

Treatise on Report on Income Tax Dues



Direct Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Foreword

The Direct Taxes Committee (DTC) of the Institute of Chartered Accountants of India (ICAI) is one of the important Committees of the ICAI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes. One of the main activities of the Committee is to disseminate knowledge and honing skills of the membership in the area of direct taxation.

Section 281 provides an overriding charge on the assets of the assessee for all pending Income tax Dues (either which are already crystallised or may get crystallised in the proceedings that were pending at the time of original transaction vis-à-vis an asset) and accordingly, any assessee intending to acquire any asset or transfer from another person any assets covered by Section 281, will call for a prior information on dues from the Income tax Department (Assessing Officer) obtaining such a certificate may require considerable duration of time. In the meanwhile, for urgency to conclude the transaction, a report/certificate from a chartered accountant may be asked by such a purchaser. In this background, I am happy to note that the Direct Taxes Committee of ICAI has come out with this publication namely **“Treatise on Report on Income Tax Dues”** to assist the members in understanding and providing basic idea on the above subject and other related valuable information.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee, CA.(Dr.) Raj Chawla, Vice-Chairman, Direct Taxes Committee and all other members of the Committee who have worked sincerely for bringing out this handbook in a timely manner. I am confident that this publication will be a useful resource for the members.

Date: 06.02.2023

Place: New Delhi

CA. (Dr.) Debashis Mitra

President, ICAI

Preface

Tax practice by a chartered accountant has gained unique accreditation of excellence due to knowledge of law and technology is provided by ICAI. Practice in the area of direct taxation is still one of the important areas for the Chartered Accountants. Our members keep themselves abreast with taxation laws and have attained commanding heights in direct tax practice.

When a person acquires by the way of transfer or mortgage any asset or interest therein, it is necessary for him whether it is subject to any prior charge. Section 281 of the Income-tax Act, 1961, creates an overriding charge in respect of outstanding income tax dues or the dues that may arise out of proceedings that were at time of transactions.

There is practice to take certificate from assessing officer about such dues. However, in order to expeditiously understand such exposure of tax dues, it is customary to obtain such certificate from chartered accountant.

To provide guidance on this matter to the members, this handbook would be very useful. We hope, it would enable the members to better understand the said provisions, exposure to risks and to mitigate the same.

The Direct Taxes Committee thought it fit to bring out this brief publication namely **“Treatise on Report on Income Tax Dues”** as a handy tool to assist the fraternity to understand the law and procedure and to equip them to perform the job.

We are sincerely thankful to CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket Sunil Talati, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are extremely thankful and appreciate the efforts of our CA Kusai Goawala who provided valuable inputs for this publication. We are pleased to place on record our sincere gratitude for the involvements and contributions by all the Committee members and our dear Council Colleagues of ICAI. We are sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the provisions.

CA. (Dr.) Raj Chawla
Vice-Chairman,
Direct Taxes Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Taxes Committee, ICAI

Date: 06.02.2023

Place: New Delhi

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1. Introduction

When an assessee in India gives away or creates a charge on their business assets, it is in the interest of the buyer or mortgagee to obtain prior permission from an Assessing Officer. This is a precedent set under Section 281 of the Income Tax Act. However, many assesseees are unaware of the implication and significance of obtaining such permission from Assessing Officer. The Income Tax Department can deem any transaction by sale, gift, exchange or mortgage as void if one does not obtain prior permission.

2. About Section 281

Section 281 provides a overriding charge on the assets of the assessee for all pending Income tax Dues (either which are already crystalised or may get crystalised in the pending proceedings) and accordingly, any assessee intending to transfer any assets covered by Section 281, will require a prior consent/permission from the Income tax Department (Assessing Officer) to transfer (creation of charge/mortgage is also considered as transfer for this Section). In absence of such consent/permission, the Income tax Department can proceed for recovery of its dues in respect of the assessee by attaching this assets even if it is held by or charged to some one else. Hence the ownership by another person or charge by mortgagee is not recognised in absence of such prior consent being obtained under this section. This applies even to a bonafide Transferee who has paid adequate consideration for transfer.

This may apply also in case of demands or dues of the Company or Partnership Firm where the Assessee is a Director or Partner as the case may be, which is considered by the AO for recovery from the Assessee who is either a Director or Partner of such Company/Firm.

