

NINETY-FIFTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1986-87)

(EIGHTH LOK SABHA)

DISPOSAL OF IMMOVABLE PROPERTIES
ATTACHED TOWARDS TAX RECOVERY

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)



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NEW DELHI

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- (i) 17 December, 1986
- (ii) 23 April, 1987

*Not printed. One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library.

**COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(1986-87)**

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SECRETARIAT

1. Shri K.H. Chhaya — *Joint Secretary*
2. Shri S.M. Mehta — *Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of Public Accounts Committee as authorised by the Committee, do present on their behalf, this Ninety-fifth Report of the Committee on paragraph 1.09.04 of the report of the Comptroller and Auditor General of India for the year 1984-85, Union Government (Civil) Revenue Receipts, Vol. II, Direct Taxes, relating to disposal of immovable properties attached towards tax recovery.

2. The Report of the Comptroller and Auditor General of India for the year 1984-85, Union Government (Civil), Revenue Receipts, Vol. II, Direct Taxes was laid on the table of the house on 7 May, 1986.

3. Under Section 222 of the Income tax Act, 1961 attachment and sale of immovable property of defaulter assessee is one of the modes of recovery of tax demand. The Committee have found that this mode has not been effectively invoked and implemented by the Department of Income tax because a large number of properties, though attached, had remained without disposal for years together and in certain cases for periods exceeding 30 years. Till March, 1983, 2, 644 immovable properties attached towards arrears of Rs. 77 crores were awaiting disposal. This figure of properties had gone upto 2,990 at the end of March, 1985. The Ministry's contention that the whole purpose of attachment was to werce the assessee to make payment, has not found favour with the Committee as the coerceve methods have proved to be totally inadequate for recovery of tax.

4. The Committee have desired that attachment of immovable properties under the Income Tax Act, 1961 should have a period of limitation. Under the 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 decree is not executed within a period of 3 years after it becomes executable it becomes time barred. Every contractual obligation has a period of limitation within which it can be enforced. The Committee have recommended that the ordinary law relating to limitation applicable to decrees of Civil Courts should also be made applicable to attachment after the date when the assessment becomes final. If no action is taken within a period of 3 years after the assessment becomes final, attachment must be deemed to have been vacated on account of efflux of time.

5. The Committee have noted that due to the absence of a provision enabling the Department to take possession, the attached properties and its

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title deeds remain with the tax defaulter who besides continuing to get benefits therefrom manoeuvred to transfer, sell or other-wise dispose of the property leaving no option to the Department except to seek time consuming legal remedy. The Committee have desired the Government to examine the matter in consultation with the Ministry of law with a view to making suitable amendment to law.

6. As regards non-disposal of attached properties due to pendency of appeals with the appellate authorities, the Committee have desired that an upper time limit for disposal thereof should be fixed.

7. The Committee have welcomed the proposal of Government for setting up a special court to be known as 'National Court of Direct Taxes' which would have benches at all the places where there are High Courts Benches. The Committee have urged the Government to expedite final decision in the matter.

8. The present provisions of rules relating to proclamation of Order of attachment have been found to be inadequate. The Committee have desired that sufficient publicity be given to the order of attachment through newspapers so that the prospective buyers of attached properties are not unaware of the correct position relating to such property.

9. The Committee examined the paragraph at their sitting held on 17 December, 1986. The Committee considered and adopted this report at their sitting held on 23 April, 1987. Minutes of the sitting form Part II of the Report.

10. For facility of reference and convenience, the recommendations/ observations have been reproduced in the Appendix IV to the Report.

11. 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.

E. AYYAPU REDDY

Chairman,

Public Accounts Committee.

NEW DELHI;

27 April, 1987

7 Vaisakha, 1909(Saka)

REPORT

DISPOSAL OF IMMOVABLE PROPERTIES ATTACHED TOWARDS TAX RECOVERY

Audit Paragraph

According to information furnished by the Ministry of Finance to the Public Accounts Committee in April 1984 and March 1985, the number of movable and immovable properties attached towards tax arrears and pending disposal as on 31 March 1983 in respect of 35 Commissioners charges was as under :

Number of Charges	Properties attached		Pending disposal	
	No.	Value (Rs.)	No.	Value (Rs.)
35	6397	19.30 crores	2180	77.52 crores

Information in respect of the other charges is yet to be furnished by the Ministry to the Committee.

1.02 A review of the records relating to immovable properties attached and pending disposal as on 31 March 1983 was conducted in Audit during 1984-85. The results of the review are stated below :

(1) Number of properties attached and pending disposal

At the end of March 1985, 2298 immovable properties which had been attached towards tax arrears upto 31 March 1983 were awaiting disposal.

The following Table gives the age-wise break-up of these properties in respect of the 34 Commissioners charges :-

State	Commissioner's charges	Total No. of properties attached	Properties awaiting disposal for			Properties for which details are not available
			More than 10 years	Between 5 and 10 years	upto 5 years	
Orissa	1	29	9	16	4	..
Tamil Nadu	1	33	2	1	22	8
New Delhi	3	30	1	4	25	..
Bombay	5	164	69	48	47	..
Haryana	1	28	5	14	9	..
Assam	1	13	13
Uttar Pradesh	5	160	8	27	125	..
Bihar	1	7	7	..
Himachal Pradesh	1	11	..	1	10	..
Calcutta	1	260	2	117	51	90
Andhra Pradesh	1	347	32	61	244	10
Rajasthan	2	55	18	10	27	..
Punjab	4	114	3	45	66	..
Madhya Pradesh	2	163	33	36	94	..
Gujarat	1	206	38	41	35	92
Karnataka	2	219	128	27	64	..
Kerala	2	459	60	168	231	..
Total :	34	2298	421	616	1061	200

Out of these properties, as many as 79 properties (Karnataka 78 and Bombay 1) were awaiting disposal for more than 30 years and 40 properties (Madhya Pradesh 21, Bombay 16 and Rajasthan 3) between 20 and 30 years.

(ii) **Non-maintenance/defective maintenance of attachment registers.**

According to be departmental instructions the attaching officer is required to maintain two registers (one for movable properties and another for immovable properties) giving information regarding the name of the tax defaulter amount of arrears, date of attachment, description of property attached, date of sale etc. The review in audit disclosed that in a large number of Tax Recovery Offices this register was either not being maintained or maintained in a defective manner. In view of this position, it is not clear how the department ensures proper watch on attachment and disposal of properties. In the absence of these registers, it is not possible also to ascertain the extent of loss by way of depreciation and deterioration due to delays in disposal of the properties. The following table summaries the results of test check of Audit.

Sr. No.	Charges	No. of Tax Recovery Offices inspected	No. of offices where registers were wanting or were defective
1	2	3	4
1.	Kerala	4	4
2.	Karnataka	5	3
3.	Madhya Pradesh	6	4
4.	Gujarat	15	5
5.	Delhi	4	2
6.	Calcutta	15	13
7.	Tamil Nadu	12	5
8.	Rajasthan	6	6
9.	Himachal Pradesh	1	1
10.	Haryana	2	2
11.	Assam	2	1
12.	Bihar	3	3

1	2	3	4
13.	Punjab	3	1
14.	Bombay	37	9
15.	Uttar Pradesh	15	14
16.	Andhra Pradesh	6	Nil
17.	Orissa	2	Nil

The registers specifically provide for indication of the estimated value of each property attached to serve as an index regarding adequacy or otherwise of the action taken to realise the arrears. In the offices where the prescribed registers were maintained, this important column was not filled up.

(iii) General reasons for delay in disposal of attached properties.

The Audit Review disclosed that the immovable properties attached for recovery of tax dues remained without disposal generally for the following reasons :

- (a) 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 settling the issue regarding ownership
- (b) Encumbrances on the properties attached with prior claims were not ascertained at the time of attachment.
- (c) Defective servicing of attachment notices.
- (d) Stay orders granted by Commissioners of Income-tax on ground of appeals pending before the appellate authorities.
- (e) Cases pending in Courts for long period without the department taking any action for expediting their disposal.
- (f) Departmental delays in getting the properties valued by competent authority.
- (g) Frequent changes in the jurisdiction of Tax Recovery Officers; and
- (h) Instructions of Central Board of Direct Taxes in some cases staying auction sales for various reasons.

(iv) Analysis of reasons for delay in disposal of properties in certain cases

The lack of effective action on the part of the Revenue Department to

dispose of attached properties and realise tax arrears will be clear from the details of a few cases furnished below:

(a) Karnataka charge

The approximate tax arrears outstanding in respect of defaulters whose immovable properties were attached amounted to Rs. 1.72 crores.

(1) According to the Tax Recovery Certificates issued, in the case of a deceased defaulter 'S' arrears of Rs. 39.78 lakhs were outstanding towards income-tax, wealth-tax, interest and penalties for the assessment years 1951-52 to 1973-74. The defaulter's several house properties in Bangalore, Mysore and Ooty were attached during 1967-1973. Two attached properties in Mysore were sold in public auctions held in 1969 and 1973, for Rs. 40,500 and Rs. 64,600 respectively. A portion of another property in Bangalore was disposed of in December 1981 and out of proceeds, Rs. 9.75 lakhs was adjusted towards income-tax arrears. No action had been taken till date by the department to dispose of the remaining 25 properties in Mysore attached in 1967, 6 properties in Mysore attached in 1972 portion of property in Bangalore (attached in 1967) and properties in Ooty attached in 1973.

(2) In the case of defaulter 'B' demand of Rs. 19.91 lakhs comprising of income-tax, interest and penalties for the assessment years 1960-61 to 1973-74 were outstanding. Agricultural land measuring 12 acres of the defaulter was attached in 1972. On his application, the court directed the Tax Recovery Officer in 1974 not to sell the land pending disposal of certain appeals before the income tax authorities. Though the High court had disposed of the defaulters petition in 1974. itself, no action has been taken so far by the Department to dispose of the property attached and realise the tax arrears.

(b) Kerala charge

(1) In the case of a defaulter 'A' (assessed in Bombay) with tax arrears (income-tax and wealth-tax) of Rs. 140.22 lakhs pertaining to the assessment years 1964-65 to 1976-77, immovable property valuing approximately Rs. 18 lakhs only was attached in 1975. The sale of the property had been kept in abeyance till date under instructions from the Income-tax Officer, Bombay issued as far back as 1979.

(2) According to the Tax Recovery Certificate issued during 1958-1967, demand of Rs. 50.43 lakhs on account of income-tax, interest and penalty arrears were due for recovery from another defaulter 'M' (now deceased) and 40 immovable properties (mostly land) were attached in 1968. Some of the properties were put up for sale in January 1980 but the auction proceedings were postponed on account of petition filed with the Central Board of Direct Taxes by the legal heirs on 24 January 1980. According to the Tax Recovery

Officer, the legal heirs had addressed petition for reduction of tax liability to the Central Board of Direct Taxes in 1982 on which orders of the Board are awaited. Pending orders of the Board no action had been taken to recover the arrears by auction sale of the attached properties.

(c) Gujarat charge

In Gujarat circle, the 206 properties attached as on 31 March 1983 pending disposal related to 165 defaulting assesseees against whom tax demand of approximately Rs. 7.23 crores was pending recovery.

