

INCOME TAX (CERTIFICATE PROCEEDINGS) RULES, 1962

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INCOME TAX (CERTIFICATE PROCEEDINGS) RULES, 1962

¹1. Published in the Gazette of India, Extraordinary, Part II, section (a), p. 559, dated 27-3-1962. In exercise of the powers conferred by sub-section (1) of section 295 of the Income-tax Act, 1961 (43 of 1961) and rule 91 and 92 of the Second Schedule to that Act, the Central Board of Revenue hereby makes the following rules, namely:

PART 1 PRELIMINARY

1. Short title and commencement :-

(1) These rules may be called the Income-tax (Certificate Proceedings) Rules, 1962.

(2) They shall come into force on the first day of April, 1962.

2. Definitions :-

. In these rules, unless the context otherwise requires,-

(1) "Act" means the Income-tax Act, 1961 (43 of 1961);

1 [(1 A) "authorised bank" shall have the same meaning as in clause (aa) of sub-rule (1) of R.2 of the Income-tax Rules, 1962;]

(2) "public officer" shall have the same meaning as in the Code of Civil Procedure, 1908 (5 of 1908);

(3) "principal rules" means the rules contained in the Second Schedule to the Act; and

(4) "section" and "Schedule" mean respectively section of, and Schedule to, the Act.

1. Omitted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990. Prior to the omission, rule 7 read as under: "7. Jurisdiction of other Tax Recovery Officers.- (1) Tax Recovery Officers referred to in sub-clause (i) of clause (44) of section 2 shall exercise jurisdiction within the respective areas in which they exercise, or are authorised to exercise, the powers of a Collector under the law relating to land revenue for the time being in force in the State concerned. (2) Tax Recovery Officers referred to in sub-clause (ii) of clause (44) of section 2 shall exercise jurisdiction in respect of such areas as the State Government concerned may direct."

3. Forms :-

All references to "Forms" in these rules shall be construed as references to the forms set out in the Appendix hereto.

4. 4 :-

[* * *]

5. 5 :-

[* * *]

6. 6 :-

[. * * *]

7. 7 :-

[. * * *]

8. Transfer of proceedings from one Tax Recovery Officer to another :-

. ¹ [Where any proceeding for execution of a certificate pending before a Tax Recovery Officer stands transferred or is transferred to any other Tax Recovery Officer, the Tax Recovery Officer to whom the proceeding _____ stands transferred or is transferred may continue the proceedings from the stage at which it stood immediately before such transfer and such transfer shall not render necessary the re-issue of any notice, warrant, proclamation, order or certificate already issued.]

1. Substituted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990. Prior to the substitution, rule 8 read as under: "8. Transfer of proceedings from one Tax Recovery Officer to another.-(1) With effect from the date a Tax Recovery Officer referred to in sub-clause (iii) of clause (44) of section 2 exercises jurisdiction in respect of any area, the Tax Recovery Officer referred to in sub-clause (i) or sub-clause (ii) of clause (44) of that section shall cease to exercise powers as such in that area, and any proceeding for execution of a certificate pending before such Tax Recovery Officer shall stand transferred to the first-mentioned Tax Recovery Officer. (2) The Central Government may at any time cancel the appointment of a Tax Recovery Officer referred to in sub-clause (iii) of clause (44) of section 2 for any area and with effect from the date of such cancellation, such Tax Recovery Officer shall cease to exercise powers as such in that area and any proceedings for execution of a certificate pending before such Tax Recovery Officer shall stand transferred to the Tax Recovery Officer referred to in sub-clause (ii) of clause (44) of section 2 for that area and if there is no Tax Recovery Officer referred to in sub-clause (ii) of clause (44) of that section for that area, to the Tax Recovery Officer referred to in sub-clause (i) of clause (44) of that section. (3) A Tax Recovery Officer referred to in sub-clause (i) of clause (44) of section 2 who exercises jurisdiction in respect of any area may

transfer any proceeding for execution of a certificate pending before him to a Tax Recovery Officer referred to in sub-clause (ii) of clause (44) of that section who exercises jurisdiction in respect of the same area, or any part thereof, and with effect from the date of such transfer the First- mentioned Tax Recovery Officer shall cease to exercise powers as such in respect of that proceeding. (4) Where any proceeding for execution of a certificate pending before a Tax Recovery Officer stands transferred under sub-rule (1) or sub-rule (2) or is transferred under sub-rule (3) to any other Tax Recovery Officer, the officer to whom the proceeding stands or is transferred may continue the proceeding from the stage at which it stood immediately before such transfer and such transfer shall not render necessary the re - issue of any notice, warrant, proclamation, order or certificate already issued."