The recovery of income tax demand can also be in the capacity of a Representative Assessee. These aspects also needs to be factored while applying provisions of this Section 281.

This provision is to protect the interest of the revenue for recovery of its dues.

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Which dues have prior charge?

The date when transactions proceedings is pending at assessment stage, appeal even when proceedings is over, all the dues have overriding charge.

For Example: A sold building at adequate consideration of Rs. 8 cr to B. FMV is Rs. 10 cr.

Tax Dues is 5 cr- 2 cr. on date of loan and 3 cr. out of proceeding in appeal, etc.

If borrower fails to pay the dues, seller is liable to pay entire dues of Rs. 5 cr.

Requirement of Comfort:

In order to have comfort, what is the exposure to income tax liability, this certificate is required.

3. For the purpose of Section 281 of the Income-tax Act, 1961, transfer of Capital Asset is defined under section 2(47) of Income-tax Act, 1961.

- (a) The following assets are covered :
- I. Immovable Properties – Land, Building
 - II. Plant and Machinery
 - III. Shares and Securities
 - IV. Fixed Deposits
- (b) The following assets are not covered:
- I. Furniture & Fittings
 - II. Intangible assets
 - III. Leasehold rights (land and building) – 178 ITD 98 Mumbai Shree Laxmi Estate P Ltd vs ITO.
 - IV. Recurring deposits
 - V. Saving deposits
 - VI. Current deposits
 - VII. Cash in hand

VIII. Vehicles

IX. The assets which are held as Stock in Trade are not covered. That means above assets that are held as either Fixed Assets or Investments (Long Term or Current) are covered. For example- Builder having 10 offices- 9 available for sale- it is stock in trade so not covered here. 1 office is for personal use, it will be included for purpose of Section 281.

X. Conversion of capital asset into stock in trade

For the purpose of applicability of the section, the asset value being transferred or mortgaged should exceed Rs.10000 and demand should exceed Rs.5000/- .

4. Circumstances when certificate generally is required u/s 281

- i. Acquired asset in transfer
- ii. Creating charge
- iii. Purchase of assets under any mode of transfer
- iv. Amalgamation, Merger
- v. Gift
- vi. Exchange
- vii. Conversion of one entity to another form of entity

Consequences of such transfer:

In case of circumstances mentioned above, the above assets is transferred or charge is created, the said transfer will become null and void to the extent of the demand due to the Income tax Department from the assessee.

The Income tax Department can proceed to recover the demand from the assets transferred to third person even if the transferee is a bonafide transferee who has paid adequate consideration for the same.

Exceptions to the rule and transfers not void:

- (a) Transfer made for adequate consideration and without notice of demand due or proceedings pending.

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This can be ascertained by checking Income tax e-filing portal from assessee's login for any demand or proceedings pending, if any.

- (b) To obtain representations in the Sale Deed that no demand, proceedings are pending.

5. Who issues Certificate under Section 281?

Assessing officer issues certificate under section 281. In case of faceless assessment, there is no such specific assessing officer, so in this case it can be applied on online portal so relevant officer can give or the assessee may contact the public relation office with the officer of commissioner who is locally available for guidance.

6. How to obtain Permission u/s 281 of the Income tax Act 1961 from Assessing Officer

In order to obtain Permission from Income tax Department, following process to be followed.

Process of obtaining permission u/s 281 of the Income tax Act.

- (a) Make an application in Form ITNS 281 giving particulars of the demands outstanding, total assets owned and assets proposed to be transferred (Part D) of the said form.
- (b) The AO will give permission stating that the assessee can transfer the assets mentioned in Part D of the Application form submitted by the Assessee to the persons mentioned therein.
- (c) Accordingly, the buyer or mortgagee should obtain copy of the submitted Application which contains details of assets proposed to be transferred and the Certificate received from AO which refers to such Schedule as the Permission letter does not specify the assets for which NOC is given except by way of reference to the Schedule in Application.
- (d) In case the persons in whose favour the permission is given is not the ultimate transferee or mortgagee, permission is required to be modified as the permission is valid only for the assets and persons mentioned therein.
- (e) The Permission is valid for 182 days from the date of issue or the date of attachment whichever is earlier.

- (f) Further, after completing the transaction proposed under the Permission Letter, the Assessee is required to submit the details of the transaction completed to the AO.

What is to be done if demands are pending.

