

**TWO HUNDRED AND FOURTH  
REPORT**

**PUBLIC ACCOUNTS COMMITTEE  
(1983-84)**

**(SEVENTH LOK SABHA)**

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

**MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

[Paragraph 2.11 (ii) of the Report of the Comptroller and Auditor  
General of India for the year 1981-82, Union Government (Civil),  
Revenue Receipts, Volume II, Direct Taxes]

*Presented in Lok Sabha on*  
*Laid in Rajya Sabha on*

**LOK SABHA SECRETARIAT  
NEW DELHI**

*April 1984; Clarendon 1906 (56) (a)*

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CORRIGENDA TO TWO HUNDRED AND FOURTH  
REPORT OF THE PUBLIC ACCOUNTS COMMITTEE  
(1983-84).

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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
v	3	4	in the	in
v	4	1	L.P.F.	E.P.F.
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2	1.7	5	Substitute the existing line as follows: "was computed by I.A.C. Special Range-I on 23 January, 1981 at a loss"	
2	1.7	7	sum	a sum
5	1.17	1	Com-	Commissioner. But here we are talking about the trustees of
6	1.23	9	contribution	contribution
7	1.24	17	hal	had
8	2.1	15	Delete the word	"em-"
10	2.7	7	Commission	Commissioner
18	3.23	19	Administrative	Administration
22	4.13	8	manners	manner
36	6.20	3	emolpyees	employers
39	6.32	8	insurance	issuance
41	6.38	11	filming	filing
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50	6.71	1	say	stay
53	-	4	Amount	Amount(in lakhs)
60	-	16	appraised	apprised
61	-	26	The	be
63	-	3	to	too
64	-	9	than	then
64	-	15	wheather	whether
65	-	14	be	the

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### PART II\*

Minutes of the sittings of the Public Accounts Committee  
(1981-82) held on :

(i) 26 October, 1983

(ii) 2 April, 1984

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**PUBLIC ACCOUNTS COMMITTEE  
(1983-84)**

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**Shri Sunil Maitra**

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1. Shri T. R. Krishnamachari—*Joint Secretary*
2. Shri H. S. Kohli—*Chief Financial Committee Officer*
3. Shri R. C. Anand—*Senior Financial Committee Officer*

## **INTRODUCTION**

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Fourth Report of the Committee on paragraph 2.11 (ii) of the Report of the Comptroller and 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'.

2. The Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes was laid on the Table of the House on 4 April, 1983.

3. In the case of an assessee company, the sum debited to the profit and loss account as interest on account of payment made to the Commissioner of Provident Fund for failure to deposit the contribution to the provident fund in time was deducted by the assessing officer in the computing the company's total income. This was objected to by Audit on the ground that the interest comprised 'damages' levied under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for delayed payment of Provident Fund contributions. 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 Act, the present provisions, as they stand, can not be construed to mean that the assessee had paid a penalty violating any statutory provisions. In order to set the matter beyond any margin of doubt, the Committee have desired Government to consider the feasibility of making an amendment to the Employees' Provident Fund Act, 1952 to bring out unambiguously the penal nature of the damages levied under Section 14-B thereof.

4. The existing penal provisions of the L.P.F. Act do not apply to the trustees of exempted provident funds. The Committee have suggested that in view of the possibility of wide-spread 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.

5. As on 31 March, 1983, EPF arrears due from 6,797 unexempted establishments amounted to Rs. 42.83 crores. The arrears due from 85 exempted and relaxed establishments as on 31 December, 1982 amounted to Rs. 23.8 crores. The total amount of contributions due for credit to the Assam Tea Plantation Provident Fund was Rs. 2.57 crores as on 31 March, 1983. Expressing concern over such heavy E.P.F. arrears, the Committee have suggested that a monitoring cell may be set up in the E.P.F. Organisation and in each Regional Provident Fund Commissioner's Office to pursue actively all cases wherein the arrears exceed Rs. 5 lakhs.

In view of the mounting arrears of provident fund contributions on the one hand and expanding scope and coverage of the scheme on the other, the Committee have desired 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.

6. The employees' provident fund scheme is a statutory one. The employees have no option but to allow deductions to be made from their wages for contributions to the provident fund trusting that their savings would be safe and secure in the hands of Provident Fund Organisation. The Organisation has, therefore, a special responsibility to ensure security of the contributions in cases where the employers persistently default in payment. The Ministry have indicated that although no concrete proposal has emerged so far, the question of creating an insurance fund has been engaging the attention of Government for some time. The Committee have desired to be informed of the decision taken by Government on the aforesaid proposal.

7. The Public Accounts Committee (1983-84) examined this paragraph at their sitting held on 26 October, 1983. The Committee considered and finalised this Report at their sitting held on 2 April, 1984. Minutes of the sitting of the Committee form Part II\* of the Report.

8. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix III). For facility of reference these have been printed in thick type in the body of the Report.

9. The Committee place on record their appreciation of the assistance rendered to them in the examination of this paragraph by the office of the Comptroller and Auditor General of India.

10. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) for the cooperation extended by them in giving information to the Committee.

SUNIL MAITRA

*Chairman*

*Public Accounts Committee*

NEW DELHI;

April 9, 1984

Chaitra 20, 1906 (Saka)

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## **REPORT**

### **CHAPTER I**

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

##### **Audit Paragraph**

Under the Income-tax Act, 1961, any expenditure not laid out or expended wholly and exclusively for the purpose of business is not allowable in computing business income. It has been judicially held that expenditure which was incurred in connection with proceeding relating to breach of law was not due to any exigency of the business carried on by an assessee, and would not be deductible even if incurred for the purpose of business.

1.2 In the accounts of a company relevant to the assessment year 1978-79 (completed by an Inspecting Assistant Commissioner in January 1981) a sum of Rs. 1,36,143 was 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 contributions to provident fund, in time. This expenditure was deducted by the Income-tax Officer in computing the company's total income. As the payment was made for infringement of statutory orders and it was not due to any exigency of the business, it would not constitute admissible expenditure. The incorrect deduction allowed on this account led to excess computation and carry forward of loss of Rs. 1,36,143 with a potential tax effect of Rs. 78,621.

1.3 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 payments of any contribution to the fund. As this provision conferred too wide a discretion on the departmental officers in the matter of extent of damages that can be levied, the Public Accounts Committee in para 124 of their 110th Report (Sixth Lok Sabha) felt that the discretion should be limited by prescribing either in the statute itself or in the executive instructions norms for exercise of discretion. In their Action Taken Note dated 28 September 1979 the Ministry of Labour stated that it was proposed to modify the existing provision contained in Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 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 provident fund arrears.

1.4 The Public Accounts Committee in para 114 of their 21st Report (7th Lok Sabha) further observed that the proposed amendments to

**Section 14 and 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 should be finalised without delay.**

1.5 No amendment to these provisions seems to have been made so far.

1.6 While not accepting the objection, the Ministry of Finance have stated that in the absence of any modification to Section 14-B of the Employee's Provident Fund Act, the present provisions, as they stand, cannot be construed to mean that the assessee had paid a penalty violating any statutory provisions.

[Paragraph 2. 11 (ii) of the Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume II-Direct Taxes (pp. 74-76)].

1.7 The assessee in the case, cited in the Audit paragraph—M/s Hindustan Spinning and Weaving Mills Limited—was assessed in the status of a company in the charge of Commissioner of Income-tax, Bombay City I. For the assessment year 1978-79, the income of the company was noticed the sum of Rs. 1,36,143 was debited by the company in the of Rs. 1.40 crores. During the course of Audit in December, 1981 it was noticed that sum of Rs. 1,36,143 was debited by the company in the profit and loss account for the year 1977-78, relevant to the assessment year 1978-79 on account of interest paid to the Commissioner of Provident Fund, for failure to deposit contributions to the Employees Provident Fund in time. This expenditure was deducted by the assessing officer while computing the income of the assessee.

1.8 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 and exclusively for the purposes of the profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" i.e. business income.

1.9 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(i) (iv) of the Income-tax Act, 1961.

1.10 Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for imposition of damages "not exceeding the amount of arrears" in the case of employers who default in the payment of provident fund contributions. According to Audit, the so called 'interest' of Rs. 1,36,143 comprised "damages" levied under Section 14-B for delayed payment of provident fund contributions.

1.11 In the following case-laws, the Central Board of Direct Taxes contended before the High Courts that damages paid by an assessee under Section 14-B of the Employees' Provident Fund and Miscellaneous



**Provisions Act, 1952 for non-payment of contributions to the Provident Fund constituted damages not allowable as business expenses under Section 37 of the Income-tax Act, 1961 :**

- (i) Commissioner of Income-tax, Gujarat versus Mihir Textiles Limited. [104 ITR 167 (Gujarat) dated 11-11-1975].
- (ii) Saraya Sugar Mills (Pvt.) Limited versus Commissioner of Income-tax, [116-ITR 387 (Allahabad full bench) dated 11th May 1978].
- (iii) Commissioner of Income-tax, Kanpur versus Swadeshi Cotton Mills Company Limited. [21 ITR 347 (Allahabad) dated 14th September 1979.]

The Board's contention was accepted by the High Courts and the damages paid by assessee were not allowed while computing business income.

1.12 In *Mahalaxmi Sugar Mills Limited versus Commissioner of Income-tax, Delhi* (123 ITR 429 dated 9 April 1980), the Supreme Court 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 also held that the interest levied under the Cess Act was not a penalty for which a separate provision had been made in the Act. The Supreme Court found that the liability to pay interest was as certain as the liability to pay cess and as soon as the prescribed date is crossed without payment of the cess interest begins to accrue. Reference by the Supreme Court to penalty provision, the application of which depends on discretion of authorities would confirm that penalty is not an allowable deduction. Relying on the Supreme Court Judgment, the Madhya Pradesh High Court also held in the case of *Commissioner of Income-tax versus Malwa Vanaspati and Chemical Company Limited* (135 ITR 221 dated 13 February 1981) that no expense which is paid by way of penalty for a breach of the law can be said to be for the business of the assessee. Under the Madhya Pradesh General Sales Tax Act, 1958, the High Court found that the liability to penalty was not automatic. It arose as a result of the imposition of penalty by the assessing authority when an assessee is found to have committed a breach of the provisions of the law. According to the Madhya Pradesh High Court in the case of expenses incurred on account of penalty levied for the breach of law, the penalty is imposed on the assessee personally and the expenses incurred in that behalf cannot be said to be laid out wholly and exclusively for the purpose of the business of the assessee. This case law lent support to the contention of the Central Board of Direct Taxes that the penalty levied for breach of law is not an allowable expenditure under Section 27(i) of the Income-tax Act.

1.13 The Committee desired to know the reasons for taking a different stand in permitting damages as allowable business expense under Section 37 of the Income-tax Act, 1961 in the case cited under the Audit paragraph. The Member, C.B.D.T. stated :

“Earlier, we were taking the stand that these were damages. Saraya Sugar Mills case went up to Supreme Court which reversed the findings i.e., of the Allahabad High Court. We went to the Patna High Court based on Allahabad High Court judgement, where they said that it was based on the Sugar-cane Cess Act. The Allahabad High Court’s judgement was specifically reversed by the Supreme Court which said that interest was automatic; and so they allowed it as deduction.”

1.14 On being pointed out that in the instant case, levy of damages was not automatic as is the case with interest, the Member, C.B.D.T. stated :

“In this particular case, they are not damages at all. It is only interest for delayed payments, and not damage(s) under Section 14-B.”

1.15 The Member further stated :

“In 116-ITR (387), the Allahabad High Court said they were damages, Supreme Court said they were not.

116 TR itself said that in view of the legal position discussed payment made as damages for delay in paying the contribution to the provident fund stood on the same footing as interest payable for non-payment of purchase tax. This decision has been reversed by the Supreme Court later on in the Mahalakshmi Sugar Mills case. There, the Supreme Court said that interest was paid by the appellate company engaged in the manufacture and sale of sugar, under Section 33 of the U.P. Sugar Act, on the arrears of cess payable. They are arrears under Section 63. They are related to the cess, and not to provident fund.”

1.16 In yet another case viz., Organic Chemical Industrial and another versus Union of India and others (55 FJR 283) the Supreme Court held that damages as imposed by Section 14-B, include a punitive sum quantified according to the circumstances of the case. In the instant case, Section 14-B of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 specifically refers to payment of damages not exceeding the amount of arrears. Thus the extent of the levy is left to the discretion of the Central Provident Fund Commissioner. The provision does not amount to levy of interest which runs automatically as in the sugar cess case.

1.17 Asked to state how it could be said to be automatic, when the levy of ‘interest’ was left to the discretion of the Provident Fund Commissioner, the Member C.B.D.T. replied :

“This is not a penalty under Section 14-B of the Act. It is interest for delay in payment made to the provident fund.

**Section 14-B relates to payment to the Provident Fund Com-Provident Fund. The matter is under appeal, and the Court will decide whether Section 14-B applies or not. We have rectified the assessment."**

1.18 Supplementing the above statement, the Chairman C.B.D.T. stated :

**"We have not accepted the Audit objection. But our understanding is that even where audit objection is not accepted, remedial action will be taken. Whether we accepted it or not, we have taken remedial action. Naturally, the assessee will go on appeal. The assessment is over. We have disallowed it. After that they (assessee) must have gone on appeal."**

1. The Member, C.B.D.T. clarified further :

**"That was only 2 or 3 months earlier, they have time to appeal, we can verify and let you know whether they have gone on appeal."**

1.20 Asked to specify the legal position in regard to allowance as a business expense of damages paid or penalty levied under Section 14-B of the Employees Provident Fund Act, 1952, the Ministry of Finance (Department of Revenue) have stated :

**"The damages under Section 14-B of the Employees Provident Fund Act, 1952 do not appear to be penal in nature. The decision of the Allahabad High Court in the case of Saraya Sugar Mills (P) Ltd. Vs. CIT (1979) 116. ITR. 387, has been over-ruled by the same High Court in Triveni Engineering Works Ltd. Vs. CIT, Delhi-II (1983) 144. ITR 732. The Allahabad High Court has followed the Supreme Court decision in Mahalaxmi Sugar Mills Co. Vs. CIT (1980) 123. ITR. 429.**

**Damages paid to the Government in terms of Section 14-B of the Employees Provident Fund Act, 1952 do not appear to qualify as a business deduction."**

1.21 The Committee enquired about the latest position of the assessee's re-assessment for the year 1978-79 and whether the demand created has been adjusted. The Ministry of Finance (Department of Revenue) have stated :

**"The Commissioner of Income-tax, Bombay City-I, Bombay has taken action under Section 263 of the Income-tax Act, 1961 and vide his order dated 11-1-1983 has held that the amount of Rs. 1,36,143/- levied as damages by the Provident Fund Commissioner under the provisions of Section 14-B of the Provident Fund Act, 1952 was wrongly allowed as a deduc-**

tion while computing the total income for the assessment year 1978-79. The I.T.O. was accordingly directed to re-determine the total income by disallowing this sum. Effect to this order has been given by the I.T.O. *vide* his order dated 14-2-1983. No additional demand has been raised in this year since the income determined remains a loss."