PART 2 GENERAL PROCEDURE

9. Procedure to be followed while sending certificate to another Tax Recovery Officer :-

. When a certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223 , he shall-

(i) keep a copy of the certificate in his office; and

1 [(ii) inform the Assessing Officer of his having sent the certificate.]

1. Substituted for the following clause (a) by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990: "(ii) inform the Income-tax Officer from whom the certificate was received of his having so sent the certificate."

9A. Procedure to be followed while sending a certified copy of certificate to another Tax Recovery Officer :-

[.

(1) Where only a part of the amount in respect of which a certificate has been 3 [drawn up by a] Tax Recovery Officer is to be recovered by any other Tax Recovery Officer under sub-section (2) of section 223 , the Tax Recovery Officer shall, before sending a copy of the certificate to the other Tax Recovery Officer, endorse on such copy a certificate in the following Form: Form of certificate I,..... Tax Recovery Officer..... do hereby certify (name) that the document bearing this endorsement is a true copy of Certificate No..... dated..... ^[drawn up by the Tax Recovery Officer],

against.....
 (name of defaulter) for the recovery of an amount of Rs..... I do hereby specify that out of the aforesaid amount, an amount of Rs..... as noted below, is to be recovered from the defaulter, by the Tax Recovery Officer.....

Rs. P. Part of certificate amount Costs and charges Interest Total -

(2) When a copy of the certificate is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223 , he shall-

(i) keep the certificate in his office; and

1 [(ii) inform the Assessing Officer of his having sent a copy of the certificate.]

1. Substituted for the following clause (a) by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990: "(ii) inform the Income-tax Officer from whom the certificate was received of his having so sent a copy of the certificate."

10. Procedure to be followed on receipt of a certificate from a Tax Recovery Officer :-

. When a certificate **1** [or the certified copy of a certificate] is sent by a Tax Recovery Officer to another Tax Recovery Officer under sub-section (2) of Section 223, such other Tax Recovery Officer shall follow the same procedure as is laid down in the principal rules and these rules including the issue of the notice under rule 2 of the principal rules.

1. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1975 w.e.f. 1-10-1975."

11. Intimation by the first Tax Recovery Officer :-

. **1** [The Tax Recovery Officer shall intimate the details of all amounts recovered in respect of a certificate, from time to time to the Assessing Officer, and, also, to any Tax Recovery Officer to whom the certificate or a certified copy of the certificate has been sent by him under sub-section (2) of section 223]

1. Substituted by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990. Prior to the substitution, rule 11 read as under: "11. Intimation by the first Tax Recovery Officer.-The Tax Recovery Officer to whom a certificate has been forwarded by an Income-tax Officer under sub-section (1) of section 223 shall intimate the details of all amounts recovered in respect of such certificate from time to time to the Income-tax Officer and, also, to any Tax Recovery Officer to whom the certificate or a certified copy of the certificate has been sent by him under sub-section (2) of the said section."

12. Intimation by the other Tax Recovery Officer :-

. When a certificate **1**[or the certified copy of a certificate] is sent by a Tax

Recovery Officer to another Tax Recovery Officer under sub-section (2) of section 223 , such other Tax Recovery Officer shall communicate to the first-mentioned Tax Recovery Officer ² [and to the Assessing Officer] the details of all amounts recovered by him in respect of such certificate from time to time.

1. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1975 w.e.f. 1-10-1975.

2. Substituted for "and to the Income-tax Officer who issued the certificate" by the Income- tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

13. 13 :-

[. * * *]

14. Form of notice of demand :-

The notice of demand under rule 2 of the principal rules shall be issued in Form No. ITCP 1 which may be so varied as the circumstances of each case may require.

PART 3 ATTACHMENT AND SALE OF PROPERTY

15. Continuance of attachment subject to claim of encumbrancer :-

Where, in the course of investigation made under rule 11 of the principal rules, the Tax Recovery Officer is satisfied that the property is subject to a mortgage or charge (other than a mortgage or charge referred to in section 281 or rule 16 of the said rules) in favour of some person not in possession, and thinks fit to continue the attachment, he may do so, subject to such mortgage or charge.

