

HUNDRED AND FIFTY-SECOND REPORT

PUBLIC ACCOUNTS COMMITTEE (1988-89)

(EIGHTH LOK SABHA)

DISPOSAL OF IMMOVABLE PROPERTIES
ATTACHED TOWARDS TAX RECOVERY

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Action Taken on 95th Report of Public
Accounts Committee (8th Lok Sabha)]

Presented in Lok Sabha on 24 April 1989
Laid in Rajya Sabha on 24 April 1989



LOK SABHA SECRETARIAT
NEW DELHI

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CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations and Observations which have been accepted by Government	4
CHAPTER III Recommendations and Observations which the Com- mittee do not desire to pursue in the light of the replies received from Government	13
CHAPTER IV Recommendations and Observations replies to which have not been accepted by the Committee and which require reiteration	14
CHAPTER V Recommendations and Observations in respect of which Government have furnished interim replies...	19
APPENDICES	
I Statement showing classification of the action taken notes furnished by the Government	20
II Conclusions and Recommendations	21
PART II	
Minutes of sitting of Public Accounts Committee held on 20.4.1939	24

THE COMMITTEE ON PUBLIC ACCOUNTS
(1988-89)

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3. Shri A. Subramanian — *Senior Financial Committee Officer*

* Appointed as Chairman w.e.f. 5.9.1988 *vice* Shri C. Madhav Reddy resigned from Chairmanship of the Committee.

@Appointed w.e.f. 7.12.1988 *vice* Shri Kalpnath Rai ceased to be member of the Committee on his appointment as a Minister of State.

INTRODUCTION

1. The Chairman of the Public Accounts Committee as authorised by the Committee to present on their behalf this 152nd Report on action taken by government on the recommendations of the Committee contained in their Ninety-fifth Report (Eighth Lok Sabha) on disposal of immovable properties attached towards tax recovery.

2. In the Report the Committee have reiterated the view expressed by the Committee in the Original Report that a time limit for disposal of immovable properties attached towards tax recovery be laid down in the Income Tax Act or Rules made there-under in as much as the time limit would be more deterrent for the tax payer to comply with the demand notice.

3. The Ministry of Finance (Deptt. of Revenue) have not accepted the recommendation made in Committee's earlier report for taking possession of the title deeds in respect of attached properties, on the plea that sale of immovable properties, valuing more than Rs. 50,000 (since increased to 2 lakhs w.e.f. 1.4.88) could not be effected without the seller having to go to Income tax authorities for obtaining clearance under Section 230A of the Income Tax Act 1961. According to the Committee, this was a safeguard against the honest tax payers and not against unscrupulous tax payers who might circumvent the provisions of law through sale of properties at an apparent lower value leaving little scope for the department to intervene in time. The Committee have desired the Ministry to examine the matter from all angles in consultation with the Ministry of Law.

4. The Report was considered by the Public Accounts Committee at their sitting held on 20 April, 1989. Minutes of the sitting form Part II of the Report.

5. For facility of reference and convenience, the recommendations and conclusions of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix-II of the Report.

6. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
21 April, 1989

1 Vaishakha, 1911(Saka)

AMAL DATTA
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by Government on the Committee's observations and recommendations contained in their Report* on disposal of immovable properties attached towards tax recovery.

1.2 The Committee's Report contained 13 recommendations/observations. Action Taken Notes have been received from Government in respect of all the recommendations/observations. These have been broadly divided into four categories as shown in Appendix-I.

1.3 The Committee expect that final reply to the recommendation in respect of which only interim reply has been furnished by the Government will be made available to the Committee expeditiously after getting the same vetted by the Audit.

1.4 The Committee will now deal with action taken by Government on some of their recommendations.

Time Limit for Disposal of Immovable Properties After Attachment

(Sl. Nos. 2,3,4, and 7, Paras 1.47-1.49 & 1.52)

1.5 In their earlier report, expressing deep concern over the large number of immovable properties remaining without disposal for years together after attachment thereof, the Committee felt that the Department did not make use of an effective mode of tax recovery available with them under Section 222 of the Income Tax Act, 1961. Having regard to the provisions of the Code of Civil procedure, the Committee stressed the need for prescribing a time limit for sale of immovable properties after attachment.

