

**TWENTY-FIRST REPORT**  
**PUBLIC ACCOUNTS COMMITTEE**  
**(1980-81)**

(SEVENTH LOK SABHA)

**NON-PAYMENT OF CONTRIBUTIONS TO TRUSTEES**  
**OR PROVIDENT FUND COMMISSIONERS**

**MINISTRY OF FINANCE**  
(Department of Revenue)

[Action taken on 110th Report (Sixth Lok Sabha)]



*Presented on 27.3.81*

*Presented in Lok Sabha on.....*

*Laid in Rajya Sabha on.....*

**LOK SABHA SECRETARIAT**  
**NEW DELHI**

*March, 1981/Phalgun, 1902 (Saka)*

*Price: Rs. 1.25*

Corrigenda to Twenty-first Report of the  
Public Accounts Committee (Seventh Lok Sabha)

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**PUBLIC ACCOUNTS COMMITTEE**

(1980-81)

**Shri Chandrajit Yadav—Chairman**

**MEMBERS**

**Lok Sabha**

2. Shri Satish Agarwal
3. Shri Subhash Chandra Bose Alluri
4. Shri Tridib Chaudhuri
5. Shri K. P. Singh Deo
6. Shri V. N. Gadgil
7. Shri Ashok Gehlot
8. Shri Sunil Maitra
9. Shri Gargi Shankar Mishra
10. Shri M. V. Chandrashekara Murthy
11. Shri Ahmed Mohammed Patel
12. Shri Hari Krishna Shastri
13. Shri Satish Prasad Singh
14. Shri Jagdish Tytler
15. Shri K. P. Unnikrishnan

**Rajya Sabha**

16. Smt. Purabi Mukhopadhyay
17. Shri N. K. P. Salve
18. Shri Tirath Ram Amla
19. Smt. Maimoona Sultan
20. Shri Patitpaban Pradhan
21. Prof. Rasheeduddin Khan
22. Shri Indradeep Sinha

**SECRETARIAT**

1. Shri H. G. Paranjpe—*Joint Secretary.*
2. Shri D. C. Pande—*Chief Financial Committee Officer.*
3. Shri K. C. Rastogi—*Senior Financial Committee Officer.*

## INTRODUCTION.

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twenty-First Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 110th Report (Sixth Lok Sabha) relating to Non-payment of Contributions to Trustees of Provident Fund Commissioners.

2. The Committee had in their 110th Report recommended that the Government should initiate effective steps to recover from the employers, the arrears of provident fund contribution which amounted to Rs. 10.76 crores as on 31st March, 1978 and that the existing procedure of review and waiver/reduction of damages might be examined critically and placed on a statutory footing so as to remove suspicion of collusion or corruption. The Committee had also pointed out that it could never have been the intention of Parliament that employers who hold back contributions payable to the trustees under the law should be afforded tax relief on such unpaid contributions. The Ministry of Labour/Finance have informed the Committee that necessary action to amend the existing provisions of the relevant Acts to give effect to the recommendations of the Committee is being taken. In this Action Taken Report, the Committee have desired that the proposed amendments should be finalised without further delay. The Committee have also recommended that the employers of exempted establishments should consult the recognised unions of employees to ascertain whether they are in favour of exemption being granted from the operation of the Employees Provident Fund Scheme. In establishments where there are no recognised unions, a procedure should be evolved to ascertain the wishes of the employees.

3. On 20 August, 1980, the following 'Action Taken Sub-Committee' was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports:

- |                                   |   |         |
|-----------------------------------|---|---------|
| 1. Shri Chandrajit Yadav—Chairman | } | Members |
| 2. Shri K. P. Singh Deo           |   |         |
| 3. Shri K. P. Unnikrishnan        |   |         |
| 4. Shri V. N. Gadgil              |   |         |
| 5. Shri Satish Agarwal.           |   |         |
| 6. Shri N. K. P. Salve            |   |         |

4. The Action Taken Sub-Committee of the Public Accounts Committee (1980-81) Considered and adopted the Report at their sitting held on 3 March, 1981. The Report was finally adopted by the Public Accounts Committee (1980-81) on 12 March, 1981.

5. For reference, facility and convenience, the recommendations and observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;

March 12, 1981

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Phalguna 21, 1902 (Saka).

CHANDRAJIT YADAV,

Chairman,  
Public Accounts Committee.

## **CHAPTER I**

### **REPORT**

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations/observations contained in their 110th Report (Sixth Lok Sabha) on paragraph 19.5 of the Report of the Comptroller & Auditor General of India for the year 1976-77, Union Government (Civil), Revenue Receipts Volume II, Direct Taxes, relating to non-payment of contributions to Trustees or Provident Fund Commissioners.

1.2. The 110th Report was presented to Lok Sabha on 30 March, 1979 and contained 14 recommendations/observations. Action Taken Notes on all these recommendations/observations have been received from Government and these have been broadly categorised as follows:—

- (i) Recommendations or observations that have been accepted by Government.

Sl. Nos. 4, 5, 10, 13 and 14.

- (ii) Recommendations or observations which the Committee do not desire to pursue in the light of the replies received from Government.

Sl. Nos. 2, 3, 11 and 12.

- (iii) Recommendations or observations replies to which have not been accepted by the Committee and which require reiteration.

S. No. 1, 6—9.

- (iv) Recommendations or observations in respect of which Government have furnished interim replies:

Nil

1.3. The Committee will now deal with action taken by Government on one of their recommendations.

**Exemption from the operation of the Employees Provident Fund Scheme 1952 (Section 17) (Sl. No. 1—para 117)**

1.4. Dealing with the exemption granted to establishments under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Committee, in para 117 of their 110th Report, had recommended as follows:—

“The Employees Provident Fund is a statutory fund. It is governed by the Employees Provident Fund Act, 1952. It extends to the whole of India except the State of Jammu & Kashmir which has a Provident Fund of its own. While enacting this law in 1952 six industries viz., iron and steel, textile, cement, paper, cigarettes and engineering industries were brought under the Act. Industries are being brought under the Act by Government progressively in a phased manner considering the existence or otherwise of retirement benefits of provident fund facilities for employees of the industry, the capacity of the industry to meet the obligations under the Act and the cost and problems of administering the Scheme in the industry. The Committee find that even when this Act is extended to an industry, all the establishments of that industry do not come under it but some establishments whose employees are already in enjoyment of provident fund benefits which are not less favourable than those which would have been available under the Employees Provident Fund Scheme, are allowed exemption from the Statutory Fund under section 17 of the Act. As on 31-3-1978 there were 3034 exempted establishments. The Ministry of Labour have assured the Committee that such exemptions do not in any way effect the interests of employees adversely. While the establishments brought under the Employees Provident Fund Act, contribute to the Statutory Fund, the ‘exempted’ establishments operate their own provident fund schemes. The Committee, however, feel that Government should aim at bringing all the industries within the purview of the Employees Provident Fund Scheme, 1952. They, therefore, suggest that Government should examine ways and means to bring about an end to this duality at an early date.”



