

TAX FLASH NEWS

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The AAR has correctly accepted the application since no question was pending upon issuance of a mere pre-printed scrutiny notice by the tax department under Section 143(2) of the Income-tax Act

Recently, the Delhi High Court in the case of CIT v. Authority for Advance Rulings¹ (the petitioners) has dismissed the writ petition filed by the tax department against the Authority for Advance Rulings (AAR)'s acceptance of application where scrutiny notice under Section 143(2) of the Income-tax Act, 1961 was issued to the taxpayer. The High Court has relied on various decisions² and observed that a question cannot be said to be pending before the AAR³ upon issuance of a mere scrutiny notice under Section 143(2), especially when it was issued in a standard pre-printed format and the questions raised before the AAR do not appear to be forming the subject matter of the said notice.

Facts of the case

During the year under consideration, the Assessing Officer (AO) issued a scrutiny notice under Section 143(2) of the Act on account of the fact that the taxpayer⁴ has shown less taxable royalty income in the revised return as compared to the original return and claimed a large refund.

In the meantime, the taxpayer filed an application before the AAR for the determination of the question whether royalty income is taxable in the hands of the taxpayers at the time of actual receipt or otherwise. The tax department contended that royalty income is taxable on paid basis has direct repercussion on the determination of refund.

The AAR held that notice under Section 143(2) merely asks the applicant to produce any evidence on which it may like to rely in support of its return. It does not disclose any application of mind to the return filed by the applicant. The Delhi High Court in various cases held that if there is no application of mind to the question raised by the applicant in the notice under Section 143(2), the said question cannot be stated to be 'pending' to attract clause (i) of the proviso to Section 245R(2).

The tax department filed a writ petition challenging the AAR ruling on the ground that it is in violation of the jurisdictional bar under proviso to Section 245R(2). The question raised by the applicant is pending before the Assessing Authority. The main issue before the AO in the scrutiny proceedings is the same as before the AARs i.e. whether the royalty is taxable in the hands of the taxpayers at the time of actual receipt or otherwise. Therefore, it was barred from assuming jurisdiction in view of the threshold bar enshrined in clause (i) under Proviso to section 245R(2). The tax department contended that though the notice under Section 143(2) is in a standard pre-printed format, yet it is in accordance with the specific language used in Sections 142(1) and 143(2).

High Court decision

The Delhi High Court in various cases have held that a question cannot be said to be pending under Clause (i) of proviso to Section 245R(2) upon issuance of a mere notice under Section 143(2), especially when it has been issued in a standard pre-printed format and the questions raised before the AAR do not appear to be forming the subject matter of the said notice. This is also more so when the notice fails to satisfy the particulars of claim of loss, exemption, deduction, allowance or relief as mandated by Section 143(2)(i).

¹ CIT v. Authority for Advance Rulings (W.P. (C) 5668/2020 & CM Appl. 20511/2020) – Taxsutra.com

² Hyosung Corporation v. Authority for Advance Rulings & Ors. [2016] 382 ITR 371 (Del) and Sage Publication Ltd. v. DCIT [2016] 387 ITR 437 (Del)

³ Under Clause (i) of proviso to Section 245R(2)

⁴ Crocs Europe BV (the taxpayer) – A Netherlands entity

In the present case, the AAR has followed the above-noted decisions and held that the notice under Section 143(2) was merely asking the applicant to produce the evidence in support of its return. It does not even remotely disclose any application of mind to the return filed by the applicant. For this reason, the AAR held that that the question cannot be said to be pending to attract the bar under clause (i) of the proviso to Section 245R(2).

The question raised was answered against the tax department in the aforesaid decisions. It was observed that the Special Leave Petition (SLPs) challenging the decisions of the Delhi High Court was also dismissed. Consequently, the issues of law and fact raised by the tax department are no longer a question that has not been examined. Further, the decision in the case of Sudhir Chandra Nawn⁵ relied on by the tax department was distinguishable to the facts of the present case. Accordingly, the High Court did not exercise jurisdiction under Article 226 and dismissed the writ petition filed by the tax department.

Our comments

The issue relating to admission of an application by the AAR where the scrutiny notice was issued by the AO under Section 143(2), has been a subject matter of debate before the Courts.

The Delhi High Court in the case of Hyosung Corporation⁶ observed that merely because notices under Section 143(2) were issued prior to the filing of the application before the AAR will not create a bar for accepting the AAR application. However, where the notice under Section 142(1), raising various questions that form the subject matter of the AAR application, were issued prior to the filing of the applications, the bar gets attracted.

Further the Delhi High Court in the case of Sage Publication⁷ held that the AAR cannot reject the application invoking proviso to Section 245R(2) since the scrutiny notice issued by the AO under Section 143(2) does not address any specific question and it does not even disclose application of mind to the income-tax return.

The Delhi High Court in the present case while dismissing the writ petition filed by the tax department observed that that a question cannot be said to be pending before the AAR upon issuance of a mere notice under Section 143(2), especially when it has been issued in a standard pre-printed format and the questions raised before the AAR do not appear to be forming the subject matter of the said notice.



⁵ Sudhir Chandra Nawn v. Wealth Tax Officer, Calcutta & Ors., (1969) 1 SCR 108

⁶ Hyosung Corporation v. AAR [2016] 382 ITR 371 (Del)

⁷ Sage Publication Ltd. v. DCIT [2016] 387 ITR 437 (Del)

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