1.6 Not accepting the recommendation of the Committee, the Ministry have advanced the same old arguments that the property, if sold within a prescribed time limit could not be restored to the assessee in case he subsequently gets a decision in his favour from any appellate authority and

*95th Report (8th Lok Sabha)

that there might be cases where property could not be sold within the time limit for want of bidders or due to bid amount being lower than the reserve price. The Committee are constrained to observe that their recommendations were not given the serious thought that they deserved. As already observed in the recommendation in para 1.47, complete information on position of recovery against cases covered by attachment was neither furnished earlier to the Committee nor has now been furnished; instead, a general reply has been given without supporting the reply with the statistical data on effectiveness of the measures taken on the recovery of arrears of tax. The contingencies envisaged by the Department can very well be taken care of through incorporation of suitable provisions in law i. e. by allowing time consumed in appeals in computation of the time limit or by vesting property in Government till final disposal of the property in case no bidder comes forward within the time limit or the bid amount is lower than the reserve price. The Committee also consider that a time limit would be more deterrent for the tax payer than the existing provisions which, in the absence of proper implementation, have not proved as coercive or deterrent as presumed by the Department. Besides, the existing provisions look incomplete without a time limit. The Committee, therefore, strongly reiterate their earlier recommendations that a time limit for disposal of immovable properties attached towards tax recovery be laid down in the Income tax Act, 1961 or the rules made thereunder. If need be, the opinion of the Law Ministry may be sought in the matter.

Need for provisions for taking possession of title deeds in respect of attached immovable property

(Sl. No. 5, Paragraph 1.50)

1.7 In order to forestall surreptitious sale or otherwise transfer of immovable properties attached towards tax recovery, the Committee in their earlier report had desired the Department to make suitable amendment in consultation with the Ministry of Law, empowering Government to take possession of the title deeds in respect of such immovable properties.

1.8 The Ministry of Finance (Department of Revenue) have not accepted the above recommendation of the Committee on the ground that sale of immovable property valuing more than Rs. 50,000 (since increased to Rs. 2 lakhs w.e.f. 1.4.88) could not be effected without the seller having to go to the Income tax Authorities for obtaining clearance under Section 230A of the Income Tax Act, 1961. In fact this is a safeguard against the honest taxpayer only and not against the unscrupulous tax-payer/defaulters who might, by circumventing the extant provisions of Law, dodge the Department through sale of property at an apparent lower value leaving little scope for the Department to intervene in time. With the raising of the value of immovable properties requiring clearance certificate under

Section 230A *ibid* to Rs. 2 lakhs* the scope of clandestine deals in respect of attached immovable properties has got widened and as a consequence thereof, the Department would be left with no alternative but to enter into long drawn legal battle. The Committee, therefore, urge the Ministry of Finance (Department of Revenue) to examine the matter from all angles in consultation with the Ministry of Law so as to plug the loopholes in the existing provisions of law.

Pendency of Appeals
(Sl. No. 6, Paragraph 1.51)

1.9 Noticing huge pendency of appeals numbering 2,96,721 (including 72,139 appeals pending for periods ranging from 2 to 5 years) as on 31 March, 1986 both with the Appellate Assistant Commissioners and the Commissioners of Income Tax (Appeals), the Committee had recommended laying down of upper time limit for disposal thereof. Complying with the recommendation of the Committee, the Ministry of Finance (Department of Revenue) issued instructions in June, 1987 stressing the need for expeditious disposal of appeals and laying down an Action Plan for disposal of old and High Demand Appeals. Now that about 22 months have elapsed since the issue of instructions, the Committee would like to be apprised of the latest position of pendency of appeals.

*Vide The Finance Act, 1988 w.e.f. 1.4.1988

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Under the provisions of Income-tax Act, 1961, every demand of tax, interest, penalty, fine or any other sum payable under the Act is normally required to be paid within 35 days of the service of notice of demand. In the event of default, the Income-tax Officer may forward a certificate specifying the demand in arrears against the assessee to the Tax Recovery Officer for recovery. The Tax Recovery Officer, in turn, sends a notice to the defaulter requiring him to pay the demand within 15 days. In case the demand is not satisfied within the given time, the Tax Recovery Officer will proceed to recover the amount by any of the modes specified under section 222 of the Income-tax Act, 1961. Attachment and sale of immovable property of the defaulter assessee is one of the modes of recovery of tax provided thereunder.

[Sl. No. 1 Para 1.46 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action taken

Narrates procedure for recovery of arrears of income-tax. Hence no comments are offered.

[M/o Finance (Deptt. of Revenue) F. No. 241/4/87-A&PAC II. and
F. No. 405/23/87-ITCC.]

Recommendation

One of the reasons adduced for non-disposal of attached properties is the pendency of appeals filed by the assesseees with the appellate authorities. Appellate Assistant Commissioner and Commissioner of Income-tax (Appeals) are the departmental appellate authorities with whom the first appeals lie. The Committee have been informed that the scheme of summary assessment has been liberalised and is extended to returned income upto Rs. 1 lakh and instructions have also been issued that penalty orders need not be passed where the amount of penalty leviable is upto Rs. 500/-. Appellate Assistant Commissioners/Commissioners of Income-tax (Appeals) have also been instructed to dispose of appeals by camping at various stations and to fix the appeals in chronological order and dispose of the old appeals.

