

SIXTY-NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1986-87)

(EIGHTH LOK SABHA)

**MISTAKES IN THE ALLOWANCE OF
CONTRIBUTIONS TO PROVIDENT FUNDS**

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

**[Action Taken on 204th Report
(Seventh Lok Sabha)]**



Presented in Lok Sabha on..... 9 1987
Laid in Rajya Sabha on..... 13/17

**LOK SABHA SECRETARIAT
NEW DELHI**

February, 1987/Magha, 1908 (Saka)

Price : Rs. 2.00

CORRIGENDA TO SIXTY-NINTH REPORT OF
PUBLIC ACCOUNTS COMMITTEE

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**PUBLIC ACCOUNTS COMMITTEE
(1986-87)**

CHAIRMAN

Shri E. Ayyapu Reddy

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Lok Sabha

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3. **Shri Amal Datta**
4. **Shri Ranjit Singh Gaekwad**
5. **Shrimati Prabhawati Gupta**
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19. **Shri A.K. Antony**

(iv)

20. Shri Nirmal Chatterjee
21. Shri M.S. Gurupadaswamy
22. Shri Virendra Verma

SECRETARIAT

1. Shri K.H. Chhaya—*Joint Secretary*
2. Shri Brahmanand—*Senior Financial Committee Officer*

INTRODUCTION

I, the Chairman of Public Accounts Committee as authorised by the Committee, do present on their behalf this Sixty-ninth Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 204th Report (Seventh Lok Sabha) relating to mistakes in the allowance of contributions to Provident Funds.

2. The Committee in their original Report had desired that the Provident Fund and Miscellaneous Provision Act, 1952 should be amended with a view to removing certain lacunae experienced in the administration of the Act. As the required amendments to the Act have not so far been made, the Committee have in this Report desired, that these may be finalised soon so that the long-standing improvements aimed at removing various lacunae experienced in the administration of the Act could be given effect to early.

3. The Committee considered and adopted this Report at their sitting held on 9th February, 1987. Minutes of the sittings form Part II of the Report.

4. For facility of reference and convenience, the recommendations and observations of the Committee have also been reproduced in a consolidated form in the Appendix to the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI ;

11 February, 1987

22 Magha, 1908 (Saka)

E. AYYAPU REDDY
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

1.1 This Report of the Committee deals with action taken by Government on the Committee's observations/recommendations contained in their 204th Report (Seventh Lok Sabha) on Paragraph 2.11 (ii) of the Report of the Comptroller & Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to 'mistakes in the Allowance of Contributions to Provident Funds'.

1.1A 204th Report was presented to the Lok Sabha on 30 April, 1984 and contained 23 observations/recommendations. The Action Taken Notes in respect of all the observations/recommendations have since been received from Government and have been categorised as follows :

- (i) Observations/Recommendations which have been accepted by Government :

Sl. Nos. 2-4, 7-11, 13, 15-16, 19, 21 and 23

- (ii) Observations/Recommendations which the Committee do not desire to pursue in the light of the replies received from Government :

Sl. Nos. 5 and 12

- (iii) Observations/Recommendations replies to which have not been accepted by the Committee and which require reiteration :

NIL

- (iv) Observations/recommendations in respect of which Government have furnished interim replies :

Sl. No. 1, 6, 14, 17, 18, 20 and 22

1.2 The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished should be submitted to them expeditiously after getting the same duly vetted by Audit.

Amendments in the Provident Fund and Miscellaneous Provisions Act, 1962

(Sl. Nos. 2, 3, 4, 10, 15, 16, 17—Paragraph Nos. 1, 24, 2.9, 2.10, 5.13, 6.53, 6.54 and 6.55).

1.3 Commenting on a number of points requiring amendments to the

Provident Fund and Miscellaneous Provisions Act 1952 with a view to removing certain lacunae that were experienced in the administration of certain provisions of Act, the Committee in the paragraph mentioned above had recommended as under :

“The Committee note that while not accepting the Audit objection the Ministry of Finance had stated that in the absence of any modification of Section 14-B of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952, the present provisions, as they stand, cannot be construed to mean that the assessee had paid a penalty violating any statutory provisions. The Committee note that this stand of the Ministry of Finance is different from the stand the CBDT had earlier taken in several cases before High Courts wherein they had contended that the damages paid by an assessee under Section 14-B of the Employees’ Provident Fund Act for non-payment of contributions to the provident Funds constituted damages not allowable as business expense under Section 37 of the Income Tax Act, 1961. The Board’s contention was accepted by the High Courts and the damages paid by the assessee were not allowed while computing business income. The explanation of the Ministry for the change in their stand is that in the *Mahalaxmi Sugar Mills Ltd. versus Commissioner of Income-tax, Delhi* (123 ITR 429 dated 9th April, 1980), the Supreme Court had held that interest payable on arrears of cess under the Uttar Pradesh Sugarcane Cess Act, 1956 was in the nature of compensation paid to the Government for delay in the payment of cess and hence an allowable expenditure. The Supreme Court had also held that the interest levied under the Cess Act was not a penalty and that the liability to pay interest was as certain as the liability to pay cess; as soon as the prescribed date is crossed without payment of the cess, interest begins to accrue. The Committee observe that the reason given by the Supreme Court for not treating interest levied under the Uttar Pradesh Sugarcane Cess Act as penalty was that a separate provision for penalty existed in that Act. However, Section 14-B of the Employees’ Provident Fund Act, 1952 specifically refers to payment of damages. Also, the extent of levy is left to the discretion of the Central Provident Fund Commissioner. In view of this, the damages payable under Section 14-B of the Employees’ Provident Fund Act, 1952 do not seem to be on all fours with the interest payable on arrears of cess under the Uttar Pradesh Sugarcane Cess Act, 1956. In fact, the Supreme Court, in *Organic Chemical Industries and another versus Union of India and others* (55 FJR 283), held that damages, as imposed by Section 14-B include a punitive sum quantified according to the circumstances of the case. However in order to set the matter beyond any margin of doubt, the Committee will like Government to consider the feasibility of making

an amendment in the Employees' Provident Fund Act, 1952 to bring out unambiguously the penal nature of the damages levied under Section 14-B thereof.

(Para 1.24)

Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, at present provides for recovery of damages not exceeding the amount of arrears. As the application of the existing table of damages prescribed by the Central Board of Trustees of the Employees' Provident Fund was giving rise to many difficulties, it has been replaced by guidelines according to which damages may be levied at a rate of 25% per annum on belated remittances subject to the condition that the total amount of damages would not exceed the actual amount of arrears. Since, however, the levy of damages is a judicial process the discretion of the Regional Commissioners in that regard remains unaffected. The revised administrative direction is applicable to defaults arising after October, 1982. The Committee have been informed that the proposal for amendment of Section 14-B of the EPF and Miscellaneous Provisions Act, 1952 is included in the current batch of amendments to the Act, which is now at an advanced stage

(Para 2.9)

The matter is pending for too long. The Ministry of Labour had informed the Committee as far back as in September 1979 in response to an earlier recommendation contained in paragraph 124 of the Committee's 110th Report (1978-79) (6th Lok Sabha) that the existing provisions would be modified so as to fix in the Act itself the percentage of penal interest to be recovered in proportion to the period of delay and the amount of arrears. The Committee desire that an amendment to Section 14-B of the Provident Fund Act to the above effect should be brought before Parliament without any further loss of time.