16. Proclamation of sale :-

For the purpose of ascertaining the matters to be specified in a proclamation of sale, the Tax Recovery Officer may summon any person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the proclamation and require him to produce any document in his possession or power relating thereto.

17. Sale to be held by whom and his remuneration :-

If the Tax Recovery Officer is of the opinion that it will be more advantageous to appoint a person other than an official subordinate to him to sell a property, he may appoint a fit person for the purpose and fix the remuneration to be allowed to him for rendering such services; and the remuneration payable to such person shall be deemed to be costs of the sale.

18. Reserve price :-

It shall be competent for the Tax Recovery Officer to fix a reserve price in

respect of any property, other than agricultural produce, to be sold and order that any bid shall be accepted only on condition that it is not less than the said reserve price.

19. Report of sale :-

The officer conducting a sale shall forthwith pay the entire amount received by him from the purchaser of the property into the Government treasury and shall submit a full report of the sale to the Tax Recovery Officer.

20. Sale proceeds not to be disbursed till sale confirmed :-

The proceeds of the sale of immovable property shall not be disbursed until the sale is confirmed by the Tax Recovery Officer or, where an appeal has been filed against the order confirming the sale, until the disposal of the appeal.

21. Registration of sale :-

Every Tax Recovery Officer granting a certificate of sale to the purchaser of immovable property sold under the Second Schedule shall send a copy of such certificate to the registering officer concerned under Registration Act, 1908 , within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate.

22. Forms :-

The following forms, which may be so varied as the circumstances of each case may require, shall be used for the purpose mentioned against each:

(i) Form No. ITCP 2, for issuing a warrant of attachment of movable property under rule 20 of the principal rules;

(ii) Form No. ITCP 3, for issuing a prohibitory order in the case of a debt not secured by a negotiable instrument under rule 26(1)(1) of the principal rules;

(iii) Form No. ITCP 4, for issuing a prohibitory order in the case of a share in a corporation under rule 26(1)(2) of the principal rules;

(iv) Form No. ITCP 5, for issuing a prohibitory order in the case of other movable property under rule 26(1)(3) of the principal rules;

(v) Form No. ITCP 6, for issuing a notice of attachment of a decree of a Civil Court under rule 27 of the principal rules;

(vi) Form No. ITCP 7, for issuing a notice of attachment where the property consists of a share or interest in movable property under rule 28 of the

principal rules;

(vii) Form No. ITCP 8, for issuing an order of attachment of salary or allowances under rule 29 of the principal rules;

(viii) Form No. ITCP 9, for issuing an order of attachment of a negotiable instrument under rule 30 of the principal rules;

(ix) Form No. ITCP 10, for issuing a notice of attachment of movable property in the custody of any court or public officer under rule 31 of the principal rules;

(x) Form No. ITCP 11, for issuing an order of attachment of property consisting of an interest in partnership property under rule 32 of the principal rules;

(xi) Form No. ITCP 12, for issuing a warrant of sale of property under rule 37 or rule 52(1) of the principal rules;

(xii) Form No. ITCP 13, for issuing a proclamation of sale of movable or immovable property under rule 38 or rule 52(2) of the principal rules;

(xiii) Form No. ITCP 14, for issuing a certificate of sale of movable property under sub-rule (2) of rule 44 of the principal rules;

(xiv) Form No. ITCP 15, for issuing an order for payment under rule 47 of the principal rules;

(xv) Form No. ITCP 16, for issuing an order of attachment of immovable property under rule 48 of the principal rules;

(xvi) Form No. ITCP 17, for issuing a notice to the defaulter for settling a proclamation of sale under rule 53 of the principal rules;

(xvii) Form No. ITCP 18, for making an order of confirmation of sale of immovable property under sub-rule (1) of rule 63 of the principal rules;

(xviii) Form No. ITCP 19, for issuing a notice to interested parties under the proviso to sub-rule (2) of rule 63 of the principal rules;

(xix) Form No. ITCP 20, for issuing a certificate of sale of immovable property under rule 65 of the principal rules;

(xx) Form No. ITCP 21, for issuing a certificate to a defaulter authorising him to mortgage, lease or sell immovable property under sub-rule (2) of rule 66 of the principal rules;

(xxi) Form No. ITCP 22, for issuing an order of attachment of a business under rule 69 of the principal rules.

