Application for advance ruling rejected as question already reported in the tax return filed by the tax payer

Summary – The Honorable Authority for Advance Rulings (AAR) in a recent case of Hyosung Corporation, Korea., (the Assessee) rejected an application for advance ruling as the question on which advance ruling was sought was already reported in the return filed by the tax payer.

Facts

The moot question that arose for consideration before AAR was whether the question raised by the applicant before Authority was already pending before I-T authority and application was liable to be rejected due to the bar provided in proviso to section 245R(2)?

The AAR held as under:

• The bar provided in proviso to section 245R would operate only in respect of questions pending before the I-T authority.

• Mere filing of a tax return would not attract the bar to seek a ruling, unless the question raised in the application was the same issue as included in the return filed.

• In the instant case notice under section 143(2) was already issued before filing of application before the Authority. The transactions on which Advance Ruling was sought, were already shown in the return filed by the applicant before the date of application.

• With issue of notice under section 143(2) of the Act, particulars of income and claims of assessee in the return would be deemed to be pending for adjudication before the Assessing Officer. It had, therefore, to be held that the question raised in the application for advance ruling was pending for adjudication before the assessing authority and the bar created under the proviso to section 245R(2) would operate. Therefore, application was not admitted for adjudication and was rejected;

• Coming to the plea of applicant that the bar contained in Section 245R(2) was patently discriminatory as it created a discrimination between resident and non-resident applicants, the AAR did not find any substance in the plea of the applicant on the question of alleged discrimination.