
Pr. CIT (Central)-2, Delhi									
15	Shri N15 / 2011-12 to 2017-18	Central Circle-20, Delhi	2.70	Immovable	6.59	244.07	30/12/2018	56.17	0.60
16	Shri S31 / 2011-12 to 2017-18	Central Circle-20, Delhi					30/12/2018	53.59	0.46

Sl. No.	Name of the Assessee / AYs	AO Charge	Estimated tax liability (₹ in crore)	Type of property attached	Value of Property Attached (₹ in crore)	Percentage of attached property value over estimated tax liability	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (January-March 2021) (₹ in crore)	Regular Tax paid (January-March 2021) (₹ in crore)
Pr. CIT (Central)-3, Delhi									
17	M/s. D2 Ltd./ 2012-13	Central Circle-27, Delhi	2.29	Immovable	21.28	928.4	29/12/2019	2.79	0.51
Pr. CIT (Central) -1, Chennai									
18	M/s. S39/ 2015-16	Circle-1(1), Chennai	3.78	Immovable	10.83	286.6	29/12/2017	0	0

Appendix 19B

[Refer Para 4.4.1(ii)]

Details of cases where insufficient properties were provisionally attached

Sl. No.	Name of the Assessee / AYS	AO jurisdiction	Estimated tax liability (₹ in crore)	Type of property attached (Movable/ Immovable/ Both)	Value of Property Attached (₹ in crore)	Attached Property is what percentage of estimated tax liability? (percentage)	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (₹ in crore)	Regular Tax paid (₹ in crore)	Whether there are other properties available on record? (if yes, value of all the properties (₹ in crore)
Pr.CIT(Central), Bengaluru										
1	Shri S15 / 2008-09 to 2018-19	Central Circle, Hubballi	2.02	Immovable	1.51	75.1	01/12/2019	1.80	0.27	2.29
2	Shri G3 / 2013-14 to 2018-19	CC-2(1), Bengaluru	31.41	Movable	22.75	72.4	Assessments pending	Assessments pending	Assessments pending	31.20
3	Smt. L5 / 2012-13 to 2018-19	Central Circle-2(2), Bengaluru	2.90	Immovable	2.00	68.9	31/12/2019	10.32	0.40	7.57
4	Shri P8 / 2015-16 to 2018-19	Central Circle -1(2), Bengaluru	3.07	Movable	2.76	89.9	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
5	Smt. R29 / 2015-16 to 2018-19	Central Circle -1(2), Bengaluru	3.07	Movable	2.76	89.9	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
6	M/s. M1 Pvt. Ltd. / 2012-13 to 2018-19	Central Circle-2, Mangaluru	5.82	Immovable	3.81	65.5	31/12/2019	5.45	0	Not ascertainable
7	M/s. P25 Pvt. Ltd. / 2008-09 to 2011-12	Central Circle, Panaji, Goa	24.31	Movable	15.67	63.7	Assessments stayed by Mumbai HC	Assessments stayed by Mumbai HC	Assessments stayed by Mumbai HC	123.71

Sl. No.	Name of the Assessee / AYS	AO jurisdiction	Estimated tax liability (₹ in crore)	Type of property attached (Movable/ Immovable/ Both)	Value of Property Attached (₹ in crore)	Attached Property is what percentage of estimated tax liability? (percentage)	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (₹ in crore)	Regular Tax paid (₹ in crore)	Whether there are other properties available on record? (if yes, value of all the properties (₹ in crore))
8	Shri B2 / 2012-13 to 2018-19	Central Circle-2(3), Bengaluru	5.26	Immovable	2.89	54.9	27/12/2019	6.50	0	9.40
9	Shri M12/ 2012-13 to 2018-19	Central Circle-1, Mangaluru	8.42	Immovable	2.72	32.4	26/12/2019	30.97	0.09	3.59
10	Shri S41 / 2012-13 to 2018-19	Central Circle-2(4), Bengaluru	2.99	Immovable	0.62	20.6	31/12/2019	4.58	0.12	No
11	Shri S25 / 2010-11 to 2016-17	Central Circle-2(2), Bengaluru	0.99	Immovable	0.09	9.1	22/12/2017	7.57	0	0.09
12	M/s. S7 Pvt. Ltd. / 2008-09 to 2017-18	Central Circle - Panaji, Goa	31.13	Movable	2.88	9.2	18/06/2021	0	0	55.78
Pr.CIT (Central)-1, Delhi										
13	Shri N13 / 2012-13 to 2018-19	Central Circle-01, Delhi	81.42	Immovable	5.91	7.3	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
14	Smt. S19 / 2012-13 to 2018-19						25/12/2019	1.01	0	
Pr.CIT (Central)-3, Mumbai										
15	M/s. A42 Pvt Ltd / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	1.28	Immovable	0.66	51.5	29/12/2017	2.14	0	Not ascertainable
16	M/s. H7 Ltd. / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	4.81	Immovable	2.12	44.0	29/12/2017	11.90	0	Not ascertainable