For realising the tax demand of about Rs. 22 lakhs outstanding against an assessee, 'G' a commercial building property owned by him was attached by the Department in 1977. The building was already occupied on rent by the Income-tax department and another Government Department. The Income-tax department intended to acquire the building for its own use from 1980 onwards but this had not fructified till date due to differing opinions on valuation of the property and area to be purchased.

(d) Calcutta charge

Though the Department had intimated that 260 immovable properties attached in West Bengal under the jurisdiction of 15 Tax Recovery Officers were pending disposal as on 31 March 1985, records pertaining to only 170 properties were produced to audit.

(1) A defaulter 'C' had arrears of tax amounting to Rs. 58.51 lakhs pertaining to the assessment years 1951-52 to 1979-80 due for recovery. Seven properties of defaulter were attached by the department in 1983. The properties could not be disposed of for realising the tax arrears as the High Court had issued an injunction order prohibiting the sale in March 1985

(2) Another defaulter 'D' had arrears of tax (income-tax, wealth-tax, interest etc.) pertaining the assessment years 1949-50 to 1975-76 amounting to Rs.17.34 lakhs outstanding and 11 house properties and 1 piece of vacant land owned by him were attached by the Department in 1981. The sale of the properties had not been effected till date in view of Central Board of Direct Taxes' directions to Commissioner of Income-tax in 1983 that "proposed sales of properties for the present be postponed and notice of sale proclamation allowed to abate."

(3) In four other cases of tax defaulters each with outstanding demand of over Rs. 10 lakhs properties attached remained undisposed from 5 to 10 years attachment as per details below :

Sr. No.	Assessee	Outstanding tax demand	No. of properties attached	Year of attachment
1.	'G'	Rs. 13.97 lakhs	11	1978
2.	'S'	Rs. 16.99 lakhs	1	1978
3.	'B'	Rs. 41.86 lakhs	6	1979
4.	'SR'	Rs. 25.64 lakhs	1	1977

In the first case, the tax demands pertained to the assessment years 1960-61 to 1972-73. The reasons for the delay in disposal of the attached properties were stated to be "awaiting decisions from High Court". In the second case, the tax demands pertained to the assessment years from 1948-49 onwards to 1980-81 and the attached properties were stated to have been not disposed of as most of the demands had been disputed in appeal, Tribunal and High Court. In the third case the tax demands pertained to the assessment years 1969-70 to 1978-79. The properties had not been disposed of as the matter was stated to be "subjudice before Court". In the fourth case, the tax demands pertained to the assessment years from 1956-57 onwards to 1969-70. For disposing of the attached property in this case notice for auction in June 1977 was issued but the said auction was not held for reasons not on record. No auction, thereafter was taken by the department till January 1985. The defaulter had obtained injunction order against sale upto March 1985 from High Court.

(e) Tamil Nadu charge

In Tamil Nadu charges as on 30 March 1983 properties were attached in 33 cases for effecting recovery of arrears of tax amounting to Rs. 1.16 crores.

(1) In one case, the assessee 'S' owed the Department Rs. 10.72 lakhs towards tax dues pertaining to the assessment years 1963-64 to 1974-75. Seven immovable properties owned by the assessee were attached by the Department in December 1981; These properties could not be brought to auction as these were reported to be involved in litigation in Court.

(2) A sum of Rs. 5.38 lakhs was due from another assessee 'V'. The arrears pertained to the assessment years 1960-61 and 1970-71 to 1978-79. Five immovable properties owned by the assessee were attached in December 1972. One more property was attached in January 1985. Though the Commission of Income-tax had issued instructions in November 1984 for initiating proceedings for sale, till date the attached properties had not been put for recovery of the tax dues.

(f) Bombay, Nagpur charges

The position in regard to some high value cases are indicated in the table below .

Sr. No.	Assessee	Arrears of tax (in lakhs of rupees) and assessment years	No. of properties attached and year of attachment.	Reasons for delay in disposal of properties attached.
1	2	3	4	5
1.	'G'	93.58 Not available	12 house properties 1964	2 properties have been sold for Rs. 1.07 and Rs. 0.40 lakhs respectively. Tax Commissioner of Income-tax proposed partial write off of arrears in 1983. The Central Board of Direct Taxes had not agreed to the proposal and called for further information which is yet to be furnished.
2.	'B'	68.59 No details available	6 properties 3 in 1966, 3 in 1982	Efforts were made to dispose of two properties but without success. The party made application for scaling down demand. The Central Board of Direct Taxes directed Commissioner of Income-tax in March 1983 to stay sale proceedings till decision was taken on the petition. Defaulter had been

1	2	3	4	5
				allowed to pay tax in quarterly instalments of Rs. 6 lakhs from June 1984.
3.	'C'	63.69 1970-71 onwards	1 land and land with structurals and plant machinery 1974 1978	No progress in regard to land. As regards land with structurals valuation was solicited in 1984 and received in 1985. The Tax Recovery Officer had been asked to proceed with auction of the property.
4.	'S'	60.30 1962-63 onwards	1 house property 1975	Sale proclamation made in 1981 and 1984 but property was yet to be sold. Proposal for write off of portion of tax arrears was stated to be under consideration:
5.	'D'	26.20 1944-45 to 1957-58 and 1962-63	1 house property at Juhu (Value Rs.3.85 lakhs in 1973 and Rs. 1.77 crores in 1984)	The department has not taken any further action for disposal of the property even though the chronology of the events indicated that the defaulter had succeeded in avoiding recovery of tax for over 25 years.

1	2	3	4	5
6.	'N'	21.24 1970-71 onwards	2 house properties 1982-83	Company went into liquidation in 1984. Department's claims filed with liquidator in June 1984.
7.	'R'	31.44	Agricultural lands 1972	Sales fixed in 1972, 1973, 1974 but no bidders came forward in these auctions. Part of land had been sold by Sales Tax Department for realisation of their dues. Civil suit filed by defaulter in 1978. No developments there after.

Certain salient aspects of four of the cases are discussed below :

Assessee 'B'

Six immovable properties of the assessee were attached 3 in 1966 and 3 in 1982. An attempt was made in 1982 to auction one property for which reserve price was fixed at Rs. 80 lakhs. However, the entire property had been encroached by hutments and no buyer came forward to purchase it. Another property was proposed for auction in March 1983, when a direction was received from the Central Board of Direct Taxes directing the Commissioner of Income-tax to stay the sale proceedings till a decision was taken on the scaling down petition and revision petition filed by the defaulter. The defaulter had also been allowed to pay tax in quarterly instalments of Rs. 6 lakhs from June 1984.

Assessee 'D' (individual)

The outstanding tax arrears against the defaulter assessee amounted to Rs. 26.20 lakhs and related to assessment years 1944-45 and onwards. The assessee's immovable property in a fashionable locality in Bombay was attac-

hed in June 1954. In February 1975, the Commissioner of Income-tax made a proposal to the Central Board of Direct Taxes of partial write off to the extent of 80 per cent of the arrears leaving a balance of Rs. 5.26 lakhs. This was not agreed to and the Central Board of Direct Taxes directed disposal of the property by public auction and also considering of feasibility of arrest and detention of the assessee. In March 1976, the Tax Recovery Officer reported that the defaulter's annual income was Rs. 6,000 only and in the context of the then arrears of Rs. 26 lakhs, time was not ripe for such a course of action. No progress was made in this direction and again in 1979, the Commissioner of Income-tax made a proposal to Board for partial write-off of tax arrears. Even with the posting of Commissioner of Income-tax (Recovery) in October 1981 no further developments occurred in this case. In October 1982 as a result of search and seizure operations it was found that the defaulter had regular source of income and led a luxurious life and according to the appraisal report of the search and seizure this was not a fit case for scaling down of the arrears. The value of the property was estimated in 1984 as Rs. 1.77 crores after inspection of the property. The writ petition filed by the defaulter's wife questioning the competence of the Commissioner of Income-tax (Recovery) to dispose of the property by auction was rejected by the Bombay High Court in September 1984. The defaulter met the Commissioner of Income-tax granted a stay on disposal of the property by auction subject to (Recovery) in September, 1984 and the Commissioner of Income-tax (Recovery) the condition that the defaulter should chalk out the arrangement for payment of the bulk of the remaining demand by December 1984 Till April 1985, the defaulter had paid only Rs. 4 lakhs. The department has not taken any further action for disposal of the property even though the chronology of the events showed that the defaulter had succeeded in not paying the tax demands for over 25 years and had also not kept up the assurance given to the Commissioner of Income-tax (Recovery) of clearing bulk of the demands by December 1984.

Assessee 'N' (Company)

In this case, the Income-tax Officer had intimated the Tax Recovery Officer in November 1982 about the details of the immovable properties of the assessee that could be attached and the Tax Recovery Officer was also cautioned that if recovery was postponed or delayed it might be difficult to recover the arrears. The properties were attached in December 1982 and March 1983. The Commissioner of Income-tax instructed the Tax Recovery Officer in October 1983 to take expeditious steps to collect the demand. The valuation reports for the property attached in 1982 were called for in October 1983 and the valuation report was received in January 1984. The auction sale fixed for March 1984 did not fructify for want of sufficient bidders. In

the meanwhile the Court issued orders winding up the company in March 1984 and the official Liquidator took possession of the properties in March 1984 and prohibited the auction-sales of the attached properties. The department had filed claims with the Liquidator in June 1984.

Assessee 'R'

In this case immovable property in the form of agricultural lands were attached in May 1972. Sales were fixed in 1972, 1973 and 1974 but no bidders came forward in any of the years. In the meanwhile it had been reported that a part of attached land had been sold by the Sales Tax Department in December 1974 to recover its dues. The assessee filed Civil Suit in 1978 and the matter was stated to be pending before the Court. The department had not taken any steps for expediting the disposal of the case.

(g) Andhra Pradesh charge

The position regarding certain old and high value cases is indicated in the table below :

Sr. No.	Assessee	Tax arrears (in lakhs) and year of assessment	Number of properties attached and year of attachment	Reasons for delay in disposal
1	2	3	4	5
1.	'U'	Rs. 133.62 (income-tax) and Rs. 27.71 (wealth-tax) 1967-68 to 1976-77	6 (1 house property 5 lands) 1972, 1971	The properties were put for auction on several occasions but the sales did not fructify for want of bidders. The properties attached were no of substantial value. The department was considering partial write off of tax dues for reasons of irrecoverability.

1	2	3	4	5
2.	'M'	Rs. 39.30 1978-79 to 1980-81	4 (2 house properties and 2 lands) 1982	The properties had not been sold so far as the Commissioner of Income tax had directed the tax Tax Recovery Officer in August 1983 to keep the property in attachment but not to make auction or sale until the demand became final at the Income tax Appellate Tribunal stage. The appeal before the Income-tax Appellate Tribunal had not been finalised.
3.	'II'	Rs: 35.96 1975-76 to 1977-78	One land, buildings, plant and machinery 1983	On an application filed by the assessee, Settlement Commission had stayed the collection of arrears of tax (November 1983). The stay had not yet been vacated.
4.	'I'	Rs: 24.29 1966-67 to 1977-78	25 1982	The properties had been sold so far. The party resided in Bombay. The party had filed

1	2	3	4	5
				appeals before the Commissioner of Income-tax (Appeals), Bombay, who had granted a stay (March 1984). The stay had not so far been vacated.
5.	'V'	Rs. 12.24 1971-72 to 1973-74	3 1980-81	The objection petitions filed by the assessee in 1980 was not replied to by the Income-tax Officer by filing counter objections. In the meanwhile, it appeared the properties had been sold away to a third party notwithstanding the fact that they were already under attachment.

