

No bar on advance ruling on filing return, issue deemed as pending only if scrutiny notice issued raises same question

Summary – The Delhi ITAT in a recent case of LS Cable & System Ltd., Korea Hyderabad Project., (the Assessee) held that The question raised in the application seeking advance ruling would be considered as pending for adjudication before Income-tax authority only when the issues are shown in the return and notice under section 143(2) is issued

Facts:

- The applicant, LSCSL, a Korean company seeks advance ruling on following question:
 - Whether the amounts received by it from India Project Limited for Offshore supply of Equipments & Materials, etc., would be liable to tax in India?
 - The revenue objected to admission of application on the ground that question was already pending before Income-tax authority as return of income was filed by applicant before filing of application for advance ruling.

The Authority held as under:

- (1) The Assessing Officer assumes jurisdiction to adjudicate all the questions arising out of the return by issue of notice under section 143(2) only. In the case of *Hyosung Corporation, Korea, In re [2013] 36 taxmann.com 150 (AAR - New Delhi)* it was held that mere filing of return does not attract bar on the admission of the application as provided in section 245R(2);
- (2) The question raised in the application would be considered as pending for adjudication before Income-tax authority only when the issues are shown in the return and notice under section 143(2) is issued;
- (3) The revenue's contention, that notice under 143(2) was issued within the stipulated time, would not affect the stated position because without issuance of the notice, the Assessing Officer does not have jurisdiction to examine and adjudicate the issues raised;
- (4) Pending proceeding in general and question already pending for adjudication are not the same. For example, when a return of income is filed, it can be said that proceeding is

pending till it is processed or deemed to have been processed under section 143(1). However, that does not mean the issues raised before this Authority are already pending for adjudication by the Income-tax Authorities;

- (5) The question cannot be said to be already pending for adjudication before the Income-tax authority unless notice under section 143(2) is issued before the application is filed;
- (6) In the instant case, though return of income was filed before filing of the application before this Authority, notice under 143(2) was issued after the application was filed and, hence, the question could not be said to be already pending before the Income-tax authority. Thus, the application was to be admitted under 245R(2).