1.22 In reply to another question whether the assessee has filed an appeal against the re-assessment order, the Ministry of Finance (Department of Revenue) have stated :

"The assessee has filed an appeal to the Income-tax Appellate Tribunal on 24-1-1983 against the CIT's order under Section 263. This appeal is still pending."

1.23 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 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 appeals is pending. The Committee would like to be appraised of the outcome of the appeal.

1.24 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 Court 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 *Mahaxim 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.

## **CHAPTER II**

### **AMENDMENT OF SECTION 14-B TO SPECIFY RATE OF DAMAGES**

2.1 Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reads as under :

"Where an employer makes default in the payment of any contribution to the Fund the Family Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 or sub-section (5) of Section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under Section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer such damages, not exceeding the amount of arrears, as it may think fit to impose :

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard."

2.2 The Public Accounts Committee, in paragraph 124 of their 110th Report (6th Lok Sabha), had recommended that the discretion under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 should be limited by prescribing norms for exercise of discretion. The Ministry of Labour stated in September, 1979 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 Ministry reiterated this position in October, 1981 while replying to paragraph 1-14 of the Committee's 21st Report (7th Lok Sabha). Asked to indicate the action taken in this connection, the Ministry of Finance (Department of Revenue) have stated :

"The proposal for amendment of Section 14-B of the EPF and Miscellaneous Provisions Act, 1952 is included in the current batch of amendment of the Act, which is now at an advanced stage. Meanwhile, the existing table of damages prescribed by the Central Board of Trustees of the Employees' Provident Fund has been replaced by a provision for levying damages at a rate not exceeding 25% simple interest, subject to the condition that the total amount of damages would not exceed 100% of the arrears. The revised provision is applicable to defaults arising after October, 1982. So far as the defaults for the past period are concerned, damages will continue to be levied in accordance with original table."

2.3 During evidence, the Committee enquired about the number of cases wherein 100% damages had been imposed, the Member C.B.D.T. replied :

"I would not be able to say because we have not got the particulars. This condition has been imposed very recently. This condition is applicable to arrears which arise after the issue of this order. This is not applicable to those outstanding prior to the issue of this order of 6th November, 1982."

2.4 Asked to indicate the rates of damages prescribed in the earlier table, the Member, C.B.D.T. replied :

"It is a very big table. Depending upon the period of persistence of default, if consecutive defaults have taken place, the percentage would vary to a maximum of 100% only because there is a statutory provision that the damages cannot exceed 100% (Section 14-B).

It is according to the administrative order that 25% simple interest is charged. 25% is in the nature of a general guideline. It is not a specific order. We are generally required to follow this order because the levy of damages is a judicial process and this cannot be applied mechanically. Such guidelines were also issued earlier.

If a withdrawal (default) persists for one month, we levy damage of 2%, for over 11 months 55% and upto 12 months or more 100%.

2.5 Asked if it is correct to say that levying of damages is discretionary, the Member, C.B.D.T. replied :

"It is a judicious process. The Regional Provident Fund Commissioner who examines these cases, applies his mind, gives a hearing to the employer and takes into account the circumstances under which the defaulter has failed to pay and comes to a decision as to the rate at which the damages should be levied. But no rate is prescribed."

2.6 In reply to a question why damages have been prescribed at a rate not exceeding 25% simple interest, the Member, C.B.D.T. clarified :

"This is the latest device that has been given to them as the application of this table is giving rise to many difficulties. We have evolved some norms and accordingly we thought that we should lay down this norm of 25%. We levy in the nature of interest, not damages. We adopted it on the pattern of AECD which prescribes 25% in case of default. Our intention is also to incorporate it in the Act itself. For the present, it is being used as an administrative direction."

2.7 The representative of the Ministry of Labour supplemented by stating :

"It has passed through some evolutionary processes. Initially our idea was to impose it as 25 per cent interest, more or less a fixed rate, but later on it was brought to our notice through a court case that we cannot constrain a Regional Provident Fund Commission from exercising his discretion. Therefore, we had to modify our instruction to say that this is in the nature of a guideline. Originally our intention was to fix a specific rate to be adopted in all cases."

2.8 The Committee enquired about the latest position in regard to the proposed modification of provisions contained in Section 14-B of the Provident Fund Act. The Ministry of Finance (Department of Revenue) have stated (February 1984) :

"Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, at present provides for recovery of damages not exceeding the amount of arrears. A proposal for carrying out certain amendments in this Section is included in the current batch of amendments to the Act, which is now at an advanced stage. Meanwhile, the existing table of damages prescribed by the Central Board of Trustees has been replaced by the guidelines according to which damages may be levied at a flat rate of 25% per annum on all belated remittances, subject to the condition that the total amount of damages would not exceed 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."

2.9 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.

2.10 This 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.**

## CHAPTER III

### RECOGNITION OF PROVIDENT FUNDS

3.1 The number of recognised/approved Provident Funds as on 1-4-1983 was 5,257.

The following statement shows the number of applications pending for recognition of Provident Funds as on 31-3-1983 alongwith the details of pendency with reference to year of receipt of applications :

(a) Applications received before 5 years i.e. financial year 1977-78 and earlier years . . . . .	31
(b) During financial year 1978-79 . . . . .	19
(c) During financial year 1979-80 . . . . .	53
(d) During financial year 1980-81 . . . . .	60
(e) During financial year 1981-82 . . . . .	44
(f) During financial year 1982-83 . . . . .	108
	<hr/>
	315

3.2 The administrative instructions issued by the Central Board of Direct Taxes *vide* No. 1190 dated 28-6-1978 require disposal of applications within three months of the receipt thereof. In paragraph 118 of their 110th Report, the Public Accounts Committee (1978-79) had recommended that the procedure for dealing with applications for recognition should be streamlined so as to ensure that any application for recognition is disposed of within three months of the date of its receipt.

3.3 Although the Central Board of Direct Taxes had in the same circular to all the Commissioners of Income-tax desired that all applications for recognition/approval which were received before 1 April, 1978 must be disposed of by 30 September, 1978, from the table of year-wise pendency furnished by the Ministry of Finance it is noticed that 31 applications received in the financial year 1977-78 or earlier years were pending. When the Committee enquired about the reasons for delay in the disposal of applications, the Member, C.B.D.T. stated :

“There are some practical difficulties in some cases; there is correspondence with the Provident Fund Commissioner asking for clarification and, therefore, some delay.”

3.4 The Member, C.B.D.T. further stated :

“We will get an analysis done of all these things, why they are pending; we will get the reasons and supply. Recently one case was referred to me also and it was very difficult to solve it. . . .”

3.5 Subsequently, the Committee enquired if the Department had reviewed the outstandings of over one year, which stood at 207, as also in-

vestigated into the failure to adhere to the instructions. In reply, the Ministry of Finance (Department of Revenue) have stated :

“The main reason for pendency is the non-cooperation/delay on the part of the trustees of the Provident Funds in furnishing the information required. In some cases, there has been delay on the part of the Income-tax Officers/IACs in furnishing reports to the Commissioners. However, the Commissioners of Income-tax have been requested to review all cases pending for over one year and take suitable action. They have also been requested to adhere to the time schedule of disposing of the applications within three months of the filing of the applications.”

3.6 Asked if delay in recognition of a provident fund results in loss of benefits of deductions under the Income-tax Act, the Member, C.B.D.T. replied :

“Actually the employees get the benefit under (Sec.) 80 C because once the application is made to the Commissioner for recognition, in almost all cases the employees get the benefit. So far as the employer is concerned, it will be a contribution to a non-recognised provident fund and he will not get the deduction. But the Courts have held that even in such cases if there is a valid trust and the funds have been made over to the trustees, it should be allowed as a deduction. But the position is not clear; no case has gone up and we are not sure. We have prescribed three months for recognition of provident fund to all the Commissioners. Sometimes there is difficulty in adhering to that, there is some delay. But we try to ensure that the recognition is given within three months because we do not want the employees to lose the benefits.”

3.7 The Member, C.B.D.T. further stated :

“In practice it does not work like that. Once an application went to the Commissioner for recognition, then practically all the employees get the benefit.”

3.8 In the same context, the Chairman, C.B.D.T. stated :

“One point I will clarify, whether he pays the amount into the PF A/c or not is not really material except from this year onwards when we have amended the Act. If he has not paid, the amount is disallowed for Income-tax purposes. He can claim it only in the year in which he is contributing. Otherwise we are not monitoring the Provident Fund as such.”

3.9 The Chairman, C.B.D.T. further stated :

“If it is mercantile account this contribution was earlier allowable if he had claimed it as liability and if the liability had arisen. Only from this year, we have imposed the condition that if he

has not actually transferred the amount to trustees, mere mercantile accounting liability will not give him the right to claim allowance for Income-tax purposes. This is the punitive measure we have introduced."

3.10 The Committee enquired about the amount of arrears due from the defaulting establishments. In reply, the Ministry of Finance (Department of Revenue) stated :

"The deduction admissible under Section 36(1)(iv) is on mercantile basis upto assessment year 1983-84. No information in regard to transfers to trustees is available."

3.11 Section 43B inserted by Act No. 11 of 1983 effective from 1-4-1984 stipulates that :

Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

- (a) any sum payable by the assessee by way of tax or duty under any law for the time being in force, or
- (b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by him."

3.12 Asked whether the employees are made aware of the existence of benefit under Section 80-C of the Act, even if the Department does not dispose of the application to recognise a fund, the Member, C.B.D.T. replied :

"We will study it and publicise it if it is a fact."

3.13 Subsequently, the Committee enquired if the Department had issued any public notice on the admissibility of deduction in computing total income of the employees of the sum paid by him as contribution to the Provident Fund. The Ministry of Finance (Department of Revenue) have stated :

"The Board issues every year a circular regarding the liability of the employers for deduction of tax at source from the salaries paid to the employees explaining in detail the various deductions (including deduction under Section 80-C of the Income-tax Act, which *inter alia*, includes deduction on account of contributions to recognised provident funds).

A copy of such a circular issued in 1983 is enclosed.\*"

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\*Not reproduced.

**3.14 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 28 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 30 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 the 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 specific 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 employers' 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 (effective from assessment year 1984-85) 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 the Income-tax Officers/Inspecting Assistant Commissioners to furnish requisite reports to the Commissioners of Income-tax expeditiously.**

3.15 Section 2(38) of the Income-tax Act, 1961 defines "a recognised provident fund" as "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 the scheme framed under the Employees' Provident Fund Act, 1952."

3.16 Rule 3(1) of Part A of Fourth Schedule to the Income-tax Act, provides that :

"The Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions"

The main conditions prescribed under Rule 4 are :

- (a) All employees shall be employed in India.
- (b) The contribution of an employee shall be a definite proportion of the salary and shall be deducted by the employer from the employee's salary in that proportion and credited to the employee's individual account in the fund.
- (c) The contribution of the employer shall not exceed the employees' contribution and shall be credited to the individual account at intervals not exceeding one year.
- (d) The fund shall be vested in two or more trustees or in the official trustee under a trust.
- (e) The fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest in respect of such contributions and accumulations and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund and no other sum.

3.17 Pending recognition of the fund by the Income-tax authorities, "relaxation" under paragraph 79 of the Employee's Provident Fund Scheme, 1952 is granted by the respective Regional Provident Fund Commissioners.

3.18 The Schedule also provides for derecognition of the fund if the prescribed conditions are not satisfied. The Act does not, however, provide any penalties for violation of the conditions of recognition; and de-recognition has only a future effect. This is so because in terms of sub-rule (3) of

Rule 3 of Fourth Schedule the order withdrawing recognition takes effect from the date on which it is made. The irregular deductions claimed and allowed in the past do not stand affected as a result of de-recognition. The Public Accounts Committee had, in paragraph 128 of their 110th Report (1978-79), recommended that with a view to providing a deterrent to unscrupulous employers who may be tempted to misuse the employees' provident fund money, the Income-tax Act should also provide for some form of penalty including prosecution to be imposed on the employers in the event of breach of the terms of recognition. In their reply dated 15th February 1980, the Ministry of Finance had stated that the recommendation of the Committee was under consideration along with the similar recommendation made by the Chokshi Committee.

3.19 The Committee desired to know the present stage in regard to making a provision for imposition of penalty in the event of breach of the terms of recognition. The Ministry of Finance (Department of Revenue) have stated (September, 1983) :

"The files of the Central Board of Direct Taxes relating to the recommendations of the Chokshi Committee were sent to the Economic Administration Reforms Commission. A final decision on the recommendations made by the Chokshi Committee on the above subject will be taken by the Government in the light of the recommendations of the E.A.R.C. If these recommendations are accepted, it is proposed to implement them through the comprehensive Amendment Bill proposed to be introduced in the winter Session of Parliament."

3.20 During evidence (October, 1983), the Member, C.B.D.T. stated :

"Various recommendations of the Choksi Committee were processed and forwarded to the EARC and the final reports have been received. All these things can be considered only after the report is finally considered. To a large extent, the purpose has been achieved by introducing a new provision. Section 43B under which a payment unless actually made to the provident fund is not allowed as a deduction. The earlier question whether a penalty can be levied or not, is something which we have yet to consider."

