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STANDING COMMITTEE ON LABOUR

(2018-19)

(SIXTEENTH LOK SABHA)

MINISTRY OF LABOUR & EMPLOYMENT

[REPORT ON 'COMPLIANCE WITH THE PRESCRIBED PROVISIONS OF DEDUCTION AND DEPOSIT OF PF, ESI AND TDS (OF INCOME TAX, ETC.) BY THE EMPLOYERS']

FIFTY-SECOND REPORT



LOK SABHA SECRETARIAT

NEW DELHI

February, 2019/ Magha, 1940 (Saka)

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(2018-19)

(SIXTEENTH LOK SABHA)

MINISTRY OF LABOUR & EMPLOYMENT

Presented to Lok Sabha on 07.02.2019

Laid in Rajya Sabha on 07.02.2019



LOK SABHA SECRETARIAT

NEW DELHI

February, 2019/ Magha, 1940 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2018-19)

DR. KIRIT SOMAIYA - CHAIRPERSON

MEMBERS

Lok Sabha

2. Shri Udayanraje Pratapsingh Bhonsle
3. Shri Rajesh Diwakar
4. Shri Ashok Kumar Dohrey
5. Shri Satish Chandra Dubey
6. Shri Devajibhai Fatepara
7. Shri Satish Kumar Gautam
8. Dr. Boora Narsaiah Goud
9. Shri Rama Chandra Hansdah
10. Shri C. N. Jayadevan
11. Shri Bahadur Singh Koli
12. Dr. Arun Kumar
13. Shri Kaushalendra Kumar
14. Shri Hari Manjhi
15. Shri R. Parthipan
16. Shri Dayakar Pasunoori
17. Shri Hariom Singh Rathore
18. Shri Naba Kumar Sarania (Hira)
19. Shri Kodikunnil Suresh
20. Shri Mulayam Singh Yadav
21. Vacant

Rajya Sabha

22. Shri Ram Narain Dudi
23. Shri N. Gokulkrishnan
24. Shri Nazir Ahmed Laway
25. Shri P.L. Punia
26. Shri Rajaram
27. Shri Amar Shankar Sable
28. Ms. Dola Sen
29. Dr. Banda Prakash
30. Shri Akhilesh Prasad Singh
31. Shri Madanlal Saini

SECRETARIAT

- | | | | |
|----|----------------------|---|---------------------|
| 1. | Ms. Rimjhim Prasad | - | Joint Secretary |
| 2. | Shri P.C. Choulda | - | Director |
| 3. | Shri C. Vanlalruata | - | Additional Director |
| 4. | Shri Kulvinder Singh | - | Under Secretary |

INTRODUCTION

I, the Chairperson, Standing Committee on Labour (2018-19) having been authorized by the Committee to present on their behalf this Fifty-Second Report on 'Compliance with the Prescribed Provisions of Deduction and Deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers' relating to the Ministry of Labour & Employment.

OBSERVATIONS

2. Deduction of employee's provident fund contribution by the employer and not depositing the same with appropriate authorities is an issue unaddressed for the last several years. Every year the number of defaulter employers are understandably increasing.

3. In similar manner the TDS (tax deducted at source) from the salaries of employee's and not deposited is also a major issue. Several employers are deducting TDS from the salary of their employees but not depositing the same with the Revenue authorities, subsequently at the time of assessment, the tax authorities insist the assessee/employees that they should pay the taxes from their own pocket. In simple meaning the employees are compelled to pay double tax though it is not their fault but the fault of the employers.

4. In both the above cases, EPFO and CBDT are acting as Government authorities and have made guidelines that a employer shall get authority to deduct directly the contribution from the salary of the employees and employers. The employee do not have any choice to pay their contribution/taxes directly to Government Authorities.

5. Similarly the Government authorities i.e. EPFO and CBDT are not ready to take responsibility if their agent/employer after deducting the PF contribution/TDS are not depositing the same. In both the cases the employees are being penalized/compelled to pay tax again or sacrifice their contribution and are treated as defaulters.

6. During the hearing, the Ministry of Finance (Department of Revenue) informed the Committee that two circulars were issued in 2015 and 2016, advising the Income Tax Assessment Officer not to compel the employees to pay tax in lieu of TDS already deducted by the employer but not deposited. But CBDT admitted that the amount remains as recoverable in the name of employees.

7. EPFO authority informed the Committee that there is a Special Reserve Fund from which an employee can subsequently submit an application and ask for a meager relief/ support. But the employee is to suffer/sacrifice their own contribution also and for recovery they to approach the Court which takes decades and ends in "Sacrifice".

8. The Committee expressed their concern that both these issues are pending since years together, both the authorities should have addressed these problem long back. Lakhs of employees are penalized/suffered due to default/fraud by their employers. The employees are suffering due to lack of monitoring system of the EPFO and CBDT.

9. The Committee feels that a strong monitoring system should be deployed and implemented by EPFO and CBDT to check the deductions and submissions by employers. The employee should not be asked for recovery of that money from employer and to file cases against the employer. Both the authorities should make good the financial losses occurred to the employees. In the case of self-assessment/default, these Government authorities are initiating action/attachment/proceeding against the self-assessee directly. The similar provision/guideline/action must be taken in the above cases i.e. default of employers to deposit PF Fund contributions and TDS.

10. The Committee expect that the Ministry of Labour, EPFO, Ministry of Finance (Department of Revenue), CBDT and others will come out with a solution to take care of honest employees.

11 The Committee took oral evidence of the representatives of the Ministry of Labour & Employment on 3rd January, 2019 and took further oral evidence of the representatives of the Ministry of Labour & Employment alongwith the representatives of the Ministry of Finance (Department of Revenue), Employees Provident Fund Organisation (EPFO) and Employees' State Insurance Corporation (ESIC) and Central Board of Direct Taxation (CBDT) on 23rd January, 2019.

12. The Committee considered and adopted the Draft Report at their Sitting held on 6th February, 2019.

13. The Committee wish to express their thanks to the officers of the Ministry of Labour & Employment, Ministry of Finance (Department of Revenue), Employees Provident Fund Organisation (EPFO) and Employees' State Insurance Corporation (ESIC) and Central Board of Direct Taxation (CBDT) for tendering oral evidence and placing before them the detailed written notes and post evidence information as desired by the Committee.

New Delhi;
6th February, 2019
17th Magha, 1940 (Saka)

DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR

REPORT

CHAPTER-I

I. INTRODUCTORY

The Committee has observed that the Income Tax Act, 1961, Employees' Provident Funds (EPF) & Miscellaneous Provisions (MP) Act, 1952, the Employees' State Insurance Corporation (ESIC) Act, 1948 has a feature, wherein the employer deducts Tax Deducted at Source (TDS)/ Provident Fund (PF)/ Employee State Insurance (ESI) from the salary of their respective employees and deposit the same with the concerned authorities. However, there were instances wherein the employer having deducted TDS/ PF/ ESI from the employee's salary failed to deposit the same with the concerned authorities. As a result, the employee was made to suffer, despite the fact that statutory deductions from his/her salary has been made. The employee has very limited time and resources at his disposal and cannot run from pillar to post to meet the ends of justice. As such the Committee decided to examine the Subject 'Compliance with the prescribed provisions of deduction and deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers'. The Parliament has framed the above Acts and TDS/ PF/ ESI is deducted under them. The government agencies, institutions or regulator has made it mandatory under the rules that the employee's contribution shall be deducted by the employer and for their convenience, the employer as such acts on behalf of the government agencies. Since the government agencies want convenience, they are asking the employers, to deduct the amount. In such a situation, the moot question is, if the employer fails to remit the deducted amount then should it not be the responsibility of the employer only who is acting on behalf of the Government to remit the tax to Government account and the employees should not be penalised for no fault of theirs.

2. With a view to examine the above Subject at length, the Committee took oral evidence of the representatives of Ministry of Labour & Employment, Employees' Provident Fund Organisation (EPFO), Employees' State Insurance Corporation (ESIC) on 03.01.2019 and further oral evidence of these organisations alongwith the representatives of the Ministry of Finance (Department of Revenue) on 23.01.2019.

II. STATUTORY PROVISIONS REGARDING DEDUCTION AND DEPOSIT OF PROVIDENT FUND

3. On being queried about the statutory provisions for deduction and deposit of EPF, the Ministry of Labour & Employment in their written reply submitted that as per Section 6 of the EPF and MP Act, 1952, the employer shall pay contribution at the rates prescribed under the Section and employees contribution shall be equal to the contribution payable by the employer in respect of him and if any employee so desires to contribute an amount exceeding the rate as prescribed in the section. Further, Section 5 provides for framing of Scheme or any matter that they may be provided in the scheme as specified in the Scheduled-II to the Act. In Employees Provident Funds Schemes, 1952 relevant provisions have also been made.

