

AAR won't decide an issue if assessment order is passed after admission of application by AAR

Summary – The High Court of Karnataka in a recent case of Eplanet Ventures Mauritius Ltd., (the Assessee) held that where assessee having filed an application before AAR, surrendered to jurisdiction of Assessing Officer for continuation of assessment proceedings, in such a case, subsequent to passing off assessment order, AAR was justified in dismissing assessee's application on ground that it had become infructuous

Facts

- The assessee filed an application before the Advance Ruling Authority. The said application was admitted. In the meantime, pursuant to return filed by assessee, assessment proceedings were concluded.
- The Advance Ruling Authority thus dismissed assessee's application by holding that it had become infructuous.
- Against said order, assessee filed instant petition contending that once an application was made for the advance ruling under section 245Q, and the same having been admitted, it was obligatory on the part of the Advance Ruling Authority to render the decision on merits.

Held

- It is an admitted position that the assessee had applied to the competent authority for Advance Rulings under section 245Q and the application was pending before the said authority. It is also an admitted position that pending the aforesaid application before the Advance Ruling Authority, the proceedings for assessment under section 143(2) were initiated. If the assessee had any grievance against the assessment proceedings or finalization of the said proceedings, nothing prevented it from raising objection for conclusion of the assessment proceedings by contending that the matter was pending consideration before the Advance Ruling Authority with reference to the aspect of liability to pay tax.
- However, the assessee consciously participated in the assessment proceedings and at no point of time, did it raise any objection for continuation of the assessment proceedings before the Assessing Officer. Not only that, but thereafter, the Assessing Officer is allowed to pass the order and resultantly, he has passed the assessment order. It appears that thereafter, when the application came up for consideration before the Advance Ruling Authority, since the assessment order was already passed, Advance Ruling Authority observed that the application had become infructuous and it would not be for the Advance Ruling Authority to sit in appeal over the assessment proceedings.

- Therefore, the Advance Ruling Authority has disposed of the application by observing that the applicant may take such recourse as is available in law and it may raise all questions available to it in law. It appears that thereafter, the assessee must have been served with notice in respect of initiation of proceedings under section 263 against the assessment order for invoking of the revisional power and under the circumstances, the assessee has approached this Court by the instant petition.
- The aforesaid shows that the conduct of the assessee, if examined further, it voluntarily participated in the assessment proceedings and did not object at any point of time for continuation or conclusion of the assessment proceedings. Once the assessee had surrendered to the jurisdiction of the Assessing Officer that too without raising any objection for continuation or conclusion of the assessment proceedings and thereafter, if the assessment order was passed by the Assessing Officer and based on the same, if the competent Authority for Advance Rulings has disposed of the application as having become infructuous, such a view taken by the Authority can not be said as unreasonable or arbitrary.
- Once a litigant has accepted the jurisdiction of a particular authority and has not resisted the proceedings before a particular quasi-judicial authority, he cannot be heard to say that he should also be simultaneously permitted to pursue the proceedings, which has actually become infructuous.
- The assessee attempted to rely upon the object of constitution of the Authority for Advance Rulings and the mechanism provided therefrom for contending that the purpose of advance rulings under the Act is to make the taxpayer aware about his/her liability to pay tax and to avoid proliferation of litigation and it submitted that the said object would be frustrated if the Advance Ruling Authority is allowed to dispose of the matter as having become infructuous and therefore, this Court may consider the said aspect.
- There cannot be any second opinion on the aspect that the purpose of the Advance Ruling Authority is to have certainty about the liability to pay tax and to avoid further litigation, but at the same time, if by conduct of the assessee, it was not desirous to invoke such power, but was rather keen to have the assessment proceedings go on and also to have conclusion of the assessment proceedings and by conduct, the assessee has not objected to the assessment proceedings, the purpose of advance ruling mechanism can not be stretched to the extent of diluting the voluntary conduct on the part of the assessee as sought to be canvassed. Hence, the said contention cannot be accepted.
- Further, in the present case, the Advance Ruling Authority itself when found that it cannot sit in appeal over the order of the Assessing Authority while deciding the matter, it has disposed of the application as having become infructuous. Such a view cannot be said to be as unreasonable, which may call for interference.
- In view of the above, considering the peculiar conduct of the assessee coupled with the aspect that the view taken by the Advance Ruling Authority cannot be said to be unreasonable, no case is made out for interference. Hence, the petition being meritless is dismissed.