Sl. No.	Name of the Assessee / AYS	AO jurisdiction	Estimated tax liability (₹ in crore)	Type of property attached (Movable/ Immovable/ Both)	Value of Property Attached (₹ in crore)	Attached Property is what percentage of estimated tax liability? (percentage)	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (₹ in crore)	Regular Tax paid (₹ in crore)	Whether there are other properties available on record? (if yes, value of all the properties (₹ in crore))
17	Shri R19 / 2011-12 to 2017-18	Central Circle-6(4), Mumbai	47.64	Movable	15.07	31.6	28/12/2018	93.84	20.72	24.07
18	M/s. V10 Ltd / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	0.60	Immovable	0.18	29.9	29/12/2017	1.58	0	Not ascertainable
19	M/s. S14 Pvt Ltd / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	1.15	Immovable	0.26	22.5	29/12/2017	2.32	0	Not ascertainable
20	Shri A38 / 2010-11 to 2016-17	(Central Circle-6(2), Mumbai)	7.50	Both	0.70	9.4	29/12/2017	11.16	0.94	Not ascertainable
21	Shri N18 / 2010-11 to 2016-17	Central Circle-5(1), Mumbai	22.48	Immovable	1.86	8.3	29/12/2017	30.41	0	Not ascertainable
Pr.CIT (Central)-4, Mumbai										
22	Smt. M11 / 2011-12 to 2017-18	(Central Circle-8(1), Mumbai)	14.58	Immovable	6.35	43.5	14/12/2018	2.48	0	Not ascertainable
23	M/s. J16 Pvt. Ltd. / 2011-12 to 2017-18	Central Circle-8(1), Mumbai	52.80	Immovable	9.20	17.4	19/12/2018	38.73	13.62	343.95
24	Shri P7 / 2010-11 to 2016-17	(Central Circle-8(4), Mumbai)	30	Immovable	1.75	5.8	29/12/2017	34.80	0	25.21
25	Smt S43 / 2011-12 to 2017-18	Central Circle-8(1), Mumbai	1.15	Immovable	0.04	3.6	10/12/2018	0.81	0	No

Sl. No.	Name of the Assessee / AYS	AO jurisdiction	Estimated tax liability (₹ in crore)	Type of property attached (Movable/ Immovable/ Both)	Value of Property Attached (₹ in crore)	Attached Property is what percentage of estimated tax liability? (percentage)	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (₹ in crore)	Regular Tax paid (₹ in crore)	Whether there are other properties available on record? (if yes, value of all the properties (₹ in crore))
Pr.CIT (Central), Hyderabad										
26	M/s. V23 Ltd./ 2012-13 to 2017-18	Central Circle - 2(3), Hyderabad	85.77	Immovable	75.00	87.4	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
27	Shri M14/ 2013-14 to 2018-19	Central Circle - 2(3), Hyderabad	3.49	Movable	0.79	22.6	Assessments pending	Assessments pending	Assessments pending	No
Pr.CIT (Central)-2, Chennai										
28	M/s. S48 Pvt. Ltd. /2012-13 to 2018-19	Central Circle - 2 (1), Chennai	54.96	Movable	9.32	17.0	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
29	M/s. N12 / 2010-11 to 2018-19	Central Circle - 2 (1), Chennai	81.02	Movable	7.57	9.3	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
30	Shri C3 /2012-13 to 2017-18	Central Circle - 2 (1), Chennai	108.45	Immovable	0.53	0.5	Assessments pending	Assessments pending	Assessments pending	Not ascertainable
Pr. CIT (Central), Bhopal										
31	M/s. A8 Pvt. Ltd. / 2011-12 to 2017-18	Central Circle-1, Raipur	5.71	Immovable	4.62	80.8	26/12/2018	1.99	0.30	Not ascertainable
32	M/s. L1 Pvt. Ltd. / 2011-12 to 2017-18							16.75	3.16	Not ascertainable

Sl. No.	Name of the Assessee / AYS	AO jurisdiction	Estimated tax liability (₹ in crore)	Type of property attached (Movable/ Immovable/ Both)	Value of Property Attached (₹ in crore)	Attached Property is what percentage of estimated tax liability? (percentage)	Date of Assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc) (₹ in crore)	Regular Tax paid (₹ in crore)	Whether there are other properties available on record? (if yes, value of all the properties (₹ in crore))
33	Smt. M4 / 2011-12 to 2017-18	Central Circle-1, Raipur	3.01	Immovable	2.28	75.8	05/12/2018	0	0	Not ascertainable
34	Shri A23 / 2011-12 to 2017-18						07/03/2019	0.10	0.10	Not ascertainable
Pr. CIT (Central) -1, Chennai										
35	Shri P17 / 2015-16 to 2017-18	Central Circle-1(2), Chennai	8.42	Immovable	2.72	34.0	28/12/2018	7.08	0	Not ascertainable