4. The Committee desired to know the relevant Section of the EPFO Act, 1952, that authorises the employer to deduct PF of the employees, as Section 6 of the EPFO Act does not specifically authorise the employer to do so. In reply, MoLE submitted that the Section 5 and 6 of the said Act, provides for that. In Employees Provident Funds Schemes, 1952 relevant provisions have been made in para 30, 32 and 38 of the scheme.

5. On being asked about the guidelines, legal status regarding the EPFO and employer and whether the employer has been authorized by the EPFO or by the legislature to deduct compulsory PF contribution from the salary, it was informed that the employer has been authorized by the legislature to deduct compulsory PF contribution from the salary of the employees. The provision for deduction by the employer for remittance to EPFO have been framed by the Central Government in Employees Provident Fund Scheme, 1952, in accordance with the provisions of the EPF & MP Act, 1952 enacted by the Parliament.

6. Asked to furnish the details about the statutory provisions including intention of the lawmakers for deducting at source the contribution of employees towards the provident fund, it was submitted that the provision for deduction of employees share of contribution from the wages by the employer is provided in para 38 of the EPFS 1952 which explicitly provides that

“the employer shall before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employees contribution from this wages.....”

The intention of the lawmakers was to cultivate among the workers a spirit of saving something regularly. Before enactment of the EPF & MP Act,

1952, some of the employers were already maintaining provident funds for their employees. The intention of the legislature was that if such employers are giving more benefits compare to benefits under EPF & MP Act, 1952 they may continue with their own provident funds.

7. The Committee note that according to the Ministry of Labour and Employment and EPFO under section 6 of the EPF and MP Act, 1952 , the employers shall pay its share of contribution at the rates prescribed under the section and the employee contribution shall be equal to that of the employer's contribution or can be higher then that. However as regard to the authority of the employer to deduct compulsory contribution from the salary/wages of the employee the Ministry of Labour & Employment has again informed that the legislature has authorised them to do so and accordingly the provision for deduction of employee's share of contribution and its remittance have been made in EPFS, 1952. The intention of the legislature behind it was to cultivate among the workers a spirit of regular savings. However, if the employee does not get the benefit of his saving due to default on the part of the employer in depositing the same to the Fund/ Government then, the very intention/ purpose of the legislature is getting defeated, as the employee is suffering financial loss/ deprived of benefit of their saving even after paying his share of contribution. In the considered view of the Committee, it gives an impression that this Labour Protection Act has turned against / is being used against the labour/ employee. Further, the Committee are not fully convinced of the claim of the Ministry, that the employer has been authorised by the legislature to deduct the contribution from the salary/wages of the employee as section 6 of the

said Act does not specifically/ categorically authorise the employer to do so. The Committee, therefore, recommend that the Ministry of Labour and Employment and EPFO should reconsider the issue and if need be obtain legal opinion, make a specific statutory provision in the Act if required and apprise the Committee accordingly at the earliest.

III COVERAGE OF ESTABLISHMENTS

8. When asked as to how EPFO ensure coverage of all eligible establishments, it was informed that the EPF & MP Act, 1952 extends to the whole of India except the State of Jammu and Kashmir and applies to all industries and class of establishments employing 20 or more persons which are specified in Schedule-I or notified in the official gazette by the Central Government. The Act applies on its own and cast upon a duty on employer to extend the provisions of the Act on its own the moment it become applicable to an establishment. Keeping in view the objective of the Government to promote ease of doing business and encourage self-compliance by employers, the EPFO introduced the Online Registration of establishment based on self-certification where the employers after furnishing the necessary information can obtain immediate registration number and start compliance. The registration is now facilitated through common portal of Ministry of Labour & Employment i.e. Shram Suvidha Portal. If an eligible establishment still does not register under the Act the inspectors appointed under Section 13 of the Act can conduct inspection of such establishment for the purpose of ascertaining whether the provision of this Act are applicable to an establishment. In case the establishment is found coverable and employer has not obtained code number, the establishment is covered by the EPFO. If the employer has any dispute about the applicability of the Act the same can be decided by the assessing officers under Section 7A of the Act by way of quasi-judicial inquiry followed by further actions for recovery and prosecutions as may be required. The Act has stringent provisions in case of non-compliance of the provisions of the Act by the employer including provisions for inspection with search and seizure authority, determination of dues, levy of penal damages and prosecution.

9. Asked about the Online Registration of Establishments (OLRE) started since July 2014 and how it has been beneficial in effective coverage of establishment, it was submitted that the employer no longer needs to have any personal interactions in EPF office and can access the portal anytime, anywhere and fill online information to obtain registration number immediately

and start compliance immediately. The number of registrations has been increasing constantly since 2013-14 as mentioned below:-

| Year | No. of registration during the year (in thousands) |
|---------|----------------------------------------------------|
| 2013-14 | 52.8 |
| 2014-15 | 65.3 |
| 2015-16 | 65.1 |
| 2016-17 | 97.9 |
| 2017-18 | 107.2 |

10. Asked to furnish details of number of firms covered under EPF alongwith the number of employees till date the Committee were informed as follows:-

| Average current contributing establishments | Average current contributing members/employees |
|---------------------------------------------|------------------------------------------------|
| 5,79,120 | 4,50,95,783 |

11. At its sitting held on 23.01.2019, the Committee pointed out that all the action and reaction of the EPFO are dependent on the information that has been filed by the Employees. There may be cases where the employers may show less number of employees from the actual employees. The Committee therefore, desired to know whether any system exists, wherein each employee on joining any company may inform the EPFO which can be cross checked by EPFO.

In reply the representative submitted as follows:

सर, अभी हम ऐसा करते हैं कि हम उसको एक यूनिक ऑथेंटिकेशन नम्बर देते हैं। हम उस यूनिक ऑथेंटिकेशन नम्बर को डाटा के साथ इस प्रकार से इंटीग्रेट कर देते हैं कि अगर उसको हमें यह इनफॉर्मेशन देनी है कि उसको पैसा नहीं मिला तो वह हमें इंडिपेंडेंटली, जो हम एम्प्लायर से डाटा लेते हैं, उसके अलावा भी दे सकें। हम अभी सी-डैक से बात करके इस सिस्टम को इंटीग्रेट कर लेते हैं।

सर, हमने आधार लिंकेज करके काफी चीजों की इम्प्रूव किया है। हमने करीब 70 परसेंट एम्प्लॉई को उसके आधार नम्बर तथा मोबाइल नम्बर को उसके अकाउंट से लिंक किया है। कुछ दिक्कतें हैं, परन्तु आपका जो सुझाव है, हम उसको जरूर ध्यान में रखेंगे।

12. The Committee note that the EPF and MP Act, 1952 extends to the whole of India, except the State of Jammu and Kashmir and applies to all

industries and class of establishments employing 20 or more persons as specified in schedule-I or notified in the official gazettee by the Central Government. Further, the EPFO has introduced an online registration of establishment based on self-certification by the employer and the Act also has stringent provisions in case of non-compliance of the provisions of the Act by the employer which includes provisions for inspection with search and seizure authority, determination of dues, levy of penal damages and prosecution etc. As regard to the registration of employer under the OLRE, the Committee have been informed that from the year 2013-14 to 2017-18, the number of registration (in thousands) have been 52.8, 65.3, 65.1, 97.9 and 107.2 each year. The Committee are satisfied to note that the number of registrations has been increasing every year. As regard to the number of firms covered under EPF alongwith the number of employees till date, the Committee have been informed that the average current contributing establishments are 5,79,120 whereas the average current contributing members/employees are stated to be 4,50,95,783. The Committee, therefore, desire that the OLRE, be further strengthened for effective coverage of EPFO.

13. To tackle the issue of the prevalent practice of under reporting of the number of employees by the employer and also for a system regarding providing of information by the employee itself to the EPFO on joining a particular company the representative of the EPFO assured the Committee that they would look into the issue and work towards linking the Unique Identification Number (UIN) of employee with their mobile

number and Aadhar number and also develop a software in consultation with C-DAC Pune. This will go a long way in ensuring that the deduction from employees wages is being deposited with the Government. The Committee, therefore, desire that a timeline may be fixed for development at software by C-DAC and its early implementation by EPFO to improve the situation and they be apprised of the progress achieved herein.