1.5. In their Action Taken Note dated 28 September, 1979, the Ministry of Labour have stated:

“Section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 provides that establishments having their own Provident Fund Schemes conforming benefits equal to or more than those under the statutory scheme may seek exemption from the operation of the Employees Provident Fund Scheme, 1952 if their employees are in favour of such exemption. This provision has existed in the Act right from the beginning. The idea underlying this provision was to protect the more favourable benefits available to the employees. Two criteria have to be fulfilled before exemptions are granted viz., (i) that the employees are in favour of granting exemptions, (ii) they enjoy greater benefits under their own Schemes. The exemptions are also subject to the condition that the establishments comply with the investment pattern prescribed by the Central Government. The exempted establishments are also subject to inspection by the Employees' Provident Fund Organisation. They are required to maintain forms and registers prescribed by the Organisation. Establishments having their own provident fund schemes are also to set up Boards of Trustees for administering the Fund and these Boards would be under the control of the concerned Regional Provident Fund Commissioners. In the circumstances, it is apprehended that if the system of granting exemptions is discontinued, it may affect the interests of the workers adversely and therefore it may not be welcome to the employees working in the exempted establishments. It may, however, be mentioned that in the course of inspections by the Employees' Provident Fund Organisation cases of abuse of provident fund money by the exempted establishments have come to notice and appropriate action has been taken. It is felt that the interests of the working class would be served better if instead of doing away with exemptions the exempted establishments are subjected to more frequent and intensive inspections followed by prompt penal action in cases where it is called for and wherever necessary cancellation of exemption.

The Public Accounts Committee may be requested to reconsider their recommendation.”

1.6. In view of Government's reply that in the course of inspection by the Employees' Provident Fund Organisation, cases of abuse of provident fund money by the exempted establishments have come to the notice, the Committee recommend that the inspection machinery should be streamlined to prevent such malpractices and prompt action should be taken against the establishments found to be misusing provident fund money.

1.7. The Committee recommend that the employers of exempted Provident Fund Scheme, 1952 or they would like to join the establishments to ascertain whether the employees are in favour of exemption being granted from the operation of the Employees' Provident Fund Scheme, 1952 or they would like to join the statutory fund. In establishments where there are no recognised unions, a procedure should be evolved to ascertain the wishes of the employees in such cases.

*Recovery of amounts outstanding from the exempted establishments*  
(Sl. No. 6—Para 122)

1.8. In para 122 of the 110th Report (Sixth Lok Sabha), the Public Accounts Committee had recommended as under:

"The Committee find that while the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for (i) the prosecution of exempted establishments under Section 14(2A) thereof and (ii) cancellation of exemption for non-transfer of Provident Fund contributions to their Boards of Trustees as also for non-compliance with the conditions governing grant of exemption, it does not provide for recovery of the amounts outstanding from the exempted establishments as arrears of land revenue and for levy of damages. The Ministry of Labour have informed the Committee that amendments to the Act to that effect are "under consideration". In view of the fact that the exempted establishments are in arrears to the tune of Rs. 10.76 crores as on 31 March, 1978, the Committee recommend that Government should take an early decision in this matter and initiate effective steps urgently to recover these arrears."

1.9. In the action taken note dated 28 September, 1979, the Ministry of Labour have stated:—

"The recommendation is accepted. Necessary action to amend the Employees' Provident Funds and Miscellaneous Pro-

visions Act, 1952 to give effect to the recommendation is being pursued."

**Procedure of review and waiver/reduction of damages (S. Nos. 7 & 8)—Paras 123 & 124**

1.10. In paragraph 123, the Committee had recommended:

"Under Section 14-B of the Employees' Provident Fund Act, 1952 read with Government's Notification of 16th October, 1973, the powers to levy damages on employers who make default in the payment of contributions to the Employees Provident Fund vests with the Central Provident Fund Commissioner as also the Regional Provident Fund Commissioners. The proceedings to levy damages are quasi-judicial in nature. The Act does not provide for review of damages once levied. In their note dated 24 January, 1978, the Ministry of Law have opined that once a decision to levy damages has been taken, the authority levying the damages "becomes *functus officio* and cannot re-open the case." However, if the defaulting employer has got any grievance against the order of the competent authority and if he satisfies the competent authority subsequently as to why the previous order passed by that authority is not in accordance with the provisions of the Act, then it is, according to the Ministry of Law, open to the competent authority to decide the matter "as they deem fit". That Ministry have also made it clear that in such cases, Regional Provident Fund Commissioner "need not take the guidance from the Central Provident Fund Commissioner for his consideration". The Committee note with grave concern the fact that notwithstanding this enunciation of legal position by the Ministry of Law, there have been cases where the Central Provident Fund Commissioner went out of his way and suggested to the Regional Provident Fund Commissioner a reconsideration of the levy. It is, however, true that the Central Provident Fund Commissioner had not done so *suo moto* but only on receipt of representations from the aggrieved employers, either direct to him or through Government. Information furnished by the Ministry of Labour indicates that though there has been no case where damages were completely waived at the instance of the Central Provident Fund Commissioner or otherwise, there have been numerous instances where damages once levied were

reduced substantially. However, expedient the existing procedure may appear to be, the fact cannot be gainsaid that it lacks statutory backing in as much as the Central Provident Fund Commissioner has not been designated as the reviewing or appellate authority. The Committee accordingly recommend that the existing procedure of review and waiver/reduction of damages may be examined critically from all angles and placed on a statutory footing so as not to leave any scope for suspicion of collusion or corruption."