The Member, further stated :

"It is very difficult for me to answer that. I was only stating a factual position. By what time Government will take a final decision is a matter where I cannot answer with any measure of certainty."

3.21 Subsequently, again the Committee desired to be furnished with the latest position about the proposed amendment. The Ministry have not furnished any reply so far. (March 1984).

3.22 Asked to state which Department was to prosecute defaulters of the recognised provident funds who failed to deposit the employees' contributions, the Chairman, C.B.D.T. replied :

"I suppose it will come under the Companies' Law and not with us."

3.23 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. The Committee have also dealt with this aspect in another context in the succeeding part of this Report (*vide* paragraphs 6.53—6.54).



## CHAPTER IV

### LACK OF MONITORING SYSTEM

#### *Inspections and Verification of Accounts*

4.1 Rule 74(1) of the Income-tax rules prescribes that the accounts of Provident Funds shall be prepared at intervals of not more than 12 months. Rule 12(2) Part 'A' of the Fourth schedule to the Income-tax Act lays down that the accounts shall be open to inspection at all reasonable times by the Income-tax authorities. The Public Accounts Committee (1978-79) had, in paragraph 126 of their 110th Report (Sixth Lok Sabha) recommended that the 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. The Committee desired to know the number of funds in which inspections were carried out during the years 1980-81, 1981-82 and 1982-83. The Ministry of Finance have furnished the following particulars regarding inspections carried out :

(a) No. of Recognised Provident Funds as on 1-4-83 . . . . .	5257
(b) No. of Funds in which inspections were carried out during 1980-81, 1981-82 and 1982-83 :	
1980-81 . . . . .	363
1981-82 . . . . .	346
1982-83 . . . . .	319
Some Commissioners have furnished the figures under this item in a consolidated manner for all the three years, without giving year-wise break-up. The No. of such inspections during these years is 70.	
(c) No. in which no defects were found . . . . .	543
(d) No. in which defects were found . . . . .	86
(e) No. out of (d) in which recognition/approval has been withdrawn . . . . .	6
(f) No. of cases other than those in (d) where recognition has been withdrawn during the four years period ending on 31-3-1983 . . . . .	2
(g) No. out of (d) above in which action has been initiated . . . . .	32

4.2 In the same context, the Member, C.B.D.T. apprised the Committee of the latest position thus :

“When we reported to the Committee we did not have all the reports from the Commissioners. Now, we have got the latest reports from all the Commissioners. We have done a little more.

The figures for the years are as below :

1980-81 . . . . .	418
1981-82 . . . . .	1033
1982-83 . . . . .	425”

4.3 Asked if the periodicity of inspections laid down in the instructions was maintained so that all the funds could be covered within the four year cycle, the Members C.B.D.T. replied :

“Sir, it is a low priority item of work, because their income is exempt. Many of the Commissioners have not followed the Board’s instructions.”

4.4 The Member, C.B.D.T. further stated :

“We are having a review on that as to what has to be done about that. Thanks to the Public Accounts Committee.”

4.5 Asked about the position obtaining in the case of funds other than those recognised by the Income-tax Department, the representative of the Ministry of Labour informed :

“We have a system of inspection of the establishments which are covered by the Employees’ Provident Fund Act and also of the exempted establishments which are to maintain the accounts. According to the instructions these are to be inspected thrice a year but the organisation has not maintained this rate. At least once or twice a year they do.”

4.6 As benefits by way of tax relief which flow from recognition of a provident fund are substantial, the C.B.D.T. issued instructions in December 1971 to the Commissioners of Income-tax to the effect that verification of accounts of recognised Provident Funds should be done every alternate year in Bombay and Calcutta charges and once in every four years in other charges to ensure compliance with the rules. The total number of recognised/approved provident funds as on 1 April, 1983 was 5257.

4.7 The number of income-tax returns called for during the financial years 1979-80 to 1982-83, as given out by the Ministry of Finance (Department of Revenue) is as follows :

“In response to Board’s letter F. No. 215/28/70-ITA.II dated 12-12-1971, the Commissioners of Income-tax called for income-tax returns from Provident Funds.

The year-wise break-up of number of returns called for during the financial year 1979-80 to 1982-83 is given as under :

1979-80	162
1980-81	176
1981-82	151
1982-83	154

Some Commissioners of Income-tax have furnished consolidated figures for all the three years and no break-up has been given. The number of such returns called for during 1979-80 to 1982-83 is 81. Information from one CIT charge is awaited and will be furnished in due course.”

4.8 The results of scrutiny, if any, exercised, have not been communicated by the Ministry.

4.9 Under Section 10(25)(ii) any income received by the trustees (Board of Trustees) on behalf of a recognised provident fund is exempt for computation of the total income.

4.10 In paragraph 130 of their 110th Report (6th Lok Sabha) the Public Accounts Committee (1978-79) had stressed the need for an effective monitoring system. Asked how in the absence of regular inspections and verification of accounts, compliance by the establishments with the rules was monitored, the Chairman, C.B.D.T. replied :

“We inspect to find out whether they have misused it. Trustees may come for exemption of the income of the trust. If certain conditions are not fulfilled this exemption is not given.

Under Section 10, they have to come. We check their accounts once in 3 years. Under Section 13, income will not be exempted unless they fulfil certain conditions read with Rules. If trustees do not follow such a pattern no exemption is there.”

4.11 As a result of inspections during 1980-81 to 1982-83, defects were found in 86 recognised approved funds out of those inspected since 1980-81. However, action was initiated only against 32 establishments. In regard to initiating action against the remaining 54 establishments, the Ministry of Finance (Department of Revenue) have stated :

“The Commissioners of Income-tax have been asked to initiate action in all cases, if not already done.”

4.12 Rule 74(1) of the Income-tax Rules prescribes that the accounts of Provident Funds shall be prepared at intervals of not more than 12 months. Rule 12(2) of Part ‘A’ of the Fourth Schedule to the Income-tax Act, 1961 lays down that the accounts shall be open to inspection at all reasonable times by the Income-tax authorities. In paragraph 126 of their 110th Report (Sixth Lok Sabha), the Committee (1978-79) had recommended that the 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. As the benefits by way of tax relief which flow from the recognition of a provident fund are substantial, the Central Board of Direct Taxes issued instructions to the Commissioners of Income-tax in December 1971 to the effect that verification of accounts of recognised provident funds should be done every alternate year in Bombay and Calcutta charges and once in every four years in other charges. The Committee, however, regret to find that while the total number of recognised provident funds as on 1 April, 1983 was 5,257, annual inspections carried out during the years 1980-81, 1981-82 and 1982-83 covered 418, 1033 and 425 funds respectively. The number of income-tax returns called for during the financial years 1979-80 to 1982-83 ranged between 162 and 195 per year.

The Member, C.B.D.T. conceded during evidence that "It is low priority item of work" and that "many of the Commissioners have not followed the Board's instructions". Lack of monitoring of funds has been admitted by the Chairman, Central Board of Direct Taxes. It seems that except for some of the recognised funds which are also exempted establishments, there is no machinery whatsoever to monitor compliance by these recognised establishments with rules. The Committee were also informed that a review is contemplated to remedy the situation. The Committee trust that the proposed review will be conducted at an early date. The Committee will like to be informed of the results of the review.

The Committee also find that inspection of the establishments which are covered by EPF Act as also the exempted establishments is not being done thrice a year as per instructions. The Committee desire that the 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 EPF Act, including those exempted should be done regularly as per instructions.

4.13 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 manners in which the Department had acted so far. It is not clear to the Committee why the Department should have been able to initiate 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.

## **CHAPTER V**

### **PATTERN OF INVESTMENT**

5.1 The Committee desired to know whether the pattern of investment prescribed for all types of Provident Funds was similar. The representative of the Ministry of Labour stated :

“So far as exempted establishments are concerned, pattern of investment is same. And so far as the establishments which do not come under the EPF Act, I am not sure whether the same pattern applies. But according to my general impression, Government of India has uniform pattern for all provident funds. This is subject to verification.”

The Chairman, C.B.D.T. supplemented :

“It (the pattern) is broadly the same. There is a pattern of investment and it is given in the Income-tax Rules.”

5.2 According to Para 52(1) of the Employees' Provident Fund Scheme, 1952, all monies belonging to Fund shall be deposited in the Reserve Bank of India or the State Bank of India or in such other scheduled banks as may be approved by the Central Government or shall be invested subject to such directions as the Central Government may from time to time specify in the securities mentioned or referred to in clauses (a) to (d) of Section 20 of the Indian Trust Act, 1982. The Central Government has accordingly been prescribing the pattern of investment from time to time. The existing pattern of investment which is effective from 1-1-1981, is as follows :

- (i) 15% Central Government Securities;
- (ii) 15% State Government Central and State Government Guaranteed Securities;
- (iii) 40%—7 year National Saving Certificate (Second and Third issue) or Post Office Time Deposits;
- (iv) 30% Special Deposits.

50% of the maturity proceeds of Post Office Time Deposit are required to be reinvested in Post Office Time Deposits Scheme and the balance of 50% under the Special Deposit Scheme.

The investment of provident fund accumulation in respect of unexempted establishment are made by the Reserve Bank of India. The Government has permitted the Bank to purchase low yielding securities standing in the name of the Central Board of Trustees, Employees Provident Fund up to the value of Rs. 50 crores per annum and re-invest the proceeds thereof in Special Deposit Scheme for a period of 5 years upto 1984-85.

5.4 So far as the exempted establishments are concerned the Government have issued necessary direction under clause (a) of sub-section (3) of Section 17 of the Act providing *inter alia* that every employer in relation to an establishment exempted under clause (a) or clause (b) of sub-section (1) of Section 17 of the Act or in relation to an employee or class of employees exempted under paragraph 27 or 27A of the EPF Scheme shall transfer the monthly PF Contributions in respect of the establishments or the employees as the case may be to the Board of Trustees within 15 days of the close of the month and the Board of Trustees shall within a period of two weeks from the date of receipt of the money from employer, invest the provident fund accumulation in respect of the establishment, reduced by any obligatory outgoing, in accordance with the pattern of investment prescribed in respect of unexempted establishments.

5.5 Rule 67 of the Income-tax Rules, 1962 prescribes the investment pattern to be followed by recognised provident funds. It reads as under :

- (1) All moneys contributed to a provident fund (whether by the employer or by the employees) after the 31st day of October, 1974, or transferred after that date from the individual account of an employee in any recognised provident fund maintained by his former employer or accruing after that date by way of interest or otherwise to the fund may be deposited in a Post Office Savings Bank Account in India or in a current account with any scheduled bank and to the extent such moneys as are not so deposited (such moneys as are not so deposited being hereafter in this rule referred to as investible moneys) shall be invested in the manner specified in sub-rule (2).

XX                      XX                      XX                      XX                      XX                      XX.

- (2) The manner investment referred to in sub-rule (1) is the following namely :—

- |   |   |
|---|---|
| (i) In government securities [as defined in Section 2 of the Public Debt Act, 1944 (18 of 1944)] created and issued by the Central Government;  | not less than 15 percent, of the investible moneys; |
| (ii) In Government securities [as defined in Section 2 of the Public Debt Act, 1944 (18 of 1944)] created and issued by any State Government; or in any other negotiable securities, the principal whereof and interest whereon is fully and unconditionally guaranteed by the Central or any State Government; | not less than 15 percent of the investible moneys;  |

- (iii) In 7 years National Savings Certificates (Second Issue and Third Issue) in any account with the Post Office Savings Bank in accordance with the Post Office (Time Deposits) Rules, 1970 ; not exceeding 40 percent of the investible moneys.
- (iv) In Central Government Special Deposit Scheme. not exceeding 30 percent of the investible moneys.

5.6 Asked to indicate how far the existing arrangements are considered effective in so far as adherence to investment pattern is concerned, the Ministry of Finance (Department of Revenue) have stated :—

“The Provident Fund Organisation has not been experiencing any particular difficulty with regard to the investment of provident fund money in respect of unexempted establishments, in which case the investments are made by the Reserve Bank of India. The Central Board of Trustees, however, feels that the returns that they get on the investments is much less as compared to interest paid on long term fixed deposit with Banks and as a result they are not in a position to pay higher rate of interest on provident fund accumulation to the subscribers. This points to the need for further liberalisation of the existing investment pattern.

The Trustees of the exempted establishments, who are required to invest the Provident Fund money of their employees have been complaining about non-availability of State Government/ Government guaranteed securities and consequential delay in investment and loss of interest. In order to overcome the difficulties being experienced by the Board of Trustees of the exempted establishments, they have been authorised to invest their Provident Fund accumulation in either the Central Government guaranteed securities or State Government securities and Government securities without following the percentage separately in each month, subject to the condition that any short-fall in any particular month is adjusted within financial year itself. The question of floating securities exclusively to cater to the requirement of the Provident Fund with an inbuilt mechanism for adjusting the interest rate to keep pace with the rate of inflation is also being considered.”

5.7 Asked to indicate separately the number of cases in which action was taken by authorities concerned for failure of the Fund/Institution to adhere to the prescribed investment pattern, the Ministry of Finance (Department of Revenue) have stated :

“The responsibility for making investment of provident fund money in respect of the establishments which have been granted exemption

under Section 17(1) (a) or 17(1)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act is that of their respective Board of Trustees. The existing penal provision of the Act do not, however, apply to the Trustees of the exempted provident funds. The Government, is, therefore, considering a proposal for making the employers and the Board of Trustees jointly and severally liable for investment of provident fund money. After this is done, it may be possible to take action against those who are not adhering to the prescribed pattern. As at present, no specific action is being taken in such cases".

5.8 In regard to the nature of defects noticed and action taken pursuant thereto, the Ministry of Finance (Department of Revenue) have stated :

"On the basis of reports received from Commissioners, the nature of the defects noticed is predominantly in the sphere of violation of investment pattern by the Provident Funds as laid down in Rule 67 of the I. T. Rules, 1962. Appropriate remedial action has been/is being taken".