IV. DEDUCTION OF CONTRIBUTION FROM EMPLOYEE SALARY AND ITS REMITTANCE BY EMPLOYER

14. Asked to state as to how EPFO ensures that each and every employer deposits the PF deducted by 15th of every month positively and the mechanism put in place by EPFO to detect the defaulting employers, it was submitted that with a view to provide ease of doing business and to do away with multiple returns, the system of Electronic Challan-cum-Return(ECR) was introduced as single return cum challan which the employers submit at present while depositing the PF deducted every month by 15. In case he fails to do so, through online tracking of default in remittances of PF dues using central ECR data base, current defaulting establishments are being identified and a defaulter list is generated every month and given to the field offices for confirming the default and take further action to ensure compliance as provided under the Act.

15. On being asked to comment, in case the employer fails to deposit the PF deducted by him and whether the money is returned to the employee or not, it was informed that in case the employer fails to deposit the PF deducted by him, the provisions of section 7A of the Act become applicable and 7A proceedings are conducted to determine the dues. Once determined, the dues are recovered in exercise of powers conferred by Section 8 of the Act so that the employee is given due benefit for the PF deducted. To penalise the employer, prosecution can also be filed under Section 14(1A) of the EPF & MP Act, 1952 which provides for minimum imprisonment for one year and a fine of Rs.10,000/- in case of default in payment of employees contribution which has been deducted by the employer from the employee's wages. Further, complaint under Section 406 / 409 of the IPC, which is a cognizable and non bailable offence, is also required to be filed with police authorities. The employee's share which has been deducted by the employer but not remitted by employer is paid to

employee after due process of recovery. Further, as a special measure, to provide relief and to compensate such employees by paying employee share deducted by employer, a Special Reserve Fund was created on 15th September, 1960 to help outgoing members or their nominees/heirs, where an employer fails to pay the whole or part of the provident fund contributions due to the Fund in respect of un-exempted establishments.

16. The Committee were further informed that SMS alert on 16th/17th of every month is sent to defaulting establishments, who have not remitted PF dues and e-mail communication is sent between 20th and 25th of every month to such establishment. When asked about action initiated in case the defaulting establishments does not remit PF dues even after sending e-mail communication to them and the system being followed to recover the dues, it was submitted that the current defaulting establishments list, as generated through system, is made available to EPFO field offices online every month for initiating inspection and based on the findings in the inspections report, the field offices initiate actions as provided in the EPF & MP Act, 1952 which is assessment of dues under Section 7A, followed by actions for recovery under section 8B to 8G of the Act and action under section 7Q/14B for belated remittances.

17. As regard to the detail of 7A inquiry initiated, conducted and concluded during the last three years it was informed as follows:-

| Year | Initiated | Conducted | Concluded |
|-------------|------------------|------------------|------------------|
| 2015-2016 | 17612 | 34659 | 13855 |
| 2016-2017 | 17860 | 38483 | 15199 |
| 2017-2018 | 9495 | 32119 | 12880 |

18. On being asked about the data of dues and remittances arrived at and fed in the system, it was informed that the data of dues and remittances is arrived from monthly ECR filed by the establishments online. The wage month data in the ECR is used to calculate delay in payment of dues. No data is manually fed and the same is captured by the system from the respective tables in the data base. Based on the amount of payment and applicable rate of interest damages are calculated by the system.

19. The Committee observed that in case of failure to pay assessed dues, recovery is effected by attachment of Banks and Debtors, attachment and sale of properties, arrest of employers, appointment of receiver etc. During 2017-18 assessments were done for Rs.3,575 crores but recoveries were effected for Rs.2,283 crores including Rs.715 Crores recovered by attachment & Sale of

properties. Further, prosecutions are also filed before court for non-payment of dues, non-submission of statutory returns & KYCs etc. but out of the total due amount of Rs.3,575 crores only Rs.2,283 crores could be recovered during the year 2017-18. The Committee desired to know whether more stringent/concrete steps need to be put in place by EPFO to recover the dues. In reply it was informed that immediately after assessment of dues the assessing officers try to recover the dues by attaching bank accounts etc. of the establishments. If the amount still remains unrecovered at the end of the financial year, the unrecovered amount is classified as Arrear Dues and transferred to Recovery Officers by issuing recovery certificates. The recovery officer proceeds to recover such dues by modes of recovery specified under section 8B to 8G which involves attachment and sale of movable and immovable properties, arrest and detention of employers etc. Apart from this they have to pay damages varying from 5-25% and interest @ 12%. The shortfall in the recovery of dues is due to factors like Litigations, closure and sickness of establishments etc. EPFO is, however, taking steps to optimise the recovery machinery and to expedite the recovery of pending dues. Cases before the Honourable Courts and CGITs are being defended vigorously. Regular training programmes are also conducted for the recovery officers for improving their skills.

20. When asked to clarify, whether EPFO contribution is a social security protection, provided by the legislature and should it not be the responsibility of EPFO/govt. to make good of financial losses incurred to employees, it was submitted that in case the employer fails to deposit the PF deducted by him, the provisions of section 7A of the Act become applicable and 7A proceedings are conducted to determine the dues. Once determined, the dues are recovered in exercise of powers conferred by Section 8 of the Act so that the employee is given due benefit for the PF deducted. To penalise the employer, prosecution can also be filed under Section 14(1A) of the EPF & MP Act, 1952 which provides for minimum imprisonment for one year and a fine of Rs.10,000/- in case of default in payment of employees contribution which has been deducted by the employer from the employee's wages. Further, complaint under Section 406 / 409 of the IPC, which is a cognizable and non bailable offence, is also required to be filed with police authorities. The employee share which has been deducted by the employer but not remitted by employer is paid to employee after due process of recovery. Further, a Special Reserve Fund was created on 15th September, 1960 to help outgoing members or their nominees/heirs, where an employer fails to pay the whole or part of the provident fund contributions due to the Fund in respect of un-exempted establishments.

21. The Committee were of the view that it is not the duty of the employee to make complaints regarding failure of the employer to deposit their dues and rather it is for the EPFO to monitor it on regular basis as EPFO registers the employers. In reply it was submitted that at present, provisions are available under Section 14(1A) of the EPF & MP Act, 1952 and Section 406/409 of IPC to deal with defaulting employers who deduct PF from the wages and do not pay the same in time. To track and monitor such defaults using the system database of ECR a defaulter list of employers is generated and sent to field offices for ensuring compliance. EPFO has introduced SMS services to subscribers whereby whenever the contribution by the employers are remitted and credited to his account, a message is sent to the concerned employee so that he is aware of payments made by the employer. The implied objectives of the service included alert to the employees who do not get SMS that their employer has not paid contribution and they may become a source partner by informing to EPFO of the default made by the employers. Efforts are being made to make this system more robust. It is proposed that a system be devised to alert the employee in case of non-receipt of contribution in ECR. Wherever, in respect of an employee contribution is remitted by the employer in a particular month through ECR, and there after contribution is not remitted in the subsequent month through ECR, SMS shall be sent informing the employee about the non-deposit of PF contribution by the employer. Such SMS shall be sent for continuous period of three months, so that if the contribution has been deducted from the wages but not deposited, the employee may provide information of the EPF deducted so that EPFO may take necessary action against the defaulting employer. To further discourage the employers from defaulting in payment of employees share after deduction from their wages, it may be considered to make the provision of levy of damages more stringent by increasing the rate of damages for delayed payment of employees share. For example the damages for delay in remittances ranges from 5 to 25% at present which are uniform for both employer and employees share.

22. When asked as to how does the EPFO propose to tackle the issue in instances of employee's contribution being siphoned off by the employer, it was submitted that at present, provisions are available under Section 14(1A) of the EPF & MP Act, 1952 and Section 406/409 of IPC to deal with defaulting employers who deduct PF from the wages and do not pay the same in time. To track and monitor such defaults using the system database of ECR a defaulter list is generated and sent to field offices for ensuring compliance. EPFO has introduced SMS services to subscribers whereby whenever the contribution by the employers are remitted and credited to his account, a message is sent to the concerned employee so that he is aware of payments made by the

employer. The implied objectives of the service, included alert to the employees who do not get SMS that their employer has not paid contribution and they may become a source partner by informing to EPFO of the default made by the employers. Efforts are being made to make this system more robust. It is proposed that a system be devised to alert the employee in case of non receipt of contribution in ECR. Wherever, in respect of an employee contribution is remitted by the employer in a particular month through ECR, and there after contribution is not remitted in the subsequent month through ECR, SMS shall be sent informing the employee about the non deposit of PF contribution by the employer. Such SMS shall be sent for continuous period of three months, so that if the contribution has been deducted from the wages but not deposited, the employee may provide information of the EPF deducted so that EPFO may take necessary action against the defaulting employer. To further discourage the employers from defaulting in payment of employees share after deduction from their wages, it may be considered to make the provision of levy of damages more stringent by increasing the rate of damages for delayed payment of employees share. For example the damages for delay in remittances ranges from 5 to 25% at present which are uniform for both employer and employees share. These may be segregated and in case of delay in remittances of employee share, damages may be made more deterrent.