(Para 2.10)

The Committee find that the investments of provident fund accumulations in respect of unexempted establishments are made by the Reserve Bank of India according to Paragraph 52 (1) of the Employees Provident Fund Scheme, 1952. So far as exempted establishments are concerned, Government have issued necessary direction under clause (a) of sub-section (3) of Section 17 of the Act providing *inter alia* that every employer of establishment exempted under paragraph 27 or 27A of the EPF Scheme shall transfer the monthly Provident Fund contributions to the Board of Trustees within 15 days, who in turn shall invest the accumulation within two weeks as per pattern prescribed in respect of unexempted establishments. The existing penal provisions of the Act do not apply to the Trustees of exempted provident funds. As at present, no specific action is being taken in such cases. The Committee

have been informed that Government are now considering a proposal for making the employers and the Board of Trustees jointly and severally liable for investment of provident fund money. The Committee desire that in view of the possibility of widespread misuse of provident fund monies, the Act should be amended forthwith to provide that both the employers as well as the Board of Trustees shall be jointly and severally liable to invest provident fund accumulations in the prescribed securities. This measure should be enforced strictly so that the funds which may otherwise be utilised by employers for furtherance of their business are available towards much needed developmental needs.

(Para 5.13)

The Committee note that under the existing provisions of the Employees' Provident Fund Act, 1952, the Provident Fund authorities are not empowered to levy damages for non-transfer of contributions by employers of exempted establishments to the Board of Trustees. Also, there is no provision for recovery of outstandings from the exempted establishments in the same manner as arrears of land revenue on the lines prescribed for unexempted establishments under Section 8 of the act. In the circumstances, the only course open for the EPF Organisation is to issue show-cause notices for withdrawal of exemption in terms of Section 14(2) A of the Act and this has been done in the case of a substantial number of defaulters.

The Committee (1978-79) in Paragraph 122 of their 110th Report (Sixth Lok Sabha), as reiterated in paragraph 1.14 of their 21st Report (1980-81) had stressed the need for amendment to Section 14 and 14-B so as to bring exempted establishments on a par with unexempted establishments in these respects. Although a period of five years has since elapsed, the proposed amendments are yet to be brought before Parliament. The Committee have now been informed, that Government are considering a proposal to empower the Provident Fund authorities to levy damages on the exempted establishments as also to provide for recovery of arrears in respect of such establishments in the same manner as arrears of land revenue. The Committee deplore the delay in taking a decision in the matter. They desire that necessary amendments suggested by the Committee should be brought before Parliament without any further delay.

(Para 6.53)

As already stated in an earlier part of the Report, the existing penal provisions of the Act also do not apply to the Trustees of the exempted establishments for their failure to adhere to the prescribed investment pattern. The cumulative effect of these lacunae persisting

over the years is that the arrears against exempted establishments have started mounting. As against arrears of Rs. 10.76 crores as on 31.3.1978, the arrears against such establishments stood at Rs. 23.8 crores as on 31.3-1983. The Committee desire that all the existing penal provisions applicable to unexempted establishments should be extended to the exempted establishments as well. The scope of Section 8, 14, 14A, 14AA, 14AB, 14AC and 14C of the Act read with paragraph 76 of the Employees Provident Fund Scheme, 1952, should be widened so as to cover the offences committed by the employers of exempted establishments.

(Para 6.54)

The Committee would also like Government to take prompt action for transfer of securities held by exempted establishments consequent on cancellation of their exemption Government should also examine the feasibility of making a specific provision in the Act to provide for recovery of arrears of all dues from, the establishments whose exemptions are cancelled.

(Para 6.55)

1.5 In their Action Taken Note, the Department of Labour have stated as under :

“The recommendation of the Committee has been noted. A proposal for carrying out a suitable amendment in the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 is included in the current batch of proposals for amendment of the Act, which is at an advance stage.

(Para 1.24)

Efforts are being made for early finalisation of the proposed amendments.

(Para 2.9)

The observation of the Committee have been noted and efforts will be made to bring forward a suitable amending bill as early as Possible.

(Para 2.10)

The recommendation of the Committee has been noted and the proposal has been included in the current batch of proposals for amendment of the Act.

(Para 5.13)

The observations of the Committee have been noted and efforts will be made to bring forward a suitable amending bill as early as possible.

(Para 6.54)

The recommendation of the Committee has been noted. A proposal in this regard is already included in the current batch of proposals for amendment as the Employees Provident Funds and Miscellaneous Provisions Act, 1952 which is at an advanced stage.

(Para 6.54)

The recommendation of the Committee has been noted and the question of making suitable provision in the Employees Provident Fund Act/ Scheme is being examined.

(Para 6.55)

1.6 In this connection the Ministry of Finance (Department of Revenue) have stated in their Action Taken Note as under :

“Kind attention is invited to the Ministry of Labour and Rehabilitation (Department of Labour) ‘s O.M. No. H-11013/1/84-PF II (SSII), dated 30.10.1984, forwarding Action Taken Notes on the recommendations contained in the above paras. Ministry of Finance (Department of Revenue) have no comments to offer.”

1.7 The Committee in their original Report had desired that the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 may be amended with a view to removing certain lacunae experienced in the administration of the Act. The amendments recommended included *inter alia* the following :

(i) To bring out unambiguously the penal nature of the damages levied under Section 14 (B) thereof with a view to obviating possibility of damages paid by an assessee under Section 14 B of the Employees Provident Fund Act for non-payment of contribution to the Provident Fund being reckoned as computed towards business expenditure under Section 37 of the Income Tax Act.

(Para 1.24)

(ii) To fix in the Act itself the percentage of penal interest to be recovered in proportion to the period of delay and the amount of arrears.

(Para 2.10)

(iii) To provide that both the employers as well as Board of Trustees shall be jointly and severally liable to invest P.F accumulations in the prescribed securities to the wide-spread misuse of provident fund monies by exempted establishments.

(Para 5.13)

(iv) Sections 14 and 14 (B) of the Act to be amended so as to bring

exempted establishments at par with unexempted establishments so that the provident fund authorities are empowered to levy damages for non-transfer of contributions by employers of exempted establishments also as in the case of unexempted establishments which are already governed by provision for recovery of outstandings in the same manner as recovery of land revenue.

(Para 6.53)

- (v) The scope of Sections 8, 14, 14A, 14 AA, 14 AB, 14 AC and 14 C of the Employees Provident Fund Act, 1952 read with Paragraph 76 of the Employees Provident Fund Scheme, 1952 to be widened so as to cover the offences committed by the employers of exempted establishments against whom arrears were mounting resulting from their failure to adhere to prescribed investment patterns as the existing penal provisions are not applicable to the trustees of these (exempted) establishments.

(Para 6.54)

- (vi) To provide for recovery of arrears of all dues from the establishments whose exemptions are cancelled.