If demands are pending, the AO may not be inclined to grant permission unless demand is paid or cleared by the Assessee.

However, if the demand is disputed and the assessee is able to demonstrate that it has enough resources/assets other than the assets proposed to be transferred to cover the demand amount, the AO may grant permission based on the same.

In the event the above process is not followed by the Assessee and the transferee/mortgagee does not verify the applicability of this provision, the asset acquired by such transferee or mortgaged in favour of the mortgagee will be void to the extent of the demands outstanding and the AO can attach such assets for recovery of its dues. In spite of making full payment to the transferor, the transferee will run the risk of losing the asset or meeting the demand of the Income tax department in respect of the transferor. The process for attaching the transferred property is by filing suit under Rule 11(6) to have the transfer declared Void. (Agasthiya Holdings Private Limited vs CIT – Madras HC).

Karnataka HC in the case of Murthy Associates vs TRO it was held that the order of the Income tax Office u/s 281 is declaratory in nature. Even if no order is passed by the AO u/s 281, the transfer in contradiction to provision of Section 281 will be void.

7. What are advantages of getting this Permission

Once this permission is obtained from the Income tax Department, the transferee or the mortgagee is assured of its title to the property or right in case of mortgage. At a later date (no time frame is stipulated), the Department cannot proceed against these assets which are transferred after obtaining permission from the Department for any demand of the transferor.

Ideally once the Department has issued the Permission and transfer is effected based on this Permission, the Department cannot proceed against

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the transferred assets for recovery even for demands which have arisen out of the proceedings on the date of the issuance of this Permission.

8. CA Report on Income tax Dues

It is seen that the buyers/lenders are also taking certificate from Chartered Accountant. The following are the reasons why certificate are taken from Chartered Accountant-

1. Income tax officer certificate will be on present dues, but assessment proceeding dues will not be in certificate of income tax officer. At least concerned person would be aware of pending proceedings and can take call on retention money
2. Time consuming: It will take time to meet assessing officer and assessee wants to complete his transaction early. In this case, certificate from chartered accountant is useful
3. It is possible that the appeal or revision is in process and dues are likely to be reduced, considering minutes of the case, this comfort/estimate can be given by expert-chartered accountant
4. Unnoticed errors: It is possible that returns are filed and there are certain errors in computation of income which have not come to surface because assessment are done prima facie and not subject to assessments. At times, clubbing provisions are applicable for income arising to a spouse out of gifts made by husband or wife as the case may be. The same is required to be clubbed in the hands of the donor person. This may not have been considered at the time of filing of returns and is potential for re-opening and demand arising at a later date.

In the event no demand or proceedings are pending in case of the seller or if the seller is holding the asset as stock in trade, the permission u/s 281 from the Income tax Department is not applicable. However, in order to satisfy the buyer that the above is not applicable, the seller may be required to provide a Report for income tax dues outstanding before completing the transaction. In this regard a Chartered Accountant has to take adequate care before providing such report in respect of Income tax Dues outstanding by following Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) – This will explain how to issue a Certificate. The title of the Report should not indicate the same as reporting the same u/s 281 of the Act as AO

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is only authorised to issue the Permission u/s 281. It can be titled as Report for Outstanding Income tax Dues or any proceedings are pending. The CA can also enclose the screen shots from the Income tax website to establish that the dues mentioned were based on the Income tax records as published on a particular date to delimit the liability of the Chartered Accountant. Further, the CA should also provide list of documents on which reliance is placed for the purpose of the above. However, if the buyer insists on obtaining a Certificate from a Chartered Accountant, the same entails higher level of assertion and more extra care needs to be taken by the Chartered Accountant to provide the same. The Report from a CA for Outstanding dues can help the buyer to assess the impact of the same on its acquisition and can take decision accordingly.

For that purpose :

- (a) To verify whether any demand is outstanding against the assessee by checking online portal of the Income tax Department through assessee login access.
- (b) To verify whether any proceedings are pending in case of the assessee which is likely to result in demand should again be verified by checking online portal of the Income tax Department through assessee login access.
- (c) Obtain representation from the assessee regarding any notices received for demand or any proceedings which may not be appearing on the income tax site.
- (d) After ascertaining the above, the CA can report that no demand is outstanding or state the demands outstanding as per Income tax portal and no proceedings are initiated or list the proceedings initiated against the assessee.
- (e) Further, the Chartered Accountant to verify whether any demand is recoverable from the Seller in respect of any Company or Firm where the Seller is a Director (Section 179) or Partner as the case may be or from the Seller as a Representative Assessee u/s 161 of the Income tax Act.
- (f) Follow the Auditing Standard SA 230 relating to Documentation and any other Standards as may be applicable.

