

The Authority for Advance Rulings (Procedure) Rules, 1996

UNION OF INDIA

India

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Rule

THE-AUTHORITY-FOR-ADVANCE-RULINGS-PROCEDURE-RULES-1996 of 1996

- Published on 18 September 1996
- Commenced on 18 September 1996
- [This is the version of this document from 18 September 1996.]
- [Note: The original publication document is not available and this content could not be verified.]

The Authority for Advance Rulings (Procedure) Rules, 1996 Published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 18th September, 1996 (w.e.f. 17th September, 1996)

1980.

G.S.R 426(E), Dated 17.9.1996. - In exercise of the powers conferred by section 245V of the Income-tax Act, 1961 (43 of 1961), the Authority for Advance Rulings hereby makes the following rules, namely:-

1. Short title and commencement.

(1) These rules may be called the Authority for Advance Rulings (Procedure) Rules, 1996. (2) They shall come into force with immediate effect.

2. Definitions.

- In these rules, unless the context otherwise requires,-(a)"Act" means the Income-tax Act, 1961 (43 of 1961);(b)"Advance Ruling" means an advance ruling as defined in sub-clause (a) of section 245-N of the Act;(c)"Applicant" means an applicant as defined in sub-clause (b) of section 245N of the Act;(d)"Application" means an application under sub-section (1) of section 245Q of the Act but shall include, where the context permits, all applications, petitions and representations of the nature referred to in rule 5;(e)"Authorised Representative",- (i) in relation to an applicant shall have the meaning assigned to it in sub-section (2) of section 288 of the Act as if the applicant were an

assessee;(ii)in relation to the Commissioner, means a person authorised by the Commissioner in writing to appear, plead and act for the Commissioner in any proceedings before the Authority;(f)"Authority" means the Authority for Advance Rulings constituted under section 245-O of the Act;(g)"Case" means any proceedings under Chapter XIX-B of the Act in respect of an applicant;(h)"Chairman" means the Chairman of the Authority;(i)"Commissioner" means,-(1)the Commissioner as defined in sub-clause (16) of section 2 of the Act in respect of an applicant assessed under the Income-tax Act,(2)the Commissioner designated by the Central Board of Direct Taxes in this behalf in respect of an applicant not hitherto assessed,(j)"Member" means a member of the Authority and includes the Chairman;(k)"Order" includes any order, direction or ruling of the Authority;(l)"Rule" means a Rule of the "Authority for Advance Rulings (Procedure) Rules, 1996";(m)"Secretary" means a Commissioner of Income-tax designated as the Secretary of the Authority and includes an Additional Commissioner of Income-tax and Deputy Commissioner of Income-tax appointed to assist the Secretary in his functions where the context so requires;(n)"Section" means a section of the Act;(o)Words and expressions used and not defined herein but defined in the Act, shall have the meanings respectively, assigned to them in the Act.

3. Language of the Authority.

(1)The language of the Authority shall ordinarily be English :Provided that the Authority may, at the request of the parties, permit the use of Hindi in the proceedings before it to the extent it may consider appropriate and practical.(2)Where any document is in a language other than English or Hindi, an English translation thereof should also be filed along therewith.(3)The ruling of, and other orders passed by the Authority may, at the discretion of the Authority, be in Hindi or English.

4. Sitzings of the Authority.

- The Authority shall hold its sittings at its headquarters at Delhi or at such other place or places as may be authorised by the Chairman and the date and place of hearing shall be notified in such manner as the Chairman may by general or special order direct.

5. Powers of the Authority.

- The Authority shall hear and determine the application made under sub-section (1) of section 245Q of the Act and such other applications, petitions and representations of an interlocutory, incidental or ancillary nature as may be necessary for a complete and effective disposal of the application, as the Chairman may by general or special order direct.

6. Power to remove difficulty.

- If any difficulty arises in giving effect to any order of the Authority, the Authority may, on its own motion or on an application made by the applicant or the Commissioner, remove the difficulty insofar as it is not inconsistent with the provisions of the Act.

7. Powers and functions of the Secretary.

(1)The Secretary shall have the custody of the records of the Authority and shall exercise such other functions as are assigned to him under these rules or by the Chairman by separate order.(2)The official seal of the Authority shall be kept in custody of the Secretary.(3)The Secretary shall also have the following powers and duties, namely :-(i)to receive all applications filed before the Authority;(ii)to scrutinise the applications to find out whether they are in conformity with the Act, the rules and the procedure;(iii)to point out defects in such application to the parties and require them to remove the defects by affording them a reasonable opportunity to do so and, where, within the time granted, the defects are not removed, to obtain necessary orders of the Authority;(iv)to fix the date of hearing for the applications in consultation with the Chairman and direct the issue of notices therefor;(v)to issue the service of notices or other processes and to ensure that the parties are properly served;(vi)to requisition records from the custody of any person including a Commissioner or any other Authority;(vii)to allow inspection of records of the Authority;(viii)to direct any formal amendment of the records of the Authority;(ix)to grant certified copies of the orders of the Authority to the parties;(x)to grant certified copies of documents filed in the proceedings to the parties in accordance with the rules; and(xi)to bring on record legal representatives, in case of death or retirement of any party to the proceedings and to make such appropriate amendments in the cause title as may become necessary in the other situations referred to in rule 15.