(Para 6.55)

Government have accepted the above recommendations and have stated in their reply furnished in October, 1984 that a proposal in that regard is included in the current batch of proposals for amending the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Committee desire that the required amendments to the Act may be finalised soon so that the long standing improvements aiming at removing various lacunae experienced in the administration of the Act could be given effect to early. The Committee would like to have a report on the present position of these cases.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

The Committee note that while not accepting the Audit objection the Ministry of Finance had stated that in the absence of any modification of Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the present provisions, as they stand, cannot be construed to mean that the assessee had paid a penalty violating any statutory provisions. The Committee note that this stand of the Ministry of Finance is different from the stand the CBDT had earlier taken in several cases before High Courts wherein they had contended that the damages paid by an assessee under Section 14-B of the Employees' Provident Fund Act for non-payment of contributions to the provident Funds constituted damages not allowable as business expense under Section 37 of the Income Tax Act, 1961. The Board's contention was accepted by the High Courts and the damages paid by the assesseees were not allowed while computing business income. The explanation of the Ministry for the change in their stand is that in the *Mahalaxmi Sugar Mills Ltd. versus Commissioner of Income-tax, Delhi* (123 ITR 429 dated 9th April, 1980), the Supreme Court had held that interest payable on arrears of cess under the Uttar Pradesh Sugarcane Cess Act, 1956 was in the nature of compensation paid to the Government for delay in the payment of cess and hence an allowable expenditure. The Supreme Court had also held that the interest levied under the Cess Act was not a penalty and that the liability to pay interest was as certain as the liability to pay cess ; as soon as the prescribed date is crossed without payment of the cess, interest begins to accrue. The Committee observe that the reason given by the Supreme Court for not treating interest levied under the Uttar Pradesh Sugarcane Cess Act as penalty was that a separate provision for penalty existed in that Act. However, Section 14-B of the Employees' Provident Fund Act, 1952 specifically refers to payment of damages. Also, the extent of levy is left to the discretion of the Central Provident Fund Commissioner. In view of this, the damages payable under Section 14-B of the Employees' Provident Fund Act, 1952 do not seem to be on all fours with the interest payable on arrears of cess under the Uttar Pradesh Sugarcane Cess Act, 1956. In fact, the Supreme Court, in *Organic Chemical Industries and another versus Union of India and others* (55 FJR 283), held that damages, as imposed by Section 14-B include a punitive sum

quantified according to the circumstances of the case. However in order to set the matter beyond any margin of doubt, the Committee will like Government to consider the feasibility of making an amendment in the Employees' Provident Fund Act, 1952 to bring out unambiguously the penal nature of the damages levied under Section 14-B thereof.

[Sl. No. 2 (Para 1.24) of Appendix III of 204th Report of PAC
(1983-84)]

Action Taken

The recommendation of the Committee has been noted. A proposal for carrying out a suitable amendment in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is included in the current batch of proposals for amendment of the Act, which is at an advanced stage.

[Department of Labour (O.M. No. H-11013/1/84-PF-II)
dated 30 October, 1984]

Recommendation

Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, at present provides for recovery of damages not exceeding the amount of arrears. As the application of the existing table of damages prescribed by the Central Board of Trustees of the Employees' Provident Fund was giving rise to many difficulties, it has been replaced by guidelines according to which damages may be levied at a rate of 25% per annum or belated remittances subject to the condition that the total amount of damages would not exceed the actual amount of arrears. Since, however, the levy of damages is a judicial process the discretion of Regional Commissioners in that regard remains unaffected. The revised administrative direction is applicable to defaults arising after October, 1982. The Committee have been informed that proposal for amendment of Section 14B of the EPF and Miscellaneous Provisions Act, 1952 is included in the current batch of amendments to the Act, which is now at an advanced stage.

[Sl. No. 3 (Para 2.9) of Appendix III of 204th Report of PAC
(1983-84)]

Action Taken

Efforts are being made for early finalisation of the proposed amendments.

[Department of Labour (O.M. No. H-1 1013/1/84-PF. II) dated
30 October, 1984]

Recommendation

The matter is pending for too long.

The Ministry of Labour had informed the Committee as far back as in September, 1979 in response to earlier recommendation contained in para 124 of the Committee's 110th Report (1978-79) (6th Lok Sabha) that the existing provisions would be modified so as to fix in the Act itself the percentage of penal interest to be recovered in proportion to the period of delay and the amount of arrears. The Committee desires that an amendment to section 14B of the Provident Fund Act to the above effect should be brought before Parliament without any further loss of time.

[Serial No. 4 Appendix III of 204th Report (1983-84)]

Action Taken

The observation of the Committee have been noted and efforts will be made to bring forward a suitable amending bill as early as possible.

[Department of Labour O.M. No. H-11013/1/84 PF-II dated
30 October, 1984]

Recommendation

The Committee also finds that inspection of the establishments which are covered by E.P.F. Act is also the exempted establishments is not being done thrice a year as per instructions. The Committee desires that inspection of accounts of recognised provident funds and monitoring thereof should be regularly undertaken so that all establishments are covered at fixed intervals. They also desire that inspection of establishments covered by the E.P.F. Act including those exempted should be done regularly as per instructions.

[Serial No. 7 of Appendix III of 204th Report (1983-84)]

Action Taken

The recommendation of the Committee has been accepted and the C. P. F. C. has been instructed to take necessary steps for its implementation.

[Department of Labour O.M. No. H. 11013/1/84-PF. II dated
30 October, 1984]

Further reply

Kind attention is invited to the Ministry of Labour and Rehabilitation

(Deptt. of Labour)'s Office Memo. No. H-11013/1/84-PF II (S311) dated 30-10-1984, forwarding Action Taken Notes on the recommendations contained in the above para.

2. The observations of the Public Accounts Committee have been noted. The Board has vide its Instruction No. 1678 dated 27-12-85 has once again impressed upon the field officers to undertake inspection of the accounts of provident fund at regular intervals. A copy of the instruction is enclosed herewith (Annexure)

3. The Board has also examined the position of Inspection of accounts of provident fund in respect of financial year 1983-84. A thorough review will be made on receipt of the consolidated position in respect of the year 1984-85. A D.O. letter from Member (I.T.) has also been issued to all the Cs.I.T. who have not carried out inspections as per the targets fixed for the year 1983-84.

[Ministry of Finance (Deptt. of Revenue) O.M. No. F 241/5/84-A & PAC II dated 23 January, 1986]

ANNEXURE

INSTRUCTION No. 1678

F.No. 228/36/84-ITA, II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 27th Dec. 1985

To

All Chief Commissioners (Admn.) &
Commissioners of Income-tax.

Sir,

SUBJECT :—*Recognised Provident Funds—Inspection of Accounts—
Instruction Regarding.*

Attention is invited to the following instructions issued by the Board on the above subject :—

(i) F.N. 215/28/70-ITA II dated 12.2.1971,

- (ii) Instruction No. 581 vide (F. No. 215/12/72-ITA. II dated 2.8.1973.)
- (iii) Instruction No. 1188 vide (F. No. 215/11/78-ITA. II dated 22.6.1978.)
- (iv) Instruction No. 1357 vide (F. No. 215//11/78-ITA. II dated 17.9.1980.)