5.9 To a pointed question as to which Department is responsible to oversee the funds of recognised establishments, the Chairman, C.B.D.T. replied :

"As at present there is none of us."

5.10 However, the representative of the Ministry of Labour clarified :

"Except to the extent they are covered by the EPF Act, 5257 includes certain exempted establishments who are governed by the EPF Act".

5.11 Asked if the authorities favoured the idea of bringing about a unified system to govern all Provident Funds, the Chairman, C.B.D.T. replied :

"It is a good suggestion and we would like to consider this".

**5.12 The Committee have been informed that the nature of defects noticed in respect of recognised provident funds is predominantly 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.**

**5.13 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 E.P.F. 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 accumulations within two weeks as per pattern prescribed in respect of un-exempted establishments. The existing penal provisions of the E.P.F. 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 wide-spread 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.

5.14 Admittedly, the trustees and subscribers have a justification in seeking higher return on their accumulations than they get from the low-yielding securities. The return should be comparable to the rate of interest paid on long term fixed deposits with Banks or Public Sector Undertakings. This points to the need for further liberalisation of the existing investment pattern. 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 Government. The Committee desire that the question may be decided expeditiously so that the subscribers may get a fair return on their accumulations. An attempt should also be made to bring about parity between the rate of return on General Provident Funds set up by Central Government or State Governments on the one hand and the Employees' Provident Funds on the other.

5.15 As already stated elsewhere in this Report, some of the establishments which are granted "exemption" under Section 17 of the Act by the Provident Fund Commissioner are also "recognised/approved" by the Commissioners of Income-tax. Furthermore, pending recognition of the establishment by the Income-tax authorities, "relaxation" is granted under para 79 of the EPF Scheme, 1952 by the respective Regional Provident Fund Commissioners. Reacting to the Committee's suggestion to bring about a unified system to govern all the funds, the Chairman, Central Board of Direct Taxes replied that 'it is a good suggestion and we would like to consider this'. Except for such recognised establishments as are also 'exempted' and governed by another set of EPF Rules, there is no monitoring of the funds of recognised funds. The Chairman, Central Board of

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**Direct Taxes affirmed this position stating that 'at present there is none of us' to oversee such recognised funds. In the case of exempted establishments, the provisions of the scheme are usually more favourable than those specified in the Act in respect of rates 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 more liberal, all exempted funds should be automatically deemed to be "recognised" by Income-tax Department. There is no reason for dual control over the same establishment. The Committee need hardly point out that multiplicity in the application of laws and rules only makes the matters more complicated and cumbersome. The Committee desire that statutory changes necessary for the purpose may be brought before Parliament as soon as possible.**

## **CHAPTER VI**

### **EMPLOYEES' PROVIDENT FUND ARREARS**

**6.1** The Employees Provident Fund is a Statutory fund. It is governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This Act extends to whole of India except the State of Jammu and Kashmir. The provisions of the Employees' Provident Funds Scheme, 1952 exclude from the scheme tea factories and plantations of tea in the State of Assam.

**6.2** The total number of establishments under the Employees' Provident Fund Act, 1952 as on 31 March, 1983 is 1,44,879. Sub-Section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, provides that the Act will apply to every establishment which is a factory engaged in any industry specified in the Schedule thereto and in which 20 or more persons are employed and to any other establishment or classes of establishments employing 20 or more persons which the Central Government may specify by notification. Initially when the law was enacted in 1952 six industries namely iron and steel, textiles, cement, paper, cigarettes and engineering industries were brought under the Act. By virtue of these provisions, the scope of the Act has so far been extended to 173 industries/classes of establishments. Further extension to other industries/classes of establishments is reportedly under consideration of Government. The Act also provides that the Central Government may, after giving due notice, extend the application of the Act to any establishment employing less than 20 persons. This is also reportedly under examination. There is no wage ceiling in the Act for its application. The Employees' Provident Fund Scheme, however, limits its application to employees drawing wages upto Rs. 1600/- per month. The question of raising or removing this limit is also under consideration of Government. Contributions in respect of establishments covered by the Employees' Provident Fund Scheme are payable to the Regional Provident Fund Commissioners. Under Section 17(1) of the Employees Provident Fund Act, 1952, an establishment can be fully or partially exempted from the operation of all or any of the provisions of the Act and/or the rules, if the provident fund, pension or gratuity, as the case may be of the establishments are not less favourable than those specified in the Act in respect of rates of contribution and other benefits.

**6.3** As on 31 March 1983, 3,147 establishments have been exempted and 1,144 relaxed from contributing to the Statutory Fund under Section 17 of the Act *ibid*. The exempted establishments have their own provident fund schemes. Contributions in respect of these funds are to be paid to the Trustees of those funds. These funds operate under the supervision of Provident Fund authorities.

6.4 In regard to conditions prescribed for grant of exemption under Section 17 of the E.P.F. Act, the representative of the Ministry of Labour stated :

“Sir, exemptions are granted under four provisions of the Act. First, where an establishment has a scheme which is not less favourable than the statutory scheme and the employees have agreed to the grant of exemption. Second, where there is pension and gratuity scheme.”

6.5 Para 79 of the Employees Provident Fund Scheme, 1952 provides that :

“Notwithstanding anything contained in the scheme, the Commissioner of Provident Fund may, in relation to a (factory or other establishment) in respect of which an application for exemption under Section 17 of the Act has been received . . . relax pending disposal of the application, the provisions of this Scheme in such manner as he may direct.”

6.6 Pending recognition of the Fund by the Income-tax authorities, “relaxation” under para 79 of the E.P.F. Scheme, 1952 is granted by the respective Regional Provident Fund Commissioners.

6.7 The Ramanujam Committee had in January, 1981 made the following recommendation in paragraph 5.4 of the Report :

“No establishment will pay any contribution during the infancy period of three years after the commencement of business, manufacture or other activities as the case may be. Every establishment shall pay contribution at the rate of 6½ per cent of the wages during the subsequent period of three years and at the rate of 8 per cent thereafter. If any establishment is already paying at the rate of 8 per cent without completing the stipulated period of three years, it shall continue to pay at 8 per cent.”

6.8 The Committee desired to know the views of the Government on the above recommendation. The representative of the Ministry of Labour stated :

“You have to view it in the light of another recommendation of Ramanujam Committee; they said, establishments should be required to pay 8% after a period of time. At present, minimum contribution is 6½%. But Government may after due examination specify the class of establishments who have to pay 8%. 173 classes of establishments are covered under the Act. 90 of them are required to pay 8%. Ramanujam Committee said, this distinction should go and all should pay 8% after a period of time. During the first 3 years there will be no contribution; during the next 3 years, they have to contribute 6½%. Subse-

quently, after 6 years, after commencement of business, all are required to contribute 8%. When such a recommendation was made, the Committee thought it also fit to leave the discretion to Government to allow some concession to individual establishments like charitable trust/religious institution."

6.9 In reply to a question whether some companies owned by big business houses which though contributing less rate of provident fund than what is available to public sector employees have been exempted, the representative of the Ministry of Labour stated :

"I am not aware whether TELCO or an individual establishment is paying or not. But we are aware of the number of establishments. There is classification of the exempted establishments showing which pay the minimum prescribed in the Act, that is, 6½%; no body can pay less, those who contribute at 8% and those who contribute more than 8%. There are some who contribute even 10 per cent."

6.10 Subsequently, the Committee desired to have particulars of large companies which are paying provident fund contribution at the rate less than 8%. The Ministry have stated :

"Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for payment of provident fund contribution at the rate of 6½% of wages. The proviso to this Section empowers the Central Government to raise the rate of contribution to 8% of wages, after an enquiry. The Government has accordingly raised the rate of contributions in respect of all establishments employing 50 or more persons and engaged in 108 industries/class of establishments from 6½% to 8%. All the establishments (exempted as well as unexempted) are paying contribution at the rate of 6½% or 8% as may be applicable to them."

6.11 There are at present various Provident Funds, as mentioned below :

- (a) The Employees' Provident Fund set up under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- (b) Coal Mines Provident Fund set up under the Coal Mines Provident Fund & Miscellaneous Provisions Act, 1948;
- (c) Assam Tea Plantation Provident Fund set up under the Assam Tea Plantation Provident Fund Act and Pension Scheme Act, 1955;
- (d) Seaman's Provident Fund set up under the Seaman's Provident Fund Act;

- (e) **Contributory Provident Funds set up under the Contributory Provident Fund Rules of the Central Government and similar rules framed by State Governments;**
- (f) **General Provident Funds set up under the General Provident Fund Rules of the Central Government and similar rules framed by the State Governments;**
- (g) **Provident Funds set up under other Central and States statutes, for example, Provident Fund under the Universities Act, All India Institute of Medical Sciences Act, Post Graduate Institute of Medical Sciences Act, etc.; and**
- (h) **Provident Funds set up by non-Government establishments and recognised under the Income Tax Act.**

6.12 The Committee enquired if Government have ever examined the feasibility of bringing all non-Government Provident Funds under the Employees' Provident Fund Scheme. The Ministry of Finance (Department of Revenue) have stated :

"The scope of coverage of Provident Funds mentioned at (a) to (f) above is generally mutually exclusive, except that departmental undertakings covered by General Provident Fund/Contributory Provident Fund Rules of the Government are also coverable under the Employees' Provident Funds and Miscellaneous Provisions Act. The establishments of the type mentioned at (g) above are also coverable under the EPF Act, as educational institutions or other classes of establishments to which the provisions of the Act have been applied. With a view to avoid conflict in application of the provisions of the two sets of laws/rules, the Government is now considering a proposal to exclude all departmental undertakings as also the establishments which have set up provident funds of their own under a separate statute such as universities etc. from the purview of the Employees' Provident Fund Act.

The non-Government establishments mentioned at (h) above, could be further classified into following two categories :—

- (i) The establishments which are covered under the EPF Act but have been granted exemption. The total number of such establishments is about 3000; and
- (ii) The establishments which are not covered under the EPF Act.

The establishments which are not covered under the E.P.F. Act will generally be those engaged in such industries/activities to which

the provisions of the Act have not so far been applied. It is proposed to obtain a complete list of such establishments from the Central Board of Direct Taxes and to examine the feasibility of bringing them within the purview of the EPF Act by extending the coverage to industries/activities in which those establishments are engaged."

6.13 The Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955 was enacted by the Government of Assam and is under their administrative control. It is intended for employees employed in tea plantations in Assam. Contributions in respect of this fund are payable to the Tea Plantation Provident Fund Commissioners.

6.14 The Public Accounts Committee had, in paragraph 120 of their 110th Report (Sixth Lok Sabha) recommended the appointment of a high level committee to review the working of the Employees' Provident Fund Organisation with special reference to the problem of mounting arrears of Provident Fund Contributions. The recommendation *inter alia* reads as under :

"The Committee consider that the time has come when, instead of taking comfort at relating the total contributions with the total arrears and falling into complacency, Government must come to grips with the problems of mounting provident fund arrears. They therefore, recommended 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 amendments for the smooth and orderly functioning of the Employees' Provident Fund Scheme."

6.15 In September 1979, the Ministry accepted this recommendation. Asked to indicate the further action taken in the matter, the Ministry of Finance (Department of Revenue) have stated :

"In pursuance of the recommendation of the Committee, a high powered Committee was set up under the Chairmanship of Shri G. Ramanujam, General Secretary, INTUC in April, 1980 to review the working of the EPF Organisation with special reference to the problem of mounting arrears etc. The Committee had submitted its report to the Government in January, 1981. The recommendations of the Committee are as contained in Chapter XXIII of its Report (copy enclosed Annexure-II).\* A statement indicating the position regarding action taken on the recommendation of the Committee is also enclosed (Annexure-III) \*"

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\*Not reproduced.

6.16 It is seen from the report of the Ramanujam Committee that out of 71 recommendations contained therein, 31 recommendations have been accepted and amendments to the Act have been proposed; 30 recommendations have been accepted in principle and action to implement these is being taken by the Central Provident Fund Commissioner. Only 3 recommendations have so far been implemented and one is under consideration of Government. 6 recommendations have been rejected.

6.17 Some of the important recommendations aimed at better administration of Provident fund dues and action taken by Government pursuant thereto are given hereunder :

Recommendation	Action Taken
1	2
(a) The system of levy of damage may be replaced by a system of levy of interest at a prescribed rate in proportion to the period of delay and the amount of Provident Fund arrears.  The Provident Fund Contributions should be deposited with a Nationalised Bank within 15 days from the close of the month. Interest should be chargeable for the period of delay in depositing the contribution at the maximum lending rate by the Reserve Bank plus 3 percent for the first month. If the default continues, the rate of interest should be the maximum lending rate plus 5 percent.  For failure to deposit within 3 months the employer should be liable for prosecution.  These provisions should apply to exempted establishments also ( <i>Vide</i> item 25).	Accepted and amendment being proposed.  Accepted and amendment being proposed.
(b) Outstanding dues including those of exempted establishments might be recovered as arrears of land revenue and not "in the same manner as an arrear of land revenue" as stated in the Act ( <i>Vide</i> item 33).	Accepted and amendment being proposed.
(c) Specific provision must be made in the Act for the recovery of all dues from establishments whose exemptions are cancelled ( <i>Vide</i> item 34).	Accepted and amendment being proposed.
(d) It is desirable for the Employees' Provident Fund Organisation to have its own Recovery Machinery ( <i>Vide</i> item 35).	Rejected.
(e) Proviso to Section 14(1A) and 14(1B) of the Provident Fund Act may be amended suitably so that deterrent punishment may be awarded in all cases of wilful default ( <i>Vide</i> item 36)	Accepted and amendment being proposed.