8. Signing of notices, etc.

(1)Any requisition, direction, letter, authorisation, or written notice to be issued by the Authority shall be signed by the Secretary or by an officer authorised by him.(2)Nothing in sub-rule (1) shall apply to any requisition or direction which the Authority may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative.

9. Mode of service of notices.

- Every notice or other document required to be served on or delivered to any person, may be sent by hand through process server, or by registered post or by FAX to that person or his authorised representative at the address or FAX number furnished by him for service or at the place where the person or his authorised representative ordinarily resides or carries on business or personally works for gain.

10. Procedure for filing applications.

(1)An application shall be made in Form 34C of the Income-tax Rules, 1962 in quadruplicate and presented by the applicant in person or by an authorised representative to the Secretary or any other officer notified in writing by the Secretary or sent by registered post addressed to the Secretary along with a fee of two thousand five hundred Indian Rupees in the form of a Demand Draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi.(2)The application, its

verification and the annexures, statements and documents accompanying it, shall be signed in the manner set out in sub-rule (2) of rule 44E of the Income-tax Rules, 1962 :Provided that where a person signing the application and other documents claims to have been duly authorised in that behalf under the rules, the application shall be accompanied by a power of attorney, authorising him to append his signature and an affidavit setting out the unavoidable reason which entitles him to sign it.(3)An application sent by registered post under sub-rule (1) shall be deemed to have been made on the date on which it is received in the office of the Authority.(4)If the applicant is not hitherto assessed in India, he shall indicate in Annexure I to the application : (a)his head office in any other country, (b)the place where his office and residence is located or is likely to be located in India, and (c)the name and address of his representative in India, if any, authorised to receive notices and papers and act on his behalf.(5)The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is represented after correction.

11. Submission of additional facts before the Authority.

(1)The Authority may at its discretion permit or require the applicant to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.(2)Where in the course of the proceedings before the Authority, a fact is alleged which cannot be borne out by or is contrary to the record, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

12. Questions contained in the application.

- The applicant shall not, except by leave of the Authority, urge or be heard in support of any additional question not set forth in the application, but in deciding the application of the Authority shall at its discretion consider all aspects of the questions set forth as may be necessary to pronounce a ruling on the substance of the questions posed for its consideration.

13. Date and place of hearing to be notified.

(1)Where an application under section 245Q is received from an applicant not hitherto assessed and there is no Commissioner designated in respect thereof under rule 2(i)(2), a copy of the application and enclosures thereto shall be forwarded to the Board calling upon it to specify or designate, within a period of two weeks, the Commissioner for the purposes of the application, failing which the application may be decided without hearing the Commissioner.(2)On receipt of an application under section 245Q in respect of which there is a Commissioner as defined in rule 2(i)(1) or a Commissioner has been designated by the Board under rule 2(i)(2) or under sub-rule (1) of this rule, the Authority shall notify the applicant and the Commissioner of the date and place of hearing of the application and forward a copy of the application to the Commissioner calling upon him to furnish the relevant records of the case along with his comments, if any, on the contents of the application and nominate his authorised representative if he desires to be heard.

14. Authorisation to be filed.

- An authorised representative appearing for the applicant at the hearing shall file, before the commencement of the hearing, a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant the capacity in which he is at the time employed.

15. Continuation of proceedings after the death, etc., of the applicant.

- Where the applicant dies or is wound up or dissolved or disrupted or amalgamated or succeeded to by any other person or otherwise comes to an end, the application shall not abate and may be permitted by the Authority, where it considers that the circumstances justify it, to be continued by the executor, administrator or other legal representative of the applicant or by the liquidator, receiver or assignee, as the case may be, on an application made in this behalf.

16. Hearing of application.

(1) On the day fixed, or any other day to which the hearing may be adjourned, the Authority shall hear the applicant or his authorised representative in cases where it is proposed to reject the application or the applicant seeks/has sought an opportunity of being heard. The Authority may also hear the Commissioner or his authorised representative as well if it considers it necessary before pronouncing its advance ruling. (2) In appropriate cases the Authority may call upon any person to supply such material as it may consider necessary to assist the Authority in arriving at a decision. (3) The Authority may, on such conditions as the circumstances of the case may require, adjourn the hearing of the application.

