Advance Ruling

(Section245N-245V)

Q. What is Advance Ruling?

Ans. As per **Section-245N** Advance Ruling means **Determination by the Advance Ruling Authority** in relation to:-

(1) **Transaction Undertaken** or **Proposed to be undertaken** by a Non-Resident applicant.

(2) **Tax Liability** out of Transaction Undertaken or Proposed to be undertaken by a **Resident applicant** (with Non-Resident)

(3) Issue relating to **Computation of Income**, which is PENDING before any IT Authority or ITAT.

Such determination under (1), (2), (3) above shall include the determination of any question of Law or question of Fact specified in the application.

Note: Applicant in (3) shall be **Public Sector Undertaking (PSU).**

Section-245Q – Application for Advance Ruling

(1) Make an application in prescribed form and manner stating the question on which the advance ruling is sought.

(2) Application shall be in **quadruplicate (4 Copies) +** fee of **Rs.2,500/-.**

(3) Application can be **withdrawn** within **30 days** from the **date of application.**

Section-245R – Procedure on Receipt of Application

(1) Authority shall forward a c**opy of application** to **CIT** to ascertain whether the case is pending or not.

(2) AAR may allow or reject the application.

(3) In following 3 cases, AAR shall Reject the Application When question raised in application: -

- ü Is **already** pending in applicant's case before any **IT Authority, ITAT, Court** on the **Date of Application.** (In case of PSU, if case is pending before **Court** only).
- ü Involves **Determination** of **FMV of Property.**
- ü Relates to a Transaction which is **prima facie for the avoidance of tax.** (N.A. on PSU).
- v Opportunity of being heard shall be given to the assessee before **order of rejection** of application.
- v Reason for rejection shall be given in the order.
- v Copy of rejection order shall be sent to **CIT** & **Applicant**.
- v No Appeal against order of rejection is possible.

(4) After allowing application and examining relevant information, AAR pronounces its Advance Ruling on the question specified in application.

(5) **On request of Applicant,** before pronouncing, AAR **shall** provide an opportunity of being heard either in person or through a duly authorised representative.

(6) AAR **shall** provide its Advance Ruling **within 6 months** of **application receipt date.**

(7) A copy of Advance Ruling shall be sent to **CIT** & **Applicant.**

(8) The order of AAR is **Final Order, No Appeal** against it.

Section-245RR – IT Authority/ITAT shall not decide any issue in respect of which an application has been made by a **Resident Applicant**.

<u>Section-245S – Applicability of Advance Ruling</u>

The Advance Ruling pronounced by AAR is **Binding on**: -

- Ø Applicant who has sought it.
- Ø In respect of **transaction** in relation to which the ruling had been sought.
- Ø **AO/CIT/CIT(A)** in respect of applicant. **(i.e., Not Binding oo ITAT)**

v Advance Ruling shall be binding **unless** there is a **change in Law or Facts** on the basis of which Advance Ruling has been pronounced.

<u>Section-245T – Advance Ruling shall be Void if: -</u>

Where AAR finds either on Commissioner's representation or otherwise that it is sought by **Fraud or Misrepresentation** of **Facts,** then it may **by order** declare such ruling to be **void-ab-initio.** Thereafter all the provisions of the Act will apply as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and the CIT.

Q. Can a person resident in India seek advance ruling from the Authority for Advance Ruling?

- Ø Section 245N enables a resident falling within any such class or category of persons as may be notified by CG to make an application for Advance Ruling.
- Ø Public sector companies as defined in section 2(36A) of the Income-tax Act, have been notified as applicant for this purpose.
- Ø Further, a resident can make an application seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by him with such non-resident.

<u>Constitution of ARR</u>

- Ø It is constituted by CG **u/s245O.**
- Ø It consists of A Chairman who is retired judge of SC and 2 officers, qualified to be member of CBDT/Additional Secretary to the Govt.

v **<u>Section-245P</u>** – A ruling pronounced by AAR shall be valid even in cases of existence of any vacancy or defect in the constitution of the Authority.

Q. A non-resident, made an application to the Authority for Advance Rulings on 2.1.2009 in relation to a transaction proposed to be undertaken by him. On 31.3.2009, he decides to withdraw the said application. Can he withdraw the application on 31.3.2009?

Ans. Section 245Q provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since more than 30 days has elapsed since the date of application by Q to the Authority for Advance Rulings, he cannot withdraw the application on 31.3.2009.

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