2. Instruction No. 1188 dated 22nd June, 1978, while reiterating the administrative arrangements for the assessments of recognised funds, directed that the work of verifying whether a fund continues to observe the conditions for retaining recognition should be attended to in the Commissioner of Income-tax Office as the verifications on the basis of which the fund was granted exemption was also done by them. These instructions detailed five steps to be followed so as to see whether the conditions under which the fund has been recognised continue to be fulfilled and the funds continue to comply with the statutory requirements in this regard.

3. In spite of clear instructions on the subject, the Board are concerned that no worth-while action is being taken by the Commissioners in the matter so as to prevent misuse of these provisions. The Board, therefore, desire that the instructions issued on the subject should be strictly followed and appropriate steps must be taken for withdrawal of approvals to provident funds, in deserving cases.

4. The receipt of this instruction may please be acknowledged to the undersigned.

5. Hindi version will follow shortly.

Yours faithfully,

Sd/-
(Girish Dave)

Under Secretary to the Government of India

Recommendation

The Committee also find that during the three year period 1980-81 to 1982-83, defects were noticed as a result of the limited inspections in 86 cases. Action has been initiated only in 32 cases. In 6 cases recognition has been withdrawn during the four-year period ending 31-3-1983. In regard to the remaining establishments, the Committee have been informed that "the Commissioners of Income-tax have been asked to initiate action in all these cases, if not already taken". The Committee are unhappy over the listless manner in which the Department had acted so far. It is not clear to the Committee why the Department should have been able to ini-

tiating action in not more than 32 cases in three years, and out of even these 32 cases, it should have been able to finalise action only in six cases. The Committee desire that necessary action in the remaining cases should be initiated/finalised without delay.

[Sl. No. 8 (Para 4.13) of Appendix III of 204th Report of the PAC (1983-14) (Seventh Lok Sabha)]

Action taken

The observations of the Public Accounts Committee have been noted. The Board had asked respectable Commissioners of Income-tax to take appropriate action in all the 86 cases where defects were noticed. It has been reported to the Board that in 9 cases recognition was withdrawn. In 5 cases no action was considered necessary on account of the closure of the concerns. In 35 cases, defects were removed by the Trustees of the Fund and in remaining cases clarifications given by the Trustees of the Fund were found satisfactory by the Commissioners of Income-tax.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/5/84-A & PAC-II dated 13 March, 1986]

Recommendation

The Committee have been informed that the nature of defects noticed in respect of recognised provident funds is predominately in the sphere of violation of investment pattern by the Provident Funds as laid down in Rule 67 of the Income-tax Rules, 1962. Appropriate remedial action is being taken pursuant thereto. The Committee would like to be apprised of the remedial measures taken in such cases as also steps taken to ensure that violation of investment pattern is not allowed to persist.

[Sl. No. 9 (Para 5.12) of the Appendix III of the 204th Report of the P.A.C. (1983-84)]

Action taken

The Board have been from time to time issuing Instructions to the field formations to examine the accounts of the Provident Funds and take necessary action like withdrawal of recognition etc. wherever violation of rules is noticed. A copy of the Inst. No. 1549 dated 13.1.1984 is enclosed. (Annexure).

It may be mentioned that while deciding cases of violations of rule 67 which prescribes the pattern of Investment of the money of the Provident Funds, a slightly liberal view is taken. If the variation in the pattern of

investment is nominal and the funds are not misused for the personal gains of the Trustees or Employees, the recognition is normally not withdrawn.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/5/84—A & PAC
II dated 22 Oct. 1985]

ANNEXURE

Instruction No. 1549

F. No. 218/35/83-ITA-II
Government of India
Central Board of Direct Taxes

New Delhi, the 13.1.1984.

To

All Commissioners of Income-tax,

Sir,

SUBJECT :—*Approved superannuation funds—approved gratuity funds—
Inspection of accounts—Instructions—regarding—*

Attention is invited to the Board's instructions No. 1357 (F. No. 215/11/71-ITA-II) dated 17th September, 1980 wherein detailed procedure was laid down for inspection of accounts of the recognised provident funds so as to keep a watch that the rules have not been violated. The Board desire that the accounts of approved superannuation funds and approved gratuity funds should also be similarly checked and the same procedure, as laid down in instructions No. 1357, be followed. As regards the questionnaire to be issued to the trustees, the same have been devised both for superannuation funds as well as for gratuity funds and are enclosed as Annexures 'A' and 'B' respectively.

2. As in the case of recognised provident funds, a report on the action taken for inspection of superannuation funds and gratuity funds in the prescribed proforma (enclosed with instructions No. 1357) for every completed financial year may be sent to the D.I. (Income-tax) by 15th of May, every year who will monitor them and will report to the Board.

Yours faithfully,

Sd/-
(P, SAXENA)

Secretary, Central Board of Direct Taxes

Encls : Annexures 'A' & 'B'.

**Savings Bank Account in
India.**

(ii) Deposited in current account with any scheduled banks. Rs.

(iii) Amount paid under a scheme of insurance under rule 89(i) of I.T. Rules. Rs.

(iv) Amount accumulated and utilised for purchasing annuities from LIC under rule 89(ii) of I.T. Rules. Rs.

Total Rs. -----

(c) Balance to be invested as per sub-rule (2) of Rule 67 of I.T. Rules. Rs.

(d) Manner of investment of the balance (c) and the break-up of investment as provided in sub-rule (2) to rule 67 may be given.

(v) Please state whether the superannuation fund satisfies all other conditions laid down in Rule 3 of Part 'B' of the Fourth Schedule to Income-tax Act, 1961 and the Rules 82-97 of the Income-tax Rules, 1962. If not, please indicate the conditions where are not satisfied.

Yours faithfully,

ANNEXURE B

From : The Commissioner of Income-tax,

To : The Trustees,

Dear Sir,

SUBJECT :—*Retention of recognition to gratuity fund
(name).....*

To enable me to decide whether the recognition granted to the above mentioned gratuity fund *vide* Order No..... dated..... should be continued, you are requested to furnish to me the following information within a month of the receipt of this letter :

- (i) Have any changes been made to the regulations of the gratuity fund without getting the approval of the Commissioner of Income-tax ? If so, please give a list of the changes showing the dates from which the changes are made ;
- (ii) Please state whether all contributions to the gratuity fund (employers' contribution and/or employees' contributions if any,) have been received. If any amount is outstanding, please state the amount and the date on which it had fallen due ;
- (iii) Please state the manner in which the funds of the gratuity fund are invested. [Please see Rule 9(1)(bb) of Part 'C' of the Fourth Schedule to the I.T. Act, 1961 and Rule 101 of the Income tax Rules, 1962]. Give the following details as well :

(a) Total funds Rs.

(b)(i) Deposited in post office Rs.
Savings Bank Account in
India

(ii) Deposited in current ac- Rs.
count with any scheduled
banks

(iii) Amount paid to LIC for Rs.
purpose of making con-
tribution under group gra-
tuity schedule under rule
101

Total Rs.

(c) Balance to be invested as per Rs.
sub-rule (2) of Rule 67 of the
I.T. Rules.

(d) Manner of investment of the
balance (c) above (the break-
up of investment as provided
in sub-rule (2) to Rule 67 may
be given).

- (iv) Please state whether the Gratuity Fund satisfied all other conditions laid down in Rule 3 of Part 'C' of the Fourth Schedule to the Income-tax Act, 1961 and the Rule 98-111 of the Income-tax Rules, 1962. If not, please indicate the conditions which are not satisfied.