1.11. In the action taken note dated 28 September, 1979, the Ministry of Labour have stated:

"Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for recovery of damages not exceeding the amount of arrears in the cases where employers make belated payments of provident fund contributions to the Fund. The Central Provident Fund Commissioner and the Regional Provident Fund Commissioners have been authorised by the Central Government to levy and recover such damages as may be imposed. At present there is no provision in the Act for the aggrieved parties to go in appeal against the orders of the Regional Provident Fund Commissioners to a higher forum. They can, however, file appeals against such orders before the High Courts in their normal appellate jurisdiction. It is proposed to modify the existing provisions in Section 14-B so as to fix in the Act itself the quantum of penal interest (instead of the existing limit of 100 per cent of damages) to be recovered in proportion to the period of delay and the amount of provident fund arrears. This will obviate the necessity for filing of appeals and providing a separate forum for such appeals. Proposed amendment to the Act on the above lines is being processed.

Pending amendment of Section 14-B, the officers of the Employees' Provident Fund Organisation have again been advised to strictly comply with the provisions of Section 14-B and the Law Ministry's advice on the subject."

1.12. In paragraph 124, the Committee had observed:

"The Committee also find that Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952

provides for recovery of damages "not exceeding the amount of arrears" in the case of employers who make defaults in the payment of any contributions to the Fund. As has already been stated in the preceding paragraph, the damages have, in many cases, been substantially reduced on review. This shows that the existing provision in the Section confers too wide a discretion on the Regional Provident Fund Commissioners and the Central Provident Fund Commissioner in the matter of extent of damages that can be levied. The Committee feel that the discretion should be limited by prescribing either in the statute itself or in executive instructions norms for exercise of this discretion."

1.13. In their action taken note dated 28 September, 1979, the Ministry of Labour have stated:

"It is proposed to modify the existing provisions contained in Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 so as to fix in the Act itself the percentage of penal interest (instead of the existing limit of 100 per cent of damages) to be recovered in proportion to the period of delay and the amount of provident fund arrears. The proposed amendment is being processed."

1.14. As considerable time has since elapsed, the Committee desire that the proposed amendments to sections 14 and 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 should be finalised without delay.

*Tax Relief on unpaid Provident Fund Contributions (S. No. 9—  
Para 125)*

1.15. In paragraph 125 of the 110th Report (Sixth Lok Sabha) the Committee had observed:

"The Committee cannot but express their grave concern over the fact that income-tax authorities had been allowing tax relief even on provident fund contributions which, though payable, had not actually been paid by the employers to the trustees/Commissioners of Funds recognised under the Income-tax Act. Tax relief allowed to assesseees under Section 80-C (which includes deduction

allowed on provident funds as well) amounted to Rs. 21.77 crores in 1975-76 and Rs. 35.56 crores in 1976-77. Although it was explained during evidence that it was not possible to find out the tax relief in respect of Provident Fund alone, the Committee feel that the quantum of tax advantage obtained by the employers on that account is likely to be higher. The question whether in such cases tax relief can be granted depends on interpretation of the word "paid" occurring in Section 36(1)(iv) of the Income-tax Act. Under that Section of the Act deduction in the computation of income is allowable on any sum "paid" by the assessee as an employer by way of contribution towards a recognised provident fund. According to Section 43(2), "paid" means actually paid or "incurred" according to the method of accounting upon the basis of which the profits or gains are computed under the head "profits and gains of business or profession". The Committee note that the Ministry of Law had in their advice to the Ministry of Finance, *inter alia*, stated that "it is a well-settled principle of law that nobody could take advantage of its own default (and that) if the employer would like to have the benefit of deductions of sums paid by way of contributions towards the recognised Provident Fund, it should comply with the conditions, namely, that it should actually pay over the contributions to the Trustees". However, in the same advice while dealing with the justification for deductions claimed by employers even though the Provident Fund collections were not deposited with the Commissioners or Trustees of the Provident Fund, the Ministry of Law have stated that 'if an assessee maintains his accounts on the mercantile system and if it makes relevant book entries, the liability under the Act for payment is an accrued liability could claim deductions under Section 36(1)(iv)'. The Committee feel that it could never have been the intention of Parliament that employers who hold back contributions payable to the trustees under the law should instead of being taken to task for such a default be afforded tax relief on such unpaid contributions. They recommend that this matter may be closely examined by Government and if there is a lacuna in the law which permits an interpretation leading to such an irrational deduction from gross income for tax purposes, it should be removed forthwith."

1.16. In their action taken note dated 4 August, 1979, the Ministry of Finance have stated:

“The recommendation of the P.A.C. for the amendment of Section 36(1) (iv) of the Income-tax Act is acceptable in principle and would be processed keeping in view a similar recommendation made by the Direct Tax Laws Committee (Chokshi Committee) in Para 1—8.33 of their Final Report.”

1.17. As considerable time has since elapsed, the Committee desire that the proposed amendment to section 36 of the Income Tax Act should be finalised without delay.

## CHAPTER II

### RECOMMENDATIONS OR OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

#### Recommendation

The Committee have been informed that the Employees Provident Fund Organisation had been taking steps for recovery of provident fund dues. These steps include launching of prosecutions under Section 14, initiation of revenue recovery proceedings under Section 8, filing of complaints under Section 406/409 of the Indian Penal Code, bringing of default to the notice of the Employers' and Workers' Organisations including the trade unions, levy of penal damages etc. The power to levy damages was transferred from State Governments to the Regional Provident Fund Organisations with effect from 1st November, 1973. The Committee are, however, perturbed to find from the statistics furnished by the Ministry of Labour in respect of provident funds covered by the Employees Provident Fund Act, 1952 that as on 31st March, 1978, 86 exempted and 4,822 unexempted establishments in 15 States were in arrears to the tune of Rs. 10.76 crores and Rs. 20.30 crores respectively. As on 31st March, 1974, exempted and non-exempted establishments were in arrears to the extent of Rs. 6.04 crores and Rs. 19.05 crores respectively. Thus provident fund arrears have increased from Rs. 25.09 crores as on 31st March, 1974 to Rs. 31.06 crores in a period of five years. Attributing this increase in arrears to the fact that the number of industries covered by the Employees Provident Fund had gone up from 131 as on 31 March, 1974 to 154 as on 31 March, 1978, Labour Secretary pleaded during evidence that the percentage of arrears of provident fund in relation to the contributions received had gone down from 1.8 per cent on 31 March, 1974 to 1.1 per cent on 31 March, 1978. The Committee are not impressed by this argument because when more and more industries come under the ambit of the Act, the total amount of contributions that pour in is bound to go up.