(b) Delhi

The position regarding two of the old pending cases is shown below :

Sr. No.	Assessee	Arrears of tax (in lakhs of rupees) and assessment year	No. of properties attached and year of attachment	Reason for delay in disposal
1	2	3	4	5
1.	'M'	120 1955-56 to 1975-76	Two 1982	The High Court had vide order

1	2	3	4	5
		with the exception of the years 1957-58, 1958-59, 1966-67; 1970-71, 1971-72 and 1973-74		dated 25 July, 1983 authorised the department to auction of one of the properties in case the assessee failed to pay Rs.20 lakhs by 15 August 1983. The property could not, however be sold as the maximum bid was below the reserved price.
2.	'H'	26.73 1972-73 1976-77	One 1980	Commissioner of Income-tax had given stay of proceeding till 31 March 1985 against part payment. An amount of Rs. 70,000 was paid by assessee on 31 March 1985. Demand reduced to Rs. 11.04 lakhs by Commissioner of Income-tax in appeal. Case pending before Income-tax Appellate Tribunal.

(v) **Conclusions**

- (a) After attachment of the immovable properties, expeditious action was not taken to issue a proclamation of sale and to bring the properties to sale. The departmental instructions, however, lay

down that the time interval between the date of a fixture of proclamation and the date of sale is 30 days. The absence of a statutory time limit for sale of properties, once attached, had led to considerable delays, over 10 years in innumerable cases. Making full use of the inordinate delay in this regard, the defaulters had arranged their affairs in such a manner as to render the department's efforts futile.

- (b) The law lays down that where any immovable property is attached the attachment should relate back and take effect from the date on which the notice to pay the arrears was served upon the defaulter. In the absence of an enabling provision for the department to take possession, the attached properties together with their title deeds are allowed to remain in the custody of the tax defaulter who besides continuing to enjoy the benefit therefrom more often than not, manouvered to transfer/sell or otherwise dispose of the property leaving no option to the department except to seek time consuming legal remedy.
- (c) The law provides that where an immovable property is attached, the Tax Recovery Officer may instead of directing a sale of the property, appoint a receiver to manage such property. This provision was not at all resorted to.
- (d) The law vest complete authority with the Tax Recover Officer to investigate any claim or objection made the attachment or sale of property in execution of a certificate. The order of the Tax Recovery Officer who is deemed to act judicially, subject to the result of an suit in a Civil Court, which may be instituted by the defaulter, is conclusive. No interference by any administrative authority is contemplated in the law. Instances were noticed where sale of attached properties in individual cases, was stayed by the Commissioner of Income-tax and the Central Board of Direct Taxes.

1.03 The review was sent to the Ministry of Finance on 23 September 1985 and their comments are awaited (January 1986).

[Paragraph 1.09.04 of the Report of the Comptrollers and Auditor General of India for the year 1984-85, Union Govt. (Civil), Revenue Receipts -Vol. II (Direct Taxes)].

1.04 According to Section 222 of the Act, when an assessee is in default or is deemed to be in default in making payment of tax, the Income-tax Officer

may forward to Tax Recovery Officer a certificate specifying the amount of arrears due from the assessee and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified there in by one or more of the modes mentioned below in accordance with the rules laid down in the Second Schedule of the Act:

- a) Attachment and sale of assessee's movable property ;
- b) Attachment and sale of assessee's immovable property ;
- c) Arrest of assessee and detention in prison ;
- d) Appointment of a receiver for management of assessee's movable and immovable properties.

1.05 The Tax Recovery Officer is the Kingpin of the tax recovery machinery and derives his jurisdiction on the issuance of a recovery certificate by the Income-Tax Officer. However, the Income-tax Officer continues to have jurisdiction over the recovery of tax even in respect of demand covered by the tax recovery certificate and may recover such demand by one or more modes provided in Section 226 of the Income Tax Act 1961 which reads as follows:

- “(1) Notwithstanding the issue of a certificate to the Tax Recovery Officer under section 222, the Income-tax Officer may recover the tax by any one or more of the modes provided in this section.
- (2) If any assessee is in receipt of any income chargeable under the head “Salaries”, the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs:

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any requisition made under this sub-section.

- (3) (i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much

of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Offices, and in the case of a joint account to all the joint holders at their last addresses known to the Income-tax Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post Office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy, or any other document to be produced for the purpose of any entry and endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary,

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this subsection is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his power under section 222.

(4) The Income-tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Income-tax Officer may, if so authorised by the Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule."

1.06 A detailed procedure for recovery of tax has been given in the 2nd Schedule of the Act.

1.07 Briefly, on receipt of a TRF from the ITO, the TRO shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within 15 days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under the Schedule. Notice is issued in Form ITCP-1.

1.08 Attachment of an immovable property is a legal process and obviously, therefore, all the formalities prescribed have to be strictly followed. There has to be a proper order of attachment prohibiting the defaulters from transferring or charging the property sought to be attached. The object of the rules in prescribing a particular way of notifying the attachment is to give

notice to defaulter not to alienate his property, and to the public not to accept any alienation from him. A proclamation of attachment is made by beat of drum at some place on or adjacent to the property attached. Likewise, a copy of the order of attachment is affixed on a conspicuous part of the property. Where several properties are to be attached, a copy of order is affixed on each of the properties except where the property is in several plots. A copy of the attachment order is also affixed on the notice board of the TRO. It is essential that the attachment order should show the correct amount of arrears.

1.09 Under Rule 51, the attachment takes effect from the date of service of form No. ITCP-1 and not from the date of attachment. Before issuing an attachment order, the enquiries are generally made by the TRO so as to eliminate the possibility of unnecessary litigation. The enquiries include the scrutiny of ITO's records; whether the property has been shown by the defaulter in his income-tax return; and also the personal visit of TRO to the site. The enquiries could be made by the TRO by making visit to the Municipal office, sub-Registrar's office and also land acquisition office.

1.10 The actual attachment of immovable property is done in the following manner :

- (a) The order in Form No. ITCP-16 is first served on the defaulter.
- (b) A copy of the order is affixed on a conspicuous portion of the property. In the case of house property, the copy is affixed on the front door and in the case of land, it is affixed on a tree or pole on on it. The affixure, however, is witnessed by two witnesses.
- (c) There after the Inspector attached to the TRO has to get the drum beaten, proclaiming the attachment of the immovable property. The proclamation by oral announcement is to be in the language of the locality though it may be made additionally in English, if necessary. The proclamation has also to be witnessed by two witnesses.
- (d) A panchanama evidencing the proceeding is prepared next. The panchanama should specifically highlight the fact that a copy of the order of attachment is sent to the defaulter, that a copy there to was affixed on the property, the drum was beaten and the proclamation was announced in the language of the district.
- (e) Lastly, the copy of the order of the attachment is affixed on the notice board of the TRO and its copy is published in the local

daily or official gazette. There is no provision against attaching the property before sunrise or after sunset, or on holidays.

1.11 The time between the affixure of proclamation and the date of sale is 30 days. However, the sale can be held earlier only when the defaulter agrees to sell in writing.

1.12 The Committee desired to know the details of (i) immovable properties attached and pending disposal as on 31.3.1983, (ii) immovable properties attached towards tax recovery after 31 March, 1985. The Ministry of Finance (Deptt. of Revenue) have furnished the requisite information which is at Appendices I and II.

1.13 According to the information supplied, the number of immovable properties attached and pending disposal as on 31 March, 1983 was 2644. Out of these, only 356 properties were disposed of till 31 March 1985. The remaining properties pending disposal have been categoriscd age-wise as follows :

i) No. of properties awaiting disposal for more than 10 years	655
ii) No. of properties awaiting disposal for 5 years to 10 years	751
iii) No. of properties awaiting disposal for less than 5 years	863

Between 31 March, 1983 and 31 March, 1985, 1109 immovable properties were attached. Out of these, 407 properties were disposed of.

1.14 In the case of two assessees, one each in Karnataka and Bombay (Recovery), properties which were attached as early as in April 1954 and June 1954 respectively have been pending disposal. The details of these cases are as follows :

Karnataka

M/s Jama Khandi Brothers

“78 properties were attached in April 1954 in this case by State Government when the recovery action rested with State Government authorities. The recovery proceedings were taken over by the Income-tax authorities only in 1967. Arrears of Rs. 17.27 lakhs were outstanding pertaining to Assessment years 1939-40 to 1948-49. The

assessee discontinued business in 1950 and by 1967 all the members of the assessee AOP were dead. The legal heir dragged on the matter before various courts for staying recovery proceedings. The Department had to move various courts for vacating of stay and with great difficulty, 8 properties could be sold before 31.3.83 and rents from some of these properties were also attached. As a result, a sum of Rs. 3,12,836/- was recovered in 1973 & 1974.

Considering non-recoverable nature of demand, write-off of a sum of Rs. 11,14,270/- was recommended by Zonal Committee, which was approved by the Board in 1982. Now the arrears outstanding is Rs. 3 lakhs excluding interest leviable under Section 220 (2).

Out of remaining 70 attached properties as mentioned above, Karnataka High Court has stayed recovery proceedings in respect of 40 properties. When the residential property was put to auction in 1980, no bidder came forward. Other properties are either small vacant plots of hutments in dilapidated conditions in remote villages and there are no buyers for them. The value of these properties range from Rs.200/- to Rs. 2,500/-. However, the TRO has again been asked to make another attempt to sell the residential property (value Rs. 70,000/-)."

Sh. D. N. Shroff (Bombay Recovery)

"The immovable property known as 'Apna Cottage plot No. 9, Juhu Tara, Juhu, Bombay was attached on 17.6.1954. The certified demands in this case were around Rs. 27.50 lakhs for the assessment years; 1946-47 to 1962-63.

In earlier years the property could not be sold as it was encumbered with prior mortgage amounting Rs. 1,60,000/- entered into in 1953. When the PROPERTY was first put up for auction in the year 1967, it was valued at Rs. 2,47,000/- & in 1974 Rs. 3,85,000/-. By that time interest liability on mortgage in creased. It was, therefore, not advisable to sell their property by auction as the Deptt. would have received a very nominal excess amount after paying the encumbrances and other incidental expenses.

In spite of this fact the Deptt. went ahead with the auction proceedings in 1975. However, vide High Court suit No 789 of 1975 filed by the mortgagee the High Court of Bombay stayed the auction proceedings. Later in the year 1980, the High Court passed

a degree absolute for sale and granted liberty to the Depptt. and the mortgagee to bid in the auction.

When the auction was proclaimed again, it could not materialise as the final demands outstanding against the assessee could not be determined being old one and the claim of the mortgagee of the exact amount payable could not be determined.

Considering complexity of the case, in September 1984 the CIT (R) stayed the auction of the property and allowed the assessee to pay Rs. 50,000 p.m. The assessee has no assets other than this immovable property and has no source of income worth attachable.