The Committee observe that as on 31 March 1986, as many as 2,96,721 appeals were pending with both the appellate Assistant Commissioners and Commissioners of Income-tax (Appeals). These included as many as 33,280 appeals pending for more than 2 years, 17,886 appeals for more than 3 years, 7,451 appeals for more than 4 years and 13,522 appeals for more than 5 years. The Committee see no reason for such heavy pendency. The Ministry themselves stated during evidence that appeals at the level of departmental officers should be disposed of within a period of 2-3 years. The Committee recommend that an upper time limit for disposal of such appeals should be laid down in law. In the meanwhile, these old pending appeals should be disposed of under a time bound programme. The Committee would like to be apprised of these measures.

[Sl. No. 6, Para 1.51 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action Taken

Attention is invited to Action Taken Note on para 5.25 of 217th Report of the Public Accounts Committee furnished vide O. M. No. 241/6/84-PAC-I dated 2-9-1985. Instructions have been given (copy enclosed) to the AACs and CsIT(A) to fix up and dispose of appeals in a chronological order and to ensure that no appeal remains pending beyond a period of 18 months. The Board has issued various instructions prescribing a time bound programme for disposal of old appeals. The copies of these instructions are enclosed herewith. Action Plan for disposal of old appeal for 1987-88 has been prescribed in Instruction No. 1760 dated 11-6-1987.

It may also be noted that the Chief Commissioner/DG have also been entrusted with the task of supervising and monitoring work of CIT(A). They will ensure that the old cases are disposed of according to the Action Plan. Further raising of monetary limit of Rs. 2 lakhs in the case of summary assessment would also enable the appellate authorities to concentrate more on old cases as the institution of appeals would be less. The cadre strength of appellate authorities [CIT(A)/AAC] have also been adjusted in tune with the work load.

[Ministry of Finance (Deptt of Revenue) F. No. 241/4/87-A& PAC II and F. No. 277/5/87-ITJ.]

ANNEXURE

*Instruction No. 1760
For Departmental use only.*

F. No. 279/21/87-ITJ
MINISTRY OF FINANCE

DEPARTMENT OF REVENUE.
CENTRAL BOARD OF DIRECT TAXES.

New Delhi, the 11th June, 1987.

All Commissioners of Income-tax,
All Commissioners of Income-tax (Appeals)

Subject: Action Plan for disposal of Old Appeals and High Demand Appeals—Financial year 1987-88.

Reference is invited to Action Plan for disposal of Old Appeals by AACs and Commissioner (Appeals) in 1986-87 circulated by Instruction No. 1710 dated 15th May, 1986.

The Action Plan had required that all the appeals filed before 1-4-1984 should be disposed of before 1-4-1987. It is noticed that some appeals filed before 1-4-1984 still remain to be disposed of by AACs and Commissioners (Appeals) in spite of the instructions that the appeals should be fixed and disposed of in chronological order.

Disposal of High Demand Appeals is also of vital importance to the Department and Commissioners (Appeals) and AACs are expected to share the concern of the Department for early disposal of these appeals.

Old Appeals i.e. filed before 1st April, 1985 and High Demand Appeals must be disposed of in the Financial year 1987-88 according to the following Action Plan:

(a) *Old Appeals*

- Appeals filed upto 31-3-82 to be disposed of by Quarter ending June, 1987.
- Appeals filed upto 31-3-1983 to be disposed of by Quarter ending September, 1987.
- Appeals filed upto 31-3-1984 to be disposed of by Quarter ending December, 1987.
- Appeals filed upto 31-3-1985 to be disposed of by Quarter ending March 1988.

(b) *High Demand Appeals*

- All appeals filed upto 1-4-1987 to be disposed of by 30-9-1987.
- All appeals filed upto 30-9-1987 to be disposed of by 31-12-1987.
- All appeals filed upto 31-12-1987 to be disposed of by 31-3-1988.

The above Action Plan for disposal of Old Appeals and High Demand Appeals may be brought to the notice of all Appellate Assistant Commissioners also.

Sd/-
(HIRA SINGH.)
MEMBER (J&WT)
Central Board of Direct Taxes.

ANNEXURE

Instruction No. 1662.

F.No. 277/385-ITJ

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

CENTRAL BOARD OF DIRECT TAXES.

New Delhi, dated the 21st Nov., 1985.

To,

All Commissioners of Income-tax,
All Commissioners of Income-tax (Appeals).

Sir,

Subject: Prompt disposal of appeals by the AACs/CsIT(A)

There is no statutory time limit for DISPOSAL of appeal by appellate Assistant Commissioner(AAC) and Commissioner (Appeals). The Public Accounts Committee in Para 5.25 of their 217th Report (1983-84) (7th Lok Sabha) observed that, therefore, there is a tendency for arrears to get accumulated. The PAC recommended that a time limit should be fixed for decision by these appellate authorities.

The Board desire that appeals should be fixed and disposed of by AACs and Commissioner (Appeals) in a chronological order subject to disposal of High Demand Appeals on priority basis. Normally no appeal should remain pending beyond a period of 18 months.