The Committee consider that the time has come when, instead of taking comfort at relating to total contributions with the total arrears and falling into complacency, Government must come to grip with the problem of mounting provident fund arrears. They



therefore, recommend that a high level committee should be appointed to review the working of the Employees Provident Fund Organisation with special reference to the problem of mounting arrears of provident fund contributions. The Committee may also be required to go into the adequacies of the existing regulatory and penal provisions of the Employees' Provident Fund Act and Scheme and suggest if necessary amendment for the smooth and orderly functioning of the Employees' Provident Fund Scheme.

The Committee are of the opinion that responsibility should be fixed for not collecting the arrears particularly in such cases where no adequate action is taken inspite of the large arrears existing for a long time.

[S. No. 4 (Para 120) of Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)].

#### **Action Taken**

The recommendations that a high level Committee be appointed is accepted.

The Central Provident Fund Commissioner has been asked to fix responsibility in cases where adequate action has not been taken.

[Ministry of Labour O.M. No. H-11013 (2) /78-PFII,  
dated 28-9-1979]

#### **Recommendation**

A test check made by Audit in Andhra Pradesh, Assam, Maharashtra and West Bengal revealed 49 cases in Andhra Pradesh, Maharashtra and West Bengal where amounts totalling Rs. 153.74 lakhs were not paid to the trustees in respect of recognised provident fund. During evidence the representative of the Department of Revenue, however, informed the Committee that an analysis of the cases referred to in the Audit Paragraph had shown that only 32 cases related to recognised provident funds. In 31 out of these 32 cases, amounts were stated to have been paid within one year of the close of the accounting year. The Committee fail to understand why the Department could not bring the factual position to the notice of Audit before finalisation of the Audit Paragraph. The Committee recommend that in future all discrepancies of fact and figures contained in the Draft Audit Paragraph should be pointed out by the Department to the Audit soon after its receipt and these

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should be reconciled before finalisation and presentation of the Audit Report.

[Sl. No. 5 (Para 121) of Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)].

#### **Action Taken**

The observation/recommendation contained in the above para has been noted by the Ministry.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 5-5-1979].

#### **Recommendation**

The Committee regret that though under Rule 74(4) of the Income-tax Rules, the accounts of a recognised provident fund are required to be prepared at intervals of not more than 12 months and are open to inspection by the Income-tax authorities, no such inspection has ever been conducted. The Committee recommend that accounts of recognised provident funds should be inspected at fixed intervals to see that such funds are not put to any misuse by unscrupulous employers.

[S. No. 10 (Para 126) of Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)].

#### **Action Taken**

The Director of Inspection (IT & A) has been asked to evolve a proper system for the inspection of the accounts of the Provident funds keeping in view the system obtaining under E.P.F. Act and other similar enactments. Further action will be taken on receipt of report from the D.I. (IT & A).

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 5-2-1980].

#### **Further Action Taken**

The report received from the DI (IT & A) has since been considered by the Board. Taking into account the recommendation of the Honourable Committee made in the captioned para, Instruction No. 1357 (F. No. 215/11/78-ITA-II) dated 17-9-80 has been issued. A copy of the same is enclosed (Annexure).

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 25-9-1980].

## ANNEXURE

Instruction No. 1357

F. No. 215/11/78-IT (AII)

GOVERNMENT OF INDIA  
 Central Board of Direct Taxes

—————  
 New Delhi, the dated the 17th September, 1980.

To

All Commissioners of Income-tax

Sir,

**SUB.—Recognised Provident Funds—Inspection of Accounts of—  
 Instructions regarding—**

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

- (i) F. No. 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 22-6-78.

2. The Board had in its letter dated 12-2-1971 desired that Income-tax returns should be called for from the recognised provident funds and the same should be gone through to see that the rules have not been violated. Such verifications of accounts of the recognised provident funds were to be done every alternative year in Bombay and Calcutta charges and once in every four years in other charges.

3. As per Instruction No. 581 dated 2nd August, 1973, the Board desired that the following steps may be taken immediately so that the problem of infringement of rules is tackled effectively:—

- (i) A list of recognised provident funds, approved superannuation funds and approved gratuity funds may be prepared immediately, and a copy forwarded to the Board by 15th August, 1973.
- (ii) All these cases may be assigned under section 127 by the Commissioner to the Income-tax Officer (Trust Circle).

If one Income-tax Officer is not able to deal with these cases another ward or wards may be created.

- (iii) Assessment proceedings may be initiated by the Income-tax Officer by issuing notice under section 139(2) for the current assessment year. If in any of the cases it is found, on the basis of the current scrutiny, that there has been infringement of the provisions in any assessment year, appropriate proceedings may be taken.

4. 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's office as the verification on the basis of which the fund was granted exemption was also done in the offices of the Commissioners. This instruction detailed five steps to be followed so as to tackle this problem effectively. These are as under:—

- “(a) A letter as per Annexure-I should be issued to the trustees of all recognised provident funds within three months of the end of each financial year;
- (b) The information received should be examined so as to find out whether the conditions under which the fund has been recognised continue to be fulfilled. In particular it should be seen whether the employer is in default of any payment to the trustees of either the employer's or employees' contribution or both;
- (c) If it is found that any of the conditions is not fulfilled and/or the employer is in default of payment, notice as to why recognition be not withdrawn as provided in the rules should be issued to the employers and the trustees of the fund;
- (d) If the requisite particulars are not furnished even after affording sufficient time for the purpose, a show cause notice should be issued;
- (e) On receipt of the reply, or after giving adequate opportunity to furnish the reply, the issue should be examined on merits and if it is found that the recognition granted should be withdrawn an order to that effect should be passed.”

5. The Public Accounts Committee in their 110th Report (1978-79) have, however, observed in paragraph 126 as under:—

“The Committee regret that though, under Rule 74(4) of the Income-tax Rules, the accounts of a recognised provident fund are required to be prepared at intervals of not more than 12 months and are open to inspection by the Income-tax authorities, no such inspection has ever been conducted. The Committee recommend that accounts of recognised provident funds should be inspected at fixed intervals to see that such funds are not put to any misuse by unscrupulous employers.”