23. On being asked as to whether the EPFO is monitoring monthly the employee's contribution deducted /collected by the employer but not deposited with the EPFO, it was stated that after introduction of ECR 2.0 version for online collection of remittances through multi banking and the Unified Portal System for remittance of contribution, real time monitoring of the remittance position of the establishments has become possible. Through online tracking of default in remittances of PF dues, current defaulting establishments are being identified against whom appropriate actions are initiated by the field offices, apart from persuasions through SMS & e-mails to ensure remittances.

The current defaulting establishments list as generated through system is made available to EPFO field offices online every month. Which they utilise for initiating inspection and based on the findings in the inspections report, the field offices initiate actions as provided in the EPF & MP Act, 1952 which is assessment of dues under Section 7A, followed by actions for recovery under section 8B to 8G of the Act and action under section 7Q/14B for belated remittances.

24. During the oral evidence held on 03.01.2019, the Committee desired to know that in case an employer runs away with the deducted amount, then whether the employee will have to wait till the conclusion of court case filed by EPFO and also as to why the employee should file a complaint regarding non-

remittance of dues with the concerned authorities by the employer, as EPFO should ask the employer directly as EPFO have authorised them, in reply the representative of the Ministry of Labour & Employment submitted that they need to amend the Act. The representative also assured the Committee to examine the issue within 07 days and come out with a concrete proposal.

25. Accordingly, at the last sitting held on 23.01.2019 the Committee desired to know the outcome of the examination of the subject and the corrective steps need to be taken. In reply the representative of the EPFO submitted as follows:-

" महोदय, आपने पिछली बैठक में जो मार्गदर्शन दिया था, उसके आधार पर हमने पूरी समीक्षा की है। आपने जो प्रश्न पूछे थे, हमने उनका भी जवाब भेजा इस संबंध जो लैकना हमारे सिस्टम में था, उसे हम ठीक करने के लिए व्यवस्था बनाने जा रहे हैं, इसमें सबसे पहला कदम है कि हम इन मामलों को डिटेक्ट कैसे करें। अभी तक यह व्यवस्था थी कि जब भी कोई ईसीआर फाइल होती थी यानी एम्प्लायर हमारे पास फाइलिंग करता था कि इतने कर्मचारियों का पैसा जमा किया है, उसके आधार पर एसएमएस भेजते थे आपका इतना पैसा जमा हुआ है। जैसा कि आपने पिछली बार बताया कि उस व्यवस्था में यह नहीं था कि अगर उसका पैसा जमा नहीं होता है, जिस कर्मचारी का पैसा कटा, उसे हमारे द्वारा यह जानकारी नहीं हो पाती थी। अब हम इसमें यह व्यवस्था करने जा रहे हैं कि अगर किसी कर्मचारी का पिछले महीने का पैसा कटा था और इस महीने जब ईसीआर फाइल हुई तो उसमें नहीं दिखाया जा रहा है कि उसका पैसा कटा है, तो उसे भी हम एक एसएमएस भेजेंगे।

26. The Committee drew the attention of the representative of the Ministry of Labour & Employment and EPFO to the software being developed by C-DAC at Pune, in this regard, which identifies and highlight the defaulters. The representative agreed that they need to implement a similar system. The representative also submitted that they are grateful to the Committee as a neglected area has been brought to their attention.

27. On being asked about complaints from the employees received regarding non-depositing of their PF dues with the EPFO by their employers, it was informed that the Electronic Complaints Management System of Compliance in EPFO was established in January, 2017. Complaints on compliance issues are received from various sources mainly Trade Unions and public at large. The progress of complaints handled in the system upto 31.12.2018 is as below:-

| Total Complaints received | Total Complaints replied | Under process |
|----------------------------------|---------------------------------|----------------------|
| 3740 | 3077 | 663 |

28. About the amount lying un-recovered vis-à-vis reasons thereto and the amount locked under litigation vis-à-vis its current status, it was informed that during the year 2017-18, a total of Rs.1,31,695.65 crores has been received as contribution towards the three schemes. The total corpus with EPFO is Rs.10,50,407.35 Crores as on 31.03.2018. In comparison, total dues to be recovered stood at Rs.8207.49 Crores as on 31.03.2018.

*This amount includes all arrears that have accrued **over the years**. The main reasons for non-recovery of these arrears include litigations at various levels from CGIT to Supreme Court, closure of establishments and financial sickness and liquidation of the establishment which leads to more time consumption as compared to a recovery in case of a running establishment. Such dues are categorised as Not Immediately Realisable (NIR). As on 30.03.2018 a total sum of Rs. 6793.14 Crores is pending in NIR Category. The recovery of assessed dues is a continuous process. A total of Rs.3011.63 Crores has been recovered during the year 2017-18.*

29. When asked to furnish details of companies who have defaulted on depositing their PF with EPFO after having deducted the same from their employees and also the details of action initiated against the defaulters, it was informed that the RPFs in the field offices are to file FIR under Section 406/409 of IPC whenever a default by employer after having deducted the PF from their employees' wages is noticed. Appropriate action in such cases will be taken more vigorously so that incidence of such cases is minimised to the maximum extent possible. The details of FIRs filed as on 31.03.2018 are as follows:-

| FIR pending with police at beginning of year | Fresh FIRs filed with the police upto the end of the year | Cases dropped by police upto the end of the year | Challans filed by police in court upto the end of the year | FIRs pending with police at the end of the year |
|-----------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------|
| 4504 | 240 | 60 | 20 | 4664 |

30. Asked about the mechanism available with the EPFO against companies/contractors not paying the subscription either (i) on their own part, (ii) of the workers or (iii) as a whole, it was informed that all the establishments which are covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 are required to remit the dues recovered from the employees along with their dues and administrative charges within 15 days of close of the month. Failure to remit the contributions and administrative

charges as provided under the Scheme will lead to initiation of inquiry under Section 7A of the Act to determine the dues. On their failure to remit the dues, action as provided under Section 8B to 8G of the Act are taken against such establishment.

If any establishment fails to pay the employees' (workers) share of contribution which has been recovered from the wages of the employees, it is treated as Criminal Breach of Trust and complaints under section 406/409 IPC are filed against such erring employers.

31. The Committee note that in case of default on the part of the employer to remit the deducted PF with the EPFO, action is initiated by the EPFO for recovery of the dues. However, the employee's share which has been deducted by the employer but not remitted by employer is paid to the employee only after due process of recovery from the employer. During oral evidence the representative of the Ministry of Labour & Employment informed the Committee that there is a need to amend the EPF & MP 1952 Act. The Committee therefore, recommend that in order to protect the interest of the employee, which is paramount and also for providing financial security to them, the necessary amendment may be brought at the earliest and they be apprised of the action taken in this regard.

32. The Committee note that employers file ECR in respect of PF deducted by them with the EPFO on monthly basis and EPFO in turn sends an SMS to the employee regarding the amount remitted by his employers. However, during oral evidence the Committee have been assured that EPFO is going to put in place such a system under which an SMS will also be sent to an employee whose PF has not been remitted by

his employer. The Committee further, desire that the said system/ mechanism be put in place at the earliest. The Committee, further lay emphasis on the need for a software to be developed by C-DAC Pune which identifies the defaulter and the representative of the Ministry of Labour and Employment has also agreed that EPFO needs to implement such a software. The Committee, therefore, recommend the Ministry of Labour & Employment and EPFO in coordination with C-DAC Pune, develop the desired software and implement the same at the earliest for the benefit of the employee.

33. The representative of the Ministry and EPFO have admitted during oral evidence that the subject 'Compliance with the prescribed provisions of deduction and deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers' was neglected area. However, it has been brought to their notice by the intervention of the Committee. The Committee exhort upon the MoLE to take necessary steps for the protecting the interests of the employee in letter and spirit now. The Committee express confidence that the Ministry of Labour & Employment and EPFO will do the needful in this regard in good time.