1	2
(f) Special Courts for trial of Provident Fund cases may be set up in States ( <i>Vide</i> item 37)	Accepted in principle and Central Provident Fund Commissioner is taking steps.
(g) Investment of fund monies should be entrusted to the Reserve Bank [ <i>Vide</i> para 7(e)] under the conditions of exemption, the Board of Trustees have to invest the monies within 14 days of their receipt. Section 17(3)(a) imposes the responsibility on the employer. It is difficult to prosecute the Board of Trustees in cases of failure. The law should be amended ( <i>Vide</i> item 39).	Accepted and amendment being proposed.
(h) If the Provident Fund rules of exempted establishments conform to the statutory scheme under the Employees' Provident Fund Act they should be deemed to be recognised by the Income-tax authorities ( <i>Vide</i> item 49).	Accepted and amendment being proposed.
(i) In the case of exempted establishments, exemption may be cancelled if the default persists beyond three months ( <i>Vide</i> item 51).	Accepted in principle and the Central Provident Fund Commissioner is taking steps.
(j) Employers should be asked to produce 'Provident Fund Dues clearance Certificate' from the Regional Provident Fund Commissioner when they apply loans to banks and financial institutions.	Rejected.

(i) *Arrears from unexempted establishments :*

6.18 As on 31 March, 1983, a sum of Rs. 40.7\* crores was due from 6,787\* unexempted establishments on account of provident fund contributions. The year-wise break up of arrears is as follows :

Statement showing the yearwise break up of P.F. Contributions in arrear from unexempted establishments

Year 1970	Amount in arrear (Rupees in crores)
1	2
1970-71	6.3
1971-72	1.0
1972-73	1.0
1973-74	1.1
1974-75	1.1
1975-76	1.1
1976-77	1.1
1977-78	1.3

1	2
1978-79	4.9
1979-80	3.8
1980-81	4.1
1981-82	9.9
1982-83	4.0
Total :	40.7*

Note : \* Figures furnished were provisional. Revised figures are Rs. 42.83 crores due from 6,797 establishments.

The total figure includes certain amount of securities to be transferred by establishments consequent on cancellation of their exemption.

(ii) *Arrears from exempted establishments*

6.19 A sum of Rs. 23.8 crores was due from 85 establishments (exempted as well as relaxed) on account of provident fund contribution as on 31-12-1982.

As for particulars of arrears as on 31-3-83 and the year-wise break up of arrears, the Ministry of Finance (Department of Revenue) have stated that the split up of arrears is not readily available.

(iii) *Arrears under Assam Tea Plantation Provident Fund Scheme*

6.20 The total amount of contributions due for credit to Assam Tea Plantation Provident Fund as on 31 March 1983 was Rs. 2.57 crores.

Break up of the above arrears alongwith the number of employees in default is given in the following Table :

Break-up of Arrears	No. of employers in arrears
As on 31-3-80 Rs. 32,92,592.75	71
As on 31-3-81 Rs. 22,54,956.01	39
As on 31-3-82 Rs. 1,06,78,501.49	71
As on 31-3-83 Rs. 95,23,831.79	108
Total : Rs. 2,57,49,882.04	289

While furnishing the above particulars, the Additional Provident Fund Commissioner, Board of Trustees, Assam Tea Plantation Provident Fund and Pension Fund Scheme has stated that certificate cases are invariably started against all defaulting employers and recovery of the arrear dues is a continuous process and this presents considerable difficulties in arriving at year-wise figures.

6.21 Section 14(2A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for :

- (i) the prosecution of exempted establishments, directors etc. and
- (ii) the cancellation of exemption for non-transfer of Provident Fund contributions to their Boards of Trustees as also for non-compliance with the conditions governing exemption.

6.22 The Act, however, does not at present provide for recovery of the amounts outstanding from the exempted establishments as arrears of land revenue and for the recovery of damages from such establishments on account of late payment of Provident Fund amount to the Board of Trustees. The Ministry of Labour during evidence in 1978 informed the Public Accounts Committee that amendments to the Act were under consideration and the Committee recommended in paragraph 122 of their 110th Report (1978-79) that Government should take early decision in the matter and initiate effective steps urgently to recover these arrears. In their Action Taken Note dated 28 September 1979, the Ministry of Labour have stated that necessary action to amend the Act was being pursued.

6.23 In paragraph 1.14 of their 21st Report (7th Lok Sabha), the Public Accounts Committee (1980-81) observed as follows :

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

6.24 The arrears which stood at Rs. 10.76 crores as on 31st March, 1978 have gone up to Rs. 23.8 crores as on 31 December, 1982.

6.25 The Committee enquired whether the arrears of Rs. 23.8 crores due from 85 exempted/relaxed establishments included therein the component of damages. The representative of the Ministry of Labour stated :

"It does not include damages".

6.26 The Committee enquired about the steps, if any, taken to withdraw exemption/relaxation in these 85 cases and penalty levied for non-compliance in paying contributions. The Ministry of Finance have stated :

"Show-cause notices for withdrawal of exemption have been issued to most of the defaulters. Under the existing provisions of the Act, the Provident Fund authorities are not empowered to levy damages for non-transfer of contributions to the Board of Trustees of exempted establishments and as such, no damages have been levied on them. The Government is, however, now considering a proposal for empowering the Provident Fund authorities to levy damages on the exempted establishments. In addition, the provident fund authorities have been filing pro-

secution cases under Section 14(2A) of the Act against defaulting employers."

6.27 Asked to specify those establishments which have arrears above rupees one crore, the representative of the Ministry of Labour replied :

"In the annual report of the Employees' Provident Fund Organisation, we give a statement of all establishments in two lists which owe more than rupees one lakh dues. There are six establishments in the exempted category, Kelvin, Ambica, Empire etc. which have above rupees one crore arrears. These are mostly jute mills in West Bengal."

6.28 The particulars of cases in which outstanding dues exceeded Rs. 10 lakhs as on 31-12-1982 furnished by the Ministry are reproduced in Appendix I. The list shows that more than rupees one crore is due from the following exempted establishments :

	Rs. (Amount in lakhs)
1. M/s. Kalvin Jute Co. Ltd. . . . .	147.11
2. M/s. Megna Mills Ltd. . . . .	222.16
3. M/s. Shree Ambica Jute Mills . . . . .	105.07
4. M/s. North Brook Jute Co. Ltd. . . . .	116.02
5. M/s. Empire Jute Co. Ltd. . . . .	106.88
6. M/s. Gouripore Co., Ltd. . . . .	158.67
7. M/s. New Central Jute Mills Ltd. . . . .	172.79
8. M/s. K.S.R.T.C. . . . .	100.69

6.29 As on 31-3-1983, there were 6,797 unexempted establishments which were found to have not deposited provident fund contributions etc. and the total amount of provident fund contributions outstanding from them amounted to Rs. 42.83 crores.

6.30 Asked whether half of the arrear amount comprised employees' contribution which had not been deposited, the witness replied :

"We cannot say, it is exactly half. In many cases, what they do is, in order to avoid conviction under Sections 405 and 406 of the I.P.C., they make the payments of the employees' contribution. But they retain the employers' contribution. So, we cannot say, it is half and half."

6.31 A list of the unexempted establishments which are in default of Rs. 5 lakhs and above, as furnished by the Department, is reproduced as Appendix II.

6.32 Asked to specify the names of companies belonging to big business houses which have issued bonus shares and declared higher dividends, but

have not paid provident fund contributions over the years, the representative of the Ministry of Labour stated :

“Sir, when this question was raised in Parliament we were in difficulty because our records are not prepared according to the nature of the establishment. It is difficult for us to correlate the cases of default with the nature of the companies.”

6.33 In reply to another question whether it would be advisable to insist on ‘no PF dues certificate’ from these companies before insurance of bonus shares and declaration of dividend, the representative of the Ministry of Labour stated :

“Sir, we are pursuing this matter with the Banking Department saying that they should obtain a no P.F. dues certificate before loans and advances are given, but we have not yet come to a settlement on this score.”

6.34 In regard to break up of the arrears as between resident/non-resident companies, sick units and wilful defaulters, the Ministry of Finance (Department of Revenue) have informed as under :

“The E.P.F. authorities do not at present maintain any record of resident/non-resident companies as the E.P.F. Act does not distinguish between the resident and non-resident companies for the purpose of coverage under the Act. The E.P.F. authorities also do not maintain separate record in respect of either sick units or the wilful defaulters.”

#### *Recovery Proceedings*

6.35 The Committee desired to know what action had been initiated to effect recovery from the defaulting establishments. The Ministry have stated :

“The provident fund authorities are generally taking the following steps for effecting the recovery of arrears of E.P.F. dues :

#### **I—UNEXEMPTED ESTABLISHMENTS**

- (i) Revenue Recovery certificates are issued to the District Collection Officer in terms of Section 8 of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952;
- (ii) Prosecutions are launched under Section 14 of the Act;
- (iii) First information reports are filed with the Police authorities under Section 406/409 of Indian Penal Code, where considered necessary;

- (iv) Damages are levied on belated payment in terms of Section 14B of the Act;
- (v) The Courts are approached under Section 110 of Criminal Procedure Code to bind the accused employer for good conduct;
- (vi) Wherever it is felt that the punishment awarded by lower Court is meagre and inadequate appeals are made to secure enhanced punishment;
- (vii) Defaults are brought to the notice of the Employees' Union/Employers' organisations with the request to use their good offices for expediting payment.

## II—EXEMPTED ESTABLISHMENTS

- (i) Prosecution cases are launched under Section 14(2A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952;
- (ii) First Information Reports are filed with the Police authorities under Section 406/409 of Indian Penal Code, where necessary;
- (iii) Penal interest at graded rates are charged on belated transfer of provident fund money;
- (iv) Action is taken to cancel the exemption granted.

6.36 The Committee desired to know the amount of damages levied in all these cases of defaulting establishments under Section 14-B of the Provident Fund Act. The Ministry of Finance (Department of Revenue) have stated :

“The damages are levied only after the payment has been finally made, as the amount of damages has to be determined with reference to the period of delay. It has been reported that upto 31-3-83, a sum of Rs. 21.80 crores was levied as damages on belated payments.”

6.37 The corresponding provisions in the Assam Tea Plantations Provident Fund Scheme Act, 1955 for levy of penalty/damages for non-payment of contributions to the funds are contained in Section 16 of the Act *ibid* which reads as follows :

“Power to recover damages : Where an employer makes a default in the payment of any contribution to the provident fund or in the transfer of accumulations required to be transferred by him under Section 14 or in the payment of any charges payable under the provisions of this Act or the Scheme framed thereunder, the Government or any other person authorised by it may recover from the employer such damages not exceeding the amount of arrears, as it may think fit to impose. The provision for levy of damages to the extent of 100% of arrears was

inserted by an amendment in 1976. Prior to this, the Act provided for recovery of damages at the rate of 25% of arrears."

6.38 In regard to the steps that have been taken to realise the outstanding dues, which were Rs. 257.50 lakhs as on 31 March, 1983 under the Assam Tea Plantations Provident Fund Scheme administered by the Government of Assam, the following information has been communicated by the concerned organisation :

"Out of the total arrears of 257.50 lakhs as on 31-3-83, a sum of Rs. 137.78 lakhs was due from 22 tea estates under the Assam Tea Corporation Limited, which is a State Government Undertaking and the balance of Rs. 119.72 lakhs was recoverable from proprietorial and company owned tea estates. The provident fund authorities are filing certificate proceedings for recovery of arrears/dues in all cases of defaults and damages, after allowing the employer a chance of personal hearing. During the year ended 31-3-83, a sum of Rs. 2.36 lakhs was recovered as damages from the defaulting employers."

#### *Prosecutions*

6.39 The following statement shows the number of prosecution cases filed under the EPF and Miscellaneous Provisions Act, 1952 and the Indian Penal Code for failure to pay provident fund contribution during the last three years :

"The number of prosecution cases filed are as given below :—

#### **I. Under Section 14 of the EPF & M.P. Act, 1952.**

Year	Opening balance	No. of cases filed	No. of cases disposed of	No. of cases pending
1980-81 . . . .	25,852	6,229	3,786	28,295
1981-82 . . . .	28,295	7,161	4,022	31,434
1982-83 . . . .	31,434	5,069	4,983	31,520

#### **II. Under Section 406/409 IPC**

Year	Opening balance	No. of cases filed	No. of cases disposed of	No. of cases pending
1980-81 . . . .	811	281	13	1109
1981-82 . . . .	1109	449	20	1538
1982-83 . . . .	1538	636	41	2131"

6.40 The Committee enquired whether there existed any penal provisions for defaulting establishments recognised by the Income-tax Department. The Member, CBDT replied in the negative and stated :

"We do not have that under the Income-tax Act."

6.41 In regard to prosecutions launched under the EPF Act, the representative of the Ministry of Labour stated :

"There are several provisions in the Act for prosecution. Each year thousands of prosecutions are launched and thousands of them are decided. And in several hundreds of cases, imprisonments are awarded or convictions are secured. I shall give you the figure(s)".

The witness supplemented :

"During 1982-83, the number of prosecution cases that were filed was 5,069 under EPF Act. 4,983 cases were decided. Of these, in 151 cases, the persons were sentenced to imprisonment. Since November 1972 to March 1983 (for 10 years) the number of cases of imprisonment was 707. During the year 1982-83 alone, 151 persons were sentenced to imprisonment as I said earlier."

6.42 Asked about the reasons for lesser number of convictions secured, the representative of the Ministry of Labour replied :

"As I said, the prosecutions are launched in the courts. It is left to them as to what punishment they should award. Very often they let off the offenders with a fine. Sometimes, they do not attach as much importance to these cases as we would like them to do."

6.43 In a note furnished subsequently (21 February, 1984), the Ministry have stated as follows :

"The Provident Fund authorities generally seek the imposition of maximum possible penalty in accordance with the penal provisions of the Act. The particulars of cases in which jail terms were demanded but no imprisonment was awarded by the Court is not readily available. However, the number of cases which ended in conviction, acquittal etc. during the last three years was as given below :

	1980-81	1981-82	1982-83
(i) Conviction . . . . .	2,964	3,276	2,754
(ii) Acquitted . . . . .	299	391	508
(iii) Withdrawn . . . . .	283	117	567
(iv) Dismissed/Discharged } . . . . .	240	238	374
	3,786	4,022	4,208



6.44 In spite of launching prosecutions and taking other penal action against the defaulters, the arrears were mounting. Asked if it was indicative of failure of the system, the representative of the Ministry of Labour replied :

“Sir, it could be that the economy is in difficulty.”