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In case of pending proceedings although no demand may be outstanding or some negligible demand may be outstanding, pending obtaining permission from the Department, the assessee may provide a Report from CA to provide facts to the transferee. In such cases, the CA should verify whether on similar matters any additions were made in earlier years which is likely to repeated for the year under assessment. The amount of such anticipated demand should be worked out and reflected in the Report including the demands outstanding as on date of such Report.. This will enable the Transferee to assess the risk involved in completing the transaction pending receipt of the permission from the Department.

In case the assessee is holding the assets being transferred or mortgage as stock in trade, the above verification is not required. He will have to verify the Financial statements and books of account to ascertain the treatment of the same in the books and accordingly report that the provision is not applicable if the asset is held as stock in trade.

The format of the Report of CA should be in accordance with the Standards on Auditing and guidance note issued by Auditing and Assurance Standards Board on Reports or Certificates for special purposes. The Report should contain that it is the Report issued for a specific purpose as per letter of engagement with the assessee, the management responsibility and practitioners responsibility paragraphs to be given. The Opinion paragraph will contain the crux of the matter where opinion that the provisions of Section 281 will not apply in case of a specific transaction to be mentioned and the reasons for not being applicable to be given clearly.

End use restriction para to be given for specific purpose for which this Report may be used and not for general purposes.

9. Appointment/Engagement Letter

The Chartered Accountant before issuing the Report or Certificate as the case may be, should ensure that the Appointment/Engagement letter is issued by the client. This lays down the scope of the work and responsibility of the CA and accordingly, limits the sphere. A specimen format is given below which is only as a matter of guidance and can be modified to suit individual requirement and on case to case basis.

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Specimen of Letter of Engagement/Appointment

On letter head of the Client

Date:

Letter of Engagement/Appointment

M/s.XYZ & Co

Chartered Accountants

XXX.

Dear Sirs,

I. This confirms our engagement covering the following services requested by us:

We are in the process of selling our property and for that purpose Section 281 of the Income tax applicability is required to be examined and complied with. For that purpose we require from you:

- (a) Report / Certificate in respect of income tax dues outstanding as on date (_____) specify date.
- (b) Report / Certificate to also cover any proceedings pending before the Income tax Authorities which may result in a demand at a later date and computation of demand that is likely to arise based on the facts of the case in the said proceedings.

Your Responsibilities and Limitations

2. Your responsibility is to provide a Report/Certificate on these income tax demands outstanding and proceedings pending.

Verification involves performing procedures to obtain evidence about the amounts and the disclosures in the tax returns. The procedures selected depend on your judgment, including the assessment of the risks of material misstatement of the same,

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Management's Responsibilities and Representations

5. We are responsible for the Returns filed by us and shall provide the full details as may be required to provide the Report/Certificate. We shall also provide all copies of the notices received by us for the pending matters as of now and also any submissions already made by us in the matter stated above.

6. You shall have unrestricted access to whatever records, documentation and other information requested in connection with the engagements.

7. The working papers prepared in conjunction with the Report/Certificate are the property of your Firm, constitute confidential information and will be retained by you in accordance with your Firm's policies and procedures.

8. In accordance with the Statement on Peer Review issued by the Institute of Chartered Accountants of India, your attestation services may be subject to a peer review to be conducted by an independent reviewer who can inspect, examine or take abstract of your work papers including those provided by us.

Fees and Billings

9. Your fee for our services will be as mutually decided amongst us. Your bills are payable promptly on presentation. Out of pocket expenses on actual basis and service tax as may be applicable shall be payable in addition to the agreed fees.

20. Your fees are based on the level of staff and the time required completing each assignment. These would be reviewed every year, to consider the impact of increase / decrease in staff costs based on changes in payment scales, inflation and changes in assignment scope in your business.

21. Except to the extent finally determined to have resulted from **Name of CA FIRM'** gross negligence or willful misconduct, **Name of CA FIRM'** maximum liability to the Company, for any reason, relating to the services under this letter shall be limited to the fees paid to **Name of CA FIRM** for the services or work product giving rise to liability, the Company will indemnify and hold harmless **Name of CA FIRM** and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter.