In August 1985, when the CIT (R) called the assessee to reconsider the instalment scheme the assessee came forward with a proposal to allow him to mortgage the property and raise the loan to pay income-tax liability and stopped paying monthly instalments.

Meanwhile, the assessee had filed belated revision petition before the CIT, City-V, Bombay for waiver of interest/penalties. The revision orders have been passed by the CIT, City-V. But for want of records the ITO could not give effect to the orders for the Assessment years 1948-49 and 1953-54. The same are still pending. Unless the demands are finally determined, the TRO neither can put the property to auction nor can he consider the assessee's petition under rule 66 as the quantum of demand is one of the basic issue required for this action."

1.15 Subsequently, the Ministry of Finance (Deptt. of Revenue) intimated the terms of the instalment scheme in the above case as follows :-

"The terms of the scheme are as under :

The assessee has to pay Rs. 50,000/- per month payable by the 20th of each month.

The attachment of the house will continue.

If the assessee fails in paying any of the instalments in future the TRO will be free to take action.

The scheme will continue till the revision petition filed by the assessee before the CIT, B.C.V. are decided.

These terms take effect from January, 1985."

1.16 As regards the present position of the case and the arrear demands, the Ministry have stated :

“After the disposal of revision petition, the assessee moved an application on 29.9.1986 to allow the defaulter to raise the funds to clear the arrears by mortgaging the immovable property attached by the Department. This was allowed by order dated 7.1.1987. The assessee has now represented on 16.2.1987 that there is some difficulty in raising money on mortgaging the property due to prior mortgage of the property and requested that he may be allowed to make payment as under :

Rs. 5 lakhs immediately

Rs. 5 lakhs on 10.3.1987

Rs. 5 lakhs on 10.4.1987

Balance on 20.4.1987

He has given cheque towards these instalments to the TRO. In view of the fact that the assessee is aged 77 years and in shattered health and the property is self-occupied, he has been allowed to make payment as above and asked to ensure that cheques are honoured.”

1.17 A statement showing the cases of immovable properties pending disposal for a period ranging between 20 to 30 years is at Appendix III.

1.18 The details of immovable properties (attached & pending disposal as on 31 March, 1985) involving arrears exceeding Rs. 10 lakhs are at Appendix IV :

The following position emerges from Appendix IV :

Properties pending disposal for more than 30 years	1
Properties pending disposal from 15 to 30 years	8
Properties pending disposal for 5 to 15 years	21
Properties pending disposal for less than 5 years	38

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1.19 During evidence, the Committee enquired as to how the attached properties pending disposal for 20 to 40 years were managed, the Secretary,

Ministry of Finance (Deptt. of Revenue) stated that the assessee and their children were living or occupying those properties.

1.20 The audit paragraph has cited a number of cases in support of an observation that there was lack of effective action on the part of the Department of Revenue to dispose of attached properties. The latest position of those cases, as furnished by the Ministry of Finance, is as follows :

“(a) KARNATAKA

(i) Audit's objection is that no action had been taken till date by the Department to dispose of 25 properties in Mysore attached in 1967, 6 properties in Mysore attached in 1972, portion of property in Bangalore (attached in 1977) and properties in Ooty attached in 1973.

Audit is referring to the case of Shri Sowcar Chenniah in which 35 properties were attached by the TRO between March 1967 to June 1972. The defaulter died in 1971. His only heir is his daughter. Some of the properties as referred to by the Audit, could not be sold as the property deeds could not be obtained from the defaulter. Further, the legal heir of the defaulter moved the Central Government in March 1980, through Chief Minister, Karnataka saying that she had given all the properties in settlement of income tax arrears except relating to three houses with her for her use and the use of her children. These properties are (1) House No.23 in Agra Abbas Ali Road, Bangalore, (2) House No. 33, Shalivahan Road, Mysore and (3) Site No.4 in Abba Road, Mysore. The assessee's other plea was for private sale of vacant land at 23 Agra Abbas Ali Road, Bangalore. The Board initially issued instructions to the CIT to stop the sale of properties till the disposal of assessee's petition to the Central Government. Later, the Board directed the CIT on 8.4.81 to authorise the TRO to permit the sale of aforesaid land through private negotiation under Rule 66 of the Second Schedule to the Income-tax Act, 1961.

The action in the matter, as pointed out by the Audit, could not be taken as CIT did not receive Board's instructions. The CIT has since been supplied a copy of Board's earlier order dated 8.4.81 on 2.7.86 and he has been asked to go ahead with the matter expeditiously.

(ii) According to Audit, agricultural land measured in 12 acres of the defaulter was attached in 1972 but ever since 1974 no action was taken by the Department in the matter.

The Audit is referring to the case of Shri B.A. Rasith where immovable properties were attached on 24.2.72 for realisation of tax demand of Rs. 19.91 lakhs. The properties attached were 12 acres of agricultural land at Sathanur village. The proclamation of sale was issued on 6.12.73. The assessee filed a

writ petition and obtained a stay on 9.1.74. The Court vide its order dt. 26.9.74. directed the TRO not to sell the agricultural lands pending disposal of the appeals made by the assessee to the Appellate Authorities. The assessee filed appeals against the assessments before CIT (Appeals)-I and CIT (Appeals) III, Bangalore. The appeals filed before CIT (Appeals)—I have now been disposed of on 12.2.86 partly allowing the claims of the assessee. The CIT (Appeals)—III has also disposed of appeals before him on 23.6.86, dismissing one appeal and allowing another. The CIT concerned has been directed to give effect to the appellate order and realise the demand.

(iii) According to Audit, the Department attached two buildings of the defaulter in 1971 but could not auction the same and take action to dispose of the attached properties. The Audit is referring to the case of Shri N.R. Shenvi in which a demand of Rs. 4.90 lakhs on account of Income-tax and wealth-tax was outstanding. Five of the defaulter's properties were attached on 6.9.69 and 4.12.71. Sale proclamation was issued. Meanwhile, the Court stayed the proceedings as these properties were assigned by the Syndicate Bank. The defaulter died in February 1981. However, efforts were continued to collect the tax and as a result out of 2.28 lakhs (regular demand), a sum of Rs. 1.32 lakhs has already been collected from the defaulter's legal heirs. The legal heirs of the defaulter have been paying the tax in instalments. In view of the above, the property belonging to the defaulter was not put on sale.

(b) KERALA

(1) According to Audit, though tax arrears in a case amounted to Rs. 140.22 lakhs but the immovable property valued at Rs. 18.00 lakhs was only attached. Even sale of the property was kept in abeyance as far back as 1979. The Audit is referring to the case of Shri K.S. Abdulla where immovable properties were attached in September 1975. Subsequently the Branch Manager, Vijaya Bank Ltd., Kasargod filed some claim petitions on the ground that these properties were mortgaged to the Bank for obtaining loan from them. Further the ITO, Pune, vide his letter dated 18.6.79, asked the TRO to stay the arrears till the disposal of the 1st appeal. The Income-tax Officer's letter is reproduced as under :

"The appeals filed by the assessee are being heard by the CIT (A), Pune. Since the entire undisputed tax has been paid by the assessee and the disputed tax has been stayed, you are requested not to take any coercive steps for recovery of the demand. At the same time all the movable or immovable properties of the assessee which are already communicated to you may be kept under attachment and also any other movable or immovable properties which are within your knowledge but not communicated by this Office."

Subsequently the Income-tax Records of the above defaulter were transferred to Central Circle, Bombay. The Tax Recovery Officer in Calicut is in constant touch with the Central Circle, Bombay for taking further steps in the matter. As the undisputed tax has already been paid, coercive measure to recover the balance can only be taken after disposal of the assessee's appeals.

(2) Shri Thangal Kunju Musaliar

According to Audit 40 immovable properties (mostly land) were attached in 1960 but virtually with no action.

In this case income-tax demand of Rs. 40,50,020/-crystalised as a result of two settlements between the assessee (since deceased) and the Government. Income-tax demand has been collected. What remains to be collected is interest for the delayed payments of tax and penalties which as on 31.12.85 are as under ;

Demand outstanding	— Rs. 34.93 lakhs
TRO's interest	— Rs. 20.25 lakhs

Total	Rs. 55.18 lakhs

The legal heirs of assessee are contesting the levy of interest and penalty on the ground that under the Travancore Act there was no provision for payment of interest and that the settlement was arrived at between Sri Musaliar and the Government and hence being a contractual obligation between Late Musaliar and the Govt., the legal representative are only liable for the tax dues and not for the interest. As regards recovery of penalty, the contention of the legal heirs is that under both the settlements there was no provision of levy of penalty and that the imposition of penalty specially after the death of Shri Musaliar will be void and unenforceable. The assessee has challenged the recovery proceedings before Kerala High Court in O.p. No. 10606 of 1985. No proceedings are pending in CBDT at present. The assessee has filed a petition before the Minister of State for Finance in 1983 for waiver of penalty/interest wrongfully imposed. Considering the pendency of the assessee's petition before High Court, the Commissioner of Income-tax was advised to consider the matter at his end.

81 items of immovable properties are under attachment by the Department. An amount of Rs.3,26,770/- has been collected from 18.6.1983 to 23.7.1986 by way of rent from these properties.

(c) GUJARAT :

“According to Audit, a commercial property owned by the assessee was attached in 1977. The department intended to acquire the building for its own use but no action has been taken thereafter. The Audit is referring to the case of Shri V. K. Gohil where a demand of Rs. 22 lakhs was outstanding. The Department has all the intention to acquire the building for its own use from 1980. For this purpose the assessee was asked to give the details of building and land attached so that the market price can be determined. The Valuation Officer is in correspondence with the assessee and also Municipal Corporation as he requires certain details.

Further floor space Index (F.S.I.) which has a bearing on valuing the property has been only recently published by the Urban Development and Urban Housing Department *vide* their Notification dated 8.11.86. On the basis of this floor space index the Distt. Valuation Officer has been asked to arrive at the market price of the property offered by the assessee.

The defaulter has further shown his willingness to handover the other portion of the property not occupied by the department but under his possession claiming additional value of over Rs. 23,60,000/-

The Department is trying to acquire the property. Efforts are already afoot.”

The Ministry of Finance, on being asked to intimate the amount of rent received/adjusted against the tax arrears and reason for delay in getting the details of the building etc. from the assessee for valuation thereof, have stated :

“The Bhavnagar property was partly in the possession of Income-tax Department and the Divisional Engineer (Telegraphs) on a monthly Rent of Rs. 4,818/- and Rs. 2,453/-respectively. The rent was being collected towards the outstanding dues regularly.

The property was acquired by Govt. of India on 29.4.1986. The delay in acquiring the property was due to the fact that the assessee had requested for enhanced valuation and there was correspondence between the Department and the assessee for initiating agreement. There was also a change in FSI and this was under consideration for the purpose of valuation by the Valuation Officer of the Department.”

(d) CALCUTTA :

Audit is referring to the case of Christian Mica Industries Ltd. In this case tax arrears amounting to Rs. 58.71 lakhs pertaining to assessment years 1968-69 to 1979-80 were outstanding. For this, seven of its properties were attached in 1983. These could not be disposed of as Court had issued in March, 1985 an injunction order prohibiting its sale. It may be mentioned that a liquidator has been appointed by the Hon'ble Calcutta High Court. Out of the 7 properties, three were to be sold, but that efforts were abandoned due to injunction issued by the Court.