The Boards has further decided that Commissioner (Appeals) should send to their Zonal Members every quarter list of appeals which remain pending beyond a period of 18 months with reasons for non-disposal for each of these appeals. Commissioners (Admn.) should obtain and send similar reports to the Zonal Members in respect of AACs in their charge.

The first report should be sent in respect of the position as on 31st March, 1986. This report should reach the Board by 20th of April, 1986.

Yours faithfully,

Sd/-

(A.K.GARG.)

Under Secretary

Central Board of Direct Taxes.

Recommendation

As regards the appeals pending with the Supreme Court and High Courts, the Committee have been informed that the Ministry have requested the Chief Justice of India and the Chief Justices of High Courts for constituting Tax Benches on continuing basis . The Committee consider it a step in the right direction and hope that, if implemented, such a measure would accelerate the disposal of appeals pending in these Courts.

[Sl. No. 8, Para 1.53 of the 95th Report of the PAC(1986-87) (8th Lok Sabha)]

Action Taken

The observations of the Hon'ble Committee have been noted. The Ministry's approach in the matter has been approved by the Hon'ble Committee.

[Ministry of Finance (Dept. of Revenue), F. No. 241 / 4 / 87-A&
PAC II. F. No.277 / 5 / 87-ITJ.]

Recommendations

The efficiency of Tax Recovery Officer/Inspector depends on the completeness and correctness of the registers maintained by him. One of the register required to be maintained by the Tax Recovery Inspector is the register of immovable properties. This register contains data regarding the defaulter and the property attached. According to Audit para out of 138 Tax recovery Offices inspected by Audit, the register was either not being maintained or maintained in a defective manner in 73 offices. The Committee fail to comprehend as to how in the absence of this basic register, the tax recovery Officer could keep watch over the attachment and disposal of immovable properties and the progress of tax recovery work. During evidence, while admitting the non-maintenance of the register, the Secretary (Revenue) informed that there was no particular reason therefor. The Committee deplore the laxity on the part of higher officers in the exercise of proper and adequate control over the functioning of the Tax Recovery Offices.

[Sl.No.10, (Para 1.55 of the 95th Report of the PAC (1986-87) (8th Lok Sabha.)]

The Committee learn that the Central Board of Direct Taxes issued instructions to the Commissioners of Income-tax inviting their attention to the audit observations to inspect the registers at periodic intervals to ensure proper maintenance thereof. The Committee trust that these instructions would henceforth be strictly enforced and disciplinary action initiated against the delinquent officers for non-compliance.

[Sl. No.11, Para 1.56 of the 95th Report of the PAC(1986-87)(8th Lok Sabha).]

Action taken

In this regard the Central Board of Direct Taxes have already issued instructions No. 1723 dated 18-8-1986 and letter No.405/387-ITCC dated 14-4-1987 to all the Commissioners of Income-tax to ensure that the tax recovery officers maintain the immovable property register and keep them upto date. The recovery Inspectors Manual gives the guidelines for maintaining the same. Certificate has been prescribed and every T.R.O. is required to certify that the control register are maintained as per T.R. Manual. The IACs, while inspecting T.R.O's Office have been required to inspect this control register.

Compliance reports have been received from the Commissioner regarding the maintenance of register prescribed under Inspectors' Manual.

[Ministry of Finance (Deptt. of Revenue), F. No.241 / 4 / 87-A& PAC II. F. No.405 / 23 / 87-ITCC.]

Recommendation

Rule 50 of the Second Schedule to the Income-tax Act 1961 provides that the order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or customary modes, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the tax recovery officer. The aforesaid provisions are not, therefore, sufficient to warn the *bonafide* purchaser or the third party against entering into any transaction with regard to the property under attachment. The Committee consider that the order of attachment which is affixed on a property may get destroyed with the passage of time and could also be defaced by unscrupulous assesseees. In order to avert all these possibilities it is imperative that sufficient publicity is given to the order of attachment. The Government should consider amendment of the rules for sufficient publicity to the order of attachment to be given through newspapers both in English and local dailies so that the prospective buyers of attached property are not unaware of the correct position relating to such property.

[Sl. No. 12, Para 1.57 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action Taken

In this Para the Public Accounts Committee are of the opinion that Rule 50 of the II Schedule to the Income-Tax Act, 1961 is not sufficient to warn the bonafide purchaser or a third party against entering into any transaction in respect of an attached property. To achieve this purpose, amendment of the rules has been recommended. The recommendation of the Committee has been accepted by the Ministry but instead of amending the Law we shall implement it by suitable departmental instructions.