PART 4 MAINTENANCE AND CUSTODY WHILE UNDER ATTACHMENT, OF LIVESTOCK OR OTHER MOVABLE PROPERTY, FEESOR SUCH MAINTENANCE AND CUSTODY, SALE THEREOF AND DISPOSAL OF SALE PROCEEDS

23. Property to which rules apply :-

The rules in this Part relate to movable property (other than agricultural produce) attached by actual seizure under the Second Schedule.

24. Custody at place of attachment :-

(1) Where the property attached is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of the property, the attaching officer shall, subject to any directions which the Tax Recovery Officer may issue in this behalf, arrange for the proper maintenance and custody of the property at the place of attachment. The attaching officer shall forthwith send a report of having done so to the Tax Recovery Officer.

(2) On receipt of a report from the attaching officer under sub-rule (1), the Tax Recovery Officer may either order the removal of the property to a place which he shall specify or sanction its maintenance and custody at the place of attachment under such conditions as he may think fit.

25. Removal and custody of property in other cases :-

Where the attached property is not kept at the place of attachment, it shall be kept in the custody of an officer (hereinafter in this part referred to as the "custody officer") subordinate to the Tax Recovery Officer and authorised by the Tax Recovery Officer for this purpose. The custody officer may remove the property to the office of the Tax Recovery Officer for custody under his own supervision or, with the approval of the Tax Recovery Officer, may make such arrangements as may be convenient and economical for its safe custody with

any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person.

26. Property may be handed over to the defaulter :-

. Notwithstanding anything contained in rule 24 or rule 25, the attaching officer or the custody officer may, with the previous approval of the Tax Recovery Officer, entrust, subject to his right of supervision, the attached property to the defaulter on his executing a duly stamped bond (sapurdnama) in Form No. ITCP 23 which may be so varied as the circumstances of each case may require. ¹ [Explanation.-Where the Tax Recovery Officer proceeds to recover any arrears due from the defaulter by attachment and sale of, or by _____ appointing a receiver for the management of, any movable or immovable property which is held by or stands in the name of, any of the persons referred to in the Explanation to sub-section (1) of section 222 and which is included in the defaulters movable or immovable property by virtue of that Explanation, the reference to "defaulter" in this rule and in rule 28 to rule 32 (both inclusive), rule 39 and rule 40 and rule 42 to rule 47 (both inclusive), shall in relation to such movable or immovable property, be construed as a reference to the person referred to in the said Explanation.]

1. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1975 w.e.f. 1-10-1975.

27. Custody of attached cash, securities, etc. :-

. If the property attached consists of cash, Government or other securities, bullion, jewellery or other valuables, the attaching officer shall send them for safe custody to the nearest Government treasury ¹ [or a branch of the Reserve Bank of India or State Bank of India or of its subsidiaries or of any authorised Bank].

1. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1981, w.e.f 19-6-1981.

28. Claim of any person other than the defaulter to the property under attachment :-

When the property remains at the place where it is attached in the custody of the attaching officer, and any person other than the defaulter claims the same, or any part thereof, the officer shall nevertheless remain in possession and shall direct the claimant to prefer his claim to the Tax Recovery Officer.

29. Return of property on cancellation or withdrawal of attachment :-

(1) If in consequence of withdrawal or cancellation of the attachment, the defaulter becomes entitled to receive back the movable property attached, the

possession thereof shall be given to him on payment of costs, charges and expenses due, if any, in respect of the execution of the certificate against such property.

(2) For the purpose of giving possession under sub-rule (1), the attaching officer shall inform the defaulter that the property is at his disposal.

(3) In the absence of any person to take charge of the property the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

30. Property may be sold if costs, etc. not paid :-

In default of the payment of costs, charges and expenses referred to in sub-rule (1) of rule 29, the movable property or such portion thereof as may be necessary shall be sold by auction and after defraying the expenses of such sale and the costs, charges and expenses aforesaid, the balance, if any, of the movable property as has not been sold shall be handed over to the defaulter.

31. Feeding and tending of livestock under attachment :-

Whenever livestock is kept at the place where it has been attached, the defaulter shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer.

32. Removal of livestock :-

In the event of the defaulter failing to feed attached livestock, the livestock may be placed in the custody of the custody officer or in the circumstances mentioned in rule 33 may be placed in a pound maintained by the Government or a local authority.