The Audit has referred to four cases where demand over 10 lakhs were outstanding and the properties attached remained undisposed of over 5-10 years. The cases referred to by Audit are as under :-

(1) In case of Shri Gunaka Charan Law, where the demand outstanding was Rs. 13.97 lakhs, the sale of attached property was stayed by the Calcutta High Court where the matter is still pending. However, the assessee has made some payments and the demand outstanding remains at Rs. 4,52,682 for wealth-tax and Rs. 27,255 for Income-tax.

(2) In the case of Snow-white Food Products, Rs. 5,40,000 have been collected against the arrear demand. The sale of attached properties could not take place because most of the demands are disputed in appeals, which are pending with the Appellate Authorities.

(3) The case of Shri B. N. Trustee Estates involving an amount of nearly Rs. 43 lakhs is *sub judice* before the Court.

(4) Shri Ram & Sons

In this case, the properties attached in 1977 could not be sold till date as when the sale proclamation was published in the newspaper the affected parties filed objection before the TRO. Finally when the objections were rejected by the TRO they filed writ in Calcutta High Court on 11.5.85 and obtained an interim injunction not to proceed with the sale of the properties attached. The Calcutta High Court restrained the TRO from selling this property. Steps have been taken to move the High Court to vacate the injunction.

Shri J. C. Sinha

In this case, 12 immovable properties were attached for the tax arrears. After sale proclamation of the property was made, the assessee approached

the C. B. I. T. with a request that he should be allowed to clear off his tax dues in instalments and attachment of the property may be withdrawn and be allowed to sell the properties through private negotiations. The Board allowed the assessee to pay the dues in monthly instalments of Rs. 5,000/- pending arrangement for sale of property and the CIT was asked to sort out the dispute about the correctness of demand expeditiously. The assessee has paid only Rs. 20,000/- from January, 1986 to April, 1986 and after that no payment has been made. As the assessee has defaulted in making payments, steps are being taken to proceed with the sale of the attached properties.

Rents receivable from various attached properties were also attached and a sum of Rs. 4,80,098/- was collected as a result of this.

(e) **TAMIL NADU:**

P. S. S. Chettiar

In this case, the total arrears reported by Audit is Rs. 10.72 lakhs for Assessment years 1963-64 to 1974-75. Out of this Rs. 5.09 lakhs represents interest under section 220 (2) upto 31.7.84. Out of Rs. 10.72 lakhs there has been collection reduction of Rs. 2.77 lakhs and a reduction of interest charged under section 220 (2) amounting to Rs. 1.05 lakhs as a result of Appellate Orders. The matter of valuation of property was referred to the Valuation Cell of the Department, Madras. As dispute over ownership of property between assessee and his son is pending before the Court, the valuation of property could not be proceeded with. Further action will be taken after orders of High Court are received and examined.

Shri K. Vijay Kumar.

In this case the demand for Income-tax and Wealth tax was Rs. 5.38 lakhs. CIT (R), Madras in November, 1984 directed the TRO-I, Coimbatore to take coercive steps for recovery of demand unless the assessee agrees to clear the substantial part thereof. In response to TRO's notice the assessee started making payments at the rate of Rs. 5000/- per month and this scheme of payment is still continuing. Total arrears for both income-tax and wealth-tax have been substantially reduced and are about Rs. 1.5 lakhs only. Which the Deptt. hopes to collect by the end of this year.

(f) **BOMBAY:**

The position of these cases is as under :-

(1) In the case of New India Fisheries Ltd., where a demand of Rs.

21.24 lakhs is outstanding, the sale of attached properties was not affected as the Co. has gone into liquidation. The Deptt. has filed claim before the liquidator on 29.6.84. Since then the matter is pending with the Liquidator.

(2) In the case of Changdeo Sugar Mills, a demand of Rs. 13.69 lakhs is outstanding. The TRO attached land etc. CIT vide his letter dated 18.11.85 has directed him to auction the property speedily.

(3) In the case of Baldota Bros., a demand of Rs. 68.59 lakhs was outstanding. The TRO has attached 12 properties. The assessee is paying the demand in quarterly instalments. The properties will thus remain under attachment till the entire demand is paid. For this reason the TRO is not proceeding further i.e., the disposal of the attached properties. After considering the payments made till June, 1986, the demand outstanding remains only Rs. 2,14,345/- in and Rs. 4,27,797/- in case of Shri A. H. Baldota and Shri R. H. Baldota respectively i.e., Rs. 6,42,142/- in total. The outstanding demand is actually interest under section 220 (2) i.e., for non-payment of tax. The rest of the demand will be paid by the assessee in quarterly instalments of Rs. 1 lakh.

(4) In the case of Sohanlal Sharma, a demand of Rs. 60.30 lakhs is outstanding. The Deptt. attached an ownership flat but the sale was stayed by Bombay High Court in April, 85.

(5) In the case of Ganesh Narain Onkar Mal and others, a demand of Rs. 93.58 lakhs is outstanding. The TRO attached 18 properties located at various places. Except seven house properties others have been auctioned and proceeds realised. The TRO is making efforts to sell the remaining properties located at Calcutta and Gorakhpur, and for this purpose he is in touch with his counterparts at these places.

(6) In the case of D.N. Shroff where demand of Rs. 26.20 lakhs is outstanding, the ERO attached his bungalow at Bombay. In order to liquidate the demand the Department has entered into an instalment scheme for the payment of the demand at the rate of Rs. 50,000/- per month. The assessee is paying the same regularly. In this view, no further action to sell the bungalow was taken.

NAGPUR

In the case of Rambilas Gulab das of Nagpur where the tax outstanding is Rs. 31.44 lakhs, agricultural land measuring 41.79 acres were attached by TRO in May, 72. The land was put to auction in 72, 73 and 74 but every time it had to be postponed as no bidders came forward. In 1975, M/s Chand Trad-

ing Company of Nagpur filed objection petition stating that the said land was sold by Sales Tax Department for recovery of Sales Tax. This order of Sales Tax Authority was set aside by the Revenue Minister, Govt. of Maharashtra on 8.1.79. Objections of M/s Chand Trading Company were subsequently rejected.

Auction of 10.81 acres was made in January, 1975. Sale of 7.70 acres was confirmed on 8.7.76 and the sale of remaining 3.11 acres was confirmed on 30.1.79. Civil suit filed by M/s. Chand Trading Co., Nagpur before Civil Judge, Sr. Division, Bhandara, Challenging *inter alia*, the auction of agrl. land on 6.1.75 was dismissed by the Court.

The proclamation of sale of remaining agricultural land was made on 25.10.80. Writ petition against this was filed by the defaulter before Bombay High Court. Application for vacating the stay or in the alternative to deposit the amount of tax in High Court was filed on 6.12.82 which is still pending.

(g) ANDHRA PRADESH

(i) In the case of Uppalapati Krishnaji Rao, where the income-tax arrear is Rs. 133.62 lakhs and Wealth-tax Rs. 27.71 lakhs, the Department attached partly constructed upstairs building on Prakasnam Road, Vijaywade. When this property was proclaimed for sale in November, 1985 the defaulter's wife Smt. U. Leela Laxmikumar filed petitions stating that she is the real owner of the property. On this petition, since she is also in huge arrears of tax, the said property was again proclaimed to sale on 10.3.1986. She then filed petition, requesting for private sale which was rejected by TRO. A fresh petition dated 4.3.1986 has been filed by her before C.I.T. (Central).

Sale proclamation of two landed properties at Edumudi and Kokkepudi is under consideration and ITO Central Circle, Hyderabad is considering the fixation of reserve price of these two properties. Similarly proclamation for sale of agricultural land at Apparaopatta is under consideration. In respect of Agricultural land at Kesarapalle the assessee has filed objection petition against the attachment which is under consideration. With regard to another agricultural land at Kesarapalle and Peruru the defaulter's minor sons have filed objection petitions against the attachments and sale which is being considered.

The agricultural land at Chinapala Paruru was proclaimed to sale on 24.3.1986 when the defaulter filed petition for permission for private sale which was granted. The sale consideration is to be received from him.

(ii) In the case of Hyderabad Vanaspati Limited where the outstanding

tax is Rs. 35.96 lakhs, settlement Commission has admitted the petition of the assessee and tax payable by the company has since been paid. The recovery certificate remains closed as on date.

(iii) In the case of Laxmi Chand Rajmal where the outstanding tax is Rs. 24.29 lakhs, the defaulter's immovable properties i.e., M/s Anand Apartments, Sikandrabad were attached. There were a number of objection petitions filed by the occupants of the plots against its attachment. The defaulter's file was transferred to Bombay. The ITAT, Bombay Bench has allowed appeal filed by the defaulter and consequently the entire arrear demand is reduced to nil.

(iv) M/s Visakha Gowde Association :

It was a registered firm assessed to tax for the assessment year 1971-72 and 1972-73. In subsequent years no return of income was filed as the firm was dissolved. As the firm did not pay the tax demand raised against it amounting to Rs.12,06,348/- the tax Recovery Officer, Vizag after receiving certificates under section 222 from the ITO attached the properties of its partners to recover the arrears. The Audit has referred to the 3 properties standing in the name of Shri Puridi China Pyadiah, one of the 19 partners of the firm. As Shri Pyadiah did not file return of income in spite of tax liabilities arising out of the share income of the firm and the unexplained investment in the firm notice under section 148 was issued to his legal heirs to file return of income. In response to this, wife of the assessee Smt. P. Appalakondamma filed a nil return. However, the assessment for the assessment year 1971-72 was completed in september, 1984 at a total income of Rs. 109,440 creating a demand of Rs. 2,48,257/- including penal interest. For assessment year 1972-73 total income was determined at Rs. 18 410/- creating a demand of Rs.8454/- These assessments were completed in the status of HUF. Before these assessments were completed recovery proceeding were initiated against Shri Pyadiah in the capacity of partner as mentioned above to collect the arrears of the firm: namely, M/s Visakha Gcwda Association.

After the attachment of the properties partners of the firm including the legal heirs filed objection petitions before TRO. The TRO in his capacity as judicial official disposed of some of the objection petitions in favour of the petitioners which was not accepted by the Department and the Department has filed civil suits against this action of TRO. Some of the objection petitions filed in May, 1981 could not be disposed of for want of counter replies to be filed by the Income-tax Officer, 'A' Ward, Vizag having jurisdiction over the firm as well as the partners because of non-determination of the status of the partners. During this period of enquiry it was ascertained that some of the

Partners. During this period inquiry it was ascertained that some of the properties were sold away to third parties in spite of the properties being under attachment.

Smt. P. Appalakondamma wife of Late Shri Pyadiah did not also accept the assessments completed in her name as legal heir of the husband (as mentioned above) on the ground that her husband was not at all a partner of the firm in any status. The CIT (Appeals) agreed with the contention of Smt. Appalakondamma and accordingly he set aside the order of ITO for making fresh enquiry as to who was the real partner. However, Smt. Appalakondamma the legal heir filed an appeal before the Tribunal against the order of CIT (A) claiming that the assessment order of the ITO ought to have been cancelled. The Tribunal in its order dated 15.7.86 cancelled the assessment of ITO accepting the plea of the assessee with direction to the ITO accepting the plea of the assessee with direction to the ITO to make enquiries to find out the real partner. The Tribunal orders have been accepted by the Department.

