O/o. Inspector General of Registration,
Chennai – 28.

Circular No.15137/C1/2020, Dated : 09.04.2021.

Sub : Orders of Provisional attachment of properties - Making entries as to the start and end date of provisional attachment on properties in index II in accordance to Section 132(9C) and 281 B(2) of IT Act – Allowing further registration beyond the end date – Instructions issued.

Ref: 1.Thiru.T.Ravindran, B.Sc., B.L., Letter Dated: 06.06.2020.

2. Inspector General of Registration, Chennai – 28,Letter No.15137/C1/20 Dated:19.06.2020

3. Inspector General of Registration, Chennai – 28 Letter No.15137/C1/20, dated:29.07.2020, 09.09.2020

4. Additional Commissioner of Income Tax (HQ), Letter Che/Coord/101(80)/2020-21,

Verified RegEstate

dated. 28.09.2020

5. Opinion of the Advocate General of Tamil Nadu Dated.02.02.2021.

6. Chief Secretary to Govt., Commercial Taxes and Registration Dept., Letter No.8762-A/J2/2020-3, Dated.25.03.2021.

****

The attachment orders over any property issued by the Income Tax Department u/s 132(9B) of IT Act,1961 are only provisional and cease to have effect after the expiry of a period of six months from the date of such order issued as per provisions contained in Section 132(9C) of the said Act. Besides, the attachment u/s 132(9B) cannot be extended beyond six month prescribed period as per Section 132 of Income Tax Act.

2. Further, the Section 281B of IT Act,1961 is extracted here:

"281B(1), Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment,

Verified RealEstate™

the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

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

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

It is clear from the above Section that the attachment made u/s 281 B (1) is also provisional and cease to have effect after the expiry of a period of six months from the date of such order issued as said in Section 281B(2) of the said Act. As per the proviso appended in the above Section the attachment made u/s 281B(1) may be extended totally up-to

Verified © RedFstate

two years (each time for six months totally for two years) but on extending it for further periods, an order of extending the attachment has to be sent to the Sub-Registrar.

3. The Section 89(2A) of the the Registration Act, 1908 provides for filing of an order for effecting or raising an attachment of immovable property issued by competent forum such as court (which includes Income Tax authorities as per Section 139 of I.T. Act, 1961).However, there are no provisions in the Registration Act to make a note regarding raising of an attachment (whether permanent or temporary) automatically by the Registering Officer, i.e., without orders from the competent authority regarding raising of attachment.

4. In the above circumstances, it has come to the notice that,

(i). The Sub Registrars are refusing to accept any registration on such properties which were under provisional attachment on orders under above said sections of Income Tax Act, 1961 even if it is brought for registration well beyond the expiry of statutory attachment period, owing to the existence of attachment note already added in the Index II of the previously registered title document of the such

Verified RealEstate ™

properties and are insisting on revocation orders of attachment from the competent authority before registration of further documents.

(ii). Hence, the action of a registering officer in refusing to accept any document for registration in the aforesaid scenario causes hardship to the registering public as well as to the business community and also leads to revenue loss to the State's exchequer.

5. Hence, the issue was addressed to the IT Department vide letters 2nd and 3rd cited and based on the remarks received the IT Department a considered opinion of the Advocate General of Tamil Nadu was sought as advised by the Government. The Advocate General of Tamil Nadu has offered his opinion as follows.

(i). Once an order of attachment has been issued by the Income Tax department, it is for the said department to be vigilant and extend the order of attachment, if the proceedings under the Income Tax Act have not yet been concluded. A safeguard is afforded to the assessee to the extent that the order of attachment can be valid only for a period of six months and thereafter, if it has to be extended;

Verified by RealEstate™

it has to be done by highly placed officers by giving reason in writing. Even this extension of attachment cannot exceed a total period of two years."

(ii). When the Act, specifically provides for the order of attachment being time-bound, by containing two provisions which make that position clear, the department(Income Tax) cannot rely upon Section 281 to contend that the time stands enlarged till the disposal of the proceedings.

6. Vide the letter cited in reference No.6 above, the Government have accepted the opinion of the AG and have directed to issue circular to all the Registering Officers in this regard.

7. Accordingly, the following guidelines are issued to all the Registering Officers for strict adherence and compliance.

(i) If a property document is brought for registration of any further documents well after the expiry of statutory attachment period as said in Section 132(9C) or Section 281B(2) read with appended extension of attachment proviso of Income Tax Act, 1961, the Registering officer is not required to insist for the production of revocation order or

NOC from Income Tax Department Department and can proceed with registration after the confirmation of the expiry of statutory attachment period.

(ii) The Registering Officer is required to verify and confirm personally the expiry of statutory attachment period of IT attachment order.

7. Any lapse on the part of the Registering Officer in ascertaining the expiry of statutory attachment period and registration of any property during the statutory attachment period will be viewed seriously and suitable disciplinary action will be initiated on them.

8. On the other-hand, if any complaint is received from the Registering Public for non-compliance of the spirit of the circular, the responsible Registering Officer will be held for suitable action.

9. The District Registrars and the Deputy Inspector General of Registrations are required to monitor the implementation of this circular in true spirit without any complaints from either party.

Verified RealEstate™

10. Acknowledgement for the receipt of this circular have to be sent by the Sub Registrars to the respective District Registrars and the District Registrars to their respective Deputy Inspector General of Registration.

Sd.09.04.2021

Inspector General of Registration.

/By Order/

9/4/21

Addl.Inspector General of Registration.

9/4/21

To,

1. All Deputy Inspectors General of Registration,
2. All District Registrars (Admin & Audit),
3. All Sub-Registrars.

Copy to,

1. All Officers of O/o IGR,
2. PC to IGR,
3. Stock file,
4. CS Section – (to upload the circular in Website).

Verified RealEstate