Appendix 19C

(Refer Para No. 4.4.2)

Statement showing details of 281B cases wherein attached property was referred to Valuation Officer (VO) for determining Fair Market Value

Sl. No.	Name of Assessee / AYS	Pr. CIT jurisdiction (AO jurisdiction)	Date of AO's reference to VO under Section 142A	Date of order under Section 281B	Delay in submission of VO Report ^(Note-1) (No. of days)	Estimated Tax Liability	Value of attached property (as per 281B records)	FMV (as per VO's Report)	Ref. made before or after order under Section 281B
			Date of VO's Report	Type of property attached			(₹ in crore)		
1.	Shri A18 / 2010-11 to 2016-17	Pr.CIT (Central)-3, Delhi (Central Circle-26, Delhi)	0812/2017 30/08/2018	06/03/2018 Immovable	235	Not available	6.00	7.96	Before
2.	Shri A17 / 2011-12 to 2017-18	Pr.CIT (Central)-3, Delhi (Central Circle-30, Delhi)	15/11/2018 18/03/2019	29/11/2019 Immovable	112	Not available	1.05	1.87	Before
3.	Shri A24 / 2011-12 to 2017-18	Pr.CIT (Central)-3, Delhi (Central Circle-30, Delhi)	15/11/2018 18/03/2019	29/11/2019 Immovable	112	Not available			Before
4.	Shri V16 / 2012-13 to 2018-19	Pr.CIT (Central)-3, Delhi (Central Circle-32, Delhi)	04/11/2019 Not available	09/10/2019 Immovable	Not applicable	Not available	0.27	Not available	After
5.	Shri R16 / 2012-13 to 2018-19	Pr.CIT (Central)-3, Delhi (Central Circle-32, Delhi)	04/11/2019 Not available	09/10/2019 Immovable	Not applicable	Not available	1.09	Not available	After
6.	Shri D1/ 2010-11 to 2017-18	Pr.CIT(Central), Bengaluru (Central Circle-2(3), Bengaluru)	13/12/2017 Not available	24/10/2018 Both	Not applicable	30.00	0.61	Not available	Before
7.	Shri S15 / 2008-09 to 2018-19	Pr.CIT(Central), Bengaluru (Central Circle, Hubballi)	13/12/2019 20/01/2020	05/12/2019 Immovable	09	2.02	0.19 (Part)	0.21	After
8.	Smt. S23 / 2010-11 to 2016-17	Pr.CIT(Central), Bengaluru (Central Circle-1, Mangaluru)	Not available 17/03/2016 & 18/03/2016	18/06/2018 Immovable	Not ascertainable	1.30	2.80	6.32	Before

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Sl. No.	Name of Assessee / AYs	Pr. CIT jurisdiction (AO jurisdiction)	Date of AO's reference to VO under Section 142A	Date of order under Section 281B	Delay in submission of VO Report ^(Note-1) (No. of days)	Estimated Tax Liability	Value of attached property (as per 281B records)	FMV (as per VO's Report)	Ref. made before or after order under Section 281B
			Date of VO's Report	Type of property attached					
9.	Shri A12 / 2010-11 to 2016-17		Not available 17/03/2016 & 18/03/2016	18/06/2018 Immovable	Not ascertainable	0.18	5.83		Before
10.	Smt. P6 / 2010-11 to 2016-17	Pr.CIT (Central), Bhopal (Central Circle, Gwalior)	05/04/2017 31/08/2017	27/09/2017 Immovable	119	2.14 (30% of ₹ 7.12 crore undisclosed income)	6.19	8.60	Before
11.	Shri P2 / 2011-12 to 2014-15	Pr.CIT(Central), Kochi (Central Circle-2, Ernakulam)	11/10/2017 22/12/2017	28/12/2017 Immovable	42	Not available	0.36 (Part)	0.75	Before
12	G6 / 2012-13 to 2018-19 ^(Note-2)	Pr. CIT (Central), Hyderabad (Central Circle-3(3), Hyderabad)	28/11/2019 30/11/2019	18/05/2018 Immovable	No delay	2.94 (30% of ₹ 9.80 crore undisclosed income)	39.65	63.70	After

Note-1: Excludes the prescribed time limit of 30 days from the date of reference by AO;

Note-2: The AO made (November 2019) reference under Section 133 (6) was made to jurisdictional Sub-Registrar Officer for determining the market rates of the attached immovable properties

Appendix 20

[Refer Para 5.1.1(1) (i)]