In the light of the Tribunal's finding Smt. Appalakondamma has since filed petitions for lifting the attachment. As the Department has accepted that Shri P. China Pyadiah was not at all a partner in the firm M/s Visakha Gowde Association, no fresh action has been initiated to collect the arrear of taxes by attaching the properties belonging to him, as it is patently against circumstances, no action appears to have been taken on the default on the part of Shri P. China Pyadiah. The matter before the Department is now on tabula-rash and enquiries have to be made by the concerned ITO to locate the real partner.

(v) In the case of Smt. G. Savitri where outstanding demand is Rs. 11.23 lakhs, the property at Pujagutta was attached. Later on TRO noticed that this property was not owned by the defaulter and as such the attachment was lifted. The properties at Madras are also under attachment and the case is pending in Madras Civil Court.

(vi) In case of Mohd. Ibrahim Khan recovery certificates were issued for Rs. 9,29,920 on 1.10.82 and further on 8.11.85 certificate for Rs. 2,81,755 was issued towards wealth-tax arrears. As per the directions of CIT the properties were kept under attachment but no action was taken since appeal filed was pending. Prohibitory order was, however, issued to Shri D.R. Shanbagh, Shanbagh Hotel, Punjagutta, Hyderabad. A sum of Rs. 7,625/- is being collected every month from rent payable to the defaulter.

(vii) In the case of Smt. Rani Rukmani Devi where the arrear demand is Rs. 16 lakhs the properties attached in 1980 could not be sold due to

pendency of objection petition. The objections are under consideration of the TRO.

(h) DELHI

(i) According to Audit, the properties attached in the case of Shri M: R, Dhawn could not be sold as the maximum bid was below the reserve price, In this case the demand of Rs. 1.16 crores is outstanding, The assessee's property was put to auction in 1984. The sale was postponed as the bid for the property was below the reserve price. In this view the Deptt. wanted to purchase the property and has sought funds for the purpose. The matter is in advance stage and a tripartite agreement between the Deptt., the defaulter and the builders has been done in consultation with the Standing Counsel.

(ii) In the case of Harish Chand Kashmiri Lal, a demand of Rs. 26.73 lakhs is outstanding. The Department attached properties. Its auction was scheduled to be held on 17.2.82, when the defaulter got stay from the High Court. The stay order was subsequently vacated by the Hon'ble High Court on 16.9.82, The recovery proceedings were started again. The assessee filed a petition before the CIT (Recovery). The CIT (Recovery) vide his letter dated 23.2.85 directed the assessee to pay further Rs. 70,000/- during the financial year and stayed the remaining demand till 30.4.85. As per the directions of CIT (Recovery) the assessee paid Rs. 70,000/- on 31.3.85 and Rs. 10,000/- on 2.9.85.

From 10th December, 1985 again proceedings were started for the recovery of tax and notice for a sale proclamation of the property was issued by the TRO on 3.1.1986. fixing the case for 20.1.1986. In the meantime one of the Partners Shri Hari Chand has expired. Now the TRO has been directed by the CIT to proceed in the matter immediately.

1.21 During evidence, the Secretary, Ministry of Finance (Deptt. of Revenue) informed the Committee as follows :

"...The whole purpose of attaching properties-as per the policy statement of the Board, is to really coerce the assessee for making payment and a precaution that he may not dispose of the property. The records as well as the policy would show that the direction to the Tax Recovery Officer is that he may not proceed to sell the property until after disposal of the appeals, if any, pending in the High Court etc. It is not a civil court acting on a decree that if you are free, you just impose it..."

1.22 On further enquiry, the witness stated :

"Sale is hardly ever done. More effective methods are available than sale. We are hamstrung ourselves with our policy. We wait till there is a pressure on us to sell. We can show you many cases where people have paid it in instalments because they cannot sell it."

1.23 Subsequently, the Ministry of Finance (Deptt. of Revenue) on being asked whether attachment of immovable properties constituted a coercive measure, stated :

"Attachment of the property constitutes a coercive measure sanctioned by law but it may not lead to sale in all cases. Central Board of Direct Taxes has issued guidelines in 1977 that attached properties should not be sold for realising demand disputed in appeal till the appeals are disposed of by the appellate tribunals."

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"To some extent attachment of property is a stop-gap arrangement to create a moral fear but mainly it is done to create a charge on the immovable property so that the defaulting assessee cannot alienate his property otherwise."

1.24 The Ministry of Finance further stated that 'the TRO before selling the property should take recourse to other modes of recovery where it is comparatively easier to recover the taxes.'

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"There are other measures also to safeguard revenue in cases where appeals are pending, like furnishing bank guarantee by assessee etc. In real practice, it is rather more difficult for the assessee to arrange for bank guarantees as the Banks for giving guarantees insist on matching deposits or securities, etc. The Department generally gives all such opportunities to the defaulter assessee before attaching the property."

1.25 Asked to state the effects of the coercive measures taken by the Ministry of Finance, the Secretary (Revenue) stated :

"For instance in the first case (mentioned in the Audit Para) the total demand was Rs. 37.78 lakhs and the present demand is Rs. 8.58 lakhs. This attachment was done from 1964 to 1973."

1.26 As regards the reasons for pendency of disposal of immovable

properties after attachment for about 30 years, the witness informed the Committee as under :

"You first attach properties and then for 20—30 years or even 40 years, some properties are not being sold, that is the real thing. This is because of the appeals and other things and also due to non-disposal of appeals and finally the legal process."

1.27 The Committee observed that the appeal should be speedily disposed of in a year or so, in order that the Ministry could be able to exert some more pressure on the assessee to clear dues. The witness stated as follows :

"As far as the first appeal is concerned, that is within the Department and we feel that this should be disposed of within a period of 2-3 years. There, I would also say that appeals which are there in the tribunals of High Courts are uncontrollable. We are now on the new amendment where-in High Court of our own would be set up and that the case will be decided within that High Court itself within a period of 2-3 years or at the most 5 years."

1.28 On an enquiry as to whether the Ministry had analysed the cases to see whether it was only the appeals which result in delay, the witness informed the Committee as follows :

"We have analysed all these cases and I agree with you that it is not the appeal alone which delays. When we were pressing for sales there were gaps available between the expiry of one hurdle and the resurgence of another hurdle. Property could have been sold but the instructions also delay. I was suggesting 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."

1.29 Subsequently, the Ministry of Finance on being asked to intimate the steps taken to ensure expeditious disposal of appeals pending with the appellate authorities, informed as follows :

"Appeals before Appellate Assistant Commissioners and Commissioner (Appeals) are filed by the tax-payers only. Scheme of summary assessment on the basis of returned income has been liberalised and is extended to returned income of Rs. 1 lakh. Instructions have also been issued that penalty orders need not be passed where the

amount of penalty leviable is upto Rs. 500/-. Instructions have been issued to Appellate Assistant Commissioners/Commissioners Income-tax (Appeals) to dispose of the appeals by camping at various stations and on the basis of written submissions without insisting on personal presence of assessee wherever it is possible. The jurisdiction of Commissioner (Appeals) and Appellate Assistant Commissioners is occasionally reorganised considering the workload with them. The quota for disposal of appeals by Commissioner (Appeals) has been revised and increased for the financial year 1986-87. Also they have been asked to fix the appeals in a chronological order and dispose of old appeals. Members of the Board and the Commissioners (Admn.) carry out inspections of Commissioner (Appeals) and Appellate Assistant Commissioners respectively.

Some appeals remain pending with Appellate Assistant Commissioners and Commissioners (Appeals), the first appellate authorities, because the issue involved has not been settled finally by higher courts the High Court or the Supreme Court, Chief Justice of India and the Chief Justices of High Courts are requested to constitute Tax Bench on continuous basis so that these issues are settled early. Also a proposal is under consideration for setting up a National Court of Direct Taxes under Article 323B of the Constitution replacing the jurisdiction of High Courts in respect of Direct Taxes with a view to settle expeditiously the disputed issues. Today 18 High Courts are free to give different verdicts having binding force within their jurisdiction. This creates uncertainty.

The public sector enterprises are also requested not to resort to appeals under the Income Tax Act but where they dispute the order of the assessing officer, they should seek its revision by Commissioner Income-tax (Admn.) under Section 264 of the Income Tax Act against which no further appeal lies."

1.30 Agewise analysis of appeals pending with AACs/CsIT (A) on 31.3.1986 as furnished by the Ministry of Finance (Deptt. of Revenue) is as below :

Total pendency of appeals as on 31-3-1986 (under all Direct Tax laws)	Pending for less than one year	Pending for less than 2 year but for more than one year	Pending for less than 3 years but for more than 2 years	Pending for less than 4 years but more than 3 years	Pending for less than five years but more than 4 years	Pending for more than 5 years	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
AAC	197355	94351	51634	23166	12427	5273	10504
CIT (A)	99366	52552	26041	10114	5459	2178	3018

1.31 In regard to stay orders granted by Commissioners of Income-tax on ground of appeals pending before Appellate authorities, the Ministry have stated :

“Administratively Commissioner of Income-tax of the ITO concerned or the Commissioner of Income-tax (Recovery) both take decision regarding grant of stay of recovery of demand in appropriate cases.

The Income-tax officer grants stay in respect of disputed tax or allows the assessee to pay the tax in instalment, in appropriate cases only when the assessee approaches the ITO for the same. The Income-tax Officer on his own does not grant stay.

Main aim of the Department is to collect the outstanding taxes from the assessee. The defaulting assessee often comes to the Department under the pressure of the attachment with certain scheme of payment which is considered on the merits of the case. If certain scheme of payment is approved, the assessee is required to pay according to that scheme. If there is any case of default, the stay of demand or grant of instalment does not hold good and the department is then free to take coercive measures to realise the tax arrears.

In genuine case of disputed demand, the Income-tax officer may extend the time for payment of tax or allow payment by instalment subject to such conditions which may include attachment/continuance of attachment as he may think fit to impose in the circumstances of the case. This often becomes necessary to safeguard the revenue.”

1.32 Asked why there was no time limit for disposal of property after attachment, the Ministry intimated as follows :

“If any time limit is prescribed for proclamation of sale after the attachment of the property it may cause, in certain cases, undue harassment to the assessee. If, after the sale of the property, the assessee gets a decision in his favour from some appellate authority, the property cannot be restored to him. Further, if, within the prescribed time, no bidder comes forward on date of sale, or the bid amount is lower than the reserved price due to which the auction has to be postponed, the Department may have difficulty in selling the property within the prescribed time limit.”

1.33 As regards the question of defective servicing of attachment

notices, the Ministry have intimated :

“Care is taken to serve notices as per procedure laid down in this regard but the defaulter assessee at times try to make out a case of invalid service by pointing out certain slight deviations from the set laws like service of notice on a person who is not competent to receive the notice etc. Often times the objections raised in this regard are not relevant. The Directorate of Inspection (RS & PR), New Delhi has issued instructions to all Commissioners of Income-tax regarding how to strictly comply with the provisions of CPC in the matter of service of notice. Tax Recovery Inspectors’ Manual has also been published for guidance of the field officers to avoid such defects.”