Yours faithfully,

Recommendation

The Committee desires that in view of the possibility of widespread misuse of P.F. money, the Act should be amended forthwith to provide that both the employers as well as the Board of Trustees shall be jointly and severally liable to invest P.F. accumulations in the prescribed securities. This measure should be enforced strictly so that the funds which may otherwise be utilised by employers for furtherance of their business are available towards much needed developmental needs.

[Serial No. 10 of Appendix III of 204th Report 1983-86]

Action Taken

The recommendation of the Committee has been noted and the proposal has been included in the current batch of proposals for amendment of the Act.

[Deptt. of Labour O.M. No. H—11013/1/84—PF II dated 30 October-1984].

Recommendation

The Committee have been informed that the question of floating securities exclusively to cater to the requirement of provident fund with an inbuilt mechanism for adjusting the interest rate to keep pace with the rate of inflation is under consideration of the Government. The Committee desires that the question may be decided expeditiously so that the subscribers may get a fair return of their accumulation. An attempt should also be made to bring parity between the rate of return on General Provident Funds set up by Central Government or State Governments on one hand and the Employees Provident Fund on the other.

[Serial No. 11 of Appendix III of 204th Report 1983-84]

Action taken

The proposal for floating securities exclusively to cater to requirement of Provident Fund is still being pursued. If this proposal is finally accepted, it should be possible to bring about parity between the rate of

return of General Provident Fund set up by Central Government or State Government on one hand and Employees' Provident Fund on the other.

[Deptt. of Labour O.M. No. H—11013/1/84-PF II dated 30 October, 1984].

Recommendation

The Committee would like the E.P.F. Organisation to take concerted measures under a time bound programme to recover outstanding dues. In particular, the Committee suggest that a monitoring cell may be set up in E.P.F. Organisation and in each Regional Provident Fund Commissioners Office to pursue actively all cases wherein the arrears exceed Rs. 5 lakhs,

[Serial No. 13 of Appendix III of 204th Report 1983-84]

Action taken

The recommendation of the Committee has been accepted and the C.P.F.C. has been asked to have the needful done.

[Deptt. of Labour O.M. No. H—11013/1/84-PF-II dated 30 October, 1984].

Recommendation

The Committee (1978-79) in Para 122 of their 100th Report (6th Lok Sabha) as reiterated in Para 1.14 of their 21st Report (1980-81), had stressed the need for amendment to section 14 and 14B, so as to bring exempted establishments at par with unexempted establishments in these respects. Although a period of five years has since elapsed the proposed amendments are yet to be brought before the Parliament. The Committee have now been informed that Government are considering a proposal to empower the provident fund authority to levy damages on the exempted establishments as also to provide for recovery of arrears in respect of such establishments in the same manner as arrears of land revenue. The Committee deplore the delay in taking a decision in the matter. They desire that necessary amendments suggested by the Committee should be brought before Parliament without further delay.

[Serial No. 15 of Appendix III of 204th Report 1983-84]

Action taken

The observations of the Committee have been noted and efforts will be made to bring forward a suitable amending bill as early as possible.

[Department of Labour O.M. No. H—11013/1/84-PF II dated 30 October, 1984]

Recommendation

The Committee desire that all the existing penal provisions applicable to unexempted establishments should be extended to the exempted establishments as well. The scope of section 8, 14, 14A, 14AA, 14AB, 14AC, 14C of the Act read with para 76 of the Employees' Provident Fund Scheme 1952 should be widened so as to cover the offences committed by the employers of exempted establishments.

[Serial No. 16 of Appendix III of 204th Report 1983-84]

Action taken

The recommendation of the Committee has been noted. A proposal in this regard is already included in the current batch of proposals for amendment of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which is at an advanced stage.

[Deptt. of Labour O.M. No. H-11013/1/84-PF II dated 30 October 1984]

Recommendation

The Committee have been informed that the Tehsildar etc. to deal exclusively with the recovery cases of E.P.F. Organisation have already started working in Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Maharashtra, Kerala and Haryana. The Committee desires that early steps should be taken to detail such Tehsildars in other States also to which the E.P.F. Act extends.

[Serial No. 19 of Appendix III of 204th Report 1983-84]

Action taken

The recommendation of the Committee has been accepted and the question of appointment of Tehsildars in other State is being actively pursued.

[Department of Labour O.M. No. H-11013/1/84-PF II dated 30 October 1984]

Recommendation

The Committee have been informed that with a view to avoid conflict in application of the provisions of the two sets of laws/rules Government are now considering a proposal to exclude all departmental undertakings as also establishments which have set up provident fund of their own under a separate statute, such as universities etc. from the purview of the Employees' Provident Fund Act. The Committee considers that such a step would

be in the right direction and would also allow the E.P.F. Organisation to concentrate more and on non-Government establishments. This measure should be taken early.

[Serial No. 21 of Appendix III of 204 the Report 1983-84]

Action taken

The proposal is included in the current batch of amendment of the E.P.F. & Miscellaneous Provisions Act, 1952 which is at an advanced stage. Pending amendment of the Act all departmental undertakings under the Central Government have been granted exemption under section 16 (2) of the E.P.F. and Miscellaneous Provisions Act. Similar exemption in respect of universities and statutory bodies is expected to be notified shortly.

[Department of Labour O.M. No. H-11013/1/84-PF II dated 30 October 1984]

Recommendation

The Committee would like Government to consider the feasibility of setting up special courts for trial of P.F. cases in States where the volume of work so justifies. However, the criminal cases under section 406/409 IPC should continue to be tried by criminal courts having jurisdiction. The Committee also desires that application for vacation of stay whenever granted should invariably be filed within the time limit. Provisions for attachment of immovable assets and furnishing of security bonds may also be resorted to more rigourously in case of wilful defaults.

[Serial No. 23 of Appendix III of 204th Report 1983-84]

Action taken

The recommendations of the Committee have been noted and the question of setting up of special courts, where pendency is heavy, is being taken up with the State Governments. CPFC is also being advised to implement the other recommendations of the Committee.

[Department of Labour O.M. No. H-11013/1/84-PF II dated 30 October 1984]

*Since notified vide notification S.O. No. 2911 dted 21.1.1984 published in the Gazette of India dated 8.9.84,

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

In paragraph 28 of their 110th Report (6th Lok Sabha) the Committee (1978-79) had recommended that the procedure for dealing with applications for recognition of various funds should be streamlined so as to ensure that any application for recognition is disposed of within three months of the receipt thereof. The Central Board of Direct Taxes issued instruction No. 1190 dated 28th June, 1978 to the effect that all applications for recognition of provident fund, superannuation/gratuity fund must invariably be disposed of within three months of the receipt thereof. In the same circular, the Commissioners of Income-tax were directed to ensure disposal of all the applications received before 1 April, 1978 by 30th September, 1978. The Committee, however, notice from the table of year-wise pendency that out of a total of 315 pending applications as on 31.3.83, 207 pertained to the financial year 1981-82 and earlier years. Of these 31 applications were received in or before the financial year 1977-78. The main reason for pendency, according to the Department is non-cooperation/delay on the part of trustees of the Provident Funds in furnishing the required information. The Committee have been informed that the Commissioners have been requested to review all cases pending for over an year, as also to adhere to the time schedule of disposing of the applications within three months of the filing thereof.