Section 281B orders which were not extended as there was no outstanding demand

Sl. No.	Name of the Assessee / AYs	Pr.CIT jurisdiction (AO jurisdiction)	281B order valid upto	Date of assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc.) (₹ in crore)	Tax recovered (₹ in crore) ⁷⁷
1	M/s. D15 / 2016-17	Pr.CIT (Central) - 3, Mumbai (Central Circle 5(2), Mumbai)	24/06/2019	26/12/2018	0.27	0.27
2	M/s. C13 Ltd. / 2014-15	Pr.CIT (Central) - 1, Mumbai (Central Circle 1(2), Mumbai)	25/01/2018 (Revocation order issued on 25-01-2018)	11/01/2018	86.58	86.58
3	M/s. C4 Pvt. Ltd. / 2011-12	Pr.CIT (Central) - 1, Mumbai (Central Circle 2(2), Mumbai)	23/04/2019	22/12/2018	0	0
4	Shri M6 / 2011-12 to 2017-18	Pr.CIT (Central)-2 Delhi (Central Circle-17, Delhi)	11/05/2019	15/12/2018	0	0
5	Shri A37 / 2010-11 to 2016-17	Pr.CIT (Central)-2 Delhi (Central Circle-19, Delhi)	20/02/2019	27/12/2018	0	0
6	Shri A22 / 2010-11 to 2016-17	Pr.CIT (Central)-2 Delhi (Central Circle-19, Delhi)	20/02/2019	27/12/2018	0	0
7	M/s l1 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT (Central)-2 Delhi (Central Circle-19, Delhi)	03/11/2020	25/12/2019	0	0
8	Shri A10 / 2011-12 to 2017-18	Pr.CIT (Central)-2 Delhi (Central Circle-19, Delhi)	03/11/2020	25/12/2019	0	0
9	Shri Y2 / 2011-12 to 2017-18	Pr.CIT (Central)-3 Delhi (Central Circle-30, Delhi)	24/05/2020	19/12/2019	0	0
10	Shri L6 / 2011-12 to 2017-18	Pr.CIT (Central)-3 Delhi (Central Circle-30, Delhi)	24/05/2020	23/12/2019	0	0
11	Shri P14 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle, Gwalior)	17/03/2019	27/12/2018	0	0
12	M/s. C11 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle, Gwalior)	17/03/2019	30/12/2018	0	0
13	M/s. K13 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle, Gwalior)	28/10/2019	17/12/2018	0	0
14	Shri A36 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle, Gwalior)	17/03/2019	27/12/2018	0	0

⁷⁷ Where the cumulative Tax demand is "Nil" and yet some Tax recovery has been made thereagainst, the tax recovery is ignored and its column is indicated as "0".
Where the cumulative Tax demand shows some amount but the Tax recovery is more than demand, the Tax payment column is restricted to the demand raised.

Sl. No.	Name of the Assessee / AYs	Pr.CIT jurisdiction (AO jurisdiction)	281B order valid upto	Date of assessment	Cumulative Tax Demand raised (net of 154, OGE, 263 orders etc.) (₹ in crore)	Tax recovered (₹ in crore) ⁷⁷
15	Smt. M4 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle-1, Raipur)	17/03/2019	05/12/2018	0	0
16	Shri S24/ 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle-1, Raipur)	17/03/2019	28/12/2018	0	0
17	Shri S10 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle-1, Raipur)	17/03/2019	28/12/2018	0	0
18	Smt. A31/ 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle-1, Raipur)	17/03/2019	28/12/2018	0	0
19	Shri A23 / 2011-12 to 2017-18	Pr.CIT (Central), Bhopal (Central Circle-1, Raipur)	17/03/2019	07/03/2019	0.10	0.10
20	M/s. S39/ 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle-1(1), Chennai)	28/05/2020	29/12/2017	0	0
21	M/s. T6 Trust / 2011-12 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle-2(3), Chennai)	19/04/2020	25/02/2019	0	0
22	M/s. A7 Pvt Ltd / 2013-14 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle-2(3), Chennai)	05/02/2019	27/12/2018	0	0
23	Shri A1 / 2010-11 to 2014-15	Pr. CIT (Central), Kochi, (Central Circle-2, Ernakulam)	27/06/2018	29/12/2017	59.87	59.87
24	Smt P26 / 2011-12 to 2017-18	Pr. CIT (Central)-3, Delhi (Central Circle-30, Delhi)	29/11/2019	27/12/2019	0	0
25	Shri N8 / 2012-13 to 2018-19	Pr. CIT (Central)-4, Mumbai (Central Circle-7(2), Mumbai)	25/06/2020	28/12/2019	0	0
26	M/s. M1 Pvt. Ltd. /2015-16 and 2016-18	Pr. CIT (Central), Bengaluru (Central Circle-2, Mangaluru)	03/06/2019	31/12/2018	0	0
27	Shri A40/ 2009-10 to 2015-16	Pr. CIT (Central), Ahmedabad (Central Circle-1(1), Ahmedabad)	20/03/2018	26/12/2017	Assessments quashed by ITAT	0
28	Shri D5/ 2009-10 to 2015-16	Pr. CIT (Central), Ahmedabad (Central Circle-1(1), Ahmedabad)	20/03/2018	26/12/2017	Assessments quashed by ITAT	0