Officers would be advised that in every case of attachment of immovable property wide publicity should be given by advertisement in local languages and English newspapers widely read in the region.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/4/87-A & PAC-II and F. No. 154/5/87-TPL]

Recommendation

The Committee are unhappy that there was general slackness on the part of Income-tax Department which led to delays in the disposal of immovable properties. The review undertaken by Audit depicts a very dismal picture of the functioning of the Department. The review has *inter alia* disclosed that:—

- (i) Real ownership of the immovable properties attached had not been enquired into prior to attachment as a result of which cases were pending in courts for setting the issue regarding ownership.
- (ii) Encumbrances on the properties attached with prior claims were not ascertained at the time of attachment.
- (iii) Departmental delays in getting the properties valued by competent authority.
- (iv) Frequent changes in the jurisdiction of Tax Recovery Officers.
- (v) Delays in the appointment of Receivers.

In response to the Committee's enquiry in this regard, the Secretary (Revenue) admitted during evidence that "it is not the appeal alone which delays..... Property could have been sold but instructions also delay". The Committee are of the opinion that the Department should streamline its administrative machinery to ensure that there are no delays in the disposal of immovable properties and adequate precaution is taken to watch the financial interest of the Government while attaching property of defaulter assesseees so as to eliminate delays at its own level. The Committee also desire that suitable instructions should be issued to the concerned officers to see that shortcomings/irregularities pointed out by Audit are rectified with due propititude and suitable remedial steps are taken to avoid lapses in future.

[Sl. No. 13, Para 1.58 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action Taken

In this recommendation, the reasons for delay have been discussed. It may be seen that in most cases the delay is on account of factors over which we do not have much control. However, in conformity with the desire expressed by the PAC, instructions have been issued to all Chief Commissioners/Commissioners to review all cases where a final disposal of property is still pending although more than three years have elapsed from the date of attachment. The factors pointed out by the PAC in para 1.58 of the report have been brought to the notice of the Chief Commissioners/Commissioners and they have been asked to ensure that such lapses are avoided in future.

[M/o Finance (Deptt. of Revenue) F. No. 241/4/87-A&PAC-II.
F. No. 405/23/87-ITCC]

CHAPTER III

**OBSERVATIONS/RECOMMENDATIONS WHICH THE
COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF
THE REPLIES RECEIVED FROM GOVERNMENT**

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

The demands certified for tax recovery as on 31 March, 1985 and pending recovery were Rs. 988 crores. It is disquieting to note that provisions contained in Section 222 of the Income-tax Act regarding attachment and sale of immovable property of the defaulting assessee were not effectively invoked and implemented. A large number of immovable properties, though attached, had remained without disposal for years together and in certain cases for periods exceeding 30 years. Till the end of March 1983, 2,644 immovable properties attached towards recovery of arrears of tax of over Rs. 77 crores were awaiting disposal including 655 properties which were pending for more than 10 years. Of these, the Ministry have furnished the value of 2,179 properties as Rs. 40.36 crores and have furnished no details about the other 465 properties. (Information regarding the position of recovery against the total arrears of Rs. 77 crores covered by attachment has also not been supplied to the Committee.) Further, out of the aforementioned 2,644 properties, only 356 properties (the value of 296 properties being Rs. 7.14 crores) were disposed of till 31 March, 1985 which worked out to 13 percent of the total properties under attachment and hardly 10 percent of the total tax arrears. The total number of properties which were awaiting disposal as at the end of March 1985 had gone up to 2,990 (value Rs. 56.68 crores in respect of 2,490 cases). The figures prove that the department have not made use of an effective mode of recovery of tax available with them.

[Sl. No. 2, Para 1.47 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

During evidence, the Secretary (Revenue) expressed the view that the whole purpose of attaching the properties was 'to really coerce the assessee for making payment'. The very fact that 2,990 properties were under attachment awaiting disposal as at the end of March 1985 with a number of those under attachment for long periods extending over 10 yrs. indicate that these coercive tactics have proved to be totally inadequate.

[Sl. No. 3, Para 1.48 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action Taken

P.A.C. has pointed out that the Department has not made full use of the mode of recovery through attachment and sale of immovable property, as provided in section 222 of the I.T. Act. The Committee has also pointed out that a large number of properties though attached, had remained without disposal for some years. In many cases, the relevant assessments would be in dispute before appellate authorities and it is only appropriate to await the finality of assessments before auctioning property and if after the sale of the property the assessee gets a favourable appellate decision, the property cannot be restored to him. Another reason is that most of the assessees in whose cases properties are attached, are **non-cooperative**, recalcitrant and habitual litigants. They seek recourse to several measures, both legal and administrative, to stall the proceedings. **Many such assessees** obtain from courts order staying sale proceedings. Another reason is that due to the local influence of such assessees, many potential buyers hesitate to attend the auctions with the result that often the bids do not reach the reserve price. A reference to Appendix-III of the PAC Report (at page 71 of the report) will bear this out.