6.45 The witness further stated :

“Sir there could be some cases of wilful default. In such cases something drastic needs to be done but there are many cases where the persons are not really able to pay. In those cases if you take drastic action then many establishments will go to the wall.”

6.46 The Ramanujam Committee had in paragraph 14.10 of the Report made the following recommendation to provide for an independent recovery machinery for recovery of outstanding dues :

“It is desirable for the E.P.F. Organisation to have its Recovery Machinery. This will require appointment of an adequate number of officers and field staff and special training will have to be given to them for this purpose. A detailed manual will have to be prepared for use of Recovery Staff who should also have the expertise to deal with legal objections.

It may therefore not be practicable for the EPF Organisation for quite some time to set up an independent Recovery Machinery. Meanwhile, the recommendations made in paras 14.8 and 14.9 may be implemented and Revenue Authorities may be directed through State Governments to accord priority to recovery of provident fund dues and to pass on the amounts which may be recovered to the E.P.F. Organisation without delay. The Revenue Authorities may also be directed through the State Governments not to question the Recovery Certificates issued by the Regional Provident Fund Commissioners but to proceed expeditiously with the Recovery on the strength of the Certificates.”

6.47 The above recommendation has been rejected by Government.

6.48 The Committee desired to have the Ministry's assessment of the efficacy of the provisions of various laws in respect of Provident Funds under the Employees' Provident Fund Scheme (both exempted and un-exempted establishments) and those recognised under the Income-tax Act in regard to :

- (i) imposing civil and criminal consequences on defaults in making prompt payments of provident fund contributions to the Trustees/Commissioners ; and

- (ii) enforcing recovery action for the recovery of arrear contributions in such cases.

6.49 The Ministry of Finance have in a note stated :

"The offences committed by the employers of unexempted establishment in the matter of payment of provident fund contributions, administrative charges or submission of the returns prescribed under the EPF Scheme, 1952, the Employees' Family Pension Scheme, 1971, and the EDLI Scheme, 1976, are punishable under Sections 14, 14A, 14AA, 14AB, 14AC, and 14C of the EPF and Miscellaneous Provisions Act, 1952 read with paragraph 76 of the EPF Scheme, 1952 while the employers of exempted establishments are punishable only under Sections 14(1A) and 14(2A) of the Act. The existing penal provisions are considered deficient to the extent that their application to exempted establishments is very restricted. The Government is, therefore, considering certain proposals for extending all the existing penal provisions to the exempted establishments. Besides, it is observed that the Courts have been generally letting off the accused leniently in exercise of the discretionary powers vested in them under the existing provisions of the Law. The courts are also liberally granting stay on recovery action initiated by the Provident Fund authorities even in cases where the employers do not comply with their direction with regard to payment of dues in suitable instalments.

Besides the penal provision of the EPF Act and the EPF Scheme, an explanation was added to Section 405 IPC in 1973 so as to specify that an employer who has deducted the employees' share of contribution from the wages of the workers but not deposited the same into the provident fund shall be deemed to have dishonestly used the amount of the said contribution in violation of direction of Law for the purpose of Section 405 IPC.

Complaints in such cases are filed with the Police authorities and these are required to be registered and processed by them through the competent court. The Provident Fund authorities are reported to be facing difficulties in some States in making the Police authorities register the FIRs filed by them and having the cases investigated by them. The matter is, however, being taken up with the concerned States and it is hoped that the same will be sorted out soon. Section 8 of the Act provides for recovery of the arrears of Provident Fund dues in respect of unexempted establishment in the same manner as arrear of land revenue. There is, however, no corresponding provision for recovery of arrears in respect of exempted establishments. The

Government is, therefore, considering a proposal for providing for recovery of arrears in respect of exempted establishments also in the same manner as arrears of land revenue. Further, the revenue recovery certificates are at present executed through the concerned District Collection Officer of the State Government. These officers are burdened with similar demands from various other agencies and take their own time to recover the Provident Fund dues. With a view to overcome this problem, Ramanujam Committee had recommended *inter alia* setting up of a separate recovery machinery for the EPF Organisation. This will call for specialised staff and other necessary arrangements, for which long term preparation will have to be made. Meanwhile, the State Governments have been requested to place the services of Tehsildars and other recovery staff at the disposal of the Provident Fund authorities to exclusively deal with revenue recovery cases pertaining to the EPF Organisation. The Tehsildars etc. have already started work in Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Maharashtra, Kerala and Haryana."

6.50 The Committee enquired if in view of the growing magnitude of arrears of provident fund contributions and the growing sickness of some of the defaulting establishments, any proposal was under consideration of the Government for creating an insurance fund, out of which provident fund payment due to employees could be securely given. The Ministry of Finance (Department of Revenue) have stated :

"The question of creating an insurance fund for payment of provident fund money to the employees of the establishments, which default in payment of the provident fund contribution has been engaging the attention of the Government for some time but no concrete proposal has emerged so far. Meanwhile, the CBT has recommended that in cases where the employees' share of provident fund contribution is deducted from his wages but not deposited with the Employees' Provident Fund Organisation, the amount so deducted may be paid to the employee or his dependents from the Special Reserve Fund, when the final payment becomes due, pending recovery from the employers. The implementation of this recommendation would involve transfer of funds from the Forfeiture Account to the Special Reserve Fund, which is subject to approval of the Government. CPFC has accordingly sent a proposal for transfer of Rupees 25 lakhs to the Special Reserve Fund and the same is under consideration."

6.51 The Committee are concerned over heavy EPF arrears. As on 31 March 1983, such arrears due from 6,797 unexempted establishments amounted to Rs. 42.83 crores. The arrears due from 85 exempted and relaxed establishments as on 31 December, 1982 amounted to Rs. 23.8

crores. The total amount of contributions due for credit to the Assam Tea Plantation Provident Fund was Rs. 2.57 crores as on 31 March, 1983. Two of the unexempted establishments had outstandings to the tune of Rs. 5.35 crores and Rs. 5.89 crores and four others had outstanding due ranging from Rs. 108.27 lakhs to Rs. 218.80 lakhs. A sum of over Rs. 24 crores is outstanding from unexempted establishments in two States alone—Madhya Pradesh Rs. 15.23 crores and Maharashtra Rs. 9.36 crores. The year-wise break-up shows that Rs. 6.3 crores pertain to the year 1970-71 and earlier years.

As regards arrears amounting to Rs. 23.8 crores due from exempted establishments, the Committee find that arrears due from eight such establishments alone amount to a total of Rs. 11.29 crores; dues from each ranging from Rs. 100.69 lakhs to Rs. 222.16 lakhs. The Committee would like the Employees' Provident Fund Organisation to take concerted measures, under a time-bound programme, to recover the outstandings. In particular, the Committee suggest that a monitoring cell may be set up in the EPF Organisation and in each Regional Provident Fund Commissioner's offices to pursue actively all cases wherein the arrears exceed Rs. 51 lakhs.

6.52 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 of outstandings 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 or institutions, the Committee desire that the Ministry of Labour should take up the matter direct with the State Governments/Union Territory Administrations concerned.

6.53. 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 (2A)

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 Sections 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 as arrears of land revenue. The Committee deplore the delay in taking a decision in the matter. The desire that necessary amendments suggested by the Committee should be brought before Parliament without any further delay.

6.54 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 laccunae 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 31-12-1982. 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 Sections 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.

6.55 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.

6.66. The Committee find that in terms of Section 8 of the EPF Act, 1952, Revenue Recovery certificates are at present executed through the concerned District Collection Officers of State Governments. These officers are burdened with similar demands from various other agencies and take their own time to recover the provident fund dues. With a view to overcome this problem, Ramanujam Committee had *inter alia* recommended setting up of a separate recovery machinery for the EPF Organisation. The Committee find that this recommendation of the Ramanujam Committee has been rejected by Government. Mounting arrears of Provident Fund contri-

butions on the one hand and the ever-expanding scope and coverage of the scheme on the other makes it all the more imperative that the EPF. Organisation should be equipped with its own recovery machinery. While initially only six industries were brought within the purview of the Act, the scope has now been expanded to cover 173 industries/classes of establishments. Further extension to other industries/classes of establishments is under consideration of Government. The application of the Act may be extended to establishments employing even less than 20 persons, or even to employees whose monthly wages exceed Rs. 1600/-. In view of the foregoing, the Committee would like Government to re-consider 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.

6.67 The Committee have been informed that pending setting up of a separate recovery machinery of the EPF Organisation, State Governments have been requested to place the services of the Tehsildars and other recovery staff at the disposal of the Provident Fund authorities to exclusively deal with recovery cases pertaining to the EPF Organisation. The Committee have been informed that Tehsildars etc., to deal exclusively with the recovery cases of the E.P.F. Organisation, have already started working in Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Maharashtra, Kerala and Haryana. The Committee desire that early steps should be taken to detail such Tehsildars in other States also, to which the EPF Act extends.

6.68 The Committee have been informed that Government have not agreed to the suggestion that 'no P.F. dues certificate' may be insisted upon from the companies before loans and advances are given to them. The Committee would like Government to re-consider 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 shares and declare huge dividends.

6.69 The Committee find that the scope of coverage of EPF Act is very wide. The General Provident Fund/Contributory Provident Fund Rules of Government are also coverable under the EPF & Misc. Provisions Act. The Provident Fund set up under other Central and State statutes, e.g., Provident Funds under the Universities Act, All India Institute of Medical Sciences Act, Post-Graduate Institute of Medical Sciences etc. are also coverable by application under the EPF Act. 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 funds of their own under a separate statute, such as Universities etc. from the purview of the Employees Provident Fund Act.

The Committee consider that such a step would be in the right direction

**and would allow the EPF Organisation to concentrate more on non-government establishments. This measure should be taken early.**

**6.70. The Employees' Provident Fund scheme is a statutory one. The employees have no option, but to allow deductions to be made from their wages for contributions to the provident fund trusting that their savings would be safe and secure in the hands of the Provident Fund Organisation. The Organisation has, therefore, a special responsibility to ensure security of the contributions in cases where the employers persistently default in payment. On Committee's enquiring if Government favoured the proposal to create an insurance fund to take care of such eventualities, the Ministry have indicated that no concrete proposal has emerged so far, though the question of creating an insurance fund has been engaging the attention of the Govt. for some time. Meanwhile, the Central Board of Trustees has recommended that in cases where the employee's share of provident fund contribution is deducted from his wages but not deposited with the EPF Organisation, the amount so deducted may be paid to the employee or his dependents from the Special Reserve Fund, when the final payment becomes due, pending recovery from the employers. The implementation of this recommendation would involve transfer of funds from the Forfeiture Account to the Special Reserve Fund, which is subject to approval of the Government. The Committee have been informed that the Central Provident Fund Commissioner has sent a proposal for transfer of rupees twenty-five 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 for the proposed revolving fund is reimbursed by effecting prompt recovery from the defaulting employers. The Committee will like to be informed of the decision taken by Government in the matter. The Committee would also like to be informed of the decision taken by Government on the proposal to constitute an insurance fund.**

**6.71 The Committee find that the number of prosecution cases filed under Section 14 of the EPF Act during the years 1980-81 to 1982-83 was 6,229, 7,161 and 5,069 respectively and those disposed of were 3,786, 4,022 and 4,983 respectively. The number of cases pending at the end of the years 1980-81, 1981-82 and 1982-83 was 28,295, 31,434 and 31,520. The pendency at the beginning of the year 1982-83 was 31,434 and at the end of the year 31,520. The number of cases which ended in conviction during the years 1980-81 to 1982-83 was 2,964, 3,276 and 2,754 respectively whereas those acquitted, withdrawn or dismissed/discharged were 822, 746 and 1,449 respectively. The Committee would like Government to consider the feasibility of setting up Special Courts for trial of Provident Fund 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 desire that applica-**

**tions for vacation of say 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 vigorously in case of wilful defaults.**

**NEW DELHI**

***April 9, 1984***

***Chaitra 20, 1906 (Saka)***

**SUNIL MAITRA**

***Chairman***

***Public Accounts Committee***



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## APPENDICES

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# APPENDIX I

**List of cases where the amount due from exempted establishments exceed Rs. 10 lakhs  
and above as on 31-12-1982 (vide paragraph 6-28)**

	Amount
1. Rajasthan State Electricity Board	30.09
2. Alexandra Jute Mills	37.34
3. M/s Kalvin Jute Co. Ltd.	147.11
4. M/s Khardah Co. Ltd.	27.70
5. M/s Megna Mills Ltd.	222.16
6. M/s Shree Ambica Jute Mills	105.07
7. M/s Dalhousie Jute Co. Ltd.	11.57
8. M/s Eastern Mfg. Co. Ltd.	55.18
9. M/s North Brook Jute Co. Ltd.	116.02
10. M/s Empire Jute Co. Ltd.	106.88
11. M/s Naskarpara Jute Mills	32.60
12. M/s Shree Gouri Sankar Jute	76.00
13. M/s Westing House Sexby Farmer Ltd.	10.51
14. M/s Burn & Co. Ltd.	66.67
15. M/s Indian Standard Wagon Co. Ltd.	36.58
16. M/s Bengal Potteries Ltd.	74.34
17. M/s Mohini Mills Ltd.	49.81
18. M/s India Paper Pulp Co. Ltd.	60.34
19. M/s Beni Ltd.	19.14
20. M/s Bird & Co.	11.11
21. M/s Hooghly Docking Co. Ltd.	36.30
22. M/s Aluminium Manufacturing Co. Ltd.	13.52
23. M/s B.B.J. Construction Co. Ltd.	12.84
24. M/s Gouripore Co. Ltd.	158.67
25. M/s Budge Budge Co. Ltd.	58.38
26. M/s Barangar Jute Factory Company Ltd.	76.01
27. M/s Howrah Mill Company Ltd.	31.62
28. M/s Kalyani Spinning Mills Ltd.	46.40
29. M/s Kankinarah Co. Ltd.	64.31
30. M/s Naihati Jute Co. Ltd.	40.04
31. M/s New Central Jute Mills Ltd.	172.79
32. M/s Victoria Jute Mill	39.08
33. M/s. The Angus Jute Co.	34.25
34. M/s. Shyamagar Jute Fy. Co. Ltd.	37.15
35. M/s Western India Spinning & Mfg. Co. Ltd.	20.73
36. M/s Model Mills Ltd.	10.47
37. M/s Travancore Rayons Ltd.	21.36
38. M/s K.S.R.T.C.	100.69
39. M/s Motipur Sugar Factory	21.33
40. M/s New Paper & Publication (P) Ltd.	12.55