1.34 The Committee desired to know whether necessary enquiries as to the real ownership, encumbrances etc. were made by the Tax Recovery Officers. The Ministry have stated :

“The attachment of the property is done on the basis of material available on record and the preliminary enquiries made in this regard. During the period of attachment necessary enquiries should also be made to ascertain the real ownership etc. But as provided in the Act objection to the attachment and sale of the property can be made by any person claiming certain interest in the property after the attachment or after the sale has been advertised. The TRO then has to necessarily make investigation regarding the objection or claim made, which in a way delays the process of sale of the property. Persons claiming interest in the property can file objection to the attachment or sale of the property any time before the sale of the property or even after the sale.”

1.35 The Audit Para mentions certain cases where the attached properties together with their title deeds remained in the custody of the tax defaulters, even after attachment, who besides continuing to enjoy the benefits therefrom manoeuvred to transfer, sell or otherwise dispose of the properties leaving no option to the department except to seeking time consuming legal remedy. The Committee desired to know the safeguards provided under the Act to avoid such contingencies and to prevent such undesirable practices. The Ministry of Finance have informed in a note as under :

“The safeguards to prevent disposal of attached property by the defaulting taxpayer are provided in rules 16 and 48 of the Second Schedule to the Income-tax Act, 1961 and also in section 281 of the

Income-tax Act, 1961. and also in section 281 of the income Tax act 1961. The rules and section are reproduced below:

Rule 16 ; Private alienation to be void in certain cases.

(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter or any debt, dividend or other moneys contrary to such attachment, shall be void against all claims enforceable under the attachment.

Rule 48 : Attachment

Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Section 281. (Certain transfer to be void)

(1) Where, during the pendency of the proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise :

Provided that such charge or transfer shall not be void if it is made-

- (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or
- (ii) with the previous permission of the Income-tax Officer.

(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation : In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.

Appointment of Receivers

1.36. Rules 69, 70 and 71 of the Second Schedule to the Income Tax Act, 1961 deal with the appointment of receiver. These rules provide as follows :

"69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

70. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale, of the property, appoint a person as receiver to manage such property.

71. (a) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits or rents and profits, of such business or other property, shall after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter."

1.37 The Committee invited the attention of the witness to the Audit observation to the effect that the provisions regarding appointment of receiver to manage immovable properties attached towards tax recovery were not at all resorted to and desired to know the reasons therefor. The Secretary (Revenue) disagreeing with the audit observation, stated :

“It is not entirely correct to say that we have not used the provisions, Two or three cases are there. I want to make one or two points, Sir. You are aware that unlike other authorities, the Income Tax Department has the Power of garnishee, The whole purpose of attaching properties as per the policy statement of the Board is to really coerce the assessee for making payment and a precaution that he may not dispose of the propertyThe receivers are to be appointed where there is a running business and the owner of the business has a languishing interest. We see whether the receiver can do better than the owner for management of the properties,”

1.38 The witness further added :

“According to the judgement of the Department where there is either mismanagement or lack of management as in the case of that sugarmill case ‘Changdec’, we are free to appoint the receiver and receive the income. Our experience has been that by the course of appointment of receiver, our earnings fall and profits become more uncertain. But if the business is being run it is better to attach the profits and get a portion out of that rather than trying to dabble to appoint a new receiver. The other situation where the receiver becomes necessary is when you attach certain piece of land or some concern and then the management is abandoned.”

Non-Maintenance/Defective Maintenance of Attachment Registers

1.39 According to Tax Recovery Inspectors Manual Tax Recovery Inspector is required to maintain two registers i.e. (i) Register for immovable properties attached. and (ii) Register for movable properties attached. These registers contain information regarding the name of the defaulter, date of attachment, description of property attached, estimated value of property, date of sale etc.

1.40 As per audit para, out of 138 Tax Recovery offices inspected by the Audit, in 73 offices registers were wanting or were defective.

1.41 The Committee enquired during evidence as to how in the absence

of these registers, check was exercised over the attached properties. The Secretary (Revenue) stated :

“The answer is individual files of the assessee. In addition, he (TRO) is required also to maintain a register which has not been maintained.”

1.42 Asked as to the reasons of non-maintenance of the register, the witness stated :

“There is no particular reason.”

1.43 On a further enquiry as to how a third party could know whether a particular property was under attachment, the Member CBDT stated :

“Notice is displayed.”

He further added :

“Notice is pasted on the notice board in the TRO's office. Anybody going to the TRO's office can see that notice board. There, the attachment of property is displayed. Further as our Chairman has already pointed out, we do not allow the people to inspect our registers. We allow them to see from the notice board. I agree that we should have maintained the registers properly.”

1.44 On the insistence of the Committee that the third party must know that the immovable property was under sale or attachment or under acquisition, the Secretary (Revenue) agreed :

“We will look into the amendment and provide publication in the newspapers.”

1.45 The Central Board of Direct Taxes issued instruction No. 1723 on 18 August, 1986 regarding maintenance of Registers of attached immovable and movable properties by Tax Recovery Officers. The instruction reads as follows :

“According to Tax Recovery Inspectors Manual, two registers are required to be maintained in the office of Tax Recovery Officers, one for movables attached and sold and other for immovables attached and sold, containing details regarding name of tax defaulters, amount of arrears, date of attachment, description of property attached, date of sale etc.

The C&AG in their report for the year 1984-85 (Para 1.09.04) have noted that these registers were not being maintained at all or were maintained in a defective manner. In case of immovable properties the proper maintenance of this register and the inspection of it at periodic intervals would ensure effective monitoring of arrear collection, by sale of the immovable properties attached. The proper filing in of the survey, number of property, its estimated value, the amount of sale proceeds, date of confirmation and the date of issue of sales certificate would go a long way in ensuring that properties attached are put to sale and the proceeds realised and adjusted against the arrear demand. In the case of movable properties, among other things clear, accurate and detailed descriptions of the properties should be recorded in the register to avoid any ambiguity or confusion about the property attached.

The Board desires that steps should be taken to ensure that these registers are maintained properly and updated from time to time as per the existing guidelines in the Tax Recovery Inspectors Manual. Compliance certificates from TROs working under your charge should be obtained. While inspecting the work of TROs, the senior officers should invariably inspect these registers."

1.46 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 ~~therein~~.

1.47 The ~~amount~~ 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 proper-

ties 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 per cent 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.

1.48 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 years indicate that these coercive tactics have proved to be totally inadequate.

1.49 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 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,

1.50 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.

1.51 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 have 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, 17,885 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.

1.52 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.

1.53 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 Branches on a 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.

1.54 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.

1.55 The efficiency of Tax Recovery Officer/Inspector depends on the completeness and correctness of the registers maintained by him. One of the registers 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. Daring 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.

1.56 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.

1.57 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 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.

1.58 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 settling 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 promptitude and suitable remedial steps are taken to avoid lapses in future.

NEW DELHI ;
April 27, 1987
7 Vaisakha 1909 (S)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX I
(Vide para 1.12 of the Report)

Details of Immovable Properties attached and pending disposal as on 31.3.1983

State	Commiss- ioner's charge	Total No. of proper- ties atta- ched and pending as on 31.3.83	Value (Rs. in thou- sand)	Total No. of proper- ties dispo- sed of till 31-3-85	Value (Rs. in thou- sand)	Balance awaiting disposal as on 31-3-85	Properties 7 awaiting More than 10 yrs.	indicated in disposal, Between 5 & 10 Yrs.	Col. Upto 5 Yrs.
1	2	3	4	5	6	7	8	9	10
U.P.	Meerut	116	18349	70	11823	46	7	11	28
	Arja	26	5620	17	4630	9	5	3	1
	Lucknow	48	1791	15	260	33	10	—	23
	Allahabad	41	3800	—	—	41	1	10	30
	Kanpur	29	9528	1	150	28	17	7	4

TAMIL NADU

Madras (R)	33	11000*	3	11000*	30	3	2	25
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*(Value shown are estimated values. In 10 properties, the value had not been ascertained at the time of attachment),

DELHI

Delhi (R)	94	47930*	17	3985	77	1	55	21
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*(Value of 5 properties were not estimated at the time of attachment)

BIHAR

Patna	22	2066	—	—	22	—	—	22
Ranchi	3	1549	—	—	3	—	2	1

RAJASTHAN

Jaipur	43	*	—	—	43	17	5	21
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*(The properties in most of the cases have not been valued because of dispute in appeals, Courts etc.)

Jodhpur	12	2317	5	*	7	1	3	3
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*Only one property was sold for Rs. 21,000/-against reserve price of Rs. 17,000/-Other properties were not valued).

1	2	3	4	5	6	7	8	9	10
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MADHYA PRADESH

Jabalpur	120	129144	1	1362	119	22	9	88
Bhopal	43	4884	7	36	36	3	31	2

ASSAM, TRIPURA, NAGALAND, ARUNACHAL PRADESH, MANIPUR, MEGHALAYA, MIZORAM

Shillong	13	774	—	—	13	13	—	—
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ANDHRA PRADESH

Hyderabad	334	12742	20	943	314	61	75	178
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PUNJAB

Ludhiana (C) 15 (All properties were transferred to Jalandhar and Patiala Charges).

Amritsar	16	*	2	*	14	—	1	13
Jalandhar	102	*	43	*	59	—	48	11

*(Properties not valued.)

Patiala	18	2561	10	2068	8	3	—	5
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GUJRAT

Gujrat (R)	206	Not valued	1	6500	205	53	72	80
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KERALA

Cochin	323	39811**	7	541	316	123	96	97
Trivandrum	142	7601	49	818	93	81	—	12

**Approximate value

KARNATAKA

Karnataka	179	12433	18	1711	161	83	36	42
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MAHARASHTRA

Nagpur	39	4055	5	239	34	12	9	13
Nasik	25	Not valued	—	—	25	1	20	4
Pune	67	5141	3	488	60	24	28	8
Kolhapur	64	3211*	—	—	64	35	18	11

*(This represents only 32 properties, remaining 32 properties not valued)

Bombay(R)	149	135479	53	22879	96	30	41	25
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55

ORISSA

Bhubaneshwar	29	4848	1	1494	28	6	13	9
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HARYANA

Rohatak	37	2214	6	237	31	6	13	12
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WEST BENGAL

Calcutta (R)	256	50979	2	201	254	37	143	74
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*(Excluding the value of 29 properties as the same not valued),

APPENDIX II

(Vide Para 1.12 of Report)

Details of Immovable Properties Attached Between 31.3.83 And 31.3.85

State	Commissioner's Charge	Total No. of properties attached between 31.3.83 & 31.3.85	Value (Rs. in thousand)	Total No. of properties disposed off till 31.3.85	Value (Rs. in thousand)	Balance
1	2	3	4	5	6	7
U.P.						
	Meerut	17	1896	6	1012	11
	Agra	6	1263	—	—	6
	Kanpur	21	17250	3	1650	18
	Lucknow	4	Not valued	—	—	4
	Allahabad	16	3285	—	—	16

TAMIL NADU

Madras (R)	77	Not valued in most cases	1	360	76
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DELHI

Delhi (R)	26	11745*	1	100	25
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*(Value of 3 properties were not estimated at the time of attachment)

