

TAX FLASH NEWS

18 September 2020



The Supreme Court suggests the government to consider the efficacy of the AAR system and make it more comprehensive

The Supreme Court in the case of National Co-Operative Development Corporation¹ (the taxpayer)² has suggested the government to consider the efficacy of the Authority for Advance Ruling (AAR) system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers. The Supreme Court referred to the international scenario where there has been an incremental shift towards mature tax regimes adopting advance ruling mechanisms. The Supreme Court also suggested that a council for Advance Tax Ruling based on the Swedish model and the New Zealand system may be a possible way forward.

Supreme Court's decision

The Supreme Court observed that the vibrant system of AAR can go a long way in reducing taxation litigation. For Central Public Sector Enterprises (CPSEs) and government authorities, there would be no question of taking this matter further once an AAR ruling was delivered, and even in case of private persons, the scope of any further challenge was completely narrowed down.

This AAR mechanism has proved to be illusionary because there is an increasing number of applications pending before the AAR due to its low disposal rate and contrary to the expectation that a ruling would be given in six months³, the average time taken is stated to be reaching around four years. This was due to lack of adequate numbers of presiding officers to deal with the volume of cases. Interestingly, the primary reason for this was the large number of vacancies and delayed

appointments of Members to the AAR. In view of the time taken, the very purpose of AAR is defeated, resulting in the mechanism being used infrequently as is evident from the ever-increasing tax related litigation.

The Supreme Court observed that insofar as a resident was concerned, the threshold limit for applying to AAR is so high that it cannot provide any relief to any individual. The Supreme Court observed that it is time to reconsider and reduce the ceiling limit, more so in terms of the recent announcement stated to be in furtherance of a tax friendly faceless regime.

The Supreme Court referred to the international scenario where there has been an incremental shift towards mature tax regimes adopting advance ruling mechanisms. The increase in global trade puts the rulings system at the centre stage of a robust international tax cooperation regime. The Organisation for Economic Cooperation and Development (OECD) lists advance rulings as one of the indicators to assess trade facilitation policies, making it an aspirational international best practice standard. For example, Australia and New Zealand have a robust system of advance rulings wherein the decisions (which are public rulings affecting a large number of taxpayers) are given teeth by being made binding on the revenue authorities. New Zealand has gone a step further and innovated 'status rulings' under which a taxpayer can apply to the Commissioner for a ruling on how a change in the law impacts an existing ruling. In the United States, there is a mechanism for the Treasury to authorise guidance in the form of revenue rulings, procedures and notices. The mechanism again, has been bolstered by subsequent practice and interpretations of the United States Courts, where rulings have indicated that taxpayers may be penalised if they act inconsistently with legal interpretations set out in the revenue rulings, procedures or notices.

¹ National Co-Operative Development Corporation v. CIT (Civil Appeal Nos. 5105-5107 of 2009) – Taxsutra.com

² The Supreme Court dealt with the issue whether the component of interest income earned on the funds received under Section 13(1) of National Cooperative Development Fund Act, 1962 and disbursed by way of 'grants' to national or state level co-operative societies, is eligible for deduction for determining the 'taxable income'. However, this flash news captures observations by the Supreme Court on the efficacy of AAR.

³ As per Section 245R(6)

The Supreme Court has recommended to the central government to consider the efficacy of the advance tax ruling system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers, whether private or public sectors are involved. A council for Advance Tax Ruling based on the Swedish model and the New Zealand system may be a possible way forward.

Our comments

Post liberalisation, Chapter XIX-B was introduced in the Income-tax Act vide Finance Act 1993 introducing the concept of 'Advance Rulings' for non-resident taxpayers, with an objective to provide a more certain and litigation free tax environment to non-resident taxpayers coming to do business with India. Subsequently, the residents have also been covered in the AAR mechanism.

The AAR was set-up in the interest of avoiding needless litigation and promoting better taxpayer relations. The number of cases in the AAR is evident of the certainty that the taxpayer is looking for before making investment into India. However, there was long increasing number of applications pending before the AAR due to its low disposal rate.

In last few years, the issue relating to admission of an application by the AAR under Section 245R(2) in terms of the notice issued by the Assessing Officer under Section 143(2), has been a subject matter of debate before the Courts. This has also led to a significant pendency and old applications are yet to be decided by the AAR even though the law provides that a ruling is to be pronounced within 6 months from the date of receipt of the application. It is imperative to take serious efforts to revive this very useful forum to reduce the long drawn litigation.

The Supreme Court in the present case has recommended the central government to consider the efficacy of the advance tax ruling system and make it more comprehensive as a tool for settlement of disputes.



KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

home.kpmg/in



home.kpmg/in/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2020 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG (Registered) (a partnership firm with Registration No. BA- 62445) converted into KPMG Assurance and Consulting Services LLP (a Limited Liability partnership firm) with LLP Registration No. AAT-0367 with effect from July 23, 2020.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only.