Circular No.175, dated 14-8-1975

The problem of arrears has been the subject matter of adverse criticism by the comptroller and Auditor-General of India and various Parliamentary Committee and as such has been constantly engaging the attention of the Board. As will be seen from the chart given below, the arrears had virtually got stabilized around Rs. 800 crores during the past 3 to 4 years. However, the arrears as on 31.03.1975 have again registered a steep increase and this trend needs to be reversed:-

ARREARS OF INCOME TAX

As on	Gross	Net
	(RUPEES IN CRORES)	
31.03.1971	738.77	499.68
31.03.1972	805.37	438.60
31.03.1973	790.02	433.10
31.03.1974	815.60	471.13
31.03.1975	935.96	537.72

2. The Boar consider that the heavy pendency of tax arrears is partly due to the fact that the various powers conferred under the Income-tax Act have not been fully utilized; some of such powers are mention below:-

(*i*) Powers of Distraint and Sale of Movable Property referred to in Section 226(5) and the Third Schedule to the I.T. Act, 1961 seem to have been very sparingly used. This is a useful mode of collection especially where small accounts are involved. In fact, the threat or use of this power would considerably help in the recovery of arrears.

(*ii*) It is also seen that the powers of arrest and detention in civil prison available under rule 73 of the Second Schedule to the Income-tax Act, 1961 also do not appear to have been utilized adequately. More frequent use of this Rule will not only enable the Department to effect recoveries in cases wherever recourse to this power is taken but also have a salutary effect on other defaulters as well. The Board, in their confidential letter F.No. 403/27/73-ITCC dated the 17th September, 1973 has already drawn your attention to this aspect.

(*iii*) While immovable properties are attached by Tax Recovery Officers in a large number of cases, there is generally an inordinate delay in putting them to sale. In this connection, your attention is invited to the insertion of Rule 59(1) by the 'Taxation Laws Amendment Act, 1975' whereby the Central Government can bid for the property at any subsequent sale of the bid if the earlier sale had been for a price which was less than the reserve price. This rule has been included in the Annexure where other changes made by the Taxation Laws Amendment Act, 1975 relating to recovery has been listed.

3. It is also seen that the total amount of arrears under certificates as shown by the Tax Recovery Officers are considerably more than the entire arrears demand which could have been certified. The Board, in their circular letter F.No. 404/217/74-ITCC dated 18th November, 1974 (Instruction No. 149) have already desired that there should be a six-monthly reconciliation of the registers of the Tax Recovery Officer and the Income-tax officer. The first report in respect of such reconciliation is due on 31st October, 1975.

4. At the instance of the Board, some of the Commissioners of Income Tax have been meeting periodically the Income Tax Officer of each range together with the Inspecting Assistant Commissioner of Income Tax concerned. In such meetings, the Tax Recovery Officer concerned is also associated. The TRO asked to reconcile his figures of arrears demand with those atleast one ITO before the next meeting so that over a certain period, the figures in respect of each range are fully conciled.

The Board, therefore, desire that this practice should be effectively adopted by all the Commissioners of Income Tax. However, in mofussil charges, where it may not be venient for the Commissioner of Income Tax to associate himself with all such meetings, the concerned Inspecting Assistant Commissioner of Income Tax should hold periodical meeting on his Income-tax Officers and the concerned Tax Recovery Officer(s).

5. The Taxation Laws (Amendment) Act, 1975 has also made changes as per Annexure which should go a considerable way in enforcing recovery. The Board desire that the officers may be apprised of these changes so that necessary steps could be taken by them.

Yours faithfully,

(V.P. Mittal)

Secretary

Central Board of Direct Taxes

Encl: Annexure as above.

To letter addressed to the Commissioners of Income-tax in F. No. 404/171/75-ITCC dated the (14th August 1975)

LEGILATIVE MEASURES TO MAKE RECOVERY MORE EFFECTIVE

Changes made in the Act.

An explanation has been added to sub-section (1) of Section 222 of the Income- tax Act, 1961 by clause 54 of the Taxation Laws (Amendment) Act, 1975. This explanation reads as under:-

> **'Explanation:** For the purposes of this sub-section, the assessee's movable or immovable property shall include any property which has been transferred, **directly or indirectly on or after the 1st day June. 1973** by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall even after the late of attachment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date."

2. In Section 223, sub-section (2) has been added by clause 65 of the Taxation Laws (Amendment) Act, 1975 which reads as under:-

> "(2) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the TRO to whom a certificate is sent by an Income–tax Officer.

(*a*) is-not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction or.