33. Custody of livestock in pound :-

If there be any such pound near the office of the Tax Recovery Officer, the attaching officer or the custody officer may place in it such attached livestock as can properly be kept therein in which case the pound-keeper shall be responsible for the livestock and shall receive the same rates for accommodation and maintenance thereof as are payable in respect of impounded cattle of the same description.

34. Custody with a person other than custody officer :-

Notwithstanding anything contained in rule 33, the custody officer may, with the approval of the Tax Recovery Officer, entrust the attached livestock to any other fit person under his own supervision and the Tax Recovery Officer may fix the remuneration to be allowed to such person after taking into account the

local circumstances and the charges which such person may have to incur for the maintenance and custody of such livestock.

35. Expenses of custody, maintenance, etc. :-

The expenses of maintenance and custody of movable property including the remuneration payable to the person concerned under rule 25 or rule 34 shall be deemed to be costs of the sale.

PART 5 DELIVERY OF PROPERTY SOLD AND EXECUTION OF DOCUMENT OR ENDORSEMENT OF NEGOTIABLE INSTRUMENT OR SHARE IN A CORPORATION

36. Delivery of movable property, debts and shares :-

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(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2)

(a) Where the property sold is movable property in the possession of some person other than the defaulter, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser and requiring him to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer.

(b) Where such person in possession of the property fails without reasonable cause to deliver possession of the property to the purchaser within the time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer shall cause the property to be seized and delivered to the purchaser and the provisions of rule 35 and rule 36 of the principal rules shall, as far as may be, apply to such seizure.

(3)

(a) Where the property sold is a debt not secured by a negotiable instrument, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the creditor from receiving the debt or any interest thereon and the debtor from making payment thereof to any person except the purchaser and requiring the debtor to make payment thereof to the purchaser within the time stipulated by the Tax Recovery Officer.

(b) Where the debtor fails to make such payment to the purchaser within the

time stipulated by the Tax Recovery Officer, or within such further time as may be allowed by him, the Tax Recovery Officer may take further proceedings to recover the amount due from the debtor as if the debtor were a defaulter in respect of whom the ¹ [Tax Recovery Officer had drawn up] a certificate under section 222 for the recovery of arrears of tax equal to the amount of the debt.

(4)

(a) Where the property sold is a share in a corporation, the delivery thereof to the purchaser shall be made by a written order of the Tax Recovery Officer prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon and requiring him to deliver the share certificate or other document of title along with the instrument of transfer duly completed by him to the Tax Recovery Officer within the time stipulated by the Tax Recovery Officer and prohibiting the manager, secretary, or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

(b) Where the person in whose name the share may be standing fails to deliver the share certificate or other document of title to the Tax Recovery Officer within the time stipulated by him, or within such further time as may be allowed by him, the Tax Recovery Officer may take steps to obtain a duplicate of the share certificate or other document of title as if the share certificate or other document of title had been lost or destroyed.

1. Substituted for "Income-tax Officer had forwarded" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

37. Transfer of negotiable instruments and shares :-

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under the Second Schedule, the Tax Recovery Officer may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:
"..... by..... Tax Recovery Officer..... in the proceedings for the recovery of the arrears under the Income-tax Act, 1961 against

(3) The Tax Recovery Officer may cause the document to be executed on proper stamp paper and to be registered if its registration is required by any law for the time being in force and the expenses of such execution and registration shall be borne by the purchaser.

(4) Until the transfer of such negotiable instrument or share, the Tax Recovery Officer may, by order, appoint some person to receive any

38. Vesting order in case of other property :-

In the case of any movable property not hereinbefore provided for, the Tax Recovery Officer may make an order vesting such property in the purchaser or as the purchaser may direct; and such property shall vest accordingly.

39. Delivery of immovable property in occupancy of defaulter :-

(1) Where the immovable property sold is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom the purchaser may appoint to receive delivery on his behalf in possession of the property, and if need be, by removing any person who refuses to vacate the same.

(2) For the purposes of sub-rule (1), if the person in possession does not afford free access, the Tax Recovery Officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession.

40. Delivery of immovable property in occupancy of tenant :-

Where the immovable property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the defaulter has been transferred

to the purchaser.