The purpose of attachment is to pressurise the assessee into making payment. Auction is conducted as a last resort where the assessees do not come around and pay. There are quite a few cases where attachments have been lifted after the assessee has made the payment or made sufficient arrangements for payment.

[M/o Finance (Deptt. of Revenue) F. No. 241 / 4 / 87-A&PAC II and
F. No. 405 / 23 / 87-ITCC.]

Recommendation

The Committee note that besides the lack of will on the part of the department to effectively enforce the provisions relating to attachment and sale of immovable property of the defaulter assessee, absence of a statutory time-limit for sale after attachment of immovable property was to a great extent responsible for the present state of affairs. The Ministry have, however, not favoured the idea of prescribing a time-limit for disposal of immovable properties after attachment for the following reasons:—

- (i) If any time-limit is prescribed for proclamation of sale after attachment it may cause undue harassment to the assessee;
- (ii) If after sale of the property the assessee gets a decision in his favour from any appellate authority, the property cannot be restored to him; and

- (iii) If within the prescribed time no bidder comes forward on the date of sale or the bid amount is lower than the reserved price due to which auction has to be postponed, the Department may have difficulty in selling the property within the time limit.

The Committee are unable to accept the above reasons for not providing a period of limitation for the unlimited continuance of attached property especially after the assessment becomes final. Under the provisions of Code of Civil Procedure the maximum time limit for enforcing a decree is 12 years. An attachment made before judgement subsists during the pendency of litigation but if the decree is not executed within a period of 3 years after it becomes executable it becomes time barred. Attachment of property for enforcement pending the adjudication of claim tantamounts to a security. Every contractual obligation has a period of limitation within which it can be enforced. Adverse possession for more than a period of 30 years has the effect of perfecting the title of possession of property of citizens against the street. Having regard to these well accepted principles, the Committee are of the opinion that attachment under the Income Tax Act must have period of limitation. This will be beneficial to the Department as well as to the assessee, and will be conducive to safeguarding general interest of the public as attachment made some years ago may not come to the notice of innocent third parties who may purchase the property *bona fide* for value. To invoke the attachment, and bring the property to sale after lapse of say a period of 10 years may lead to a number of complications to the detriment of innocent third parties. The Committee, therefore, are of the view that ordinary law relating to limitation applicable to decrees of civil courts also be made applicable to attachments after the date when the assessment becomes final. The Committee are of the opinion that if no action is taken within a period of 3 years after the assessment becomes final, the attachment must be deemed to have been vacated on account of efflux of time. A suitable and necessary amendment to that effect in the existing law is, therefore, highly desirable.

During evidence, the Secretary (Revenue) had made a suggestion that "after an initial period which should count for the first appeal, then like any other civil court if on that particular day there is no stay, they will get it sold." The Committee hope that necessary amendment to the rule would be made by the Government expeditiously.

[Sl. Nos. 4 & 7, Para 1.49 & 1.52 of the 95th Report of the PAC (1986-87) (8th Lok Sabha).]

Action taken

The Public Accounts Committee in both these paras have recommended that amendment of Law be carried out to prescribe a time limit for sale of immovable properties attached for tax recovery. Reliance has been placed on the Code of Civil Procedure for pre-fixing the time limit in respect of sale of attached immovable properties. A Court decree is generally in respect of two or more private parties where as in an attachment of immovable properties under the Income-tax Act, one of the parties is the Income-tax Department. There is no time limit for disposal of appeals by Appellate Authorities including the High Court and Supreme Court. Some of the appeals are finally disposed of by the Supreme Court 15 to 20 years after the property is attached. In case, the principle of fixing a time limit is accepted then undue harassment would be caused to the taxpayer if after the sale of property the assessee gets a decision in his favour, because the property if sold by then cannot thereafter be restored to him. The fixing of a time limit even after the assessment becomes final is also not acceptable on account of the fact that if within the prescribed time no bidder comes forward on the date of sale or the bid amount is lower than the reserve price due to which auction had to be postponed, the Department may have difficulty in selling the property within the time limit. This quite often happens due to local influence of the assessee in default, which results in no bidder coming forward on the date of action. Prescribing a time limit for sale of properties will increase the difficulty of the Department in this regard and may result in loss of revenue in some cases. Besides, often attachments of properties for recovery of taxes demanded on the basis of "Protective Assessments" have to be made. In such cases when the assessment becomes final in the substantive case, the "Protective Assessment" has to be rescinded. In the meantime, the attachment should, however, continue without the need for sale, which can cause irretrievable loss to the assessee or the likelihood of lapse by limitation, which can cause loss of revenue.

It is also necessary to note that in the context of appreciation of Real Estate values there is no likelihood of loss to revenue because of attached properties not being sold before pursuing other methods of recovery of tax dues. Attachment of property is only to safeguard revenue and the department does recover amounts due to it from the assesseees during the period the property is under attachment. For the above reasons, no amendment of Law is considered necessary for fixing a time limit in respect of sale of attached properties.