6. These observations of the Public Accounts Committee were examined and the Board has reviewed the position. The instructions already issued on the subject cover all the requirements set out by the PAC in the recommendation referred to above.

7. In spite of clear instructions on the subject, the Board find that no worthwhile action is being taken to ensure that accounts of the recognised provident funds are called for and inspected in order to ensure that the funds comply with the statutory requirements. The Board, therefore, desire that the instructions already issued on the subject should be strictly followed and steps taken for considering withdrawal of provident funds wherever necessary.

8. As a feed-back on the subject, the Board desire to have a report on the action taken for inspection of provident fund accounts during the Financial Year 1979-80 as per Annexure by 15-10-1980. A report on the same lines is to be forwarded in future for every completed financial year which should reach by 15th of May of every year. The reports should be sent to the DI (Income-tax and Audit) who will monitor them and report to the Board.

9. Similar reports should be sent for Approved Superannuation Funds and Approved Gratuity Funds also.

Yours faithfully,

Sd/-

(V. B. Srinivasan)

Secretary,

Central Board of Direct Taxes.

Copy to:—

1. Director of Inspection (IT & A). He will please maintain a watch over these reports and send his report to the Board for 1979-80 by 15th November, 1980 and then by the 15th June of every year.
2. Directors of Inspection (IT)/R & S/P & P R/(Inv.), New Delhi.
3. Director of O & M Services (Income-tax), 1st Floor, Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi (5 copies).
4. All officers & Sections of I.T. Wing of CBDT.
5. Comptroller and Auditor General of India, New Delhi (10 copies).
6. Bulletin Section of Dte. of Ins. (RS & P), New Delhi (5 copies).
7. Director of Training, IRS (Direct Taxes), Staff College, Nagpur (5 copies).
8. Shri P. K. Kartha, Joint Secretary, Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs), New Delhi.

Sd/-

(V. B. Srinivasan)

Secretary.

Central Board of Direct Taxes

#### ANNEXURE I

CIT's Charge\_\_\_\_\_

*Report on review of cases of Recognised Provident Funds/  
Approved Superannuation Funds/Approved Gratuity  
Funds during the Financial Year\_\_\_\_\_*

1. No. of recognised/approved funds in the charge as on 1-4-19
2. No. of funds in which the inspections were carried out during the Financial Year
3. No. in which no defects were found.

4. No. in which defects were found.
5. No. of cases out of 4 above in which action has been initiated.
6. No. of cases out of 5 in which recognition/approval has been withdrawn (Please attach a list giving suitable remarks).
7. No. of cases other than those in No. 5 where recognition/approval has been withdrawn during the year i.e. cases started in earlier years. (Please attach a list and give suitable).
8. General remarks, if any.

Signature of CIT \_\_\_\_\_

Designation \_\_\_\_\_

Date \_\_\_\_\_

### **Recommendation**

The Committee are of the view that if administration of various funds operating in the country is to be improved, much will depend on whether and if so to what extent the Employers Provident Funds Organisation and the Income-tax Department are able to forge a coordinated approach to tackle various problems including the question of recovery of arrears of provident fund contributions. Surprisingly enough, there is at present no coordination machinery. Even lists of defaulters are not being exchanged between the Regional Provident Fund Commissioners and the Commissioners of Income-tax. The Committee recommend that a body consisting of representatives of the Ministry of Labour and Finance may be set up soon to chalk out the modalities with a view to bring about greater harmony between the work of the two organisations.

[S. No. 13 (Para 129) of the Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)].

### **Action Taken**

A Committee has been constituted accordingly consisting of the Central Provident Fund Commissioners, Deputy Secretary (Social Security), Ministry of Labour, CIT, Delhi-1 and Director (IT) in

the Central Board of Direct Taxes. The Committee has held its meeting and is collecting material to work out its further line of action.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-PAC-II, dated 5-2-1980].

### **Recommendation**

The Committee note that the Central Board of Direct Taxes issued a circular on 12th February, 1978 to the effect that verification of accounts of the recognised Provident Funds should be done very alternative year in Bombay and Calcutta charges and once in every four years in other charges. With a view to tackle the problem of verification of accounts of recognised provident funds effectively, the Board issued another circular to the Commissioners of Income-tax on 2nd August, 1973 calling for a list of recognised provident fund/ approved gratuity funds by 15th August, 1973. Before issuing the second circular in 1973, the Board did not verify whether the first circular of 1971 had been implemented by the Commissioners and if so to what extent. On 22nd June, 1978, the Board issued yet another circular. This circular stipulated a procedure for withdrawal of recognition but did not call for lists of provident funds. It is indeed surprising that the documents which were considered essential and were called for as back as in 1973 were not even mentioned much less insisted upon, in the circular issued by the Board in 1978. The representative of the Board conceded during evidence that the Board had "not monitored the effect of this (1973) circular or whether the field officers are complying with the circular or not". The Committee need hardly emphasise that with the issue of instructions alone, Board's duty does not come to an end. They must also see to it that an effective Monitoring system is evolved to ensure that whatever instructions are issued are implemented otherwise the very purpose of issuing such instructions could be defeated.

[S.No. 14(Para 130) of the Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)]

### **Action Taken**

Ordinarily, it is taken to be the duty of all the Supervisory officials in the I.T. Department as well as of the C.B.D.T. to see that the Board's Instructions are followed by the field offices. It is one of the functions of the IACs to ensure this in course of their inspection of the work of the ITOs. Similarly, the Cs.I.T. and Ds.I as well as the Members of the CBDT during the course of their tours to the



Income-tax Offices see whether the instructions issued by the CBDT are being implemented. The Internal Audit Parties also carry out this function while checking the assessment orders. There is an Inspection Division functioning directly under the CBDT which also look into this aspect. To supplement the work of this division, System Review Teams have also been set up at important places like Bombay, Madras, Calcutta, Ahmedabad and Delhi to ensure, *inter-alia*, that Board's instructions on important matters are being followed in the field. The valuable observations made by the Committee in this regard have been duly noted and are being kept in view.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 5-2-1980]

