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BEFORE THE AUTHORITY FOR ADVANCE RULINGS (INCOME TAX) NEW DELHI

1ST Day of December, 2015

A.A.R. Nos. 1066 of 2011

PRESENT

Justice Mr V.S. Sirpurkar, Chairman
Mr. A.K. Tewary, Member (Revenue)
Mr. R.S. Shukla, Member (Law)

Name & address of the applicant	Satyam Computer Services Ltd. Hyderabad
Present for the applicant	Mr. Rajan Vora, SRBC & Asso. CA Mr. Pravat Jena, SRBC & Assoc. CA Mr. Aditya Bajoria, CA
Present for the Department	Mr. G.C.Srivastava, Advocate Mr. Daksh S. Bhardwaj, Advocate Ch. Rajeswara Reddy, DCIT-IT, Hyderabad

R U L I N G
(By Sirpurkar J)

The Applicant, namely Satyam Computer Services Limited ("the Company") is an Indian company incorporated under the Companies Act, 1956. The Applicant's shares are listed on the National Stock Exchange of India ("NSE") and the Bombay Stock Exchange ('BSE'). Further, the Applicant's American Depositary Shares ('ADS') were listed on the New York Stock Exchange ('NYSE').

2. After the January 7, 2009 letter of the former Chairman of the Company and subsequent investigation by various authorities, a complaint was filed by the US

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Securities and Exchange Commission ('SEC') against the Company in the United States District Court For the District of Columbia ("the US Court").

3. In the complaint, SEC prayed before the US Court for among other restraints imposing a civil monetary penalty pursuant to section 21(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and alleged violations of Sections 10(b), 13(a), 13(b)(2)(a) and 13(b)(2)(b) of the Securities Exchange Act of 1934 and Exchange Act Rules of 10b-5, 12b-20, 13a-1 and 13a-16.

4. The Applicant submitted to the Court's jurisdiction and filed its Consent and Undertaking with SEC on March 31, 2009, without admitting or denying the allegations in the complaint, agreeing to an amount of US $ 10 million as penalty and other restraints. Based on the Consent and Undertaking, the US Court passed the final Judgment/decree against the applicant.

5. The United States District Court for the District of Columbia passed its final judgment/decree against the applicant on 6 April 2011, stating "It is further Ordered, Adjudged, and Decreed that Satyam is liable for a civil penalty in the amount of the $10 million pursuant to the provision of Section 21(d) of the Exchange Act."

6. The Court Order/Decree further states "Satyam shall satisfy this obligation by paying the $10 million in civil money penalty within 14 days after the entry of this Final Judgment to the Clerk of this Court."

7. Further the Court held that the "amount ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes."

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8. By virtue of the above mentioned Final Judgment/Decree, the Company is liable to pay an amount of US $10 Million (approximately Rs. 443,750,000 at USD 1 = Rs.44.375) as Penalty to the US Court/US Government.

9. The Applicant, being desirous of confirming that tax under section 195 of the Income Tax Act is not required to be deducted at source in connection with payment of the penalty pursuant to the US Court Order/Decree for violation of the provisions to the US Securities Exchange Act, filed this application before this Authority and raised the following questions:-

Que. 1) Whether, on the facts and circumstances of the case, the Penalty Amount payable pursuant to the Final Judgment/Decree of the US Court and paid to the Government of USA/US Court would be liable to tax deduction at source under the provisions of the Income-tax Act, 1961?

Que. 2) Where the answer to the Question No. 1 is in the affirmative and the Applicant is required to deduct income tax at Source under section 195 of the Act, at what rate shall income tax be deducted?

10. It is, therefore, to be seen as to whether the payment (penal amount) made in pursuance of the final judgment/decree of the US Court would attract provision of Section 195. It is trite law that unless the payment made attracts the tax under the Income Tax Act, there would be no liability to deduct tax under Section 195 of the Income Tax Act. A penalty ordered by the US Court can never attract any tax nor

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would such a payment made by the applicant attracts any tax liability. It is, therefore, axiomatic that the payment being a penalty amount as ordered by the court of competent jurisdiction for the same, can never attract any such tax liability. Hence, the applicant would not be required to deduct any such amount under Section 195. The law is very clear on this aspect.

11. Mr. Srivastava appearing for the Department very fairly stated and, correctly in our opinion, conceded that there would be no necessity of deducting tax from the penalty amount of 10 million US $.

12. We hold accordingly, and the answer to question No. 1 would be in the negative. Since, the answer to question No. 1 is in the negative there would be no need to consider the question No.2. The matter stands disposed of.

(A.K. Tewary) **Member (R)**	**(V.S. Sirpurkar)** **Chairman**	**(R.S. Shukla)** **Member (L)**