22. In the event you are requested or authorized by the Company or are required by government regulation, or other legal process to produce your

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documents or your personnel as witnesses with respect to our engagements for the Company, the Company will reimburse you for your professional time and expenses, as well as the fees and expenses of your counsel, incurred in responding to such requests.

23. If any portion of this letter is held to be void, invalid, or otherwise unenforceable, in whole or part, the remaining portions of this letter shall remain in effect.

24. We also authorise your firm to access our Income tax portal and obtain information from the same by using the Password provided by us to you.

If these arrangements are acceptable, please sign one copy of this letter and return it to us. We trust that our association will be a long and mutually beneficial one.

Thanking you

Yours faithfully

Signature and Name of the Client

Accepted

For XYZ & Co

Chartered Accountants

Firm Reg. No. _____

Partner

M.No. _____

Place:

10. Report vs Certificate

At times, in place of report certificate is demanded. When certificate is asked, it should be certificate and vice versa.

A certificate is a matter of fact and a higher level of attestation and accuracy is expected whereas in case of a Report it is a matter of opinion based on data available on record. It also relates to pending proceedings where the demand is computed based on judgement of the professional judgement of a Chartered Accountant.

11. Provisions of Section 281 of the Income-tax Act, 1961

Certain transfers to be void.

(1) Where, during the pendency of any 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 Assessing 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.

12. Priority of payments to Creditors – Secured and Unsecured

As per Section 178 of the Insolvency and Bankruptcy Code (IBC), the preferential payments to creditors is as under:

(1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or the State Legislature for the time being in force, in the distribution of the final dividend, the following debts shall be paid in priority to all other debts—*

- (a) *firstly, the costs and expenses incurred by the bankruptcy trustee for the bankruptcy process in full;*
- (b) *secondly,—*
 - (i) *the workmen's dues for the period of twenty-four months preceding the bankruptcy commencement date; and*
 - (ii) *debts owed to secured creditors;*
- (c) *thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the bankruptcy commencement date;*
- (d) *fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;*
- (e) *lastly, all other debts and dues owed by the bankrupt including unsecured debts.*

(2) *The debts in each class specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.*

(3) *Where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the Adjudicating Authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing.*

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(4) *Unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.*

(5) *Any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.*

(6) *Interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt.*

(7) *In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.*

(8) *Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.*

13. Relevant Circular-Circular No. 4/2011, dated 19-7-2011

SECTION 281 OF THE INCOME-TAX ACT, 1961 - CERTAIN TRANSFERS TO BE VOID - GUIDELINES FOR PRIOR PERMISSION UNDER SECTION 281 TO CREATE A CHARGE ON THE ASSETS OF BUSINESS

CIRCULAR NO. 4/2011 [F. NO. 402/69/2010-ITCC], DATED 19-7-2011

References have been received by the Board regarding issuance of guidelines for granting of prior permission u/s 281 of the IT Act, 1961 to transfer or create a charge on the assets of the assessee. The Board has considered the matter and in order to have uniformity on the issue, it has been decided that:

1. The taxpayers should apply in the prescribed form annexed hereto titled "Application u/s 281 of the IT Act, 1961" which would be available on the departmental website, as well as with the Assessing Officers.
2. The taxpayer would have to file the form at least thirty days prior to the proposed date of transaction.

3. The circumstances under which prior permission u/s 281 should be granted by the Assessing Officers are as follows:

- (i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the permission should be granted.
- (ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the taxpayer should pay the same along with interest due thereon and then permission should be granted.
- (iii) If there is disputed demand outstanding, then the taxpayer should obtain stay for the same and indemnify the outstanding demand by way of bank guarantee or sufficient assets or by Department retaining the first charge on the assets proposed to be transferred or on which such charge is being created, to the extent of such demand. Thereafter, the permission u/s 281 would be granted by the A.O.
- (iv) If demand is likely to arise in the next six month, then the A.O. should explore the possibility of action prescribed u/s 281B.

4. There would be only one level of intervention *i.e.*, at the level of the range head for granting permission. The cases in which A.O. would require such approval would be where

- (a) value of assets being transferred or on which charge is being created, or
- (b) the amount of charge being created is Rs. Ten crores or more.