## CHAPTER III

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

#### Recommendation

Since under Section 36(1)(iv) of the Income-tax Act, 1961 any sum paid by an assessee as an employer by way of contribution to a recognised provident fund (subject to prescribed limits) is allowed as a deduction in computing the income of the assessee, the question of grant of recognition to a provident fund by the Income-tax authority comes in. Section 2(38) of the Income-tax Act defines a recognised provident fund to mean, "a provident fund which has been and continues to be recognised by the Commissioner of Income-tax in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a Scheme framed under the Employees Provident Fund Act, 1952". In other words, a provident fund established under the Employees Provident Fund Act, 1952 is deemed to be a recognised provident fund for the purpose of Income-tax and no separate recognition is necessary therefor. By 31-3-1978, income tax authorities have granted recognition to 4,860 out of 5048 provident funds who had applied for recognition. The Committee are surprised to find that as on 31 March, 1977, the Income-tax authorities had a backlog of 188 applications for recognition. Of these, 123 applications are pending for more than a year. The oldest application is that of Assam State Warehousing Corporation. It is stated to have been pending with the Income-tax authorities for more than 15 years. The Finance Secretary was frank enough to concede in evidence that the delay in this particular case was "indefensible".

The Committee have been informed that the Central Board of Direct Taxes has since issued instructions to the Commissioners of Income-tax that all applications for recognition/approval of the provident funds which were received before 1 April 1978 "must be disposed of by 30 September, 1978". The Committee would like to have a report whether the target of 30 September, 1978 laid down for the disposal, of the entire backlog of 188 pending applications has been

actually kept. They also desire that the causes for delays of one year or more in the disposal of applications should be investigated and if any officer is found to have been responsible for it without adequate reasons, action should be taken against him. They further recommend that as delay in grant of recognition results in loss of benefit of deduction under the Income-tax Act the procedure for dealing with such applications should be streamlined so as to ensure that an application for recognition is disposed of within three months from the date of its receipt.

[(S. No. 2 (Para 118) of the Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)]

### **Action Taken**

Out of 188 applications pending for disposal on 31st March, 1977, 88 applications had been disposed of by 30th September, 1978. Causes for delays in disposal of the applications are being ascertained. The Commissioners of Income-tax have been asked *vide* Instruction No. 1190(F. No. 216/6/78-ITA-II) dated the 28th June, 1978, to dispose of all such applications within three months of the receipt thereof in future.

[Ministry of Finance (Deptt. of Revenue) O.M. 241/1/79-A & PAC-II, dated 20-3-1980]

### **Further Action Taken**

134 applications out of 188 pending as on 31-3-1977 have since been disposed of leaving a balance of 54 applications. 48 out of these 54 applications have been pending due to the delay on the part of the applicants in furnishing the required information.

Causes for delay have been looked into in all these 188 cases. In 13 cases, delay was not more than one year. Out of the remaining cases, in 141 cases the delay was on the part of the applicants in furnishing information and in compliance of various requirement. No action has been found necessary in 25 cases, and action is being taken for delay 9 cases.

[Ministry of Finance (Deptt. of Revenue) O.M. No: 241/1/79-A & PAC-II, dated 8-9-1980]

### **Recommendation**

The Regional Provident Fund Commissioner, West Bengal, the Andaman & Nicobar Islands, Calcutta and the Commissioner of Income-tax, West Bengal, Calcutta have, in a note, to the Committee

urged that with a view to ensuring smooth functioning of the trust funds of the 'exempted' or 'relaxed' establishments and for avoiding unnecessary complications, such trust funds, like the statutory fund, should be given automatic recognition by the Income-tax authorities. It has also been suggested to the Committee that Section 2 (38) of the Income-tax Act may be amended to include such provident funds as may be maintained by the exempted or relaxed establishments with the approval of the provident fund authorities. The Committee recommend that these suggestions may be examined by Government in the interest of smooth and efficient management of provident funds.

[S. No. 3 (Para 119) of the Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)]

#### **Action Taken**

The above recommendation is under examination of the Ministry in the light of the recommendations contained in the Report of the Direct Tax Laws Committee (Chokshi Committee) on the subject of recognition of Provident Funds.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 15-2-1980]

#### **Recommendation**

Non-payment of provident fund contributions to the Provident Fund Commissioners or the Trustees is a clear violation of the conditions governing grant of recognition under the Income-tax Act. Yet, despite large-scale violation of this condition on the part of the employers, recognition was not withdrawn by the Department of Revenue even in a single case during the last three years. This is to say the least, deplorable. The Committee would like the Department to use the instrument of derecognition unhesitatingly to compel the recalcitrant employers to comply with the statutory requirement regarding payment of provident fund contributions to the Provident Fund Commissioners or the Trustees.

[S. No. 11 (Para 127) of the Appendix to 110th Report of the PAC (Sixth Lok Sabha)]

#### **Action Taken**

The derecognition has to be enforced with adequate safeguards against any possible harm to the employees in such cases. A Committee consisting of the representatives of Ministry of Labour, Central Provident Fund Commissioner and Income-tax Department has

already been set up in compliance to the recommendation at para 129 of this Report. The question of derecognition of the provident fund on account of the defaults committed by the employers in the payments of contributions will also be taken up by this Committee as it may directly affect the interest of the employees as well. The question will be further examined in the light of their recommendations.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 5-2-1980]

### **Recommendation**

While the Employees Provident Fund and Miscellaneous Provisions Act, 1952 contains penal provisions to deal with cases of default in payment of contributions in respect of funds covered under that Act, the Income-tax Act does not provide any penalties for violation of the conditions for the grant of the recognition of the fund except derecognition of the fund which only has a future effect. Moreover, the irregular deductions claimed and allowed in the past do not stand affected as a result of derecognition. The Committee recommend that with a view to provide a deterrent to unscrupulous employers who may be tempted to misuse the employees provident fund, the Income-tax Act should also provide for some form of penalty including prosecution to be imposed on the employers in the event of non-breach of the terms of recognition.

