

Circular No-5/2009

F.No.375/01/2009-IT (B)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi dated the 2nd July, 2009.

Subject: - Procedure for representation before BIFR and AAIFR

In supersession to all circulars and instructions of the Central Board of Direct Taxes (CBDT) issued on the above subject, the CBDT prescribes the following procedure to be followed before the **Board for Industrial and Financial reconstruction (BIFR)** and the **Appellate Authority for Industrial and Financial Reconstruction (AAIFR)** in respect of granting Income tax reliefs/concessions to be given to sick companies for its rehabilitation under the Sick Industrial Companies (SICA) Act, 1985.

1. The **Director General Income Tax (Administration), [DGIT (Admn.)]** will be the **Nodal agency** for co-ordination between the BIFR and the CBDT and between the AAIFR and the CBDT.
2. It will be the responsibility of DGIT (Admn) to represent the CBDT before BIFR and AAIFR in every case in which Income Tax reliefs is sought under the **Draft Rehabilitation Scheme** or in the **Sanctioned Scheme circulated** by BIFR/AAIFR.
3. The DGIT (Admn) will consider each case of Income Tax reliefs/concessions under the Direct Tax Laws on merits of each individual case for the purpose of **consent** as contemplated in Section 19 (2) of the SICA, 1985. In cases where the company and the assessing officer have quantified the Income tax reliefs the DGIT (Admn) will communicate the **consent** or **denial of consent** to BIFR at the time of hearing itself after obtaining the approval of CBDT. Where the information from the company and the assessing officer is incomplete, the DGIT (Admn.) will obtain the necessary information from the concerned parties and put up the file for the consideration of CBDT and subsequently intimate the BIFR.
4. It is the responsibility of DGIT (Admn) to obtain the approval of CBDT in every case in which Income tax relief/concessions is sought and to communicate the approval of CBDT to BIFR and the concerned assessing officer. The decision thus communicated by the DGIT (Admn.) on behalf of the CBDT is **binding** on all assessing officers.

5. The assessing officer should give the Income Tax reliefs to sick companies only after obtaining the approval as mentioned above. In cases where BIFR/AAIFR is taking a **different view** from that of the CBDT, it will be the responsibility of DGIT (Admn) to file appeal before the appellate authority (**AAIFR**) or before the **Delhi High Court** as the case may be. It is also hereby clarified that in cases where the sick companies file appeals against the order of BIFR/AAIFR in any of the High Court other than Delhi High Court, it will be the responsibility of concerned **Chief Commissioner of Income Tax (Administration)** to defend the case in the **respective High Court**.

This Circular may be brought to the notice of all officers working in your region for strict compliance.

This Circular should also be brought to the notice of the officers responsible for conducting internal audit and adherence to these should be checked by the auditing parties.

Ansuman Pattnaik
Director (Budget)

Copy to:-

1. The Chairman, Members and other officers in CBDT of the rank of Under Secretary and above.
2. All Chief Commissioners and Directors General of Income Tax.
3. DIT (PR, PP&OL) for printing in the quarterly tax bulletin and for circulation as per their usual mailing list.
4. DIT(Recovery), DIT(System), DIT(DOMS), DIT(Vigilance),DIT(IT) and DIT (HRD)
5. The Comptroller and Auditor General of India
6. The Secretary, BIFR, Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi-1
7. Guard file.

Ansuman Pattnaik
Director (Budget)