The Committee find that during oral evidence it was stated that once an application went to the Commissioner for recognition, then practically all the employees get the benefit. However, from the written reply of the Ministry of Finance (Department of Revenue) it would appear that under Section 80-C of the Act, while computing taxable income of salaried group specified deductions are allowed at source for payments towards contributions to recognised provident funds. It is not clear whether under the law, the employees would be entitled to the deduction once an application for recognition is made. So far as employees' contribution is concerned, the deduction admissible under Section 36(1)(iv) was on mercantile basis upto assessment year, 1983-84. The Chairman, C.B.D.T. informed the Committee during evidence that the relevant provision had been amended from this year

and accordingly contribution unless actually made over does not qualify as a business deduction. Section 43B introduced with effect from 1.4.1984 provides that deduction in respect of any sum payable by the assessee as an employer by way of contribution to any provident fund shall be allowed only in computing the income of that previous year in which such sum is actually paid by him. The Committee observe that to an extent the purpose has been achieved. The Committee however desire that Government should consider making a statutory provision to dispose of all applications for recognition within three months of the receipt thereof. This is necessary in view of the fact that the repeated instructions issued by the Central Board of Direct Taxes are not being implemented. In the meanwhile, the Committee desire, effective steps should be taken by the C.B.D.T. to ensure that the time-limit of three months for recognition of provident funds is strictly adhered to by the Commissioners of Income-tax. Instructions should also be issued to be Income-tax Officers/Inspecting Assistant Commissioners to furnish requisite reports to the Commissioners of Income-tax expeditiously.

[Sl. No. 5 (Para 3.44) of the Appendix III of the 204th Report of the P.A.C. (1983-84) (7th Lok Sabha)]

Action taken

The recommendation that a statutory provision should be made requiring disposal of all the applications for recognition of provident funds within three months of their receipt has been examined. The question of prescribing a statutory time limit for this purpose has to be examined in the context of the fact that sometimes taxpayers may not be in a position to furnish all the required particulars and they may ask for time in such cases. A provision shall, therefore, have to be made for extension of time. Where the time is not extended on the request of the taxpayer, an appeal will have to be provided against the order rejecting the request. The provisions will thereby get more complicated.

2. The other implications of a provision prescribing a time limit are also quite important. If application for recognition is not disposed of within the statutory period, the law will have to provide that the provident fund would stand recognised. In such cases, recognition would stand granted without proper and adequate scrutiny. As contributions made by employers and employees to recognise provident funds and income earned by such provident funds enjoy certain concessions, automatic recognition of the funds by mere expiration of the time limit and without a proper scrutiny will not be desirable.

3. It is however, necessary that applications for recognition should be

expeditiously disposed of. Having regard to the difficulties mentioned above, it appears that the problem of delay in recognition of provident fund needs to be solved through administrative firmness rather than through a statutory provision placing a statutory limit for passing an order of recognition. For this purpose the Board has already issued instructions that applications for recognition of provident funds, superannuation funds, gratuity funds, etc., should invariably be disposed of within three months of their receipt.

[Ministry of finance (Deptt. of Revenue) O.M. No. 241/5/84-A & PAC
II dated 25 October, 1984]

Recommendation

In the case of exempted establishments the provisions of the Scheme are usually more favourable than those specified in the Act in respect of rate of contribution and other benefits. The Committee, therefore, recommend that since the provident fund rules of the exempted establishments not only conform to the statutory scheme under the EPF Act but are very liberal, all exempted funds should be automatically deemed to be recognised by Income Tax Department. There is no reason for the dual control over the same establishments. The Committee need hardly point out that multiplicity in the application of laws and rules only make the matter very complicated and cumbersome. The Committee desires that statutory changes necessary for the purpose may be brought before Parliament as soon as possible.

[Serial No. 12 of Appendix III of
204th Report 1983-84]

Action taken

The recommendation of the Committee has been noted and the question of bringing all the P.F. under the E.P.F. Act is being examined.

[Department of Labour O.M. No. H-11013/1/84-PF II
dated 30 October, 1984]

Further reply

The conditions of withdrawal from provident funds incorporated in the Employees' Provident Funds Scheme are more liberal than the conditions laid down under the Income-tax Rules. The liberal conditions of withdrawal incorporated in the employees' Provident Fund Scheme are basically meant for workers and wage-earner in lower income brackets. The Income-tax Rules have been amended with a view to bringing the conditions of withdrawal under the Income-tax Rules in line with the conditions of withdrawal

under the Employees' Provident Funds Scheme in so far as employees drawing a monthly salary of Rs. 1,600 or less are concerned.

If provident funds of establishments which are treated as "exempted establishments" under the Employees' Provident Funds and Miscellaneous Provisions Act, are treated on par with provident funds of establishments which are regulated by the said Act and the Scheme framed thereunder, high salaried employees will be able to take undue advantage of the liberal conditions of withdrawal laid down in the EPF Scheme. The rationale underlying tax exemptions to provident funds and contributions to such funds is to encourage savings and to channelise the savings into desirable modes of investment. This object will be defeated if withdrawals are permitted freely and within a short duration. If the provisions of exempted establishments are treated on par with the provident funds of establishments which are governed by the Employees' Provident Funds and Miscellaneous Provisions Act, the Provident Fund bearing different terms regarding withdrawal, investments, etc. in the case of higher paid employees will get the benefit of tax concessions.

For the foregoing reasons, it has been decided with the approval of the Finance Minister not to accept the recommendation of the Hon'ble Committee.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/5/84-A & PAC
II dated 22 October, 1985]

CHAPTER IV

**OBSERVATIONS/RECOMMENDATIONS REPLIES TO WHICH
HAVE NOT BEEN ACCEPTED BY THE COMMITTEE
AND WHICH REQUIRE REITERATION**

-NIL-

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

Section 37 of the Income-tax Act, 1961 provides that any expenditure, which is not in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly or exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" i.e., business income. However in the account of an assessee company relevant to the assessment year 1978-79, a sum of Rs. 1,36,143 debited to the profit and loss account as interest on account of the payment made to the Commissioner of Provident Fund for failure to deposit the contribution to the provident fund in time was deducted by the Income-tax Officer in computing the company's total income. This was objected to by Audit. Their view was that the interest of Rs. 1,36,143 comprised 'damages' levied under Section 14-B of the Employees' Provident Fund and miscellaneous Provisions Act, 1952 for delayed payment of provident fund contributions. As it has been judicially held that penalties incurred for non-compliance with the provisions of any law being not expenditure incurred in the exigencies of business are not allowable as deductible expenditure under Section 36(1) (iv) of the Income-tax Act, 1961, the interest of Rs. 1,36,143 was not allowable as deductible expenditure. Although the Audit objection was not accepted by the Department, to safeguard revenue, the Commissioner of Income-tax directed the I.T.O. under Section 263 of the Income-tax Act, 1961, to re-determine the total income by disallowing the sum levied as damages. Effect to this order was given by the I.T.O. in February, 1983. The Committee have been informed that the assessee has filed an appeal to the Income-tax Appellate Tribunal on 24.1.83 against the order of the Commissioner of Income tax under Section 263 of the Income tax Act and the appeal is pending. The Committee would like to be apprised of the outcome of the appeal.

