Finance Act, 1993

Section 31 - Insertion of New Chapter Xix-b

After Chapter XIX-A of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of June, 1993, namely: -

CHAPTER XIX-B

Advance Rulings

245N. Definitions. - In this Chapter, unless the context otherwise requires, -

(a) "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant;

(b) "applicant" means a non-resident making an application;

(c) "application" means an application made to the Authority under sub-section (1) of section 245Q;

(d) "Authority" means the Authority for Advance Rulings constituted under section 245-O;

(e) "Chairman" means the Chairman of the Authority;

(f) "Member" means a Member of the Authority and includes the Chairman.

245-O. Authority for Advance Rulings. -(1) The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely :-

(a) a Chairman, who is a retired Judge of the Supreme Court;

(b) an officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes;

(c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

245P. Vacancies, etc., not to invalidate proceedings. - No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

245Q. Application for advance ruling. - (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(3) An applicant may withdraw an application within thirty days from the date of the application.

245R. Procedure on receipt of application. - (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

Provided that the Authority shall not allow the application where the question raised in the application, -

(a) is already pending in the applicants's case before any income-tax authority, the Appellate Tribunal or any court;

(b) involves determination of fair market value of any property;

(c) relates to a transaction which is designed prima facie for the avoidance of income-tax :

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation : For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

245S. Applicability of advance ruling. - (1) The advance ruling pronounced by the Authority under section 245R shall be binding only -

(a) on the applicant who had sought it;

(b) in respect of the transaction in relation to which the ruling had been sought; and

(c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

245T. Advance ruling to be void in certain circumstances. - (1) Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

245U. Powers of the Authority. - (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), as are referred to in section 131 of this Act.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

245V. Procedure of Authority. - The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.'