Appendix 21

[Refer Para 5.1.1(1) (ii)]

Section 281B orders which were valid as on the date of audit (December 2020 to March 2021)

Sl. No.	Name of the Assessee	AYs	Pr.CIT jurisdiction	AO jurisdiction	281B order valid upto
Cases in which assessments were pending					
1	Shri O	2002-03 to 2008-09	Pr.CIT(Central) Kochi	Central Circle- 2 Ernakulam	31/05/2021
2	Shri M14	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle - 2(3) Hyderabad	18/07/2021
3	M/s. V23 Ltd.	2012-13 to 2017-18	Pr.CIT (Central), Hyderabad	Central Circle - 2(3) Hyderabad	30/06/2021
4	Shri A27	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
5	Smt. A28	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
6	Shri A29	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
7	Shri A30	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
8	Smt. M16	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
9	Smt. P18	2013-14 to 2018-19	Pr.CIT (Central), Hyderabad	Central Circle 3(2), Hyderabad	19/04/2021
10	M/s. B3 Pvt. Ltd.	2008-09 to 2017-18	Pr.CIT (Central), Bengaluru	Central Circle - Panaji, Goa	08/04/2021
11	M/s. S6 Pvt. Ltd.	2008-09 to 2017-18	Pr.CIT (Central), Bengaluru	Central Circle - Panaji, Goa	08/04/2021
12	M/s. S7 Pvt. Ltd.	2008-09 to 2017-18	Pr.CIT (Central), Bengaluru	Central Circle - Panaji, Goa	08/04/2021
13	Shri T4	2013-14 to 2018-19	Pr.CIT (Central)-2, Chennai	Central Circle - 2 (1) Chennai	24/03/2021
14	M/s. S48 Pvt. Ltd.	2012-13 to 2018-19	Pr.CIT (Central)-2, Chennai	Central Circle - 2 (1) Chennai	24/03/2021
15	M/s. R21	2010-11 to 2018-19	Pr.CIT (Central)-2, Chennai	Central Circle - 2 (1) Chennai	24/03/2021
16	M/s. N12	2010-11 to 2018-19	Pr.CIT (Central)-2, Chennai	Central Circle - 2 (1) Chennai	24/03/2021
17	S38 Trust	2011-12 to 2017-18	Pr.CIT (Central)-2, Chennai	Central Circle - 2(3) Chennai	25/04/2021

Appendix 22

[Refer Para 5.1.1(3)]

Details of Section 281B cases in which validity period is not mentioned in the related records

Sl. No.	Name of the Assessee / AYS	Pr. CIT(Central jurisdiction (AO jurisdiction))	Date of order under Section 281B	Estimated tax liability	Tax demand raised on assessment
			Date of assessment	Value of attached property	Balance tax outstanding (as on dates of Audit)**
(₹ in crore)					
1	Smt. J1 / 2012-13 to 2018-19	Pr. CIT (Central)-1, Chennai (Central Circle-1(4), Chennai)	26/12/2019	2.87	3.95
			30/12/2019	Not available	3.95
2	Smt. M10 / 2012-13 to 2018-19	Pr. CIT (Central)-1, Chennai (Central Circle-1(4), Chennai)	09/09/2020 Assessment not completed	2.18 Not available	Assessment not completed
3	Shri C3 / 2012-13 to 2017-18	Pr. CIT (Central)-2, Chennai (Central Circle - 2(1), Chennai)	25/09/2019	108.45	Assessment not completed
			Assessment not completed	0.53	Assessment not completed
4	Shri R17 / 2012-13 to 2017-18	Pr. CIT (Central)-2, Chennai (Central Circle - 2(1), Chennai)	20/09/2019	Not available	3.00
			30/12/2019	Not available	3.00
5	Shri R3 / 2017-18	Pr. CIT (Central)-2, Chennai (Central Circle - 2(3), Chennai)	20/12/2018	7.67	7.67
			11/12/2020	Not available	7.49
6	Shri J4 / 2011-12 to 2017-18	Pr. CIT (Central)-2, Chennai (Central Circle - 2(4), Chennai)	05/04/2018	506.82	21.35
			06/02/2020	Not available	21.35
7	Shri V22 / 2011-12 to 2017-18	Pr. CIT (Central)-2, Chennai (Central Circle - 2(4), Chennai)	26/02/2020	8.65	12.40
			03/02/2020	Not available	12.40
8	M/s. A6 Pvt. Ltd / 2015-16 to 2018-19	Pr. CIT (Central)-2, Chennai (Central Circle - 3(1), Chennai)	14/12/2020	83.50	Assessment not completed
			Assessment not completed	Not available	Assessment not completed