## APPENDIX II

**List showing the details of unexempted establishments which are in arrears of Rs. 5 lakhs and above as on 1st March, 1983  
(vide paragraph 6.31)**

S. No.	Name of the Establishment	Amount in arrears (Rupees in lakhs)
(1)	(2)	(3)
<b>ANDHRA PRADESH</b>		
1.	Tirupathi Cotton Mills Ranigunta Chittoor . . . . .	5.43
2.	M/s Azam Jahi Mills Ltd. . . . .	27.76
3.	M/s Nalimarla Jute Mills Co., Vizag. . . . .	8.88
		42.07
<b>NORTH EASTERN REGION</b>		
1.	P.W.D. Mechanical Workshop, Gauhati . . . . .	7.22
<b>BIHAR</b>		
1.	M/s National Jute Mfg. Corporation Ltd., Unit R.B.H.M., Katihar . . . . .	48.75
2.	M/s Katihar Jute Mills, Katihar . . . . .	62.21
3.	M/s Domchanchi Main Mica Factory of CNI, Domchanch . . . . .	9.58
4.	M/s Bihar Sugar Works, Pachruhi . . . . .	11.40
5.	M/s Bihar State Sugar Corporation Ltd., Unit Goraul . . . . .	9.52
6.	M/s Reliance Firebricks & Pottery Co. Ltd., Dhanbad . . . . .	18.89
7.	M/s Katras Ceramics & Refractory (P) Ltd., Dhanbad . . . . .	6.18
8.	M/s Pradip Lamp Works, Patna . . . . .	9.11
9.	M/s Bihar Cotton Mills Ltd., Phulwarisharif . . . . .	7.59
10.	M/s Bihar State Co-op. Bank Ltd., Patna . . . . .	50.10
		233.33
<b>DELHI</b>		
1.	M/s Samachar Bharti, New Delhi . . . . .	7.06
2.	M/s Hindustan Samachar Co-op. Society Ltd., New Delhi . . . . .	8.22
3.	M/s Associated Journals Ltd. (National Herald) New Delhi . . . . .	11.39
4.	M/s Sahara Deposit and Investt. (P) Ltd., (DL-6527) . . . . .	9.57
		36.24
<b>GUJARAT</b>		
1.	M/s Keshariya Investment Ltd., Baroda (Priya Laxmi Ltd.,) Baroda . . . . .	22.07
2.	M/s The Manekchowk & Ahmedabad Mfg. Co. Ltd., Ahmedabad . . . . .	18.68
3.	M/s Jehangir Vakil Mills Co. Ltd., Bhavnagar . . . . .	5.41
4.	M/s Bhalakia Mills Co.; Ltd., Ahmedabad . . . . .	6.17
5.	M/s The Commercial Mills Ltd., Ahmedabad . . . . .	9.52
6.	M/s The Central Pulp Mills Ltd., Songadh . . . . .	13.56
		69.41

(1)	(2)	(3)
<b>KARNATAKA</b>		
1. Metro Malleable Mfgs., Bangalore . . . . .		5.81
2. Nippon Electronics, Bangalore . . . . .		5.14
3. Shankar Textile Mills, Davanagare . . . . .		9.64
4. Mahadeva Textile Mills, Bangalore . . . . .		7.02
5. Bellary Spinning & Weaving Mills, Bellary . . . . .		6.32
		<hr/> 33.93
<b>KERALA</b>		
1. M/s Ponmudi Tea Factory & Estate, Trivandrum . . . . .		7.61
2. M/s Alagappa Textile, Cochin . . . . .		9.17
3. M/s A.S. Mohammed Kutty Co., Palghat . . . . .		6.58
4. M/s Kerala Ceramics & Tiles, Feroke . . . . .		6.89
5. M/s Kerala Ceramics, Feroke . . . . .		8.64
6. M/s Malabar Motor Transport Co-op., Society Calicut . . . . .		7.38
7. M/s Government Dry Stock Farm, Punalur . . . . .		5.31
		<hr/> 51.60
<b>MADHYA PRADESH</b>		
1. M/s Indore Malwa United Mills, Indore . . . . .		99.17
2. M/s Kalyanmal Mills, Indore . . . . .		33.80
3. M/s Swadeshi Cotton & Flour Mills, Indore . . . . .		47.45
4. M/s Hira Mills, Ujjain . . . . .		21.09
5. M/s Bengal Nagpur Cotton Mills, Rajanandgaon . . . . .		16.92
6. M/s New Bhopal Textile, Bhopal . . . . .		23.64
7. M/s Indore Textile Ltd., Ujjain . . . . .		16.73
8. M/s Hope Textile Ltd., Indore . . . . .		535.05
9. M/s Binod Mills Co. Ltd., Ujjain . . . . .		589.34
10. M/s Bimal Mills Co. Ltd., Ujjain . . . . .		94.70
11. M/s Bilaspur Spn. Mills Industries Ltd. . . . .		7.23
12. M/s J.B. Mangharam & Co. Pvt. Ltd., Gwalior . . . . .		10.79
13. M/s Sound Zweired Union Pvt. Ltd., Gwalior . . . . .		5.63
14. M/s Jaora Sugar Mills, Jaora . . . . .		21.71
		<hr/> 1523.25
<b>MAHARASHTRA</b>		
1. Hindustan Wire Netting Co., Thane . . . . .		6.85
2. Hind Cycle Ltd. . . . .		108.87
3. M/s Universal Mechanical Works . . . . .		6.58
4. M/s Ogale Glass Works, Satara . . . . .		29.39
5. M/s Globe Auto Elect. Ltd., Mulund, Bombay . . . . .		7.67
6. M/s Jaifabs Textiles Mills, Bombay . . . . .		10.25
7. M/s Solapur Spg. & Wvg. Mills Solapur . . . . .		40.16
8. M/s Shri Shakti Mills, Bombay . . . . .		7.59
9. M/s Nanded Textile Mills, Nanded . . . . .		6.81

(1)	(2)	(3)
10.	M/s Saksaria Cotton Mills . . . . .	18.12
11.	M/s New Kaiser-I-Hind Mills . . . . .	16.43
12.	M/s Digvijay Textile Mills . . . . .	13.55
13.	M/s India United Mills . . . . .	218.80
14.	M/s Bharat Textile Mills . . . . .	15.01
15.	M/s Dhula Textile Mills, Dhule . . . . .	7.80
16.	M/s Bradbury Mills Ltd. Bombay . . . . .	203.21
17.	M/s Phoenix Mills Ltd., Bombay-13 . . . . .	70.87
18.	M/s Esskay Dyg. & Ftg. Works, Thane . . . . .	11.01
19.	M/s Shree Krishna Woollen Mills Ltd., Bombay-78 . . . . .	7.59
20.	M/s New India Rayon Mills Ltd., Bombay-13 . . . . .	20.70
21.	M/s Shree Sitaram Mills Ltd., Bombay . . . . .	72.56
22.	M/s Ellora Silk Mills . . . . .	14.69
23.	M/s Shivraj Fine Art Litho Works . . . . .	11.24
24.	M/s. Marathwada Sahakari Sakhar, Karkhahana . . . . .	5.46
25.	M/s. Timblo [P] Ltd. Goa. . . . .	5.56
		<hr/> 936.17 <hr/>

## ORISSA

1.	Orissa Textile Mills Ltd., Cuttack . . . . .	19.98
2.	Orissa Road Transport Corporation Ltd., Berhampur . . . . .	10.35
3.	Bisra Stone & Lime Co. Ltd., Sundergarh . . . . .	20.25
4.	Indian Refractory Works, Rourkela . . . . .	5.63
		<hr/> 56.21 <hr/>

## PUNJAB

1.	M/s Post Graduate Institute of Medical Education and Research, Chandigarh . . . . .	204.15
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## HARYANA

1.	M/s Gedore Tools India Ltd., Faridabad . . . . .	19.73
2.	M/s Usha Spinning and Weaving Mills, Faridabad . . . . .	17.78
3.	M/s Prestolite of India Ltd., Faridabad . . . . .	6.75
4.	M/s Bharat Carpets Ltd., Faridabad . . . . .	9.68
5.	M/s Anand Synthetics Ltd., Faridabad . . . . .	5.32
		<hr/> 59.26 <hr/>

## RAJASTHAN

1.	M/s Jaipur Spinning & Weaving Mills Ltd., Jaipur . . . . .	17.24
2.	M/s Mewar Textile Mills Ltd., Bhilwara . . . . .	10.07
		<hr/> 27.31 <hr/>

(1)	(2)	(3)
<b>TAMIL NADU</b>		
1.	M/s Kaleswarah Mills Ltd., Coimbatore . . . . .	13.36
2.	M/s Somasundaram Mills (P) Ltd., Coimbatore . . . . .	26.60
3.	M/s The Coimbatore Spg. & Wvg. Co. Ltd., Coimbatore . . . . .	8.95
4.	M/s Pankaja Mills Ltd., Coimbatore . . . . .	7.51
5.	M/s The Bharathy Mills Ltd., Pondicherry . . . . .	21.62
6.	M/s The Vasantha Mills Ltd., Coimbatore . . . . .	12.49
7.	M/s Sri Ramalinga Choodambigai Mills Ltd., Tiruppur-2 . . . . .	6.80
8.	M/s Sri Mahalakshmi Textile Mills, Madhurai . . . . .	36.38
9.	M/s Tiruppur Textiles Ltd., Coimbatore . . . . .	5.25
10.	M/s Kasthuri Mills Ltd., Coimbatore . . . . .	8.47
11.	M/s Kadri Mills Ltd., Coimbatore-16 . . . . .	8.90
12.	M/s Jayalakshmi Mills Pvt. Ltd., Coimbatore . . . . .	5.98
13.	M/s Janardhana Mills (P) Ltd., Coimbatore . . . . .	12.45
14.	M/s Pilot Pen Co. (India) Pvt. Ltd., Madras . . . . .	12.18
15.	M/s Textool & Co. Ltd., Coimbatore . . . . .	10.40
16.	M/s Madras Machine Tools Ltd., Coimbatore . . . . .	6.91
17.	M/s Chitram & Co., Madras-15 . . . . .	5.31
18.	M/s Krishna Mines, Tirunelveli . . . . .	5.78
19.	M/s Tamilnadu Magnesite Products Ltd., Salem-7 . . . . .	17.38
20.	M/s Sudarsan Finance Corporation, Madras-86 . . . . .	15.83
		<b>248.63</b>
<b>UTTAR PRADESH</b>		
1.	M/s Seksaria Sugar Mills, Gonda . . . . .	17.17
2.	M/s Laxmi Devi Sugar Mills, Deoria . . . . .	23.82
3.	M/s U.P. State Sugar Corporation, Barabanki . . . . .	5.19
4.	M/s Mahabir Sugar Mills, Goarkhpur . . . . .	19.85
5.	M/s U.P. State Sugar Corporation, Behraich . . . . .	24.06
6.	M/s U.P. State Sugar Corporation, Barabanki . . . . .	12.98
7.	M/s Victoria Mills, Kanpur . . . . .	45.65
8.	M/s Swadeshy Cotton Mills, Kanpur . . . . .	43.95
9.	M/s Laxmi Rattan Cotton Mills, Kanpur . . . . .	31.43
10.	M/s Atherton Waste & Co., Kanpur . . . . .	43.95
11.	M/s Associated Journals Ltd., Lucknow . . . . .	8.58
12.	M/s Bijli Cotton Mills, Hathras, Aligarh . . . . .	15.99
13.	M/s H.R. Sugar Factory, Bareilly . . . . .	28.41
14.	M/s Tiger Locks Ltd., Aligarh . . . . .	5.21
15.	M/s Ajudhia Sugar Mills, Moradabad . . . . .	10.53
16.	M/s Tiger Hardware & Tools Ltd., Aligarh . . . . .	12.18
17.	M/s Tiger Products (P) Ltd., Aligarh . . . . .	7.07
18.	M/s Meerut Straw Board Mills, Meerut . . . . .	5.48
19.	M/s L.K. Textiles, Saharanpur . . . . .	5.89
20.	M/s Electricity Distribution Division, Pauri Garhwal . . . . .	22.80
21.	M/s Jaswant Sugar Mills Meerut . . . . .	25.95
22.	M/s Pandit Ji Sugar Mills and General Mills, Bulandshahar . . . . .	18.18
23.	M/s Nawabganj Sugar Mills, Gonda . . . . .	90.87
24.	M/s Amritsar Sugar Mills, Muzaffarnagar . . . . .	5.97
		<b>508.35</b>