34. The Committee note that to ensure remittance of deducted contribution of the employee and his own share of contribution by 15th of every month, a number of measures have been initiated like introduction of Electronic Challan-cum-Return (ECR), identification of defaulter employer, preparation of list of defaulter and forwarding them to the field offices for further action, invoking of proceedings under

Section 7A, recovery of dues under section 8, filing of prosecution under section 14(1A), complaints under section 406/409 of the Indian Penal Code, recovery of amount by attachment of banks and debtors, attachment and sale of properties, arrest of employer, appointment of receiver, filing of court cases etc. However, the Committee are concerned to note that despite these stringent measures, the amount due is running into crore of rupees and it appears to the Committee that these steps are neither comprehensive nor sufficient to recover the dues. The apprehension of the Committee is supported by the fact that (i) out of the 34659, 36483, 32119 inquiries initiated under section 7A during the year 2015-16, 2016-17 and 2017-18 only 13855, 15199 and 12880 inquiries could be concluded, (ii) out of the total dues of Rs 3575 crore for the year 2017-18 only 2283 crore could be recovered and (iii) the total dues of EPFO to be recovered as on 31.3.2018 are stated to be a whopping Rs.8207-49 crores. The Committee therefore feels that the above measures are either insufficient or there are some lacunae in their implementation. The Committee therefore strongly recommend that the Ministry should review these measures and if necessary some more stringent measures be devised to protect the interest of the employee. The Committee are of the considered view that that the onus to file a complaint regarding non-remittance of his deducted PF is not on the employee, rather it is for the EPFO to take stock of the remittances from the employee whom they have authorised to deduct the contribution. The Committee, therefore, recommend that the EPFO should take

immediate steps to ensure that the onus of filing complaints of the non remittance of deducted PF should not be put on the employees and where there are complaints filed by them, they be given utmost priority and resolved expeditiously. The Committee further recommend that no employee should be made to run from pillar to post for credit of his due/ legitimate rights and urgent steps be taken to ensure that no employee has to pay twice his share of contribution or is deprived of his share of the contribution.

35. The Committee are perturbed to note that the number of FIRs have been filed under Section 406/409 of IPC. As on 31.03.2018 as many as 4504 FIRs were pending with police at the beginning of the year and 240 fresh FIRs were filed by the end of the year. Further, only 60 cases were dropped by police and challan in 20 cases could only be filed in court during the year. The number of FIRs, rose to 4664 from 4504 in the beginning of the year. The rising number of FIRs is a clear indication of the non-compliance of the provisions of the Act by the employers which warrants immediate remedial measures. The Committee, therefore, recommend that Ministry of Labour & Employment may deliberate seriously on the issue to ensure strict compliance of the provisions of the EPFO and MP Act, 1952 to safeguard the interests of the vulnerable employee.

V. SOLUTION OF THE ISSUE

36. Asked about the corrective measures undertaken by EPFO to find a lasting solution to this vexed issue, it was informed that all the establishments which are covered under the Employees Provident Funds and Miscellaneous

Provisions Act, 1952 are required to remit the dues recovered from the employees along with their dues and administrative charges within 15 days of close of the month. Failure to remit the contributions and administrative charges as provided under the Scheme will lead to initiation of inquiry under Section 7A of the Act to determine the dues. On their failure to remit the dues, action as provided under Section 8B to 8G of the Act are taken against such establishment.

37. As regard to the solution of the vexed issued of employer deducting employee's contribution and remittance to the EPFO alongwith his own share of contribution, the Ministry of Labour & Employment and EPFO have mentioned of initiation of proceedings under 7A and 8B to 8G of the Act. However, as observed by the Committee in the preceeding para that there is a yawning gap between the initiation and conclusion of proceedings under Section 7A. From the reply of the Ministry of Labour & Employment and EPFO it becomes evident that they are not all serious in finding a lasting solution to the issue as they have merely mentioned the proceedings of Section 7A, recovery and dues under Section 8B to 8G etc. Cautioning the MoLE and EPFO on their lackadaisical attitude, the Committee strongly recommend that the Ministry of Labour & Employment and EPFO should furnish to them a foolproof solution to this issue urgently including making specific and adequate statutory provision by way of amending the Act and making the EPFO and the employer directly responsible for non deposit of employees share deducted from his wages.

The Committee express their concern that these issues pertaining to deduction at source are pending since years together and the authority should have addressed this problem long back as lakhs of employees are penalized/suffered due to default by their employers. The employees are

suffering due to lack of monitoring system of the CBDT and EPFO. The Committee feels that a strong monitoring system should be deployed and implemented to check the deductions and deposits by employers. The employee cannot be made liable for recovery of that money from employer and to file cases against the employer. The authorities should look at a mechanism to make good the financial losses if any occurred to the employees. The Committee expect that the Labour Ministry, EPFO, Department of Revenue and others will come out with a solution to take care of honest employees.

VI. ALTERNATIVE OPTIONS TO THE EMPLOYEES

38. On being queried as to whether the employees/beneficiaries have been given alternative options regarding the deduction at source and if the employees wish to contribute directly instead of via the employer, what would be the status/situation, it was submitted that is the Employees Provident Fund Scheme, 1952 no alternative option has been provided in lieu of deduction of employees share from wages. Under the existing provisions the employee cannot contribute directly instead of via the employer. As the scheme is mandatory, employer has been made responsible and accountable for enrolment of eligible employees to the scheme and remittance of both shares of PF contributions. Any provision for direct remittance of PF contribution by employees will not be in synchronization with the objectives of a mandatory deduction of PF to ensure old age income security. Such a provision, if allowed, will make employee liable for damages and interest for delay in remittances as also to stringent penal provisions under EPF & MP Act, 1952. Only in a voluntary scheme, the contribution can be directly taken from the employees. In a mandatory scheme if the remittances are directly taken from the employees, for default and delay the employees shall be subjected to penal provisions which will not be in the interest of employees.

39. The Committee note that the employees have not been given an alternative option to remit their share of contribution in lieu of deduction from their wages. The Ministry of Labor & Employment have submitted that any provision for direct remittance of PF contribution would only add to the woes of the employees. It therefore follows that duty of the

Ministry of Labour & Employment and EPFO becomes more strenuous and vital for the upkeep of the interest of the employee. The Committee, therefore, desire that the MoLE ensure that interests of the employee are protected at all cost.

VII. SPECIAL RESERVE FUND

40. As regard to the relief measures available to the employees in case their employer does not deposit their PF with the EPFO, whether the employee's money is returned to them in such case and also whether the money of the employee has ever been returned to them in these cases, it was informed that a Special Reserve Fund was created on 15th September, 1960 to help outgoing members or their nominees/heirs, where an employer fails to pay the whole or part of the provident fund contributions due to the Fund in respect of un-exempted establishment. The terms of assistance from SRF is available to the extent of the employees' share of contribution deducted from his wages by the employer but not paid to the Fund plus the interest thereon at usual rates. This is also applicable in respect of member who leaves a covered establishment and joins another covered establishment and his PF accumulation become payable to him subsequently owing to retirement or death or any of the circumstances mentioned in para 69/70 of EPF Scheme, 1952. The amount to be paid from the Special Reserve Fund should be the actual amount due to be paid to the member concerned. Subsequently, if the amount is recovered from the employer, the actual amount paid from the Special Reserve Fund should be credited in the Fund.

The details of last five years are as below:

| Financial Year | Amount allocated | Number of employees |
|--------------------------|-------------------------|----------------------------|
| 2018-19 (as on 15.01.19) | 2,88,71,721/- | 1227 |
| 2017-18 | 7,81,623/- | 72 |
| 2016-17 | 17,47,054/- | 67 |
| 2015-16 | 8,88,847/- | 1 |
| 2014-15 | 31,28,154/- | 142 |
| 2013-14 | 45,76,704/- | 2871 |

41. Asked to furnish details about the claims received, utilization done, cases of failure of employer to deposit employee's contribution including special reserve fund, it was informed that in such case the RPFs in the field offices

file FIR under Section 406/409 of IPC. The details of FIRs filed as on 31.03.2018 are as given in Para No. 29.

In 2017-18, in 240 establishments, default by employer after having deducted the PF from their employees' wages was noticed. To provide relief and to compensate such employees by paying employee share deducted by employer, a Special Reserve Fund was created on 15th September, 1960 to help outgoing members or their nominees/heirs, where an employer fails to pay the whole or part of the provident fund contributions due to the Fund in respect of un-exempted establishments.

42. The representative of the Ministry of Labour & Employment during oral evidence admitted that they have a Special Reserve Fund (SRF) as a relief measure to help members or their nominees where the employer fails to pay whole or part of PF contribution to the fund. The Committee have also been informed that the terms of assistance from SRF is available to the extent of the employee's share of contribution deducted but not deposited by the employer including the interest thereon and applicable to employees leaving an establishment owing to retirement, deaths on any circumstances mentioned in Para 69/70 of the EPF Scheme, 1952. Further during the year 2018-19 as on 15.01.2019 an amount of Rs.2,88,71,721 was allocated to 1227 employees. However, during the year 2017-18, 2016-17, 2015-16 and 2014-15 an amount of Rs.7,81,623/-, Rs.17,47,054/-, Rs.8,88,847/- and Rs.31,28,154/- was allocated to 72, 67, 1 and 142 employees, however, during the year 2013-14 the amount allocated was Rs.45,78,704 to 2871 employees. A perusal of these figures reveals that except the FY, 2013-14 and 2018-19, the number of employees benefitted under SRF from the year 2014-15 to 2017-18 has remained low, which corroborates the fact that a few

employees are getting their contribution credited in case of default by their employer. The representative of the Ministry also admitted that a procedure needs to be devised regarding SRF, awareness regarding SRF and strengthening of SRF is the need of the hour. The representative also informed the Committee that the employee need not claim money from the SRF and EPFO will credit the contribution to the account of the employee directly but, for this, they need detailed deliberation etc. The Committee therefore, strongly recommend that all necessary steps in this regard be initiated by MoLE for streamlining the SRF so as to safeguard the employee from any financial loss occurring to him hitherto. The Committee are sanguine that if the MoLE act upon their instant recommendation it would usher in a new chapter for the welfare of the employee.