** The current status was awaited from the Ministry/CBDT (October 2022).

Appendix 23

(Refer Para 5.1.2)

Delay in issue of extension order to order under Section 281B

Sl. No.	Name of the Assessee / AYs	Pr.CIT Jurisdiction (AO Jurisdiction)	Order under Section 281B valid upto	Date of extension to order under Section 281B	Time gap (in days)
1	Shri A37 / 2010-11 to 2016-17	Pr.CIT (Central) - 2, Delhi (Central Circle-19, Delhi)	29/04/2018	20/08/2018	110
2	M/s. W1 Pvt. Ltd. / 2011-12 to 2017-18	Pr.CIT (Central) - 2, Delhi (Central Circle-19, Delhi)	18/03/2020	04/05/2020	46
3	Shri A27 / 2013-14 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(2), Hyderabad)	18/08/2020	20/10/2020	62
4	Smt. A28 / 2013-14 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(2), Hyderabad)	05/09/2020	20/10/2020	45
5	Shri A29 / 2013-14 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(2), Hyderabad)	18/08/2020	20/10/2020	62
6	Shri A30 / 2013-14 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(2), Hyderabad)	18/08/2020	20/10/2020	62
7	Smt. P18 / 2013-14 to 2018-19	Pr.CIT (Central), Hyderabad (Central Circle - 3(2), Hyderabad)	18/08/2020	20/10/2020	62
8	Shri T1 / 2013-14 to 2018-19	Pr.CIT (Central), Bengaluru (Central Circle-1(3), Bengaluru)	06/07/2020	10/07/2020	2
9	Smt. S23/ 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru (Central Circle-1, Mangaluru)	07/06/2018	18/06/2018	11
10	Shri A12 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru (Central Circle-1, Mangaluru)	07/06/2018	18/06/2018	11
11	Shri S5 / 2010-11 to 2016-17	Pr.CIT (Central), Bengaluru (Central Circle-1, Mangaluru)	07/06/2018	18/06/2018	11
12	M/s. B3 Pvt. Ltd. / 2008-09 to 2017-18	Pr.CIT (Central), Bengaluru (Central Circle-Panaji, Goa)	08/09/2020	09/10/2020	30
13	M/s. S6 Pvt. Ltd. / 2008-09 to 2017-18	Pr.CIT (Central), Bengaluru(Central Circle-Panaji, Goa)	08/09/2020	09/10/2020	30
14	M/s. P25 Pvt. Ltd / 2008-09 to 2017-18	Pr.CIT (Central), Bengaluru(Central Circle-Panaji, Goa)	19/06/2018	27/06/2018	8

Sl. No.	Name of the Assessee / AYs	Pr.CIT Jurisdiction (AO Jurisdiction)	Order under Section 281B valid upto	Date of extension to order under Section 281B	Time gap (in days)
15	Shri V14 / 2010-11 to 2016-17	Pr.CIT(Central), Bhopal (Central Circle Gwalior)	31/10/2017	04/12/2017	34
16	Shri B9 / 2011-12 to 2017-18	Pr.CIT (Central), Ahmedabad (Central Circle-1(3) Ahmedabad)	21/08/2018	21/12/2018	122
17	Shri D10 / 2011-12 to 2017-18	Pr.CIT (Central), Ahmedabad (Central Circle-1(3) Ahmedabad)	14/07/2018	21/12/2018	160
18	M/s. C15 Pvt. Ltd./ 2011-12 to 2017-18	Pr.CIT (Central)-1, Chennai (Central Circle-1(1), Chennai)	12/08/2019	22/08/2019	10
19	Shri V3 / 2017-18	Pr.CIT (Central)-1, Chennai (Central Circle-1(1), Chennai)	14/09/2019	17/09/2019	2
20	Shri P17 / 2015-16 to 2017-18	Pr.CIT (Central)-1, Chennai (Central Circle - 1(2), Chennai)	22/11/2017	28/11/2017	6
21	Shri J3 / 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
22	Shri T3 / 2016-17	Pr.CIT Central-1, Chennai (Central Circle-1(3), Chennai)	12/06/2020	15/06/2020	3
23	Shri A4 / 2014-15	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
24	Shri A4 / 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
25	Shri J2/ 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
26	Shri T2 / 2015-16	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
27	Shri T2 / 2016-17	Pr.CIT (Central)-1, Chennai (Central Circle -1(3), Chennai)	12/06/2020	15/06/2020	2
28	Smt. M10 / 2012-2013 to 2018-2019	Pr.CIT (Central)-1, Chennai (Central Circle - 1(4), Chennai)	25/06/2020	09/09/2020	74