(1)	(2)	(3)
<b>WEST BENGAL</b>		
1.	M/s Bertrams Scott, 24 Parganas . . . . .	18.77
2.	M/s Bird & Co., Calcutta . . . . .	8.21
3.	M/s Canton Carpentry Works, Calcutta . . . . .	14.98
4.	M/s Chains India (P) Ltd., Calcutta . . . . .	5.08
5.	M/s Carter Pooler & Co., Calcutta . . . . .	24.17
6.	M/s Electrical Industries Corp., Calcutta . . . . .	6.31
7.	M/s East India Industries, 24-Parganas . . . . .	5.43
8.	M/s Howrah Iron & Steel Works (P) Ltd, Howrah . . . . .	5.51
9.	M/s India Capacitors, Calcutta . . . . .	6.92
10.	M/s Poddar Sanitary Works, Calcutta . . . . .	5.74
11.	M/s Port Engg. Works, Howrah . . . . .	14.55
12.	M/s Precision Industries (P) Ltd., . . . . .	5.31
13.	M/s Shalimar Works, Howrah . . . . .	13.38
14.	M/s Sur & Co., Calcutta . . . . .	5.11
15.	M/s Wire Machinery Mfg. Co., Ltd., 24-Parganas . . . . .	5.40
16.	M/s Arati Cotton Mills, Howrah . . . . .	5.18
17.	M/s Bangeswari Cotton Mills, Howrah . . . . .	9.82
18.	M/s Bengal Fine Spinning & Weaving Mills, Hooghly . . . . .	11.99
19.	M/s Bengal Luxmi Cotton Mills, Hooghly. . . . .	32.01
20.	M/s Bangadaya Cotton Mills, 24-Parganas . . . . .	14.15
21.	M/s Laxmi Narayan Cotton Mills, Hooghly . . . . .	28.22
22.	M/s Rampooria Cotton Mills, Hooghly . . . . .	83.78
23.	M/s Sree Mahalaxmi Cotton Mills . . . . .	24.05
24.	M/s Central Cotton Mills . . . . .	22.03
25.	M/s Ambaria Tea Estate, Jalpaiguri . . . . .	6.76
26.	M/s Dem Dima Tea Estate, Jalpaiguri . . . . .	8.71
27.	M/s Hills Tea Estate, Darjeeling . . . . .	6.45
28.	M/s Kerala Valley Tea Estate, Jalpaiguri . . . . .	3.75
29.	M/s Looksan Tea Estate, Jalpaiguri . . . . .	7.44
30.	M/s Majherdabri Tea Estate, Jalpaiguri . . . . .	15.86
31.	M/s Meechpara Tea Estate, Jalpaiguri . . . . .	5.24
32.	M/s Pashok Tea Estate, Darjeeling . . . . .	8.18
33.	M/s Potong Tea Estate, Darjeeling . . . . .	5.74
34.	M/s Sarugaon Tea Estate, Jalpaiguri. . . . .	10.50
35.	M/s India Rubber Mfg. Ltd., Howrah . . . . .	6.06
36.	M/s National Iron & Steel Co. Ltd., Howrah . . . . .	24.69
37.	M/s Bharat Jute Mills, Howrah . . . . .	32.81
38.	M/s Krishna Silicate & Glass Works, Calcutta . . . . .	6.23
39.	M/s Allied Resin & Chemicals, Calcutta . . . . .	5.55
40.	M/s Bharat Overseas (P) Ltd., Calcutta . . . . .	7.40
		539.47

**APPENDIX III**  
**(Vide Introduction)**  
**Conclusions and Recommendations**

Sl. No.	Para No.	Ministry/Department	Recommendation
1	2	3	4
1	1.23	Finance (Revenue)	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.

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1.24 (Finance Revenue)

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

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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

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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.

3            2.9            Finance (Revenue)

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 14B of the EPF and Miscel-

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aneous Provisions Act 1952, is included in the current batch of amendments to the Act, which is now at an advanced stage.

4            2.10      Finance (Revenue)

This 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 Committees' 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.

5            3.14      Finance (Revenue)

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 30 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 the 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 employers' 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.

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6                      3.23              Finance (Revenue)

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

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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 Committees 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.

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4.12

Finance (Revenue)

Rule 74(1) of the Income-tax Rules prescribes that the accounts of Provident Funds shall be prepared at intervals of not more than 12 months. Rule 12(2) of Part 'A' of the Fourth Schedule to the Income tax Act, 1961 lays down that the accounts shall be open to inspection at all reasonable times by the Income-tax authorities. In paragraph 126 of their 110th Report (Sixth Lok Sabha), the Committee (1978-79) had recommended that the 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. As the benefits by way of tax relief which flow from the recognition of a provident fund are substantial, the Central Board of Direct Taxes issued instructions to the Commissioners of Income tax in December 1971 to the effect that verification of accounts of recognised provident funds should be done every alternate year in Bombay and Calcutta charges and once in every four years in other charges. The Committee, however, regret to find that while the total number of recognised provident funds as on 1 April, 1983 was 5,257, annual inspections carried out during the years 1980-81, 1981-82 and 1982-83 covered 418, 1033 and 425 funds respectively. The number of income-tax



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returns called for during the financial years 1979-80 to 1982-83 ranged between 151 and 176 per year.

The Member, C.B.D.T. conceded during evidence that "it is low priority item of work" and that "many of the Commissioners have not followed the Board's instructions". Lack of monitoring of funds has been admitted by the Chairman, Central Board of Direct Taxes. It seems that except for some of the recognised funds which are also exempted establishments, there is no machinery whatsoever to monitor compliance by these recognised establishments with rules. The Committee were also informed that a review is contemplated to remedy the situation. The Committee trust that the proposed review will be conducted at an early date. The Committee will like to be informed of the results of the review.

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

8            4.13            Finance (Revenue)

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 initiate 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.

9            5.12            Finance (Revenue)

The Committee have been informed that the nature of defects noticed in respect of recognised provident funds is predominantly 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.

10           5.13            Finance (Revenue)

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

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(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.

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11                      5.14                      Finance (Revenue)

Admittedly, the trustees and subscribers have a justification in seeking higher return on their accumulations than they get from the low-yielding securities. The return should be comparable to the rate of interest paid on long term fixed deposits with Banks or Public Sector Undertakings. This points to the need for further

liberalisation of the existing investment pattern. 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 Government. The Committee desire that the question may be decided expeditiously so that the subscribers may get a fair return on their accumulations. An attempt should also be made to bring about parity between the rate of return on General Provident Funds set up by Central Government or State Governments on the one hand and the Employees' Provident Funds on the other.

12            5.15            Finance (Revenue)

As already stated elsewhere in this Report, some of the establishments which are granted "exemption" under Section 17 of the Act by the Provident Fund Commissioner are also "recognised/approved" by the Commissioners of Income-tax. Furthermore, pending recognition of the establishment by the Income-tax authorities, "relaxation" is granted under para 79 of the EPF Scheme, 1952 by the respective Regional Provident Fund Commissioners. Reacting to the Committee's suggestion to bring about a unified system to govern all the funds, the Chairman, Central Board of Direct Taxes replied that "it is a good suggestion and we would like to consider this". Except for such recognised establishments as are also "exempted" and governed by another set of EPF Rules, there is no monitoring of the funds of recognised funds. The Chairman, Central Board of Direct Taxes affirmed this position stating that 'at present there is none of us' to oversee such recognised funds. In the case of exempted

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		Finance (Revenue)	<p>establishments, the provisions of the scheme are usually more favourable than those specified in the Act in respect of rates of contribution and other benefits. The Committee, therefore, recommend that since the provident fund rules of the exempted establishments not only confirm to the statutory scheme under the EPF Act but are more liberal, all exempted funds should be automatically deemed to be "recognised" by Income-tax Department. There is no reason for dual control over the same establishment. The Committee need hardly point out that multiplicity in the application of laws and rules only makes the matters more complicated and cumbersome. The Committee desire that statutory changes necessary for the purpose may be brought before Parliament as soon as possible.</p>
13	6.51	Finance (Revenue)	<p>The Committee are concerned over heavy EPF arrears. As on 31 March 1983, such arrears due from 6,797 unexempted establishments amounted to Rs. 42.83 crores. The arrears due from 85 exempted and relaxed establishments as on 31 December, 1982 amounted to Rs. 23.8 crores. The total amount of contributions due for credit to the Assam Tea Plantation Provident Fund was Rs. 2.57 crores as on 31 March, 1983. Two of the unexempted establishments had outstandings to the tune of Rs. 5.35 crores and Rs. 5.89 crores and four others had outstanding dues ranging from Rs. 108.27 lakhs to Rs. 218.80 lakhs. A sum of over Rs. 24 crores is outstanding from unexempted establishments in two States alone—Madhya Pradesh</p>

Rs. 15.23 crores and Maharashtra Rs. 9.36 crores. The year-wise break-up shows that Rs. 6.3 crores pertain to the year 1970-71 and earlier years.

As regards arrears amounting to Rs. 23.8 crores due from exempted establishments, the Committee find that arrears due from seven such establishments alone amount to a total of Rs. 11.29 crores; dues from each ranging from Rs. 100.69 lakhs to Rs. 222.16 lakhs. The Committee would like the Employees' Provident Fund Organisation to take concerted measures, under a time-bound programme, to recover the outstandings. In particular, the Committee suggest that a monitoring cell may be set up in the EPF Organisation and in each Regional Provident Fund Commissioner's offices to pursue actively all cases wherein the arrears exceed Rs. 5 lakhs.

14                      6.52                      Finance (Revenue)

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 of outstandings 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 or institutions, the Committee desire that the Ministry of Labour

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should take up the matter direct with the State Governments/Union Territory Administrations concerned.

15            6.53            Finance (Revenue)

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.

16            6.54            **Finance (Revenue)**

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 Sections 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.

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17            6.55            **Finance (Revenue)**

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

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18	6.66	Finance (Revenue)	<p>in the Act to provide for recovery of arrears of all dues from the establishments whose exemptions are cancelled.</p> <p>The Committee find that in terms of Section 8 of the EPF Act, 1952, Revenue Recovery certificates are at present executed through the concerned District Collection Officers of State Governments. These officers are burdened with similar demands from various other agencies and take their own time to recover the provident fund dues. With a view to overcome this problem, Ramanujam Committee had <i>inter alia</i> recommended setting up of a separate recovery machinery for the EPF Organisation. The Committee find that this recommendation of the Ramanujam Committee has been rejected by Government. Mounting arrears of Provident Fund contributions on the one hand and the ever-expanding scope and coverage of the scheme on the other makes it all the more imperative that the EPF Organisation should be equipped with its own recovery machinery. While initially only six industries were brought within the purview of the Act, the scope has now been expanded to cover 173 industries/classes of establishments. Further extension to other industries/classes of establishments is under consideration of Government. The application of the Act may be extended to establishments employing even less than 20 persons, or even to employees whose monthly wages exceed Rs. 1600/-. In view of the foregoing, the Committee would like Government to re-consider the question of the E.P.F. Organisation having a separate recovery machinery of its own. It could be on lines of Tax Recovery Officers under the Income-tax Act.</p>

19	6.67	Finance (Revenue)	<p>The Committee have been informed that pending setting up of a separate recovery machinery of the EPF Organisation, State Governments have been requested to place the services of the Tehsildars and other recovery staff at the disposal of the Provident Fund authorities to exclusively deal with recovery cases pertaining to the EPF Organisation. The Committee have been informed that Tehsildars etc., to deal exclusively with the recovery cases of the EPF Organisation, have already started working in Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Maharashtra, Kerala and Haryana. The Committee desire that early steps should be taken to detail such Tehsildars in other States also, to which the EPF Act extends.</p>
20	6.68	Finance (Revenue)	<p>The Committee have been informed that Government have not agreed to the suggestion that "no P. F. dues certificate" may be insisted upon from the 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 shares and declare huge dividends.</p>
21	6.69	Finance (Revenue)	<p>The Committee find that the scope of coverage of EPF Act is very wide. The General Provident Fund/Contributory Provident Fund Rules of Government are also coverable under the EPF &amp; Misc. Provisions Act. The Provident Funds set up under other Central and State statutes, e.g., Provident Funds under the Universities Act. All India Institute of Medical Sciences Act,</p>

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			<p>Post-Graduate Institute of Medical Sciences etc. are also coverable by application under the EPF Act. 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 funds of their own under a separate statute, such as Universities etc. from the purview of the Employees Provident Fund Act. The Committee consider that such a step would be in the right direction and would allow the EPF Organisation to concentrate more on non-government establishments. This measure should be taken early.</p>
22	6.70	Finance (Revenue)	<p>The Employees' Provident Fund scheme is a statutory scheme. The employees have no option, but to allow deductions to be made from their wages for contributions to the provident fund trusting that their savings would be safe and secure in the hands of the Provident Fund Organisation. The Organisation has, therefore, a special responsibility to ensure security of the contributions in cases where the employers persistently default in payment. On Committee's enquiring if Government favoured the proposal to create an insurance fund to take care of such eventualities, the Ministry have indicated that no concrete proposal has emerged so far, though the question of creating an insurance fund has been engaging the attention of the Government for sometime. Meanwhile, the Central Board of Trustees has recommended that</p>

in cases where the employee's share of provident fund contribution is deducted from his wages but not deposited with the EPF Organisation, the amount so deducted may be paid to the employee or his dependents from the Special Reserve Fund, when the final payment becomes due, pending recovery from the employers. The implementation of this recommendation would involve transfer of funds from the Forefeiture Account to the Special Reserve Fund, which is subject to approval of the Government. The Committee have been informed that the Central Provident Fund Commissioner has sent a proposal for transfer of rupees twenty-five 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 for the proposed revolving fund is re-imbursed by effecting prompt recovery from the defaulting employers. The Committee will like to be informed of the decision taken by Government in the matter. The Committee would also like to be informed of the decision taken by Government on the proposal to constitute an insurance fund.

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6.71

Finance (Revenue)

The Committee find that the number of prosecution cases filled under Section 14 of the EPF Act during the years 1980-81 to 1982-83 was 6,229, 7,161 and 5,069 respectively and those disposed of were 3,786, 4,022 and 4,983 respectively. The number of cases pending at the end of the years 1980-81, 1981-82 and 1982-83 was 28,295, 31,434 and 31,520. The pendency at the beginning of the year 1982-83 was 31,434 and at the end of the year 31,520. The number of cases which ended in conviction during the years 1980-81 to 1982-83 was 2,964, 3,276 and 2,754 respectively

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**Finance (Revenue)**

whereas those acquitted, withdrawn or dismissed/discharged were 822, 746 and 1,449 respectively. The Committee would like Government to consider the feasibility of setting up Special Courts for trial of Provident Fund 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 desire that applications 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 vigorously in case of wilful defaults.

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