CHAPTER-II

TDS DEDUCTION OF THE EMPLOYER AND ITS REMITTANCE BY THE EMPLOYER

43. Asked to furnish the details about the statutory provisions including intention of the lawmakers for deducting at source the contribution of employees towards the Income Tax, it was submitted that the provisions relating to TDS from salaries are contained in section 192 of the Income-tax Act, 1961 (the Act) which require that any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made. These provisions have always been in the Act since 1961. The intention of the legislature in applying TDS on certain types of the payments, including salaries, is to ensure that the taxes get collected by the Government at the time of the accrual/ payment of income itself and that an audit trail is created for such payments so as to preclude non-reporting or under-reporting by the recipient of the payment. TDS ensures that taxes are duly collected at source at the earliest point in time and not left to the compliance behavior of the taxpayer in correctly reporting it in his return of income. Since it is not administratively feasible for the Government to check tax compliance by millions of salaried employees, TDS is a very effective tool for ensuring tax collection and creating audit trail of income earned by such employees. TDS is also convenient for the employees as the taxes are deducted in instalments every month thereby reducing the burden of tax payment in one go at the end of the year.

44. On being asked whether the employees have been given alternative options regarding the deduction at source and if the employees wish to contribute directly instead of via the employer, what would be the status/ situation, it was submitted that TDS is mandatory on salary payments and the employers are required under the law to make full deduction of applicable taxes failing which the employer himself becomes an 'assessee in default' and the amount of tax is liable to be recovered from him along with interest. The employee, therefore, does not have an option to not opt for TDS and rather pay his taxes as Advance Tax or Self-assessment Tax. Only taxes to be paid over and above the amount already deducted at source can be paid by the employee on his own under Advance Tax or Self-assessment Tax.

45. When asked that the Ministry have made it mandatory to facilitate CBDT to collect the employee's contribution by employer and guidelines legal status regarding the CBDT and the employer and the authorization by the CBDT/

legislature to deduct compulsory TDS from the salary, it was submitted that the Employers/ deductors are not an agent of the Government or CBDT but independent entities discharging statutory obligations cast upon them under the Act. The deductors are not paid any remuneration or compensation for the duties performed under these obligations. On the contrary, any failure to comply with TDS provisions by the employer may result in penal action. There is no direct or indirect contract between CBDT and the deductors in this regard and so the relationship between CBDT and employers/ deductors is not of principal and agent rather both are performing their respective duties under the provisions of the Income-tax Act.

46. Asked to state that in case the employer fails to deposit the employee's contribution with CBDT, what would be the scenario/ status/ legal provision responsibility, it was submitted that in case the employer fails to deposit tax deducted from employee's salaries to Government account, he will be liable for following legal consequences:

- i. Section 201(1A): Charging on interest at the rate of 18% per annum on the amount not deposited in Government account for the period of default.
- ii. Section 201: The employer is treated as an "assessee in default" and apart from the amount of TDS not deposited being liable to be recovered along with interest, an amount up to 100% of the defaulted amount can be levied as penalty under section 221.
- iii. Section 276B: Prosecution punishable with rigorous imprisonment ranging from 3 months to 7 years and with fine.

It was further stated that the employer is not an agent or representative of CBDT but an independent entity discharging its obligations under the statute. His failure to perform his statutory duties is punishable under the Act by the Income Tax Department. Therefore, the employer is like any other assessee against whom proceedings under the Act for recovery of tax and for imposition of penalty and filing of prosecution can be initiated.

47. When asked to clarify that should it not be the responsibility of CBDT/ Govt. to make good of financial losses incurred to employees for non-depositing of TDS, it was submitted that Section 199 of the Act requires that the tax deducted by the employer must be deposited into the Government account for the amount to be treated as tax credit of the employee. Therefore, till the amount of TDS is not paid by or recovered from the employer, corresponding credit cannot be given to the employee. However, to address the genuine hardship of the employees, CBDT has already issued Circulars dated 01.06.2015 and 11.03.2016 directing its officers not to enforce any demand on the employee where the employer/ deductor has deducted TDS from employee's income but has not deposited the same to the Government account. Moreover, vide **Circular No. 8/2015** dated 14.05.2015, it has been prescribed that where

the employer has not deposited TDS into Government account, the resultant demand in the hands of the employee may be reduced by the assessing officer up to Rs.1,00,000/- after verifying the TDS certificate and other relevant documents submitted by the employee and on submission of an Indemnity Bond in certain cases. Thus, adequate measures have been taken by the Government to ensure that no harassment is caused to the employees due to failure of the employer to deposit the TDS amount.

48. On being asked as to how does the CBDT propose to tackle the issue of instances of employee's contribution being siphoned off by the employer, it was submitted that as regards ensuring compliance by the employers, CBDT is already taking action in cases where the employer has either not deducted TDS or has not paid the TDS to the Government after deduction, including conducting of surveys and inquiries, levy of interest and penalty and launching of prosecution in suitable cases. Moreover, several outreach programmes are being conducted to educate the employers of their responsibilities and obligations under the Income-tax Act.

49. As regards protecting the interest of the employees, CBDT has already issued Circulars dated 01.06.2015 and 11.03.2016 directing its officers not to enforce any demand on the employee where the employer/ deductor has deducted TDS from employee's income but has not deposited the same to the Government account. Moreover, vide **Circular No. 8/2015** dated 14.05.2015, it has been prescribed that where the employer has not deposited TDS into Government account, the resultant demand in the hands of the employee may be reduced by the assessing officer up to Rs.1,00,000/- after verifying the TDS certificate and other relevant documents submitted by the employee and on submission of an Indemnity Bond in certain cases. CBDT has also introduced an SMS service under which information about the amount of TDS deposited by the employer for a quarter is sent to the employee through SMS so as to alert him of possible failure of the employer to deposit the TDS and to allow him to take corrective action promptly without waiting for the end of the year.

50. As regard to the CBDT monitoring monthly the employee's contribution deducted/ collected by the employer but not deposited with the CBDT, it was submitted that CBDT has established a dedicated Central Processing Centre for TDS (CPC-TDS), which regularly generates list of deductors/ employers who have deducted TDS but not deposited the same with the Government. These lists are made available online to the TDS officers who carry out necessary inquiry and recover the amount in default along with interest. In suitable cases, penalty is also imposed and prosecution is also launched. The progress of work in this area is regularly monitored by supervisory officers. Complaints and grievances filed by the employees are examined and referred to the

jurisdictional TDS officers by a dedicated Taxpayer Service Directorate under CBDT.

51. During oral evidence of the representative of the Ministry of Finance (Department of Revenue) and CBDT held on 23.01.2019, the Committee desired to apprise of the issue. In reply the representative submitted as follows:

"सर, हम लोग जो एम्प्लायर्स का टी.डी.एस. करते हैं, उनको हम लोग एजेंट ट्रीट न करके असेसी ही ट्रीट करते हैं कि वे लोग इनकम टैक्स एक्ट के तहत असेसी हैं। वे अपनी इयूटी डिस्चार्ज कर रहे हैं। You pay as you earn. जैसे-जैसे एम्प्लायर को तन्ख्वाह देते हैं, उसमें से टी.डी.एस. भी डिडक्ट कर रहे हैं। जब हम किसी मामले में यह पाते हैं कि टी.डी.एस. डिडक्ट किये गये, लेकिन जमा नहीं किये गये, there the employer was treated as assessee in default. Having been treated as assessee in default, उनके ऊपर प्रोसिक्यूशन प्रोसिडिंग्स भी हुईं और उनसे डिमांड भी कलेक्ट की गयी, उनके ऊपर इंटेस्ट भी लगाया गया। जब ये शिकायतें थोड़ी बढ़ गयीं तो वर्ष 2015 में CBDT came out with a couple of circulars. हमने अपनी रिप्लाइ में भी इसके बारे में बताया है। On 1st June, 2015, they have said that any demand on the employee or deductee should not be enforced. अगर एम्प्लायर ने टी.डी.एस. काटकर जमा नहीं किया तो that demand should not be enforced in a coercive manner. जोर-जबर्दस्ती से उनकी डिमांड रिकवर नहीं की जाएगी। इसी सर्कुलर को दोबारा वर्ष 2016 में रीइटेड किया गया। कुछ मामलों में जहां एक लाख से नीचे का डिफॉल्ट था, that is, where the amount not paid, वहां पर the deductee assessee could come forward. They were giving indemnity bond. That was being accepted by the Tax Department as proper demand and that they have discharged their onus. Those demands were being cancelled on the basis of that. डिपार्टमेंट ने इस प्रकार के स्टेप्स उठाये हैं, जिससे कि जो डिडकटी हैं या एम्प्लाइ हैं, उन्हें एम्प्लायर की गलती की वजह से उनके ऊपर कोई दिक्कत न आए।