PART 6 RESISTANCE OR OBSTRUCTION TO DELIVERY OF POSSESSION TO PURCHASER

41. Resistance or obstruction to possession of immovable property :-

(1) Where the purchaser of immovable property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Tax Recovery Officer complaining of such resistance or obstruction within thirty days of the date of such resistance or obstruction.

(2) The Tax Recovery Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

42. Resistance or obstruction by defaulter :-

Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the defaulter or by some other person at his instigation, he shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Tax Recovery Officer may also, at the instance of the applicant, take steps to put the applicant into possession of the property by removing the defaulter or any person acting at his instigation.

43. Resistance or obstruction by bona fide claimant :-

Where the Tax Recovery Officer is satisfied that the resistance or obstruction was occasioned by any person (other than the defaulter) claiming in good faith to be in possession of the property on his own account or on account of some person other than the defaulter, the Tax Recovery Officer shall make an order dismissing the application.

44. Dispossession by purchaser :-

(1) Where any person other than the defaulter is dispossessed of immovable property sold in execution of a certificate by the purchaser thereof, he may make an application to the Tax Recovery Officer complaining of such dispossession within thirty days of such dispossession.

(2) The Tax Recovery Officer shall fix a day for investigating the matter and

shall summon the party against whom the application is made to appear and answer the same.

45. Bona fide claimant to be restored to possession :-

Where the Tax Recovery Officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the defaulter, he shall direct that the applicant be put into possession of the property.

46. Rules not applicable to transferee lite pendente :-

Nothing in rule 43 and rule 45 shall apply to resistance or obstruction by a person to whom the defaulter has transferred the property after the service of a notice under rule 2 of the principal rules or to the dispossession of any such person.

47. Right to file a suit :-

Any party not being a defaulter against whom an order is made under rule 42 or rule 43 or rule 45 may institute a suit in a civil court to establish the right which he claims to the present possession of the property.

PART 7 APPOINTMENT, POWERS AND DUTIES OF A RECEIVER

48. Powers of a receiver :-

A receiver appointed under the Second Schedule shall have all such powers, as to bringing in and defending suits and for the realisation, management, protection and preservation of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tax Recovery Officer thinks fit.

49. Remuneration of a receiver :-

The Tax Recover Officer may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

50. Duties of a receiver :-

(1) Every receiver so appointed shall-

(a) furnish such security (if any) as the Tax Recovery Officer thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form as the Tax Recovery Officer directs;

(c) pay the amount due from him as the Tax Recovery Officer directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

(2) The receiver shall maintain true and regular accounts of the receivership and shall in particular maintain a cash book in which shall be entered from day to day all receipts and payments and also a ledger. He shall also maintain a counterfoil receipt book with the leaves numbered serially in print, from which shall be given, as far as possible, all receipts for payments made to the receiver.

(3) Unless the Tax Recovery Officer otherwise directs, the receiver shall, as soon as may be, after his appointment, open an account in the name of the receivership in such bank as the Tax Recovery Officer may direct and shall deposit therein all moneys received in the course of the receivership immediately on receipt thereof save any minimum sums that may be required for meeting day to day current expenses. All payments by the receiver shall, as far as possible, be made by cheques drawn on the bank account.

(4) Unless otherwise ordered, a receiver shall submit his accounts once in every three months. The first of such accounts commencing from the date of his appointment and ending with the expiry of three months therefrom shall be submitted within fifteen days of the expiry of the said period of three months and the subsequent accounts brought down to the end of each succeeding period of three months within fifteen days of the expiry of each such period of three months.

51. Enforcement of receivers duties :-

(1) Where a receiver fails to submit his accounts at such periods and in such form as the Tax Recovery Officer directs, the Tax Recovery Officer may direct his property to be attached until such time as such accounts are submitted to him.

(2) The Tax Recovery Officer may at any time make an enquiry as to the amount, if any, due from the receiver, as shown by his accounts or otherwise,

or an inquiry as to any loss to the property occasioned by his wilful default or gross negligence and may order the amount found due, if not already paid by the receiver under rule 50, or the amount of the loss so occasioned, to be paid by the receiver within a period to be fixed by the Tax Recovery Officer.