[Sl. No. 1 (Para 1.23) of Appendix III of the 204th Report of the P.A.C. (1983-84) (Seventh Lok Sabha)]

Action taken

The appeal filed by the assessee against order u/s 263 is still pending before the Income-tax Appellate Tribunal.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/5/84-A &
PAC-II dated 11 September 1984]

Recommendation

The Fourth Schedule to Income-tax Act, 1961 provides for recognition of Provident Funds. It also provides for de-recognition of Provident Funds, if the prescribed conditions are not satisfied. The Act, however, does not provide for any penalty for violation of the conditions of recognition. The order withdrawing recognition takes effect from the date on which it is made. Since de-recognition has only a future effect, irregular deductions claimed and allowed in the past do not stand affected as a result thereof. The Committee (1978-79) had, in paragraph 128 of their 110th Report (Sixth Lok Sabha), recommended that with a view to providing a deterrent to unscrupulous employers who may be tempted to misuse the employees provident fund contributions, the Income-tax Act should also provide for some form of penalty including prosecution to be launched against the employers in the event of breach of terms of recognition. The Committee were informed in February 1980 that the above recommendation of the Committee was under consideration of Government along with a similar recommendation made by the Chokshi Committee.

The Committee have now been informed that the files of the Central Board of Direct Taxes relating to the recommendations of the Chokshi Committee were sent to the Economic Administrative Reforms Commission and that a final decision on the subject will be taken by Government in the light of the recommendations of the Economic Administration Reforms Commission. If these recommendations are accepted, these will be implemented through a comprehensive Amendment Bill. The Committee are concerned to note that although a period of five years has elapsed since the Committee had desired Government to move for an amendment of the Income-tax Act so as to provide for a penalty on an employer in the event of a breach of terms of recognition of the provident fund, a decision is yet to be taken by Government. The result is that there is still no deterrent to an unscrupulous employer who may misuse the employees' provident fund contributions. During evidence, the Committee desired to know which Department is to prosecute an employer who fails to deposit the employees' contributions. The Chairman, C.B.D.T. stated, "I suppose it will come under the Companies Law and not with us". This shows how uncertain the position at present is. In view of this, the Committee consider it all the

more essential that the proposed amendment is brought before Parliament without any further delay.

[Sl. No. 6 (Para 3.23) of Appendix III of the 204th Report of the PAC (1983-84) (Seventh Lok Sabha)]

Action taken

The recommendation made by the PAC has been considered. In this connection, EARC in para 19(ii) of their Report No. 27 has observed as under :—

“The only remedy provided in the I.T. Act against the infringement of the provisions regulating the recognition of provident funds is the withdrawal of recognition. Unfortunately, this remedy hurts the employee more than the employer, as it would deprive the employee of his legitimate tax-benefit in respect of his subscriptions to the fund, and would thus penalise the employee for his employers’ default. He would thus be doubly hurt, first by his employer’s default and then by the loss of the tax benefit. Moreover, derecognition can only have future effect. Irregular deductions claimed by the employee and allowed in the past cannot be withdrawn as a result of the de-recognition. We feel that disciplinary and penal action for lapses and irregularities on the part of the employer should be directed against the employer, and that the employees who had made contributions should not be made to suffer. The extreme step of de-recognition should be resorted to only in exceptional circumstances. It is of course necessary to take penal action against the employers for the non-payment of contributions by them and against trustees for the misuse of the funds. Our general approach has all along been that the proper administration of institutions, funds, trusts, etc. should be the responsibility of the regulatory authorities concerned and that the tax authorities should not be burdened with such responsibilities. However, it is difficult to apply this principle in the case of provident funds, as there is no special statute or authority governing the conduct and administration of provident funds other than those which come within the purview of the EPF Act or those which are specifically exempted therefrom in terms of that Act. We had suggested earlier that there should be a suitable legislation governing all provident funds. However, pending the enactment of such legislation, the only means of regulating the conduct of such provident funds is through the provisions of the Income-tax Act. If de-recognition is confined to exceptional cases it becomes necessary to provide for the imposition of penalties on employees and trustees for abuses. Suitable provisions in this regard need therefore to be included in the Income-tax Act.”

2. The matter has been examined in consultation with the Ministry of Labour. The Ministry of Labour has informed that there are different types of provident funds including provident funds set up by non-Government establishments and recognised under the Income-tax Act. Ministry of Labour are examining whether these non-Government provident funds which are at present recognised under the I.T. Act but which are not at present covered under the EPF MP Act, can be brought within the purview of the EPF MP Act, 1952.

3. The question as to whether, pending the final decision by the Ministry of Labour, the provisions of the Income-tax Act should be so amended as to provide for imposition of penalties on employees and trustees will be examined by the Department of Revenue, if necessary, at the time of consideration of various proposals for the next Taxation Laws (Amendment) Bill.

[Ministry of Finance (Deptt. of Revenue) O.M. 241/5/84—A & PAC-II dated 12 September 1985]

Recommendation

The Committee find that among the list of exempted establishments from whom arrears exceeding Rs. 10 lakhs are due is the Rajasthan State Electricity Board, owing Rs. 30.09 lakhs and among unexempted establishments is the Post-Graduate Institute of Medical Education and Research, Chandigarh, owing Rs. 204.15 lakhs. The maximum amount outstanding under the Assam Tea Plantation Provident Fund scheme administered by the Government of Assam is against the Assam Tea Corporation Ltd., a State Government undertaking, owing Rs. 137.78 lakhs. The Committee feel that recovery in these cases should not pose any particular difficulty. With a view to liquidating arrears in these cases as also arrears against other State/Union Territory undertakings institutions, the Committee desire that the Ministry of Labour should take up the matter direct with the State Governments/Union Territory Administrations concerned.

[Serial No. 14 in Appendix III of 204th Report 1983-84]

Action taken

The recommendation of the Committee has been accepted and the cases of defaulting public sector undertakings is being taken up with the concerned Central Ministries/Departments and State Governments/Union Territory Administrations.

[Deptt. of Labour O.M. No. H-11013/1/84-PF II dated 30 October 1984]

Recommendation

The Committee would also like Government to take prompt action for transfer of securities held by exempted establishments consequent on cancellation of their exemption. Government should also examine the feasibility of making specific provisions in the Act to provide for recovery of arrears of all dues from the establishments whose exemptions are cancelled.

[Serial No. 17 of Appendix III of 204th Report, 1983-84]

Action taken

The recommendation of the Committee has been noted and the question of making suitable provision in the Employees Provident Fund Act/Scheme is being examined.

[Department of Labour O.M. No. H-11013/1/84 PF II dated 30
October 1914]

Recommendation

The application of the Act may be extended to the establishments employing even less than 20 persons or even to employees whose monthly wages exceed Rs. 1600/-. In view of foregoing, the Committee would like Government to reconsider the question of the E.P.F. Organisation having a separate recovery machinery of its own. It could be on the lines of tax recovery officers under the Income Tax Act.

