

ADVANCE RULINGS

Some key points

Restrictions on Appellate Authorities [Section 245RR]

Where a resident applicant has made an application to AAR and referred issues therein for decision of AAR, then, any Income-tax Authority or Tribunal should not take any decision in respect of such issues. In other words, a resident assessee cannot pursue both the remedies, i.e. an appeal or revision before Income-tax Authority / Appellate Authority as well as an application for Advance Ruling to AAR, in respect of an issue.

Applicability of Advance Ruling [Section 245S]

The advance ruling shall be binding only on the applicant who has sought it and in respect of the specific transaction in relation to which advance ruling was sought. It will also be binding on the Commissioner and the Income-tax Authorities subordinate to the Commissioner who are having jurisdiction over the applicant.

The advance ruling will continue to remain in force unless there is a change either in law or on facts, on the basis of which the advance ruling was pronounced.

Question 1

Explain as to what the term 'Advance Ruling' means under the Income-tax Act 1961.

Answer

The term 'Advance Ruling' has been defined in section 245N(a) to mean :-

- (a) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a **non-resident applicant**; or
- (b) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken **by a resident applicant with such non-resident**,
and such determination shall include the determination of any question of law or of fact specified in the application;
- (c) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision

Direct Tax Laws

on any question of law or of fact relating to such computation of total income specified in the application.

Question 2

Q, a non-resident, made an application to the Authority for Advance Rulings on 2.7.2010 in relation to a transaction proposed to be undertaken by him. On 31.8.2010, he decides to withdraw the said application. Can he withdraw the application on 31.8.2010?

Answer

Section 245Q(3) of the Income-tax Act, 1961 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 have elapsed** since the date of application by Q to the Authority for Advance Rulings, **he cannot withdraw the application.**

Question 3

A foreign company entered into contracts with several Indian companies for installation of mobile telephone system and made an application to the Authority for Advance Rulings for advance ruling on the rate of withholding tax on receipts from Indian companies. One of the Indian companies had also made an application to the Assessing Officer for determination of the rate at which tax is deductible on payment to the said foreign company. The Authority for Advance Rulings rejected the application of the foreign company on the ground that the question raised in the application is already pending before an income tax authority. Is the rejection of the application of the foreign company justified in law?

Answer

The matter relates to the admission or rejection of the application filed before the Advance Ruling Authority on the grounds specified in clause (i) of the first proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.

Clause (i) of the first proviso of section 245R(2) provides that the Authority shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court.

In the above case, no application had been filed or contention urged by the applicant (foreign company) before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with AAR. One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant's case.

Therefore, as held by the AAR in *Ericsson Telephone Corporation of India AB v. CIT (1997) 224 ITR 203*, the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by the non-resident. Hence, it would not be proper to reject the application of the foreign company relying on clause (i) of the proviso to sub-section (2) of section 245R of the Income-tax Act. The application is, therefore, maintainable.

Question 4

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

Answer

Section 245N enables a resident falling within any such class or category of persons as may be notified by the Central Government to make an application for Advance Ruling. Such notified resident applicant can seek ruling in respect of issues relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal. Such a resident applicant can make an application to seek decision on a question of law or a question of fact.

Public sector companies as defined in section 2(36A) of the Income-tax Act, 1961 have been notified as applicant for this purpose.

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.

Question 5

Discuss the following proposition:

An advance ruling can become void

Answer

As per section 245T, an advance ruling can be declared to be *void ab initio* by the Authority for Advance Ruling if, on a representation made to it by the Commissioner or otherwise, it finds that the ruling has been obtained by fraud or misrepresentation of facts. 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 Commissioner.