BIHAR

Patna	3	550	—	—	3
Ranchi	NIL	NIL	NIL	NIL	NIL

RAJASTHAN

Jaipur	21	14100	—	—	21
Jodhpur	8	1758	1	—	7

MADHYA PRADESH

Jabalpur	22	4919	—	—	22
Bhopal	16	1231	5	123	11

KARNATAKA

Bangalore	11	2840	—	—	11
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MAHARASHTRA

Nagpur	6	145	4	414	2
Bombay (R)	163	114309	47	329380	116

1	2	3	4	5	6	7
	Nasik	2	Not valued	—	—	2
	Kolhapur	29	487*	—	—	29
*(This value represents & properties, remaining 2 properties not valued).						
	Pune	15	8350	—	—	15
MIZORAM, MEGHALAYA, ASSAM, NAGALAND, MANIPUR, ARUNACHAL PRADESH						
	Shilong	NIL	NIL	NIL	NIL	NIL
ANDHRA PRADESH						
	Hyderabad	446	118801	314	57021	132
PUNJAB						
	Amritsar	20	Not valued	6	Not known	14
	Jalandhar	27	Not valued	—	—	27
	Patiala	3	776	—	—	3
GUJRAT						
	Gujrat (R)	27	10408	2	6578	25
KERALA						
	Cochin	50	12168	11	845	39
	Trivandrum	55	1286	4*	—	51
*(Attachment withdrawn)						

ORISSA

Bhubaneswar

NIL

NIL

HARYANA

Rohtak

6

500

WEST BENGAL

Calcutta

12

4561*

***(Excluding the value of 2 properties as the same are not valued)**

NIL

NIL

NIL

—

—

6

1

100

11

APPENDIX III

(Vide Para 1.17 of Report)

Cases Pending Between 20-30 Years

CIT CHARGE	Name of Assessee	Value involved (Rs. in lakhs)	Date of attachment	Reasons/Remarks
1	2	3	4	5
Jabalpur	M's G.H. Cook & Sons.	@	22.10.59	Twelve properties of this assessee were attached. Whenever auction was fixed, no bidder came to bid hence properties could not be disposed off yet.
	Sh. Panchanan Singh,	@	26.12.64	Civil litigation against attachment is pending in Court.
	Shiv Narayan Prabhudayal.	@	07.02.64	Eight properties of this assessee were attached. Pending in Court.
	@ Not Specified			

Agra	M/s Badri Prasad Jagan Prasad.	1 00
	M/s Brijmohan Lal Nathi Lal.	0.50
	M/s Bimal Glass Works.	1.60
	M/s Elahibux Mohd. Usman.	0.30

@ Not Specified,

29.08.63

Stayed by Tribunal. Efforts are afoot for verification of demand. However, ITCP-17 has been issued for sale proclamation.

07.12.55

Property was put to auction about 2 to 3 times but due to low bid, it could not be sold. Again the property was auctioned on 21.3.86 but due to objection filed, the sale was set-aside. Notice (IRCP-17) has again been issued by TRO.

15.12.59

The auction was held in 1968 but due to low bid, the sale was cancelled. However, property is again being put to auction soon on receipt of reserve price.

23.07.63

The properties were attached by the Collector, Jhansi, but this file has not been received from the Collector. The records of the ITO show that the properties attached did not belong to

1	2	3
---	---	---

	M/s Tailong Bros.	0.50
Jaipur	Shri K.L. Tiwarı	17.69
Bombay (Recovery)	Ganesh Narain Onkarmal	93.58

the defaulter. However, confirmation with regard to present ownership, has been asked for from the ITO and necessary steps to proceed with the recovery will be taken there after.

1960

Demand involved has since been paid and interest waived in March, 1986. No further action is needed now.

62

03.07.64
and
29.07.64

Two properties of this assessee were attached. The matter is disputed in court.

5.5.1964

Out of 18 properties attached in 1964, 8 properties have been sold and an amount of Rs. 32,69,725/- has been realised upto 30.9.1986. The balance 10 properties are outstation properties. Concerned TROs have been asked to sell the properties.

Late Sh. M.M.
Aga

47.00

17.1.1960

5 properties of this assessee were attached. Out of these, one property was sold on 23.4.84 for Rs. 61.25 lakhs. This is adjusted against the certified demands and the balance demand outstanding is Rs. 7.90 lakhs. The remaining 4 properties are under attachment. Since the first appeal is pending in this case (the assessments were completed in January, 1986) no further action is taken.

APPENDIX IV

(Vide para 1.18 of Report)

*Details of Immovable Properties (Attached and Pending Disposal as on 31.3.1985)
Involving Arrear Exceeding Rs. 10 Lakhs*

Commissioner's Charge	Name of the Assessee		
1	2	3	4
NASIK	Shri M. S. Padvi Dhule	15.43	1.9.1975
BOMBAY	Shri Changdev Sugar Mills Ltd.	104.73	7.9.74 & 3.8.78
RECOVERY	Shri V. M. Bhatt	40.00	20.8.85
	M/s Swastic Properties P. Ltd.	90.00	19.3.86
	M/s New India Fisheries Ltd.	38.44	10.12.82 & 9.3.83
	M/s Reliable Extraction Industries (P) Ltd.	12.00	26.2.85
	Shri D.N. Shroff	16.37	17.6.54
	Soorji Vallabhdas Group	15.04	25.10.75
	Baldota Bros	299.26	27.8.66
	Shri Sultan Karim Mithani	23.30	3.11.79
	Shri Sayajirao P. Gaekwad	238.00	17.12.81 & 28.2.83
	Shri Haji Mastan Mirza	40.00	30.8.84

JAIPUR

**Nimjibhai C. Kapadia
Shri Narendra M. Mehta
Mrs. Darshana A. Mehta
Ashwin M. Mehta
Mrs. Poornima M. Mehta
Mrs. Smita N. Mehta
Prakashwanti B. Aggarwal
Mrs. Maya Devi H. Aggarwal
M/s Rajendra Plastic Industries
Smt. Urvashi Devi
M/s Krishna]Kapoor & Co.
M/s Golecha Group of cases
Shri K.L. Tiwari**

HYDERABAD

**Shri Tiwari Jhumar Lal
Rani Rukmini Devi
Barkat Ali Khan
Barkat Ali Khan L/R Osman Ali Khan.
M/s Anwarkhan Mehboob & Co.**

JABALPUR

COCHIN

**P. Sivramakrishna Iyer
M. Gopinath
P.J. Cicily
P.V. Chacko
K.]Ramachandran Nair
C.M. Joseph**

KARNATAKA-III

**Gunjalli Mahantappa
Shri L.B. Sardesai & Others**

***(Value of Property)**

22.00	16.1.84
20.00	23.2.85
25.00	18.2.85
35.00	23.2.85
25 00	23.2 85
25.00	18.2.85
10.00	20.3.85
30 00	20.3.85
99.27	20.1.82
53.00	31.12.83
28.45	28.9.84
64.35	13.3.81
17.69	3.7.64
17.87	16.2.83
12.00*	1980-81
92 00*	1973-74
90.00*	1973-74
14.75	November, 1981
37.00	13.3.81
20.00	10.3.82
52.03	27.12.83
28.00	29 11.84
10.00	5.7.79
25.00	29.11.84
20.00	7.1.81
17.53	18.1.84

**BHOPAL
DELHI
(RECOVERY)**

**Late Shri M.N. Sitoley
Shri M.R. Dhawan
M/s La Medica
Sahib Singh & Sons
Shri A.A. Rashide
Hari Chand Kashmiri Lal
Bansal Metal Container**

**MADRAS
(RECOVERY)**

**S. Gananathan, S/o S.P.
Chidambaram Pillai**

**MEERUT
KANPUR**

**Shri V.C. Ganeshan
M/s M.V. Shanmugham & Co.
P.S.S. Somasundaran Chettair (HUF)**

**CALCUTTA
(RECOVERY)**

**S.A.K. Chinnathambi Chettair
M/s Giri Lal Mam Chand & Co.
Late S N. Bagla, HUF
Late R.P. Bagla, HUF
M/s Laxmi Rattan Cotton Mills
M/s Manoo Lal Kedar Nath
M/s Andhra Steel Corp., Dankuni
M/s Bharat Minerals & Sales Corpn.**

3	4
15.00*	11.2.81
67.73	14.9.82
50.00	21.11.78
50.00	21.9.79
65.00	2.2.79
35.00	22.1.80
30.00	22.1.80
12.00*	22.3.83
45.00	20.3.84
(approx.)*	

96

12.80*	5.3.83
10.00	4.5.75
(approx.)*	
12.00*	19.2.70
104.95	14.5.77 & 30.10.82
87.38	15.11.67
10.94	15.11.67
28.00	4.11.68
10.07	4.9.72
47.26	17.5.82
17.00	3.12.84

**TRIVANDRUM
RANCHI
GUJARAT
(RECOVERY)**

**M/s Christian Mica Industries Ltd.
M/s. Ram Kumar Agarwala &
Brothers
Pitambar Bhaichand Shah
Khirodimal Lohariwala
Nawab Mussaruf Hussain & others
Murari Ch. Law (deceased)
L/H Guneka Charan Law
M/s. Puranmal Rajkumar & Partner
Shri Thangal Kunju Musaliar
Sardar Sewa Singh, HUF
M/s. Jamnadas & Co.
Shri S. D. Jadeja**

***Value of property**

12.99	5.3.83	
12.60	22.12.80	
15.00	12.12.80	
10.17	14.8.69	
24.96	22.9.75	
18.34	4.11.78	
17.00	31.7.78	
55.10	1968	
10.83	14.8.1973	
10.00	12.9.1975	
300.00	15.1.1974,	23.4.1974,
	8.8.74,	17.2.1978 &
	12.4.78.	

APPENDIX V

Conclusions/Recommendations

Sl. No.	Para No.	Ministry/ Deptt.	Recommendation/Conclusion
1	2	3	4
1	1.46	Finance (Revenue)	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.
2	1.47	--/o--	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 of immovable properties attached towards recovery

1	2	3	4
			<p>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 per cent 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 figure prove that the department have not made use of an effective mode of recovery of tax available with them.</p>
3	1.48	Finance (Rev)	<p>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 years indicate that these coercive tactics have proved to be totally inadequate.</p>
4	1'49	—do—	<p>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</p>

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 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

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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 safe guarding 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 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.

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Finance
(Revenue)

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

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			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.
6	1.51	Finance (Revenue)	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

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			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.
7	1.52	Finance (Revenue)	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.
8	1.53	---do---	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 a 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.
9	1.54	- do -	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

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			<p>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.</p>
10	1.55	Finance (Revenue)	<p>The efficiency of Tax Recovery Officer/Inspector depends on the completeness and correctness of the registers maintained by him. One of the registers 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 Office's.</p>
11	1.56	—do—	<p>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</p>

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thereof. The Committee trust that these instructions would henceforth be strictly enforced and disciplinary action initiated against the delinquent officers for non-compliance.

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Finance
(Revenue)

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 assessesees. 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.

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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

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enquired into prior to attachment as a result of which cases were pending in courts for settling 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 promptitude and suitable remedial steps are taken to avoid lapses in future.
