

CERTAIN CONCEPTS RELATED TO ASSESSMENTS, APPEALS, ETC.

SECTION 281: CERTAIN TRANSFERS TO BE VOID

Where, during the pendency of any proceeding under the Income-tax Act or after the completion thereof, 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 a charge or transfer will be **deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee** as a result of the completion of the proceedings or otherwise.

EXCEPTION: Charge or transfer not to be considered void where it is made:

- (a) for **adequate consideration** and **without any notice of the pendency** of such proceeding or without any notice of such tax or other monies remaining payable by the assessee; or
- (b) with the **previous permission of the Assessing Officer**.

This section applies to all cases where the amount of tax or other sum of money which is payable or likely to be **payable exceeds ₹5,000 and the assets** which are charged or transferred by the **assessee exceeds ₹10,000 in value**. (Assets do not include stock in trade of the assessee's business).

SECTION 281B: PROVISIONAL ATTACHMENT TO PROTECT THE INTEREST OF THE REVENUE IN CERTAIN CASES

- (1) The Assessing Officer may, by an order in writing, attach provisionally any property belonging to the assessee where:

Condition 1: Any assessment proceeding is pending under section 143(3) / 144 / 147; and

Condition 2: Assessing Officer is of the opinion that it is necessary to attach the property for the purpose of protecting the interest of the Revenue.

Before passing such order, the Assessing Officer has to take prior permission of the CCIT or CIT.

Finance Act, 2021 provides that Assessing Officer can provisionally attach the property of the assessee during the pendency of proceedings for imposition of penalty under section 271AAD (false/fake invoices to claim ITC) where the amount of penalty likely to be imposed exceeds ₹ 2 crores.

- (2) Every provisional attachment would cease to be effective after the expiry of a period of **6 months from the date of passing of aforesaid order by the Assessing Officer.**

Such time period may be extended by the CCIT/ CIT, for reasons to be recorded in writing. **However, total period of extension shall not in any case exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.**

ILLUSTRATION

For Assessment Year 2017-18, the assessment proceedings were going on under section 143(3) on 01-01-2018. The Assessing Officer noticed massive tax evasion by the assessee and passed an order of provisional attachment under section 281B on 01-01-2018. The order of attachment is valid till 30-06-2018. The Chief Commissioner of Income-tax/ Commissioner of Income-tax on 20.06.2018 extends the attachment period as under:

- (i) By 2 years; or
- (ii) Upto 60 days after the date of order of assessment or reassessment

whichever is later.

The assessee takes a stay from High Court on 01-11-2018 against the assessment proceedings by filing a writ petition and stay is vacated on 31-10-2022 after 4 years and assessee's writ petition is dismissed. Now, Assessing Officer completes assessment under section 143(3) on 31-12-2022.

As per section 281B, the provisional attachment is valid upto 01-03-2023. The Assessing Officer can auction the attached properties to realise the tax assessed.

- (3) **The attachment shall be revoked by Assessing Officer, by an order in writing, where assessee furnishes a guarantee from a scheduled bank for an amount not less than the FMV of the property provisionally attached.**

However, where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the FMV of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

- (4) For the purposes of determining value of the property provisionally attached, **Assessing Officer may make a reference to the Valuation Officer, who shall estimate the fair market value of the property and submit the report within 30 days from the date of receipt of such reference.**

- (5) An order revoking the provisional attachment under sub-section (3) shall be made—

- (i) within **45 days** from the date of receipt of the guarantee, where a **reference to the Valuation Officer** has been made under sub-section (4); or
- (ii) within **15 days from the date of receipt** of guarantee in any other case.

- (6) Assessing Officer may invoke the guarantee furnished under sub-section (3), wholly or in part, to recover the amount in case of failure of the assessee to pay the demand raised on him in the notice of demand within the time specified in the notice of demand.

- (7) The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, in case of failure of the assessee to renew the guarantee referred to in sub-section (3), or failure to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee referred to in sub-section (3).
- (8) Amount realised by invoking the guarantee referred above shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Commissioner in RBI/ SBI.
- (9) Where the Assessing Officer is satisfied that the guarantee referred above is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

RULE 68B OF SECOND SCHEDULE

The existing provisions of rule 68B of the Second Schedule of the Act provide that **no sale of immovable property attached** towards the recovery of tax, penalty etc. shall be made **after the expiry of three years** from **the end of the financial year in which the order** in consequence of which any tax, penalty etc. becomes **final**.

In order to protect the interest of the revenue, especially in those cases where demand has been crystallised on conclusion of the proceedings, the Finance Act, 2019 amends the aforesaid sub-rule so as to **extend the period of limitation from three years to seven years**. The CBDT can further extend this period by three years.

SECTION 282: SERVICE OF NOTICE GENERALLY

Service of any communication (notice/ summon/ requisition/ order etc) under this Act may be made by delivering or transmitting a copy thereof, to the person therein named,—

- (a) by post or by such courier services as may be approved by the Board; or
- (b) by hand; or
- (c) by e-mail; or
- (d) by any other means provided by rules made by the Board.

SECTION 282A: AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS

- (1) For issuance of a notice or other document by any income-tax authority, **such notice or other document shall be signed in manuscript by that authority**. The notice or document can be sent in paper form or communicated in electronic form.
- (2) **Every notice or other document shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.**

KEY NOTE: W.e.f. 01.10.2019, any communication shall be deemed invalid unless a Document Identification Number (DIN) has been allotted and duly quoted in the body of such communication.

SECTION 292B: RETURN OF INCOME, ETC., NOT TO BE INVALID ON CERTAIN GROUNDS

No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act **shall be invalid** or shall be deemed to be invalid **merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding** if such return of income, assessment, notice, summons or other proceeding is **in substance and effect** in conformity with or according to the intent and purpose of this Act.

SECTION 292BB: NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES

Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such **assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—**

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner:

This section shall not apply where the assessee has raised such objection before the completion of such assessment or reassessment.