

## **Filing of ITR does not bar filing an advance ruling application**

**Summary – The Delhi ITAT in a recent case of Mitsubishi Corporation, Japan, (the Assessee) held that Mere filing of ITR does not attract the bar on filing advance ruling application u/s 245R(2).**

### **ORDER**

- 1.** The applicant is a company incorporated in Japan and is a tax resident of Japan, as per Article 4 of the Agreement for Avoidance of Double Taxation between India and Japan(India-Japan Tax Treaty). The registered/principle office of the applicant is situated at Mitsubishi Shoji Building, 3-1, Marunouchi 2-Chome, Chiyoda-ku, Tokyo, 100-8086, Japan.
- 2.** The applicant established a Branch Office in India in April, 2008 after obtaining the necessary approvals from the Reserve Bank of India. The activities carried out by the Branch Office in India primarily relate to provision of support services to the applicant.
- 3.** The applicant received off-shore supplies contract from Power Grid Corporation India Ltd. and entered into two separate contracts with the Power Grid Corporation India Ltd., i.e. (i) Offshore supply contract and (ii) Onshore service contract.
- 4.** The applicant sought a ruling from the Authority for Advance Rulings.
- 5.** The Revenue objected to the admissibility of the application stating that return of income was filed before filing the application. Relying on the decision by the AAR in the case of SEPCO III Electric Power Corporation (AAR No.1009 of 2010) dated 25.8.2011 and the decision in the case of NetApp B.V (AAR No.955 of 2010) dated 2.2.2005 that was confirmed by the Hon'ble Delhi High Court reported in (W.P.(C) 3959/2012 dated 14.8.2012), Revenue submitted that when the return of income is filed it should be treated as pending before the Income-tax Authority. In this case the return of income was filed on 30.11.2011 and the application was filed on 4.4.2012 before the Authority and therefore the matter is already pending before the Income-tax Authority before filing the application and the application is barred by proviso section 245R(2) of the Act.
- 6.** The applicant on the other hand submitted that mere filing of return does not attract the bar unless the question raised in the application for Advance Ruling is an issue pending for adjudication before the Income Tax Authorities. Reliance is placed on the decision of this Authority in the case of Hyosung Corporation Korea in AAR/1138/2011.

7. The AAR held that when returns are filed under section 139 or in response to a notice under sub-section (1) section 142, they are processed under section 143(1) of the Act. The Revenue does not have any jurisdiction to examine or adjudicate any issue other than those mentioned in Section 143(1) of the Act. There is no scope for examining or adjudicating any debatable issue that requires long drawn arguments. Before or without issuing notice under section 143(2) or notice under section 142(1) in cases whether return is not filed, there is no jurisdiction to examine or adjudicate debatable issue claimed or shown in the return of income.

8. In the case of *Hyosung Corporation Korea (supra)* it was held that mere filing of return does not attract bar on the admission of the application as provided in section 245R(2) of the Act. We are of the view that only when the issues are shown in the return and notice under section 143(2) is issued, the question raised in the application will be considered as pending for adjudication before the Income-tax Authorities. In the present case the application was filed on 4.4.2012. Return of income was filed on 30.11.2011 i.e. before filing the application. However, notice under section 143(2) was issued on 8.8.2012 i.e. after the date of the application. Following which ruling in *Hyosung Corporation (supra)* we hold that the question raised by the applicant in the present case is not already pending before the Income-tax Authorities and therefore, the application is admitted.