



# news flash

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## FILING OF IT RETURN DISBARS AN AAR APPLICATION

The Delhi High Court in its recent decision in the case of *Netapp B.V. vs. the AAR*<sup>1</sup> has held that once an assessee proceeds to file a return of his income, the Authority of Advance Ruling's ("AAR") jurisdiction to entertain an application for advance ruling is taken away, and therefore the AAR would not be able to entertain such application. A brief analysis of the judgment is provided below.

### **Background**

Section 245R of the Act deals with the procedure to be followed by the AAR on receipt of an application for advance ruling. Section 245R (1) enjoins upon the AAR to cause a copy of the application to be forwarded to the commissioner and if necessary, call upon him to furnish the relevant records.

The first proviso to Section 245R(2) ("**the Proviso**") states that the AAR shall not allow the application inter alia, where the question raised in the application is already pending before any income tax authority or Income Tax Appellate Tribunal.

Two writ petitions were filed before the Delhi High Court involving identical questions of law and taken up together for final hearing. Netapp B.V. and Sin Oceanic Shipping ASA ("**Petitioners**") questioned the orders of the AAR which declined to entertain their applications.

In both cases, the Petitioners had filed their return of income and thereafter filed an application for advance ruling before the AAR.

The Petitioners had inter alia contended before the AAR as follows:

- i. Since the purpose of the mechanism of advance ruling was also to attract foreign investment, the AAR should be wary of interpreting the Proviso too widely and consequently, of restricting its own jurisdiction.
- ii. The restrictions on jurisdiction conferred have to be considered strictly, and that the jurisdiction ought not to be declined unless the application comes strictly within the clauses of the Proviso.

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<sup>1</sup> Decided on 14 August 2012



- iii. The restriction enacted through clause (i) of the Proviso, only applied to those questions which were raised by the income tax authority and that the filing of return of income did not automatically result in a question being pending before the income tax authority.
- iv. That the bar under the Proviso would not apply unless the assessing authority specifically raised a question, and for instance, issued notice calling the assessee to respond to it.

**The AAR held as follows:**

- i. Merely by filing the return, all questions that can possibly arise, with respect to that transaction are ushered into the proceeding and are then within the purview of the assessing authority.
- ii. The jurisdiction did not depend on such vagaries such as whether the assessing officer or the parties raised all the pertinent questions at the time of filing of returns.
- iii. It was consistent with the purpose of the Act that applications before the AAR be made at the earliest possible opportunity and not after it invokes the jurisdiction of the assessing authority.
- iv. The date of filing of return by the assessee is a crucial question for determining the applicability of the Proviso and not the date when the assessing authority issues a notice. This period cannot be left to the vagaries of the progress of the process of the income tax authority issuing a notice or the uncertainties of the progress of application before the authority. Therefore, the need for fixing a definite common point for determining jurisdiction necessitated that the date of filing the return by the applicant would serve as this point.

Based on the above, the AAR held that in the case of the Petitioners, keeping the dates of filing of return in mind, its jurisdiction to entertain the application was barred under the Proviso.

Aggrieved by the ruling of the AAR, the Petitioners filed a writ petition before the Hon'ble Delhi High Court. One of the contentions of the Petitioners was that in cases where the return of income was filed by the assessee and there was no notice received from the department, the interpretation of law, favoured the exercise of jurisdiction by the AAR, hence, the AAR in the present case should have at least entertained and examined the application on merits.

**The Delhi High Court concurred with the ruling of the AAR and HELD as follows:**

- i. The Proviso to Section 245R(2) of the Act creates a bar to the jurisdiction of the AAR if any of the conditions are fulfilled. The rationale for the bar appears to be straightforward; if the applicant wishes to plan its affairs and transactions in advance, it is free to do so to consider wider tax ramifications. However, once it proceeds to file a return, or take a similar step, the AAR's jurisdiction to entertain the application for advance ruling is taken away.

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- ii. Once a return of income is filed, the income tax authority concerned would be seized of the matter, and would possess a multitude of statutory powers to examine and rule on the return. Conversely, if the AAR is approached prior to filing of the return of income, the application can be entertained, and the AAR would be exclusively dealing with the matter before it.
- iii. The argument that the AAR erred in not following a so called past practice is unpersuasive and hence petitions were rejected.

## Conclusion

This decision of the Delhi High Court may not be very well welcomed by the tax payers as it has narrowed the jurisdictional powers of the AAR. Based on this judgement, once an assessee has filed his return of income, he can no longer approach an AAR for any ruling or queries with respect to the transactions entered into by it. Although, it provides some amount of certainty on the conflict of opinion that previously existed on this question, this being a Delhi High Court judgement will not be binding in other states but will have a persuasive value.

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