Sl. No.	Name of the Assessee / AYs	Pr.CIT Jurisdiction (AO Jurisdiction)	Order under Section 281B valid upto	Date of extension to order under Section 281B	Time gap (in days)
29	Shri C3 / 2012-13 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle - 2 (1) Chennai)	21/07/2018	28/09/2018	67
30	Shri J5 / 2011-12 to 2017-18	Pr.CIT Central-2, Chennai (Central Circle 2(3) Chennai)	31/08/2019	20/12/2019	111
31	Shri V22 / 2011-12 to 2017-18	Pr.CIT (Central)-2, Chennai (Central Circle - 2(4) Chennai)	11/09/2019	26/02/2020	166

Appendix 24

[Refer Para 5.1.3(i)]

Cases in which assessments are not completed either due to pendency of assessee's application before the IT Settlement Commission or have been stayed by the Courts

Sl. No.	Assessee name / AYs	Pr.CIT Jurisdiction AO Jurisdiction	Date on which the order under Section 281B lapsed	Est. Tax liability or Undisclosed Income (₹ in crore)
a) Cases in which assessee's application is pending in the Settlement Commission				
1	Shri N13/2012-13 to 2018-19	Pr.CIT (Central)-1 Delhi (Central Circle-01, Delhi)	21/04/2020	81.42 (for the whole group)
2	Shri S11 / 2017-18	Pr.CIT(Central), Bhopal (Central Circle, Gwalior)	28/10/2019	2.17 (for the whole group)
3	Shri R13 / 2011-12 to 2017-18	Pr.CIT(Central), Bhopal (Central Circle, Gwalior)	28/10/2019	
4	M/s. J15 Pvt. Ltd. / 2012-13 to 2017-18	Pr.CIT(Central) Kochi (Central Circle – 1, Ernakulam)	12/02/2020	No
5	Shri A16 / 2012-13 to 2017-18	Pr.CIT(Central) Kochi (Central Circle – 1, Ernakulam)	03/02/2020	No
6	M/s. S38 Trust / 2011-12 to 2017-18	Pr.CIT (Central) -2, Chennai (Central Circle - 2(3), Chennai)	25/04/2021	170.00
7	M/s B15 Ltd./ 2012-13 to 2018-19	Pr.CIT (Central) -2, Chennai (Central Circle - 3(1), Chennai)	08/01/2021	40.00
8	Shri Y1 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
9	Shri L7 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
10	Shri S46 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
11	Shri P27 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
12	Smt. S44 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
13	Shri B11 / 2011-12 to 2017-18	Pr.CIT (Central) -3, Delhi (Central Circle - 30, Delhi)	11/05/2019	No
14	Shri S40/ 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
15	Shri D3 / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
16	Shri U1 / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
17	Shri K9 / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
18	Smt. J17 / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No

Sl. No.	Assessee name / AYs	Pr.CIT Jurisdiction AO Jurisdiction	Date on which the order under Section 281B lapsed	Est. Tax liability or Undisclosed Income (₹ in crore)
19	M/s. S18 Pvt. Ltd. / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
20	M/s R4 Pvt. Ltd. / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
21	M/s A21 Pvt. Ltd. / 2012-13 to 2018-19	Pr.CIT (Central) -3, Delhi (Central Circle - 31, Delhi)	10/05/2020	No
22	M/s M9 Pvt. Ltd. / 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	10/12/2019	No
23	Shri R15 / 2011-12 to 2017-18	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	12/03/2019	No
24	Smt. U2 / 2011-12 to 2017-18	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	12/03/2019	No
25	Smt. D13 / 2011-12 to 2017-18	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	12/03/2019	No
26	Smt. S30 / 2011-12 to 2017-18	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	12/03/2019	No
27	Shri S27 / 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	31/01/2020	No
28	Shri A46 / 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	28/01/2020	No
29	Shri S17 / 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	31/01/2020	No
30	Shri K11 / 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	31/01/2020	No
31	M/s. G4 Ltd./ 2012-13 to 2018-19	Pr.CIT Central, Chandigarh, (Central Circle-1, Chandigarh)	31/01/2020	No
b) Cases in which assessee's application is stayed by the Courts				
32	M/s. P25 Pvt. Ltd. / 2008-09 to 2011-12	Pr.CIT Central, Bengaluru Central Circle, Panaji, Goa	31/12/2018	24.31
33	Shri Y3 / 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No
34	Shri R20 / 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No

Sl. No.	Assessee name / AYs	Pr.CIT Jurisdiction AO Jurisdiction	Date on which the order under Section 281B lapsed	Est. Tax liability or Undisclosed Income (₹ in crore)
35	Smt K7 / 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No
36	Shri C10 / 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No
37	Shri S45/ 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No
38	Smt. M15 / 2007-08 to 2013-14	Pr.CIT Central, Ahmedabad (Central Circle-1(1), Ahmedabad)	17/12/2018	No

Appendix 25

[Refer Para 5.1.3(ii)]

Details of number of Section 281B cases in which assessments had been completed and the assessee has filed appeal thereagainst and the validity period of order under Section 281B had expired during the pendency of appeal.