[Serial No. 18 of Appendix III of 204th Report, 1983-84]

Action taken

The recommendation of the Committee has been noted and the question of extension of the provisions of the Act to establishments employing less than 20 persons and coverage of employees drawing wages exceeding Rs. 1600/- per month is under examination. The question of setting up a separate recovery machinery for the E.P.F. Organisation is also being examined.

[Department of Labour O.M. No. H-11013/1/84-PF II dated 30
October 1984]

Recommendation

The Committee have been informed the Government have not agreed to the suggestion that "no P.F. dues certificates" may be insisted upon from companies before loans and advances are given to them. The Committee

would like Government to reconsider the matter. Similarly, Government may also examine whether production of such certificates may also be insisted upon under the Companies' Act in case of such companies as contemplate to issue bonus share and declare huge dividends.

[Serial No. 20 of Appendix III of 204th Report 1983-84]

Action taken

The recommendation of the Committee will be examined in consultation with the Ministries/Departments concerned.

[Deptt. of Labour O.M. No. H-11013/1/84/PF-II dated 30 October, 1984]

Recommendation

The Committee have been informed that the C.P.F.C. has sent a proposal for transfer of Rs. 25 lakhs to the special reserve fund and the same is under consideration. If such a proposal materialises, steps will necessarily have to be taken to ensure that the basic money provided in the proposed revolving fund is reimbursed by effecting prompt recovery from the defaulting establishments. The Committee will like to be informed of the decision taken by the Government in the matter. The Committee will also like to be informed of the decision taken by the Government on the proposal to constitute an insurance fund.

[Serial No. 22 of Appendix III of 204th Report 1983-84]

Action taken

The Government's approval for transfer of Rs. 25 lakhs to the special reserve fund has since been accorded. The proposal for setting up of an insurance fund is, however, still under consideration.

[Department of Labour O.M. No. H-11013/1/84-PF II dated 30
October 1984]

NEW DELHI ;
11 February, 1987
22 Magha, 1908 (S)

E. AYYAPU REDDY
Chairman,
Public Accounts Committee.

PART II

MINUTES OF THE 40TH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 9TH FEBRUARY, 1987

The Committee sat from 1500 hrs. to 1630 hrs.

PRESENT

Shri E. Ayyapu Reddy—*Chairman*

2. Shri J. Chokka Rao
3. Shri Amal Datta
4. Smt. Prabhawati Gupta
5. Shri G.S. Mishra
6. Shri Vilas Muttemwar
7. Shri Rameshwar Neekhra
8. Shri Rajmangal Pande
9. Shri H.M. Patel
10. Smt. Jayanti Patnaik
11. Shri Girdhari Lal Vyas
12. Shri Nirmal Chatterjee
13. Shri M.S. Gurupadaswamy
14. Shri Virendra Verma

Members

SECRETARIAT

1. Shri K.H. Chhaya—*Joint Secretary*
2. Shri Brahmanand—*Senior Financial Committee Officer*
3. Shri S.M. Mehta—*Senior Financial Committee Officer*

REPRESENTATIVES OF AUDIT

1. Shri M Parthasarthy—*Addl. Dy. C & AG (Reports-Central)*
2. Shri M M B, Anaavi—*Director of Audit (DS)*

3. Shri Baldev Rai — Director (Reports)
4. Shri P.K. Bandyopadhyay — Director of Receipt Audit-II
5. Shri N.R. Rayalu — Joint Director (R-C)
6. Shri N.L. Chopra — Joint Director of Audit (DS)
7. Shri S.K. Gupta — Joint Director (C & CX)
8. Shri K. Krishnan — Joint Director (Direct Taxes)

The Committee considered and adopted the following draft Reports with certain modifications as shown in Annexure.....

XX	XX	XX
XX	XX	XX

- (iii) Draft Report on action taken on recommendations contained in 204th Report (7th Lok Sabha) regarding mistakes in the Allowance of contributions to Provident Funds.

2. The Committee also approved the modifications/amendments suggested by Audit as a result of factual verification of the aforesaid Reports.

3. The Committee also authorised to Chairman to present these Reports to the Lok Sabha.

xxx	xxx	xxx	xxx
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The Committee then adjourned.

ANNEXURE

Amendments/Modifications made by Public Accounts Committee at their sitting held on the 9 February 1987, in Draft Report on Action taken on 204th Report relating to mistakes in the allowance on contributions to Provident Funds.

Page	Para	Line	Amendment/Modification
8	1.7	4	<i>Delete "to carry out a number of amendments thereto"</i>
9		12 from bottom	<i>For 'amendments of' Substitute "amending"</i>
9		10 from bottom	<i>Delete "which is at an advanced stage"</i>
9		5-3 from bottom	<i>Delete "Recommendations in respect of some of these have already been made by the Committee in their earlier reports"</i>

APPENDIX

Observations/Recommendations

Sl. No.	Para No.	Ministry/ Department concerned	Observation/Recommendation
1	2	3	4
1.	1.2	Finance (Revenue) Labour	<p>The Committee desire that final replies to the recommendations in respect of which only interim replies have so far been furnished should be submitted to them expeditiously after getting the same duly vetted by Audit.</p>
2.	1.7	do	<p>The Committee in their original Report had desired that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 may be amended with a review to removing certain lacunae experienced in the administration of the Act. The amendments recommended included <i>inter alia</i> the following :</p> <p>(i) To bring out unambiguously the penal nature of the damages levied under Section 14(B) thereof with a view to obviating possibilities of damages paid by an assessee under Section 14B of the Employees' Provident Fund Act for non-payment of contribution to the Provident Fund being reckoned as business expenditure under Section 37 of the Income Tax Act.</p>

(Para 1.24)

(ii) To fix in the Act itself the percentage of penal interest to be covered in proportion to the period of delay and the amount of arrears.

(Para 2.10)

(iii) To provide that both the employers as well as Board of Trustees shall be jointly and severally liable to invest P.F. accumulations in the prescribed securities to prevent the wide-spread misuse of provident fund monies by exempted establishments.

(Para 5.13)

(iv) Sections 14 and 14(B) of the Act to be amended so as to bring exempted establishments at par with unexempted establishments so that the provident fund authorities are empowered to levy damages for non-transfer of contributions by employers of exempted establishments also as in the case of unexempted establishments which are already governed by provision for recovery of outstanding in the same manner as recovery of land revenue.

(Para 6.53)

(v) The scope of Sections 8, 14, 14A, 14AA, 14AB, 14AC, 14C of the Employees Provident Fund Act, 1952 read with Paragraph 76 of the Employees Provident Fund Scheme, 1952 to be widened so as to cover the offences committed by the employers of exempted establishments against whom arrears were mounting resulting from their failure to adhere to prescribed investment patterns as the existing penal provisions are not applicable to the trustees of these (exempted) establishments.

(Para 6.54)

(vi) To provide for recovery of arrears of all dues from the establishments whose exemptions are cancelled.

(Para 6.55)

Government have accepted the above recommendations and have stated in their reply furnished in October, 1984 that a proposal in that regard is included in the current batch of proposals for amending the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Committee desire that the required amendments to the Act may be finalised soon so that the long standing improvements aiming at removing various lacunae experienced in the administration of the Act could be given effect to early. The Committee would like to have a report on the present position of these cases.