

INSTRUCTION No. 5/2011

Dated 30-3-2011

The Hon'ble Supreme Court has made the following observations in an order dated 12-8-2010 in the case of CIT, Delhi v. Bharti Cellular Ltd. [2010] 193 Taxman 97 (SC):

"We are directing CBDT to issue directions to all its Officers, that in such cases, the Department need not proceed only by the contracts placed before the officers. With the emergence of our country as one of the BRIC countries and with the technological advancement matters such as present one will keep on recurring and hence time has come when Department should examine technical experts so that the matters could be disposed of expeditiously and further it would enable the appellate Forums, including this Court, to decide legal issues based on the factual foundation. We do not know the constraints of the Department but time has come when the Department should understand that when the case involves revenue running into crores, technical evidence would help the Tribunals and courts to decide matters expeditiously based on factual foundation."

2. The above directions of the Supreme Court may be brought to the notice of all the officers in your region. In view of these directions in all cases that are taken up for scrutiny, the Assessing Officers/Transfer Pricing Officers should frame assessments only after bringing on record appropriate technical evidence that may be required in a case. The process of identification of such cases and initiation of the proceedings to obtain the technical evidence should be taken up well in advance before the date of limitation. The Officer concerned shall bring such cases to the notice of the CCIT/DGIT concerned, who will look into the complexities of the technical issues and monitor the progress of the case and if required assist in obtaining the opinion of the technical experts in the relevant field of expertise and endeavour to arrange for the opinion of the concerned technical expert well within time. Further, the evidence so gathered shall be made available to the assessee and reasonable opportunity provided before the assessment order is passed.

3. After a reference is made to an expert in the above manner, intimation must be sent of the Board through Member (IT) in the following proforma:

Name of case and Assessment year	Brief description of the technical issue involved	Name and address of the expert	Tax effect
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[F.No. 225/61/2011-IT(A-II)]