[S. No. 12 (Para 128) of the Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)]

### **Action Taken**

The above recommendation is under consideration of the Ministry alongwith a similar recommendation made by the Direct Tax Laws Committee (Chokshi Committee) contained in para II—14.11 of its Final Report.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-A & PAC-II, dated 15-2-1980]

## CHAPTER IV

### RECOMMENDATIONS OR OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

#### Recommendation

The Employees Provident Fund is statutory fund. It is governed by the Employees Provident Fund Act, 1952. It extends to the whole of India except the State of Jammu and Kashmir which has a Provident Fund of its own. While enacting this law in 1952 six industries viz., Iron and Steel, textile, cement, paper, cigarettes and engineering industries were brought under the Act. Industries are being brought under the Act by Government progressively in a phased manner considering the existence or otherwise of retirement benefits or provident fund facilities for employees of the industry, the capacity of the industry to meet the obligations under the Act and the cost and problems of administering the scheme in the industry. The Committee find that even when this Act is extended to an industry, all the establishments of that industry do not come under it but some establishments whose employees are already in enjoyment of provident fund benefits which are not less favourable than those which would have been available under the Employees Provident Fund Scheme, are allowed exemption from the statutory Fund under section 17 of the Act. As on 31-3-1973 there were 3034 exempted establishments. The Ministry of Labour have assured the Committee that such exemptions do not in any way affect the interests of employees adversely. While the establishments brought under the Employees Provident Fund Act, contribute to the Statutory Fund, the 'exempted' establishments operate their own provident fund Schemes. The Committee, however, feel that Government should aim at bringing all the industries within the purview of the Employees Provident Fund Scheme, 1952. They, therefore, suggest that Government should examine ways and means to bring about an end to this duality at an early date.

[S. No. 1 (Para 117) of Appendix VII to 110th Report of the PAC  
(Sixth Lok Sabha)]

### **Action Taken**

Section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 provides that establishments having their own Provident Fund Schemes conferring benefits equal to or more than those under the statutory scheme may seek exemption from the operation of the Employees Provident Fund Scheme, 1952 if their employees are in favour of such exemption. This provision has existed in the Act right from the beginning. The idea underlying this provision was to protect the more favourable benefits available to the employees. Two criteria have to be fulfilled before exemptions are granted viz., (i) that the employees are in favour of granting exemptions, (ii) they enjoy greater benefits under their own Schemes. The exemptions are also subject to the condition that the establishments comply with the investment pattern prescribed by the Central Government. The exempted establishments are also subject to inspection by the Employees' Provident Fund Organisation. They are required to maintain forms and registers prescribed by the Organisation. Establishments having their own provident fund schemes are also to set up Boards of Trustees for administering the Fund and these Boards would be under the control of the concerned Regional Provident Fund Commissioners. In the circumstances, it is apprehended that if the system of granting exemptions is discontinued, it may affect the interests of the workers adversely and therefore it may not be welcome to the employees working in the exempted establishments. It may, however, be mentioned that in the course of inspections by the Employees' Provident Fund Organisation cases of abuse of provident fund money by the exempted establishments have come to notice and appropriate action has been taken. It is felt that the interests of the working class would be served better if instead of doing away with exemptions the exempted establishments are subjected to more frequent and intensive inspections followed by prompt penal action in cases where it is called for and wherever necessary cancellation of exemption.

The Public Accounts Committee may be requested to reconsider their recommendation.

[Ministry of Labour O.M. No. H-11013 (2)/78-PFII  
dated 28-9-1979]

### **Recommendation**

The Committee find that while the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for (i) the prose-

cution of exempted establishments under Section 14(2A) thereof and (ii) cancellation of exemption for non-transfer of Provident Fund contributions to their Boards of Trustees as also for non-compliance with the conditions governing grant of exemption it does not provide for recovery of the amounts outstanding from the exempted establishments as arrears of land revenue and for levy of damages. The Ministry of Labour have informed the Committee that amendments to the Act to that effect are "under consideration". In view of the fact that the exempted establishments are in arrears to the tune of Rs. 10.76 crores as on 31 March, 1978, the Committee recommend that Government should take an early decision in this matter and initiate effective steps urgently to recover these arrears.

[S. No. 6 (Para 122) of Appendix VII to 110th Report of the PAC  
(Sixth Lok Sabha)]

#### **Action Taken**

The recommendation is accepted. Necessary action to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to give effect to the recommendation is being pursued.

[Ministry of Labour O.M. No. H-11013 (2)/78-PFII  
dated 28-9-1979]

#### **Recommendation**

Under Section 14-B of the Employees' Provident Fund Act, 1952 read with Government's Notification of 16th October, 1973, the powers to levy damages on employers who make default in the payment of contributions to the Employees Provident Fund vests with the Central Provident Fund Commissioner as also the Regional Provident Fund Commissioners. The proceedings to levy damages are quasi-judicial in nature. The Act does not provide for review of damages once levied. In their note dated 24 January, 1978, the Ministry of Law have opined that once a decision to levy damages has been taken, the authorities levying the damages "becomes functus officio and cannot re-open the case." However, if the defaulting employer has got any grievance against the order of the competent authority and if he satisfies the competent authority subsequently as to why the previous order passed by that authority is not in accordance with the provisions of the Act, then it is, according to the Ministry of Law, open to the competent authority to decide the matter "as they deem fit". That Ministry have also made it clear that in such cases, Regional Provident Fund Commissioner "need not take the guidance from the Central Provident



Fund Commissioner for his consideration". The Committee note with grave concern the fact that notwithstanding this enunciation of legal position by the Ministry of Law, there have been cases where the Central Provident Fund Commissioner went out of his way and suggested to the Regional Provident Fund Commissioner a reconsideration of the levy. It is, however, true that the Central Provident Fund Commissioner had not done so *suo moto* but only on receipt of representations from the aggrieved employers, either direct to him or through Government. Information furnished by the Ministry of Labour indicates that though there has been no case where damages were completely waived at the instance of the Central Provident Fund Commissioner or otherwise, there have been numerous instances where damages once levied were reduced substantially. Howsoever, expedient the existing procedure may appear to be, the fact cannot be gain said that it lacks statutory backing in as much as the Central Provident Fund Commissioner has not been designated as the reviewing or appellate authority. The Committee accordingly recommend that the existing procedure of review and waiver/reduction of damages may be examined critically from all angles and placed on a statutory footing so as not to leave any scope for suspicion of collusion or corruption.