(*b*)

(*c*) Is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this chapter, it is necessary so to do, he may sent the certificate or, where only a part of the amount is to be recovered a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a TRO within whose jurisdiction the assessee resides or has property, and thereupon, that TRO shall also proceed to recover the amount under this chapter as if the certificate or the copy thereof had been the certificate sent to him by the Income-tax officer.

3. Rule 73 of Second Schedule to the Income-tax Act has also been amended and a sub-rule (3A) has

been added by the provisions of Section 81 (vi) of the Taxation Laws (Amendment) Act, 1975. The new rule (3A) reads as under:-

> "(3A) A warrant of arrest issued by a TRO under sub-section rule (2) or sub-rule (3) may also be executed by any other Tax Recovery officer within whose jurisdiction the defaulter may for the time being be found."

4. Further, an Explanation has been added to sub-rule (4) of Rule 73 after the provision which reads as under:-

> "Explanation:-For the purposes of this rule, where the defaulter is an Hindu undivided family, the Karta thereof shall be deemed to be the defaulter".

5. Clause 68 has amended Section 276C. As per sub-section (2) of Section 276C, even willful attempts to evade the payment of any tax has been made liable to prosecution. Section 276C(2) reads as under:-

> "(2) If a person willfully attempts in any manner what sever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.
>
> *Explanation :* For the purposes of this section, a willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(*i*) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act.) containing a false entry or statement; or

(*ii*) makes or causes to be made any false entry or statement in such books of account or other documents; or

(*iii*) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

6. Clause 73 has amended Section 281 to provide for certain transfers to be void. The amended Section reads as under:-

> "281. (1) Where, during the pendency of any proceeding under this Act or after the completion thereof but be fore 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 case 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:- I 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.

7. Clause 74 has inserted a new Section 281B to provide for provisional attachment, to protect revenue in certain cases. Section 281B reads as under:-

"281B. (1) Where, during the pendency of any proceeding for the assessment for any income or for the assessment or reassessment of any income which has escaped assessment, the Income-tax officer is of the opinion that for the purpose of protecting the interest of the revenue, it is necessary so to do, he may, with the previous approval of the Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(2) Every such provisional attachment shall cease to have effect after the expiry of period of six month from the date of the order made under sub-section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so however, that the total period of extension shall not in any case exceed two years.

8. Causes 81 has made certain amendments of the Second Schedule. These are as under:-"81. In the Second Schedule to the Income-tax Act,–

(*i*) rule 19A shall be re-numbered as sub-rule (2) thereof, and before the sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:–
(1) A Tax Recovery Officer, being a Gazetted Officer of the Central Government who is authorized to exercise the powers of the Tax Recovery Officer under this Act, may entrust any of his functions as Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income Tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be Tax Recovery Officer.
Provided that where the Tax Recovery Officer is an Income Tax Officer any entrustment under this sub-rule shall be made only with the approval of the Inspecting Assistant Commissioner;

(*ii*) In rule 53, in clause (c), the ward "and" occurring at the end shall be omitted, and after that clause, the following clauses shall be inserted, namely:-"(cc) the reserve price, if any, below which the property may not be sold; and;

(*iii*) to rule 56, the following proviso shall be added, namely:–
"Provided that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of rule 53;

(*iv*) Rule 59 shall be re-numbered as sub-rule (2) there of, and before that sub-rule as so re-numbered, the following sub-rule shall be inserted, namely:-
(1) Where the sale of a property, for which a reserve price has been specified under clause (cc) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Income Tax Officer, if so authorized by the Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale:

(*v*) in Part III, after rule 68, the following rule shall be inserted, namely:-
68A. (1) Without prejudice to the provisions contained in this Part, an Income Tax Officer, duly authorized by the Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the

property, the sale of which has been postponed for the reason mention in sub-rule (1) of rule 59, at such price as may be agreed upon between the Income tax Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the Income Tax Officer and on the date the possession of the property is delivered to the Income Tax Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908, accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceed the amount due form the defaulter, such excess shall be paid by the Income Tax Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the Income Tax Officer fails to pay such excess within the period aforesaid, the Central Govt. shall for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid pay simple interest at twelve percent per annum to the defaulter on such amount;

(*vi*) in rule 73,–

(*i*) after sub-rule (3), the following sub-rule shall be inserted, namely,–

(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within those jurisdiction the defaulter may for the time being be found;

(*ii*) in sub-rule (4),—

(*a*) for the words, brackets and figures "sub-rule (2) or sub-rule (3)", the words "this rule" shall be substituted and after the words "Tax Recovery Officer", the words "Issuing the Warrant" shall be inserted;

(*b*) after the proviso, the following Explanation shall be inserted, namely:—

Explanation:- For the purpose of this rule, here the defaulter is a Hindu Undivided family, the Karta thereof shall be deemed to be the defaulter.".

■■