

AAR can only determine tax liability of applicant and not any of its affiliate or AOP

Summary – The Honorable Authority for Advance Rulings has held that it cannot give a ruling that the applicant is not liable to be taxed but somebody else is liable to be taxed. The questions framed by fo AAR determination can only relate to applicant's tax liability and it would be impermissible for AAR to determine tax liability of person other than the applicant.

Facts

- The applicant company was based in Hong Kong.
- It formed a consortium with an Indian company CINDA to execute a project in India (*i.e.* Petronet LNG).
- The contract was awarded by Govt. to the Consortium.
- Under the Contract, the Applicant was responsible for offshore supplies, offshore services and mandatory services and CINDA responsible for onshore supplies, construction and erection.
- AAR ruled that income from offshore supplies received from Petronet by the Applicant is not taxable in India in view of the Supreme Court decision in Ishikawajima.
- Revenue filed an application for rectification of apparent mistake in that the contract was awarded to consortium (Association of Persons-AOP) and not to applicant and ruling of AAR that Applicant is not liable to tax is inconsistent with the finding that AOP is the assessing unit.
- AAR allowed the rectification application of Revenue and posted the application for main hearing as to whether AOP could be held liable for tax in respect of offshore supplies.

Held

- Section 245N of the Act doesn't permit AAR to rule on tax liability of person other than the Applicant.
- The Authority (AAR) can't give a ruling that the applicant is not liable to be taxed and somebody else is liable to be taxed.
- The proposed question framed by AAR for determination can only relate to applicant's tax liability.
- It would be impermissible for AAR to determine tax liability of person other than the applicant (*i.e.* AOP in this instance).