[S. No. 7 (Para 123) of Appendix VII to 110th Report of the PAC  
(Sixth Lok Sabha)]

#### **Action Taken**

Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for recovery of damages not exceeding the amount of arrears in the cases where employers make belated payments of provident fund contributions to the Fund. The Central Provident Fund Commissioner and the Regional Provident Fund Commissioners have been authorised by the Central Government to levy and recover such damages as may be imposed. At present there is no provision in the Act for the aggrieved parties to go in appeal against the orders of the Regional Provident Fund Commissioners to a higher forum. They can, however, file appeals against such orders before the High Courts in their normal appellate jurisdiction. It is proposed to modify the existing provisions in Section 14-B so as to fix in the Act itself the quantum of penal interest (instead of the existing limit of 100 per cent of damages) to be recovered in proportion to the period of delay and the amount of provident fund arrears. This will obviate the necessity for filing of appeals and providing a separate forum for such appeals. Proposed amendment to the Act on the above lines is being processed.

Pending amendment of Section 14-B, the officers of the Employees' Provident Fund Organisation have again been advised to strictly comply with the provisions of Section 14-B and the Law Ministry's advice on the subject.

[Ministry of Labour O.M. No. H-11013 (2) /78-PFII  
dated 28-9-1979]

### **Recommendation**

The Committee also find that Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for recovery of damages "not exceeding the amount of arrears" in the case employers who make defaults in the payment of any contributions to the Fund. As has already been stated in the preceding paragraph, the damages have, in many cases, been substantially reduced on review. This shows that the existing provision in the Section confers too wide a discretion on the Regional Provident Fund Commissioners and the Central Provident Fund Commissioner in the matter of extent of damages that can be levied. The Committee feel that the discretion should be limited by prescribing either in the statute itself or in executive instructions norms for exercise of this discretion.

[S. No. 8 (Para 124) of Appendix VII to 110th Report of the PAC  
(Sixth Lok Sabha)]

### **Action Taken**

(Please see comments of the Ministry of Labour against recommendation contained in para 123).

It is proposed to modify the existing provisions contained in Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 so as to fix in the Act itself the percentage of penal interest (instead of the existing limit of 100 per cent of damages) to be recovered in proportion to the period of delay and the amount of provident fund arrears. The proposed amendment is being processed.

[Ministry of Labour O.M. No. H-11013 (2) /78-PFII  
dated 28-9-1979]

### **Recommendation**

The Committee cannot but express their grave concern over the fact that income-tax authorities had been allowing tax relief even

on provident fund contributions which, though payable, had not actually been paid by the employers to the trustees Commissioners of Funds recognised under the Income-tax Act. Tax relief allowed to assesseees under Section 80-C (which includes deduction allowed on provident funds as well) amounted to Rs. 21.77 crores in 1975-76 and Rs. 35.56 crores in 1976-77. "Although, it was explained during evidence that it was not possible to find out the tax relief in respect of Provident Fund alone, the Committee feel that the quantum of tax advantage obtained by the employers on that account is likely to be higher." The question whether in such cases tax relief can be granted depends on interpretation of the word "paid" occurring in Section 36(1) (iv) of the Income-tax Act. Under that Section of the Act deduction in the computation of income is allowable on any sum "paid" by the assessee as an employer by way of contribution towards a recognised provident fund. According to Section 43(2), "paid" means actually paid or "incurred" according to the method of accounting upon the basis of which the profits or gains are computed under the head "profits and gains of business or profession." The Committee note that the Ministry of Law had in their advice to the Ministry of Finance, *inter alia*, stated that "it is a well-settled principle of law that nobody could take advantage of its own default (and that) if the employer would like to have the benefit of deductions of sums paid by way of contributions towards the recognised Provident Fund, it should comply with the conditions, namely, that it should actually pay over the deductions on account of the employees as well as its own contributions to the Trustees". However, in the same advice while dealing with the justification for deductions claimed by employers even though the Provident Fund collections were not deposited with the Commissioners or Trustees of the Provident Fund, the Ministry of Law have stated that 'if an assessee maintains his accounts on the merchantile system and if it makes relevant book entries, the liability, under the Act for payment is an accrued liability could claim deductions under Section 36(1) (iv)'. The Committee feel that it could never have been the intention of Parliament that employers who hold back contributions payable to the trustees under the law should instead of being taken to task for such a default be afforded tax relief on such unpaid contributions. They recommend that this matter may be closely examined by Govt. and if there is a lacuna in the law which permits an interpretation leading to such an irrational deduction from gross income for tax purposes, it should be removed forthwith.

[S. No. 9 (Para 125) of Appendix VII to 110th Report of the PAC (Sixth Lok Sabha)]

### **Action Taken**

The recommendation of the P.A.C. for the amendment of Section 36(1)(iv) of the Income-tax Act is acceptable in principle and would be processed keeping in view a similar recommendation made by the Direct Tax Laws Committee (Chokshi Committee) in Para 1-8.33 of their Final Report.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/1/79-  
A & PAC-II, dated 4-8-1979]

**CHAPTER V**

**RECOMMENDATIONS OR OBSERVATIONS IN RESPECT OF  
WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES**

**NIL.**

NEW DELHI;  
March 12, 1981.  

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Phalguna 21, 1902 (Saka)

CHANDRAJIT YADAV,  
Chairman,  
Public Accounts Committee.

## APPENDIX

### Statement of Conclusions/Recommendations

Sl. No.	Para of Report	Ministry / Deptt.	Conclusion/Recommendations
1.	1.6	Ministry of Finance (Department of Revenue)	<p>In view of Government's reply that in the course of inspections by the Employees' Provident Fund Organisation, cases of abuse of provident fund money by the exempted establishments have come to notice, the Committee recommend that the inspection machinery should be streamlined to prevent such malpractices and prompt action should be taken against the establishments found to be mis-using provident fund money.</p>
2.	1.7	-Do-	<p>The Committee recommend that the employers of exempted establishments should consult the recognised unions in such establishments to ascertain whether the employees are in favour of exemption being granted from the operation of the Employees' Provident Fund Scheme, 1952 or they would like to join the statutory fund. In establishments where there are no recognised unions, a procedure should be evolved to ascertain the wishes of the employees in such cases.</p>

3. 1.14 .Do-  
 As considerable time has since elapsed, the Committee desire that the proposed amendments to sections 14 and 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 should be finalised without delay.

4. 1.17 -Do-  
 As considerable time has since elapsed, the Committee desire that the proposed amendment to section 36 of the Income Tax Act should be finalised without delay.

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