[M/o Finance (Deptt. of Revenue) F. No. 241/4/87-A&PAC-II and
F. No. 154/5/87-TPL.]

Recommendation

The Committee also note that as per existing law where any immovable property is attached, the attachment would relate back and take effect from the date on which the notice to pay the arrear was served upon the defaulter. In the absence of enabling provision for the department to take possession, the attached properties together with their title deeds remain in the custody of the tax defaulter who, besides continuing to get the benefits therefrom, more, often than not, manoeuvred to transfer, sell or otherwise dispose of the property, leaving no option to the Department except to seek time consuming legal remedy. The Committee also feel that the Ministry consider amending the law keeping in view the above position. The Government should examine further the matter in detail in consultation with the Ministry of Law and enact suitable amendment to the relevant provisions of law as attachment should be resorted to only as a transitory measure.

[Sl. No. 5, Para 1.50 of the 95th Report of the PAC (1986-87) (8th Lok Sabha)].

Action taken

In respect of property which has been attached possession of title deeds can be insisted upon by the Income-tax Officer/Tax Recovery Officer as a security while allowing time/instalments. Under section 230A of the Income-tax Act there are restrictions on registration of transfers of immovable property valued at more than fifty thousand rupees. No registering officer can register a sale of immovable property valued at more than fifty thousand rupees unless the taxpayer obtains a clearance certificate. A tax defaulter whose property is attached would not be in a position to obtain a certificate under section 230A and consequently would not be in a position to sell his property. It may be pointed out that it would be very rare case where an attached property has been surreptitiously sold by a taxpayer in default. The recommendation of the Committee for amendment of law to enable taking over the title deeds at the time of attachment is, therefore, not acceptable.

[Ministry of Finance (Deptt. of Revenue) F. No. 241/4/87-A&PAC-II and F. No. 154/5/87-TPL.]

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

In para 5.23 of their 217th Report (7th Lok Sabha—1983-84) the Public Accounts Committee recommended that the Ministry should examine the feasibility of establishing Central Tax Courts to tackle the litigations under direct tax laws. Although in their reply of September 1985, the Ministry informed the Committee that the Ministry of Law, on examination, had advised the establishment of Central Tax Courts as not feasible, the Committee are happy to learn that Government have now felt the need for a special court and have a similar proposal for setting up a high powered appellate body under Article 323B of the Constitution to be known as 'National Court of Direct Taxes' which would have all India jurisdiction with benches at all the places where there are High Court Benches at present. It will replace the jurisdiction of High Courts in respect of Direct Tax Laws. The Committee would urge the Government to expedite a final decision in the matter which will facilitate expeditious clearance of outstanding cases besides ensuring uniformity in the application of law throughout the country.

[Sl. No. 9, Para 1.54 of 95th Report of the PAC (8th Lok Sabha).]

Action taken

The proposal for setting up a National Court of Direct Taxes is awaiting approval of the Cabinet.

(This issues with the approval of Joint Secretary)

[M/o Finance (Deptt. of Revenue) F. No. 241/4/87-A&PAC-II and
F. No. 154/4/87-TPL.]

NEW DELHI;
21 April, 1989

1 Vaishaka, 1911 (SAKA)

AMAL DATTA
Chairman,
Public Accounts Committee

APPENDIX I

(Vide Para No. 1.2)

I. Recommendations and observations which have been accepted/noted by Government:

Sl. Nos. 1, 6, 8, 10-13

II. Recommendations and observations which the Committee do not desire to pursue in view of the replies received from Government:

— NIL —

III. Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration:

Sl. Nos. 2-5 and 7

IV. Recommendations and observations in respect of which Government have furnished interim replies:

Sl. No. 9

APPENDIX II

Conclusions and Recommendations

Sl. No.	Para No.	Conclusions/Recommendations
1	2	3
1.	1.3	The Committee expect that final reply to the recommendation in respect of which only interim reply has been furnished by the Government will be made available to the Committee expeditiously after getting the same vetted by the Audit.
2.	1.5	In their earlier report, expressing deep concern over the large number of immovable properties remaining without disposal for years together after attachment thereof, the Committee felt that the Department did not make use of an effective mode of tax recovery available with them under Section 222 of the Income-tax Act, 1961. Having regard to the provisions of the Code of Civil Procedure, the Committee stressed the need for prescribing a time limit for sale of immovable properties after attachment.
3.	1.6	Not accepting the recommendation of the Committee, the Ministry have advanced the same old arguments that the property, if sold within a prescribed time limit could not be restored to the assessee in case he subsequently gets a decision in his favour from any appellate authority and that there might be cases where property could not be sold within the time limit for want of bidders or due to bid amount being lower than the reserve price. The Committee are constrained to observe that their recommendations were not given the serious thought that they deserved. As already observed in the recommendation in para 1.47, complete information on position of recovery against cases covered by attachment was neither furnished earlier to the Committee nor has now been furnished; instead, a general reply has been given without supporting the reply with the statistical data on effectiveness of the measures taken on the recovery of arrears of tax. The contingencies envisaged by the Department can very well be taken care of through incorporation of suitable provi-