(3) Where the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) within the period specified, the Tax Recovery Officer may direct such amount to be recovered from the security (if any) furnished by the receiver or by attachment and sale of his property or, if his property has been attached under sub-rule (1), by the sale of such property and may direct the sale proceeds to be applied in making good any amount found due from the receiver or any such loss occasioned by him and the balance (if any) of the sale proceeds shall be paid to the receiver.

(4) If a receiver fails to submit his accounts at such periods and in such form as directed by the Tax Recovery Officer without reasonable cause or improperly retains any cash in his hands, the Tax Recovery Officer may disallow the whole or any portion of the remuneration due to him for the period of the accounts with reference to which the default is committed and may also charge interest at a rate not exceeding 12 per cent per annum on the moneys improperly retained by him for the period of such retention without prejudice to any other proceedings which might be taken against the receiver.

52. Form of order of appointment of a receiver :-

An order of appointment of a receiver under rule 69 or rule 70 of the principal rules shall be made in Form No. ITCP 24 which may be so varied as the circumstances of each case may require.

PART 8 ARREST AND DETENTION

53. Prison in which defaulter may be detained :-

A person against whom an order of detention has been passed under Part V of the Second Schedule may be detained in the civil prison of the district in which the office of the Tax Recovery Officer ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the civil courts of such district to be detained.

54. Subsistence allowance :-

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(1) The subsistence allowance shall be supplied by the ¹ [Tax Recovery Officer] by monthly instalments in advance before the first day of each month.

(2) The first payment shall be made to the Tax Recovery Officer for such portion of the current month as remains unexpired before the defaulter is committed to the civil prison, and the subsequent payment (if any) shall be made to the officer in charge of the civil prison.

1. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1971, w.e.f. 1-1-1972.

55. Forms :-

The following Forms, which may be so varied as the circumstances of each case may require shall be used for the purpose mentioned against each;

(i) Form No. ITCP 25, for issuing a notice to show cause why a warrant of arrest should not issue under rule 73 of the principal rules;

(ii) Form No. ITCP 26, for issuing a warrant of arrest under Part V of the principal rules;

(iii) Form No. ITCP 27, for issuing a warrant of detention under Part V of the principal rules;

(iv) Form No. ITCP 28, for issuing an order of release under rule 77 or rule 78 or rule 79 of the principal rules.

PART 8A 2 [APPEALS TO A CHIEF COMMISSIONER OR COMMISSIONER]

55A. Form of appeal :-

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(1) Every appeal under ¹ [* * *] sub-rule (1) of rule 86 of the principal rules, shall be made in Form No. ITCP 29A which shall be verified in the manner indicated therein and shall be accompanied by a copy of the order appealed against.

(2) The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification appended thereto shall be signed:- (a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his

behalf:

(b) in the case of a Hindu undivided family, by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person, or by some person competent to act on his behalf.

1. The words "clause (c) of" omitted, the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990.

55B. Procedure in appeal :-

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(1) The ¹[Chief Commissioner or Commissioner] shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the ²[Chief Commissioner or Commissioner] against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the time of appeal:-

(a) the appellant, either in person or by ³[an authorised representative] referred to in rule 62 of these rules;

(b) the Tax Recovery Officer, either in person or by a representative.

⁴[(3) The ⁵[Chief Commissioner or Commissioner] may, if sufficient cause is shown, at any stage of the appeal, grant time to the parties or to any of them, and may, for reasons to be recorded in writing, adjourn from time to time the hearing of the appeal].

(4) The **6**[Chief Commissioner or Commissioner] may, before disposing of any appeal, make such further inquiry, as he thinks fit, or may direct the Tax Recovery Officer to make further inquiry and report the result of the same to the **7**[Chief Commissioner or Commissioner.]

(5) The **8**[Chief Commissioner or Commissioner] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the **9**[Chief Commissioner or Commissioner] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the **10**[Chief Commissioner or Commissioner] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(7) On the disposal of the appeal, the **11**[Chief Commissioner or Commissioner] shall communicate the order passed by him to the appellant, the defaulter (if he is not the appellant) and the Tax Recovery Officer.

12[(8) Every appeal shall be disposed of by the **13** [Chief Commissioner or Commissioner] as expeditiously as possible and endeavour shall be made to dispose of the appeal within six months from the date on which it is presented.]]

1. Substituted for "Tax Recovery Commissioner" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

2. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

3. Substituted for "a legal practitioner" by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1974, w.e.f. 30-12-1974.