Pr.CIT Jurisdiction	No. of AOs	No. of order under Section 281Bs issued during the review period	No. of order under Section 281B cases in which assessment completed	No. of 281B cases in which validity expired during pendency of appeal against assessment order
(1)	(2)	(3)	(4)	(5)
Pr.CIT (Central), Bhopal	02	26	24	01
Pr.CIT (Central)-1, Kolkata	03	07	07	06
Pr.CIT (Central)-2, Kolkata	01	06	06	06
Pr.CIT (Central)- 1, Chennai	06	34	31	17
Pr.CIT (Central)-2, Chennai	04	34	25	05
Pr.CIT (Central), Kochi	02	07	04	04
Pr.CIT (Central), Bengaluru	10	30	22	13
Pr.CIT (Central), Ahmedabad	05	33	22	11
Total	33	177	140	63

Appendix 26

(Refer Para 5.1.4)

Details of Section 281B order cases with details of time gap between the date of search and the date of initial order under Section 281B

Pr.CIT Jurisdiction (No. of AOs)	No. of Sn.281B orders issued during the review period	No. of 281B cases having information regarding time gap between the date of search and the date of initial 281B order	Range of time gap (in days)
(1)	(2)	(3)	(4)
Pr.CIT (Central)-1, Delhi (04)	11	08	561-782
Pr.CIT (Central)-2, Delhi (04)	30	28	426-824
Pr.CIT (Central)-3, Delhi (06)	41	26	686-1,220
Pr.CIT (Central), Bhopal (02)	26	26	444-771
Pr.CIT (Central)-1, Kolkata (03)	07	06	708-1,046
Pr.CIT (Central)- 2, Kolkata (01)	06	06	742
Pr.CIT (Central)- 1, Mumbai (04)	09	07	649-1,023
Pr.CIT (Central)- 3, Mumbai (05)	11	10	513-961
Pr.CIT (Central)- 4, Mumbai (04)	16	16	239-1,220
Pr.CIT (Central)- 1, Chennai (06)	34	10	239-944
Pr.CIT (Central)- 2, sChennai (04)	34	03	291-868
Pr.CIT(Central), Kochi (02)	07	07	208- 1,129
Pr.CIT (Central), Bengaluru (10)	30	28	253- 956
Pr.CIT (Central), Hyderabad (07)	25	25	232 -899
Pr.CIT (Central), Visakhapatnam (01)	05	05	434-937
Pr.CIT (Central) Ahmedabad (05)	33	23	307- 1,120
Pr.CIT (Central), Rajasthan (01)	03	03	876- 879
Pr.CIT (Central), Chandigarh (02)	22	0	--
Total (71)	350	237	208 – 1,220

Abbreviations

Abbreviation	Full Form
ACIT	Assistant Commissioner of Income Tax
Act	Income Tax Act, 1961
AO	Assessing Officer
AY	Assessment Year
BG	Bank Guarantee
Board/CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income Tax
CERSAI	Central Registry of Securitisation Asset Reconstruction and Security Interest of India
CGST Act	Central Goods and Service Tax Act, 2017
CGST Rules	Central Goods and Service Tax Rules, 2017
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
DCIT	Deputy Commissioner of Income Tax
DGIT (Systems)	Director General of Income Tax (Systems)
EC	Encumbrance Certificate – Issued by Sub-Registrar Officer under the State Government’s Department of Stamps and Registration
FMV	Fair Market Value (of a property)
FY	Financial Year
ITAT	Income Tax Appellate Tribunal
ITD/Department	Income Tax Department
ITO	Income Tax Officer
ITSC	Income Tax Settlement Commission
JCIT	Joint Commissioner of Income Tax
OGE	Order Giving Effect
PAN	Permanent Account Number
Pr. CCIT	Principal Chief Commissioner of Income Tax
Pr.CIT (Central)/Central Commissionerate	Principal Commissioner of Income Tax (Central)
Pr.DGIT	Principal Director General of Income Tax
r.w.s.	Read with Section
Rules	The Income Tax Rules, 1962
SARFAESI Act	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SSCA	Subject-specific Compliance Audit
VO	Valuation Officer

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