

Section 220 of the Income-tax Act, 1961 – Collection and recovery of tax-When tax payable and when assessee deemed in default – Changes in SARFAESI Act, 2002, impacting the collection of taxes out of attached properties.

Letter [F. No. 1[1380]/DIT[R]/SARFAESI/17-18], dated September 6, 2017.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) allows bank and other financial institutions to recover their loans by taking possession/auction of assets which were kept as security by the defaulting borrowers. Under the SARFAESI Act, there is a Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) to register security interest created by banks and financial institutions covered under the SARFAESI Act.

2. The SARFAESI Act has been amended on 12-08-2016 to extend the scope of the Act to provide for registration of security interest held by all other creditors, in addition to the banks and financial institutions defined as secured creditors under the Act. This will give confidence to the secured creditors *qua* the value of the security, by obviating the risk of the same borrower obtaining credit on the same security from multiple lending institutions without informing the extend of the earlier charges. It will also benefit borrowers, as better access of lenders to secured credit information will lead to ease in getting credit.

3. Sub-section (4) of section 26B of the amended Act enjoins every authority or officer of the Central Government or any State Government or local authority entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, to file with the Central Registry (CERSAI) any order of attachment of any property issued by them. This becomes very important in view of provisions of section 26C dealing with effect of such registration. As per sub-section (1) of section 26C, registration with CERSAI shall be deemed to constitute a public notice of such a transaction. Sub-section (2) of section 26C lays down that such a registered security interest shall have priority over any subsequent security interest created upon such property in any fashion like sale, lease or attachment by any other authority/person. Therefore it becomes very important that as soon as an attachment order is issued under the Income Tax Act, a copy of the same is sent to CERSAI as well.

4. Keeping in view, the above changes in the provisions of SARFAESI Act, 2002, it has become very important for the field authorities to notify CERSAI of any attachment order already issued and also endorse a copy of attachment orders to CERSAI when, ever the same are issued in future so that not only the value of the attached property

remains intact but also the right of the Department over the attached property remains at the top. This would have to be done in the form prescribed for the purpose which can be downloaded from the website of CERSAI *i.e.* www.cersai.org.in . The field officers may also be instructed to approach CERSAI for getting information in respect of properties already attached by other creditors for not only exploring the collection out of the same but also to find out the hidden and undeclared assets of the tax defaulter.

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