17. Hearing of application ex parte.

- Where on the date fixed for hearing or any other day to which the hearing may be adjourned, the applicant or the Commissioner does not appear in person or through an authorised representative when called on for hearing, the Authority may dispose of the application ex parte on merits : Provided that where an application has been disposed of as above and the applicant or the Commissioner, as the case may be, applies within 15 days of receipt of the order and satisfies the Authority that there was sufficient cause for his non-appearance when the application was called upon for hearing, the Authority may, after allowing the opposite party a reasonable opportunity of being heard, make an order setting aside the ex parte order and restore the application for fresh hearing.

18. Modification of the order.

- Where the Authority finds suo motu or on a representation made to it by the applicant or the Commissioner or otherwise, but before the ruling pronounced by the Authority has been given effect

to by the Assessing Officer, that there is a change in law or facts on the basis of which the ruling was pronounced, it may by order modify such ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

19. Rectification of mistakes.

(1)The Authority may, with a view to rectifying any mistake apparent from the record, amend any order passed by it before the ruling pronounced by the Authority has been given effect to by the Assessing Officer.(2)Such amendment may be made suo motu or when the mistake is brought to its notice by the applicant or the Commissioner, but only after allowing the applicant and the Commissioner reasonable opportunity of being heard.

20. Amendment of the Record.

- If at any stage of the proceedings before the Authority it appears that there is any factual or material error in the records the same shall be amended after hearing the applicant and the Commissioner.

21. Fees for supply of additional certified copies.

(1)The Secretary may order grant of additional certified copies of documents or orders to the applicant or the Commissioner on a written request made by either of them.(2)Copying fees for supply of additional certified copies to the applicant shall be charged at rupees three per page and such fees shall be paid in advance in cash.

22. Inspection of records and fees thereof.

(1)The applicant or the Commissioner or an authorised representative may be allowed to inspect the records of the case on making an application in writing to the Secretary provided that only those documents shall be allowed to be inspected which have been relied upon in the proceedings before the Authority.(2)The inspection shall be allowed only in the presence of an officer of the Authority and the applicant may be permitted to make notes of inspection but not to take copies of any document.(3)Fees for inspecting records of the Authority shall be charged from the applicant as follows :(a)Rupees one hundred for the first hour or part thereof; and(b)Rupees fifty for every additional hour or part thereof.(4)Fees for inspection shall be paid in advance in cash.

23. Declaration of advance rulings to be void in certain circumstances.

(1)Where a representation is made under section 245T of the Act to the Authority 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, such representation shall be made in quadruplicate and shall be accompanied by a statement of facts incorporating the fraud or misrepresentation as also particulars of the evidence to substantiate the claim of fraud or

misrepresentation of facts.(2)On receipt of such representation a notice shall be issued to the applicant along with a copy of the representation for rebuttal and a reasonable opportunity shall be allowed to the applicant and the Commissioner for being heard before passing an order under section 245T.

24. Proceedings not open to the public.

- Proceedings before the Authority shall not be open to the public and no person, other than the applicant, the Commissioner or their authorised representatives shall, without the permission of the Authority, remain present during such proceedings.

25. Publication of orders.

- Such of the orders of the Authority, as the Chairman deems fit for publication in any authoritative report or the press, may be released for such publication on such terms and conditions as the Chairman may specify.

26. Authentication and communication of orders.

(1)Every order of the Authority under Chapter XIX-B shall be duly signed by the members and bear the official seal of the Authority.(2)One certified copy of such order of the Authority shall be communicated to the applicant and the Commissioner under the signature of the Secretary or any other officer of the Authority authorised by him in this behalf and bear the official seal of the Authority.

27. Proceedings of the Authority.

(1)When one or both of the members of the Authority other than the Chairman is unable to discharge his functions owing to absence, illness or any other cause or in the event of occurrence of any vacancy or vacancies in the office of the members and the case cannot be adjourned for any reason, the Chairman alone or the Chairman and the remaining member may function as the Authority.(2)Subject to the provisions of sub-rule (3), in case there is difference of opinion among the members hearing an application the opinion of the majority of members shall prevail and orders of the Authority shall be expressed in terms of the views of the majority but any member dissenting from the majority view may record his reasons separately.(3)Where the Chairman and one other member hear a case under sub-rule (1) and are divided in their opinion, the opinion of the Chairman shall prevail.

28. Procedure in case of other application.

- The provisions contained in these rules for the hearing and disposal of application under section 245Q(1) shall apply, mutatis mutandis, to the hearing and disposal of all other applications, petitions and representations before the Authority.

29. Dress regulations.

(1)An authorised representative shall appear before the Authority in dress prescribed for the members of his profession by the competent professional body, if any.(2)All other persons appearing before the Authority shall be properly dressed.