52. The Committee have been informed that the employers/ deductors are not an agent of the Government or CBDT, but independent entities discharging statutory obligations cast upon them under the Act. The Employers/ deductors of TDS from the salaries from the employees are treated as assessee and in case after deduction of the TDS they do not remit them to the concern authorities, the employers/ deductor is treated as assessee in default as such prosecution proceeding are initiated against them, the whole amount is collected by levying interest thereon. Expressing satisfaction with the reply of the Ministry of Finance, the Committee desire that the entire procedure may be further streamlined.

53. The Committee have been informed that in case the employers/ deductor fails to deposit tax deducted from employees salary action under Section 201(assessee in default), 201(1A) (interest penalty) and Section 276 (B) (prosecution with imprisonment) are initiated. The Committee have further been informed that as per circular No.8/2015 dated 14.05.2015 in such cases the resultant demand in the hands of the employees may be reduced by assessing officer upto Rs.1,00,000 after verifying the TDS certificate and other relevant documents submitted by the employee and on submission of an Indemnity Bond in certain cases. Also vide circular dated 01.06.2015 and 11.03.2016 the assessing officers have been apprised that the IT Act puts a bar on direct demand against the assessee in cases where tax is deductible at source and the demand on tax credit mismatched cannot be enforced coercively. But CBDT admitted that the amount remains as recoverable in the name of employee only and not employer. However, the Committee are of the view that these circulars are only clarificatory in nature and the relevant statutory provisions viz, section 199 and 205 of the IT Act, 1961 needs to be revisited to specify that demand on account of tax credit mismatch cannot be enforced coercively. The Committee further opined that the condition of Indemnity Bond as referred above though in certain cases, may be reviewed to bring relief to the employee whose TDS has already been deducted from his salary. Further, the Committee not being clear about the intention behind the above Rs.1,00,000 limit, desire that the Ministry of Finance should also consider raising the present said limit of

Rs.1,00,000 in the interest of welfare of the workers. The Committee would like to be apprised of the steps taken by the Ministry of Finance in this regard.

54. The Committee express their concern that these issues pertaining to deduction at source are pending since years together and the authority should have addressed this problem long back as lakhs of employees are penalized/suffered due to default by their employers. The employees are suffering due to lack of monitoring system of the CBDT and EPFO. The Committee feels that a strong monitoring system should be deployed and implemented to check the deductions and deposits by employers. The employee cannot be made liable for recovery of that money from employer and to file cases against the employer. The authorities should look at a mechanism to make good the financial losses if any occurred to the employees. The Committee expect that the Labour Ministry, EPFO, Department of Revenue and others will come out with a solution to take care of honest employees.

**New Delhi;
6th February, 2019
17th Magha, 1940 (Saka)**

**DR. KIRIT SOMAIYA
CHAIRPERSON,
STANDING COMMITTEE ON LABOUR**

STANDING COMMITTEE ON LABOUR

(2018-19)

Minutes of the Eighth Sitting of the Committee

The Committee sat on 3rd January, 2019 from 1500 hrs. to 1600 hrs. in Committee Room No. 1, Block-A, PHA-Ext. Building, New Delhi.

PRESENT

Dr. Kirit Somaiya – CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Rajesh Kumar Diwakar, MP
3. Shri Ashok Dohrey, MP
4. Shri Satish Chandra Dubey, MP
5. Shri Devajibhai G. Fatepara, MP
6. Shri Rama Chandra Hansdah, MP
7. Shri Bahadur Singh Koli, MP
8. Dr. Arun Kumar, MP
9. Shri Hari Majhi, MP
10. Shri Dayakar Pasunoori, MP

RAJYA SABHA

11. Shri Ram Narain Dudi, MP
12. Shri N. Gokulakrishnan, MP
13. Shri Akhilesh Prasad Singh, MP
14. Dr. Banda Prakash, MP

SECRETARIAT

1. Ms. Rimjhim Prasad - Joint Secretary
2. Shri P.C. Choulda - Director
3. Shri C. Vanlalruata - Additional Director
4. Shri Kulvinder Singh - Under Secretary

Witnesses
REPRESENTATIVES OF MINISTRY OF LABOUR & EMPLOYMENT

| Sl. No. | Name | Designation |
|----------------|-----------------------------|------------------------|
| 1. | Smt. Anuradha Prasad | AS, DG (ESIC) |
| 2. | Shri R.K. Gupta | Joint Secretary |

REPRESENTATIVES OF ESIC

| Sl. No. | Name | Designation |
|----------------|--------------------------|--------------------------------|
| 1. | Shri R.K. Kataria | Medical Commissioner |
| 2. | Shri A.K. Sinha | Insurance Commissioner |
| 3. | Shri Sanjay Sinha | Additional Commissioner |

REPRESENTATIVES OF EPFO

| Sl. No. | Name | Designation |
|----------------|----------------------------|-------------------------------------------|
| 1. | Shri Sunil Barthwal | Central PF Commissioner |
| 2. | Shri Jagmohan | Additional Central PF Commissioner |
| 3. | Smt. Aprajita Jaggi | Regional PF Commissioner |

2. At the outset, the Chairperson welcomed the representatives of the Ministry of Labour & Employment, representatives of the EPFO and ESIC to the sitting of the Committee, convened to have briefing on the subject 'Compliance with the Prescribed Provisions of Deduction and Deposit of PF and ESI by the Employers'. The Chairperson then drew the attention of the representatives to Direction 55(1) of the 'Directions by the Speaker' regarding

confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees.

3. Thereafter, the Committee in connection with the Subject 'Compliance with the Prescribed Provisions of Deduction and Deposit of PF and ESI by the Employers' noted that PF and ESI is deducted by the employers but the same is not deposited with the concerned agencies/authorities and as a result the employee has to suffer. The Committee noted that the similar is the case with regard to deduction of Income Tax/TDS etc. by concerned employers which is also not submitted. The Committee, therefore, decided to amend the above Subject and decided to add to it the deduction of Income Tax/TDS also. Accordingly the amended subject will now be read as follows:-

'Compliance with the Prescribed Provisions of Deduction and Deposit of PF, ESI and TDS (of Income Tax, etc) by the Employers'. The Committee also directed that the representatives of the Ministry of Finance (Department of Revenue) and Central Board for Direct Taxation (CBDT)/Income Tax may also be called in the next sitting.

4. The Committee then desired to know as to which Section of the EPFO Act, 1952 authorises the employer to deduct PF of the employees. In reply, the representative of the EPFO submitted that Section 6 of the said Act authorises the employer to do so. However, the Committee were of the view that Section 6 does not specifically authorise the employer to deduct PF and if the employer does not deposit the amount deducted with the Provident Fund Commissioner then the contribution of the employee is not returned to them by EPFO stating that the employer has not deposited the money with them. The representative of the EPFO submitted that failure on the part of the employer to deposit the collected/deducted PF would be treated as a criminal breach of trust and proceedings under Section 7-A are initiated by EPFO in such cases. However, the Committee were not satisfied with this explanation, as the amount of PF deducted from the employees would not be paid back to them even if the failure to deposit the amount by the employer is treated as criminal breach of trust and the Committee were doubtful about the payment of deducted amount to

the employees. The Committee also directed to be apprised of such proceedings initiated under Section 7-A during the last four months within a time period of eight days. The Committee were also of the view that it is not the duty of the employee to complain about failure of their employer to deposit the deducted PF and rather it is for the EPFO to monitor it on regular basis as EPFO registers the employers/employees.

5. The representatives of the Ministry of Labour & Employment and EPFO requested the Committee to give them an opportunity to examine the issue and assured to come back with a concrete proposal within 7 days. They further informed the Committee that there are 90 crore accounts and about 4.5 crore individuals' ESRs are filed by the establishment. As there is a seasonal employment, sometimes contribution is given by an employee and sometimes not. The existing scheme of things provides that there will be matching contribution by the employee and the employer and it will be deposited by the employer. It would require amendment of Act or Scheme. The Committee also urged the representative of the Ministry of Labour & Employment, EPFO and ESIC to deliberate upon the issue seriously and suggest a way out.