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sions in law i.e. by allowing time consumed in appeals in computation of the time limit or by vesting property in Government till final disposal of the property in case no bidder comes forward within the time limit or the bid amount is lower than the reserve price. The Committee also consider that a time limit would be more deterrent for the tax payer than the existing provisions which, in the absence of proper implementation, have not proved as coercive or deterrent as presumed by the Department. Besides, the existing provisions look incomplete without a time limit. The Committee, therefore, strongly reiterate their earlier recommendations that a time limit for disposal of immovable properties attached towards tax recovery be laid down in the Income-tax Act, 1961 or the rules made thereunder. If need be, the opinion of the Law Ministry may be sought in the matter.

4. 1.7 . In order to forestall surreptitious sale or otherwise transfer of immovable properties attached towards tax recovery, the Committee in their earlier report had desired the Department to make suitable amendment in consultation with the Ministry of Law, empowering Government to take possession of the title deeds in respect of such immovable properties.
5. 1.8 The Ministry of Finance (Department of Revenue) have not accepted the above recommendation of the Committee on the ground that sale of immovable property valuing more than Rs. 50,000 (since increased to Rs. 2 lakhs w.e.f. 1.4.88) could not be effected without the seller having to go to the Income tax Authorities for obtaining clearance under Section 230A of the Income Tax Act, 1961. In fact this is a safeguard against the honest tax-payer only and not against the unscrupulous tax-payer/defaulters who might, by circumventing the extant provisions of Law, dodge the Department through sale of property at an apparent lower value leaving little scope for the Department to intervene in time. With the raising of the value of immov-

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able properties requiring clearance certificate under Section 230A *ibid* to Rs. 2 lakhs* the scope of clandestine deals in respect of attached immovable properties has got widened and as a consequence thereof, the Department would be left with no alternative but to enter into long drawn legal battle. The Committee, therefore, urge the Ministry of Finance (Department of Revenue) to examine the matter from all angles in consultation with the Ministry of Law so as to plug the loopholes in the existing provisions of law.

6. 1.9 Noticing huge pendency of appeals numbering 2,96,721 (including 72,139 appeals pending for periods ranging from 2 to 5 years) as on 31 March, 1986 both with the Appellate Assistant Commissioners and the Commissioners of Income Tax (Appeals), the Committee had recommended laying down of upper time limit for disposal thereof. Complying with the recommendation of the Committee, the Ministry of Finance (Department of Revenue) issued instructions in June, 1987 stressing the need for expeditious disposal of appeals and laying down an Action Plan for disposal of old and High Demand Appeals. Now that about 22 months have elapsed since the issue of instructions, the Committee would like to be apprised of the latest position of pendency of appeals.

*Vide The Finance Act, 1988 w.e.f. 1.4.1988

PART II

MINUTES OF THE 44TH SITTING OF PUBLIC ACCOUNTS COMMITTEE HELD ON 20 APRIL, 1989.

The Committee sat from 1600 hrs. to 1630 hrs. in Committee Room No. 50, Parliament House.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

2. Shri Chhitubhai Gamit
3. Shri M.Y. Ghorpade
4. Shri Mohd. Ayub Khan
5. Shri Y.S. Mahajan
6. Maj. Gen. R.S. Sparrow
7. Smt. Usha Rani Tomar
8. Shri Vir Sen
9. Shri Jagesh Desai
10. Shri Kailash Pati Mishra
11. Shri Yalla Sesi Bhushana Rao
12. Shri T. Chandrasekhar Reddy
13. Shri Surender Singh

SECRETARIAT

1. Shri B.D. Duggal—*Director (PAC)*
2. Shri A. Subramanian—*Senior Financial Committee Officer.*

REPRESENTATIVES OF AUDIT

1. Shri G.M. Mani—*ADAS (Rlys. & Reports)*
 2. Shri S.B. Krishnan—*Director (Reports)*
 3. Shri T. Sethumadhavan—*Director (RA & DT)*
 4. Shri D.S. Iyer—*DACWM (I)*
 5. Shri K. Krishnan—*Joint Director (Direct Taxes)*
2. The Committee considered and adopted the following Reports:
- (i) * * *
 - (ii) Draft action taken report on action taken on 95th Report (Eighth Lok Sabha) of Public Accounts Committee relating to disposal of immovable properties attached towards tax recovery.

(iii), (iv) & (v) *

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3. The Committee authorised the Chairman to finalise the report in the light of verbal and consequential changes arising out of factual verification by Audit and present the same to the House.

The Committee then adjourned.