5. The timelines for granting/refusing permission u/s 281 by the A.O. are as follows:

- (i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the A.O. should grant the permission within ten working days of the receipt of the application.
- (ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the A.O. should grant permission within ten working days of payment as in para 3(ii) above.
- (iii) If there is disputed demand outstanding and the taxpayer has obtained stay and indemnified the demand, then the A.O. should grant the

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permission within ten working days of the indemnification of the demand.

- (iv) If demand is likely to arise in the next six months and the A.O. is considering actions prescribed u/s 281B for the assets excluding the asset under consideration, then the A.O. should grant the permission within fifteen working days of the receipt of the application.
- (v) If the taxpayer does not pay the undisputed outstanding demand or his application for stay of disputed demand is rejected or he is unable to indemnify the outstanding demand, the application shall be disposed of within a period of ten working days. In case the permission is not being granted, a speaking and reasoned order conveying refusal would be issued with the approval of the Range head within ten working days of expiry of time given to the taxpayer to pay the undisputed demand or rejection of his stay application, as the case may be.

These time limits should be followed scrupulously by the A.Os.

6. The validity of the letter granting permission u/s 281 would be:

- (i) One hundred and eighty days from the date of issue of approval, or
- (ii) Service of order of attachment u/s 281B whichever is earlier.

7. Once the asset is transferred or charge is created, the taxpayer should submit the documents, in this regard, to the A.O. for his record.

8. This circular shall come into force with immediate effect.

DATE OF APPLICATION

To,

The Assessing Officer,

.....
.....
.....

I/M/S (name of the assessee in block letters) son/daughter ofdo, hereby, request that permission may be granted under clause (ii) of the proviso to section 281 creating a charge on, or to part with the possession (by way of

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sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of asset(s) given in D4 of Part D below in favour of person(s) to be mentioned in D1 of Part D below.

PART A - GENERAL PARTICULARS

Form I.T.N.S. 281		Application u/s 281 of IT Act, 1961	
A1 First Name	A2 Middle Name		
A3 Last Name	A4 SEX		
	Male		Female
A5 Date of Birth/Date of Incorporation	A6 Designation of Assessing officer (Ward/ Circle)		
A7 Flat/Door/Block No	A8 Name of Premises/Building/Village	A9 Road/Street/Post Office	
	A10 Area/Locality		
A11 Town/City/District	A12 State	A13 Pin code	
A14 E-mail Address		A15 Residential/Office Phone No. with STD Code	
A16 Mobile No. With Country Code	A17 Fill only one Resident Non-Resident Resident but not ordinarily resident		
A18 Fill Status (Only one) Individual HUF FIRM AOP/BOI Company Others			

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PART B - POSITION OF OUTSTANDING DEMAND AS ON THE DATE OF APPLICATION

	Assessment Year	Demand Section	Outstanding Demand (In Rs.)	Particulars of stay of demand, if any	Remarks
B1					
B2					
B3					
B4					
B5					
B6					
B7					
B8					
B9					
B10					

PART C - Particulars of 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 as on the date of application

	Description of the Asset	Particulars of Place where Situated	Value of the Asset as Shown in the Books of Account as on the Date of Application (In Rs.)	Whether any Charge Exists in Part or Full on the Asset	Remarks [Please Indicate the Amount (in Rs.) of Charge Existing On the Asset]
C1				Yes No	
C2				Yes No	

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VERIFICATION

I, son/daughter of
..... holding permanent account
number solemnly declare
that to the best of my knowledge and belief, the information given in the
proforma above is correct and complete. I further declare that I am submitting
this application in my capacity as and I am also
competent to make the return of income and verify the return of income.

Place

Signature

APPLICATION U/S 281- INSTRUCTIONS

Instructions for Application u/s 281 of the IT Act, 1961

1. This form needs to be used by the taxpayer to seek permission from the Assessing Officer before creating a charge or parting with the possession of an asset. According to section 281, no taxpayer shall make a sale or mortgage or gift or exchange or any other mode of transfer of any asset in favour of any other person, during the pendency of any proceedings or after the completion of proceedings, but before service of notice under rule 2 of the Second Schedule. However, the following exceptions are provided in the Act:

- The transfer is made for adequate consideration and without any notice of proceedings or pendency of tax
- The previous permission of the Assessing Officer is obtained
- The tax payable does not exceed Rs. 5000/- and the value of the asset does not exceed Rs. 10000/-

2. Asset means land, building, plant, machinery, shares, securities and fixed deposits in bank (other than Stock-in-trade)

3. "Previous Year" is the financial year (1st April to the following 31st March) during which the income in question has been earned. "Assessment Year" is the financial year immediately following the previous year.