6. The Chairperson then thanked the witnesses for appearing before the Committee and briefing them on the subject as well as responding to the queries raised. The Chairperson directed the representatives to furnish written replies within 8 days in respect of those queries, for which information was not readily available with them during the meeting as well as which required detailed and statistical information.

The Committee then adjourned.

[A copy of the verbatim proceedings was kept on record]

STANDING COMMITTEE ON LABOUR

(2018-19)

Minutes of the Ninth Sitting of the Committee

The Committee sat on 23rd January, 2019 from 1430 hrs. to 1545 hrs. in Committee Room No. 2, Block-A, PHA-Ext. Building, New Delhi.

PRESENT

Dr. Kirit Somaiya – Chairperson

MEMBERS

LOK SABHA

2. Shri Satish Chandra Dubey, MP
3. Dr. Boora Narsaiah Goud, MP
4. Shri Rama Chandra Hansdah, MP
5. Shri C. N. Jayadevan, MP
6. Shri Bahadur Singh Koli, MP
7. Dr. Arun Kumar, MP
8. Shri Kaushalendra Kumar, MP
9. Shri R. Parthipan, MP
10. Shri Hariom Singh Rathore, MP

RAJYA SABHA

11. Shri Nazir Ahmed Laway, MP
12. Shri Rajaram, MP
13. Shri N. Gokulakrishnan, MP
14. Shri Akhilesh Prasad Singh, MP
15. Dr. Banda Prakash, MP

SECRETARIAT

1. Ms. Rimjhim Prasad - Joint Secretary
2. Shri P.C. Choulda - Director
3. Shri C. Vanlalruata - Additional Director
4. Shri Kulvinder Singh - Under Secretary

Witnesses
REPRESENTATIVES OF MINISTRY OF LABOUR & EMPLOYMENT

| Sl. No. | Name | Designation |
|----------------|---------------------|----------------------|
| 1. | Ms. Anuradha Prasad | Additional Secretary |
| 2. | Shri R.K. Gupta | Joint Secretary |
| 3. | Shri N.K. Santoshi | Dy. Director General |

REPRESENTATIVES OF EMPLOYEES' STATE INSURANCE CORPORATION (ESIC)

| Sl. No. | Name | Designation |
|----------------|----------------------|---------------------------------------|
| 1. | Shri A.K. Sinha | Insurance Commissioner |
| 2. | Shri A.P. Tripathi | Additional Commissioner (Benefits) |
| 3. | Shri S. Ravichandran | Additional Commissioner (P&D) |

REPRESENTATIVES OF EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)

| Sl. No. | Name | Designation |
|----------------|---------------------|-------------------------|
| 1. | Shri Sunil Barthwal | Central PF Commissioner |
| 2. | Shri Jagmohan | ACC (Hq.) |
| 3. | Shri V.P. Singh | ACC (Hq.) |
| 4. | Smt. Aprajita Jaggi | RPFC-I |
| 5. | Shri A.K. Mandal | RPFC-I |

REPRESENTATIVES OF CENTRAL BOARD OF DIRECT TAXATION (CBDT)

| Sl. No. | Name | Designation |
|----------------|-----------------|-----------------------------------------|
| 1. | Ms. Neena Kumar | Member (R&TPS) & Spl. Secretary CBDT |
| 2. | Shri Anand Jha | Commissioner (IT&CT), CBDT |

2. At the outset, the Hon'ble Chairperson welcomed the members and informed them about the Infrastructure Leasing & Financial Services (IL&FS) issue in which pension and PF amount of the investors aggregating to Rs.9,700 crore has been lost as they invested in the company's bond and now Infrastructure Leasing & Financial Services (IL&FS) is in deep financial crisis and there is no inquiry, monitoring regulation or accountability after the money has been lost. The Committee therefore decided to take the following Subject and decided to call the representative of the Ministry of Labour & Employment, Ministry of Finance (Department of Economic Affairs) in their next Sitting:-

"Guidelines, Monitoring, Rating and Regulatory System, Status of Investment in Bonds and such Instruments (Example of Infrastructure Leasing & Financial Services (IL&FS) by PF Funds, Pension Funds".

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Labour & Employment, the Ministry of Finance (Department of Revenue), EPFO, ESIC and CBDT to the sitting of the Committee, convened to have briefing on the subject 'Compliance with the prescribed provisions of deduction and deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers'. The Chairperson then drew the attention of the representatives to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of the proceedings of the Committee during deposition before the Parliamentary Committees.

4. The Committee then desired to know about the necessary action taken by the Ministry of Labour & Employment, EPFO on the Subject 'Compliance with the prescribed provisions of deduction and deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers'. The representative of the EPFO informed that they are going to develop a system in which an SMS will be sent monthly to the employees for the amount remitted by its employer as well the amount

not remitted by him. In case of default necessary action will be taken by the CPFC and all defaults will be reflected/ highlighted by the system.

5. As regard to the payment of the money deducted by the employer but not remitted to the concerned authorities to the respective employees, the representative of the Ministry of Labour & Employment informed that at present the employees are not getting repayment of money from the Special Reserve Fund and a procedure is being desired in this directed steps to see that the employee should not be required to claim his money are also being devised.

6. The Committee then desired to hear the views of the CBDT on the Subject. The representative of the CBDT submitted that they don't treat the employer as an agent but as an assessee. In case the employer does not deposit the TDS then he is treated as assessee in default and prosecution proceedings are initiated and demand is also collected from them including levying of interest. CBDT also came out with circulars in 2015 in this regard on increase in the number of complaints. The representative also assured the Committee to come back to the Committee in case salary actually not paid to the employee and his status of filing his return.

7. The representative of the CBDT informed the Committee that the employee would be given credit of the TDS deducted by his employer when the employer will actually deposit the amount with the income tax authority. The representative submitted that if the tax payer's reply or Departmental records show that the demand is on account of TDS mismatch and TDS credits are available in the system, the AO, if the credit are not available in 26AS, the deduction should not exceed Rs.1,00,000 for that assessment year. The Committee desired to know the logic behind it. In reply the representative submitted that this has been done in keeping in view the interest of small tax payers. The Committee desired to know whether the limit of Rs.1,00,000 is proposed to be enhanced or not.

8. The Chairperson then thanked the witnesses for appearing before the Committee and briefing them on the subject as well as responding to the queries raised. The Chairperson directed the representatives to furnish written replies within 8 days in respect of those queries, for which information was not readily available with them during the meeting as well as which required detailed and statistical information.

The Committee then adjourned.

[A copy of the verbatim proceedings was kept on record]

STANDING COMMITTEE ON LABOUR

(2018-19)

Minutes of the Twelfth Sitting of the Committee

The Committee sat on Wednesday, the 6th February, 2019 from 1030 hrs. to 1100 hrs. in Room No. 95-A, Chairperson's Chamber, Parliament House, New Delhi.

PRESENT

Dr. Kirit Somaiya - CHAIRPERSON

MEMBERS

LOK SABHA

2. Shri Ashok Kumar Dohrey, MP
3. Shri Satish Chandra Dubey, MP
4. Shri Rama Chandra Hansdah, MP
5. Shri C. N. Jayadevan, MP
6. Shri Kaushalendra Kumar, MP
7. Shri R. Parthipan, MP
8. Shri Hariom Singh Rathore, MP

RAJYA SABHA

9. Shri Ram Narain Dudi, MP
10. Shri P.L. Punia, MP
11. Shri Amar Shankar Sable, MP
12. Shri N. Gokulakrishnan, MP
13. Shri Madanlal Saini, MP

SECRETARIAT

1. Ms. Rimjhim Prasad - Joint Secretary
2. Shri P.C. Choulda - Director
3. Shri C. Vanlalruata - Additional Director
4. Shri Kulvinder Singh - Under Secretary

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee, convened for consideration and adoption of the following draft Reports:

- (i) XX XX XX XX
- (ii) XX XX XX XX
- (iii) XX XX XX XX
- (iv) XX XX XX XX
- (v) XX XX XX XX
- (vi) XX XX XX XX

(vii) Draft Report on 'Compliance with the Prescribed Provisions of Deduction and Deposit of PF, ESI and TDS (of Income Tax, etc.) by the Employers'.

3. The Committee took up the Draft Reports one by one for consideration/ adoption and adopted the same without any addition/ modification.

4. The Committee then authorized the Chairperson to finalise the Report in the light of consequential changes that might arise out of factual verification and present the same to both the Houses.

The Committee then adjourned.

XX Does not pertain to this Report.