4. Substituted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1973, w.e.f. 1-4-1973.

5. Substituted for "Tax Recovery Commissioner" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

6. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

7. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

8. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990,

w.e.f. 6-2-1990.

9. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

10. Substituted for "Tax Recovery Commissioner" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

11. the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

12. Inserted by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1974, w.e.f. 30-12-1974.

13. Substituted for "Tax Recovery Commissioner" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

PART 9 SCALE OF FEES FOR PROCESSES, CHARGES FOR OTHER PROCEEDINGS AND POUNDAGE FEES, ETC.

56. Process fees :-

The following scale of fees shall be charged for service and execution of processes issued under the Second Schedule and these rules:

57. Levy and scale of poundage fees :-

(1) In respect of any sale made in the execution of a certificate, there shall be levied a fee by way of poundage on the gross amount realised by the sale, calculated at the rate of 2 per cent on such gross amount up to Rs. 1,000 and at the rate of 1 per cent on the excess of such gross amount over Rs. 1,000.

(2) The poundage fee leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 50 paise shall be levied for every Rs. 25, or part of Rs. 25, realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 25 paise for every Rs. 25 or part thereof on the excess of such amount over Rs. 1,000, shall be levied.

(3) Where the sale is in more than one lot, the poundage fee shall be calculated with reference to the sale proceeds of each lot separately.

(4) The poundage fee under sub-rule (1) shall be paid by the purchaser of the property as soon as the sale is completed.

(5) When a sale of immovable property is set aside under sub-rule (2) of rule 63 of the principal rules, the Tax Recovery Officer may make an order for

payment, by the defaulter or by the person at whose instance the sale is set aside, of the poundage fees paid by the purchaser of the property under sub-rule (1) read with sub-rule (4).

58. Copying fees :-

1 [(1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document at the rate of Re. 1 for each page of such document.]

(2) Copying fees shall be payable in advance.

2 [(3) The fees to be charged for the supply of a copy of any document

1. Substituted for the following sub-rule (1) by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1992, w.e.f. 1-5-1992: "(1) Except in cases where copies are supplied free under rules or instructions in force, copying fees shall be charged for supplying a copy of any document as follows:- (a) for the first 200 words or less 75 Paise (b) for every additional 100 words or fraction thereof 35 Paise."

2. Substituted for the following sub-rule (3) by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1992, w.e.f. 1-5-1992: "(3) The scale of fees to be charged for the supply of a copy urgently shall be twice those prescribed in sub-rule (1)."

59. Inspection fees :-

(1) Fees for inspecting records of proceedings before the **1**[Chief Commissioner or Commissioner] or Tax Recovery Officer under the Second Schedule shall, where such inspection is permitted, be charged as follows:-

(a) for the first hour or part thereof **2** [Rs. 2]

(b) for every additional hour or part thereof 50 Paise

(2) Fees for inspection shall be payable in advance.

1. Substituted for "Tax Recovery Commissioner" by the Income-tax (Certificate Proceedings) (Second Amendment) Rules, 1990, w.e.f. 6-2-1990.

2. Substituted for "75 paise" by the Income-tax (Certificate Proceedings) (Amendment) Rules, 1992, w.e.f. 1-5-1992.

PART 10 MISCELLANEOUS

60. Proceedings against legal representative of a deceased defaulter

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A notice to the legal representative of a deceased defaulter under Rule 85 of the principal rules read with rule 2 of those rules shall be issued in Form No. ITCP 29 which may be so varied as the circumstances of each case may require.

61. Recovery from surety :-

A notice to a surety under rule 88 of the principal rules read with rule 2 of those rules shall be issued in Form No. ITCP 30 which may be so varied as the circumstances of each case may require.

62. Appearance before Tax Recovery Officer :-

(1) Any person who is entitled or required to attend before any [[Chief Commissioner or Commissioner] or Tax Recovery Officer] in connection with any proceeding under the Second Schedule or these rules, otherwise than when required under rule 83 of the principal rules to attend personally for examination on oath or affirmation, may attend either in person or by [an authorised representative]. [Explanation.-For the purposes of this sub-rule, "authorised representative" shall have the meaning assigned to it in clauses (iii) to (vii) of sub-section (2) of section 288]

(2) In any proceeding before the Tax Recovery Officer, referred to in sub-rule (1), the [Assessing Officer] concerned shall have the right to be heard either in person or by a representative.