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4. Scheme of the Form

The form has been divided into four parts, the details of the same are provided below:

- i.* Part A seeks general information requiring identificatory and other data
- ii.* Part B seeks the position of outstanding demand as on the date of Application
- iii.* Part C seeks particulars of assets as on the date of application
- iv.* Part D seeks the particulars of the proposed transaction(s) transferring the assets/creating charge for which permission is sought

5. Item by Item Instructions

Part A

- A1-A3: In case of Individual, fill your First name, Middle name and Last name in A1, A2 & A3 as per details entered in PAN Card. In any other case, use the space given in A1-A3 to fill the name of the person
- A4: In case of Individual, indicate the Date of birth. In others, indicate the date of incorporation. The format should always be in DD-MM-YYYY
- A5-A11: Fill in the communication Address. A11 -PIN CODE is mandatory to enable faster communications from/with the department
- A12: Indicate your e-mail address
- A13: Fill the STD code in the first five digits and then the telephone No. in the next eight digits. No Special Characters or Alphabets are allowed in A13
- A14: Fill the Country code in the first two digits and then fill the 10 digit mobile number in the next ten digits. No special characters or Alphabets are allowed in A16
- A15: Shade the appropriate circle
- A16: Shade the appropriate circle
- A17: Fill in the Ward/Circle. Example: Ward 15(1), Circle 14(1)

Part B

- Indicate the Assessment Year in which the demand was raised in Column *i*. This should be of the format 2010-11, 2011-12.

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- Indicate the section under which Demand was raised in Column *ii*. A detailed list of various demand section is given below:

Demands under various sections	Description
115O	Tax on distributed profits of domestic companies
115P	Interest payable for non-payment of tax by domestic companies.
115R	Tax on distributed income to unit holders.
115S	Interest payable for non-payment of tax u/s 115R
115WE(1)	Summary Assessment-Fringe Benefits Tax
115WE(3)	Regular Assessment-Fringe Benefit Tax
115WF	Best judgment assessment-FBT
115WG	Fringe benefits escaping assessment
115WK	Interest for default in furnishing return of fringe benefits
144	Best judgment assessment
147	Income escaping assessment
148	Issue of notice where income has escaped assessment
154	Rectification of mistake
139(1)	Time-Limit for filing the Return
139(4)	Belated Return
142(1)	Inquiry before assessment
143(1)	Summary Assessment
143(3)	Regular Assessment
153A	Assessment in case of search
153C	Assessment of income of any other person
158BA	Assessment of undisclosed income as a result of search
158BFA	Levy of interest and penalty in certain cases .
174	Assessment of persons leaving India

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174A	Assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose
175	Assessment of persons likely to transfer property to avoid tax
184	Assessment as a firm
201	Consequences of failure to deduct or pay
220(2)	Interest in case demand not paid within 30 days from the date of service
220	Interest in case demand not paid within 30 days from the date of service
221	Penalty payable when tax in default
254	Orders of Appellate Tribunal
263	Revision of orders prejudicial to revenue passes by Commissioner
264	Revision of other orders by Commissioner
271	Failure to furnish returns comply with notices concealment of income, etc.
271(1)(b)	Failure to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142
271(1)(c)	Concealment of the particulars of income, or furnishing inaccurate particulars thereof
271(1)(d)	has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits
271A	Failure to keep, maintain or retain books of account, documents, etc.
271AA	Penalty for failure to keep and maintain information and document in respect of international transaction
271AAA	Penalty where search has been initiated
271B	Failure to get accounts audited

