Authority for Advance Ruling: Making and Unmaking

Tanessa Puri

21 Nov 2018

The following essay is divided into three parts. In the first part, the scheme of Advance Ruling will be discussed. In the second part, the impact of this mechanism in terms of its ability to deliver certainty to taxpayers shall be discussed and in the third part, the case of Colombia Sportswear will be used to discuss whether the decisions of Authority of Advance Ruling should be appealable.

Part I

Advance Ruling

Chapter XIX-B of the Finance Act 1993 brought in Advance Ruling. An applicant can seek this body’s ruling on the validity of a proposed transaction before such applicant enters into the said transaction. This body issues a ruling in advance on the proposed transaction, on behalf of the Government of India, telling the applicant about the validity, benefits of the transaction, for example, what reliefs they will be entitled to etc., should they decide to pursue the transaction as proposed.

The ruling of the AAR is binding only upon the person who has applied for such a ruling i.e. the particular applicant.

The AAR is not allowed any retrospective amendments.

Authority for Advance Ruling

Pursuant to this scheme, the power to issue advance rulings has been given to an independent adjudicatory body called ‘Authority for Advance Ruling’ (AAR). The AAR consists of the following members appointed by the Indian Government:

1. A Chairman who is a retired judge of the Supreme Court
2. An officer of the Indian Revenue Services (IRS) who is qualified to be a member of the Central Board of Direct Taxes
3. An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

Persons who can Seek Advance Ruling

Based on Section 245N(b) of the Income Tax Act, an advance ruling can be sought by

1. A non-resident,
2. A resident having transactions with non-resident or
3. Specified categories of residents.

**Powers of the Advance Ruling Authority**

Section 245U deals with the Powers of the Authority. The AAR is a quasi-judicial body having full powers of a civil court under the Income Tax Act based on sub section (1) of the said Section. Therefore, the AAR shall have all the powers of a Civil Court under the Code of Civil Procedure as are referred to in Section 131 of the Income Tax Act, when trying a suit in respect of the following matters:

1. Discovery and Inspection
2. Enforcing the attendance of any person, including any officer of a banking company and examining him on oath
3. Compelling the production of books of account and other documents; and
4. Issuing Commissions

It can give its rulings on specific questions of law or fact. Column 8 of Form No. 34C makes it clear that there can be more than one question in one application.

**Part II**

The impact of this mechanism to deliver certainty to its taxpayers will be assessed on two touchstones—firstly, that of its benefits and secondly, that of its implementation.

A. Benefits of Obtaining an Advance Ruling

1. Helps non-residents in planning their income tax affairs well in advance.
2. Brings certainty in determination of the tax liability
3. Helps in avoiding long drawn litigation; and
4. It is relatively inexpensive, expeditious and binding

B. Implementation of Advance Ruling

Initially, J. Ranganathan, former judge of the Supreme Court, headed the Advance Ruling Authority. This was a glorious period for AAR. Fairness and equity, without bias towards either the assessee or the Department was exercised. This initial confidence helped the AAR gain the trust of various non-resident investors who would approach the AAR to understand their tax liability.

However, now due to a lack of judicial expertise on taxation matters, the AAR finds itself far less useful and reliable. Ideally, the field of expertise of a said judge should be taken into consideration before assigning her/him to the AAR.

**Part III**

A. Should decisions of the Authority for Advance Ruling be appealable?
In my opinion, since the decisions of the AAR are binding only upon the applicant, appeal should not be allowed. The body of the AAR should be strengthened in terms of its knowledge and expert base, so as to be able to provide correct and reliable rulings. Experts from the ‘Big Four’ Accounting Firms should be hired through incentives such as high salaries and job security. The constitution of the AAR should be amended to include experts from such firms. This will help lay the foundation of a strong knowledge base for the body of the AAR.

B. Are the decisions of the Authority for Advance Ruling, as a matter of law, appealable?

In the case of Columbia Sportswear Company, the question before the three judge bench of the Supreme Court was whether an AAR pronounced advanced ruling could be challenged before the High Court or under Article 136 of the Constitution directly before the Supreme Court? The Court held that AAR is a Tribunal within the meanings attributed to the word under Articles 136 and 227 of the Constitution.

The point of law laid down by this case is that the aggrieved party should file the writ before the High Court. But in a case where the ruling has given rise to a substantial question of general importance or any similar question which may be pending before the Supreme Court, then the SLP can be filed directly before the Supreme Court.

*(Author is 4th year B.A. LLB Student of Jindal Global Law School)*
Author Bio

**Name:** Tanessa Puri

**Qualification:** Student - Others

**Company:** Jindal Global Law School, O.P. Jindal Global University

**Location:** Maharashtra, IN

**Member Since:** 21 Nov 2018 | **Total Posts:** 5