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271BA	Penalty for failure to furnish report under section 92E
271BB	Failure to subscribe to the eligible issue of capital
271C	Penalty for failure to deduct tax at source
271CA	Penalty for failure to collect tax at source
271D	Penalty for failure to comply with the provisions of section 269SS
271E	Penalty for failure to comply with the provisions of section 269T
271F	Penalty for failure to furnish return of income
271FA	Penalty for failure to furnish annual information return
271FB	Penalty for failure to furnish return of fringe benefits
271G	Penalty for failure to furnish information or document under section 92D
272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
272AA	Penalty for failure to comply with the provisions of section 133B
272B	Penalty for failure to comply with the provisions of section 139A
272BB	Penalty for failure to comply with the provisions of section 203A
272BBB	Penalty for failure to comply with the provisions of section 206CA
273	False estimate of, or failure to pay, advance tax
275A	Contravention of order made under sub-section (3) of section 132
275B	Failure to comply with the provisions of clause (iib) of sub-section (1) of section 132
276	Removal, concealment, transfer or delivery of property to thwart tax recovery

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276A	Failure to comply with the provisions of sub-sections (1) and (3) of section 178
276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
276BB	Failure to pay the tax collected at source
276C	Wilful attempt to evade tax, etc.
276CC	Failure to furnish returns of income
276CCC	Failure to furnish return of income in search cases
276D	Failure to produce accounts and documents
277	False statement in verification, etc.
277A	Falsification of books of account or document, etc.
278	Abetment of false return, etc.
278A	Punishment for second and subsequent offences
278B	Offences by companies
278C	Offences by Hindu undivided families

- Indicate the value of the Outstanding Demand in Column iii
- Indicate the details of stay of demand in Column iv

Part C

- Indicate the type of asset in column i. The following types of assets can be indicated
 - i. Land
 - ii. Building
 - iii. Plant and Machinery
 - iv. Shares and Securities
 - v. Fixed Deposits in BankThe above assets should not form part of the Stock-in-Trade
- Indicate the particulars of place where the asset is situated in

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column ii. Complete Address where the Assets are situated needs to be furnished

Part D

- D1 : Indicate the name of the party/parties with whom the transaction is proposed
- D2 : Give the complete Address of the party/parties with whom the transaction is proposed
- D3 : Give the PAN of the Party/Parties with whom the transaction is proposed. If there are multiple PAN's, then indicate in the space after the boxes provided for writing PAN
- D4 : Indicate the details of all the Assets proposed to be transferred or for which a charge is to be created
- D5 : Fill the expected date of transfer or creation of charge
- D6 : If applicable, fill the period for which the charge is being created
- D7 : Fill any other information considered relevant by the taxpayer
- D8 : Fill the appropriate circle
- D9 : Explain in detail, how the taxpayer proposes to pay or indemnify the Income Tax Department for outstanding demand disclosed. The taxpayer should submit his latest asset/liability statement including the guarantees given by him.

14. Some relevant judicial precedents

(i) Gujarat High Court in the case of Tax Recovery Officer Vs Industrial Fin. Corpn. of India [2012] 346 ITR 11 (Guj)

As per Judgement of Gujarat High Court, it is clearly established that under clause (i) of the proviso to section 281(1) of the Act, the charge or transfer shall not be void if made (a) for adequate consideration and without notice of the pendency of the income-tax proceedings, or (b) without notice of tax or other sum payable by the assessee, viz. the transferor. It may further be noted in this regard that once the case in relation to the charge on or transfer of any assets in favour of any other person; falls within the purview of clause (i) of the proviso to section 281(1) of the Act, then clause (ii) of the said proviso will not come into play. In other words, the previous permission of the Assessing Officer will not be required in respect of the aforesaid charge or transfer.

(ii) High Court of Madras in case of State Bank of India Vs Tax Recovery Officer [2022]

Section 281 of the Income-tax Act, 1961 - Certain transfers to be void (Burden of proof) - Whether where mortgages are entered into between parties, after initiation of action by Income-tax Department for recovery of arrears, then such mortgages are void and cannot be a valid execution in eye of law - Held, yes - Whether where petitioner bank claimed that it held priority charge over subject property as valid mortgage was executed by it under provisions of Debt Recovery Act and SARFAESI Act, only if petitioner bank established that mortgage was prior to initiation of action by Income-tax Department, bank may claim right over mortgaged property - Held, yes - Whether mortgage or attachment made by bank during pendency of Income-tax proceedings cannot be ground to claim priority based on provisions of SARFAESI Act or DRT Act .

(iii) HIGH COURT OF MADRAS in case of J. Manoharakumari v. Tax Recovery Officer-1, Coimbatore [2021]

(iv) HIGH COURT OF ANDHRA PRADESH AND TELANGANA in case of ICICI Bank Ltd. v. Tax Recovery Officer [2019]



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