

In Re: Instrumentarium

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Court : Authority for Advance Rulings

Decided On : Nov-25-2004

Reported in : (2005)193CTRAAR347

Judge : S S Quadri, K Singh

Appellant : In Re: Instrumentarium

Judgement :

For Appellant/Petitioner/Plaintiff: Rahul Krishna Mitra and Parikshit Datta, Advs.

Income Tax Act, 1961 - Sections 92 to 92(F), 92(1), 92(2), 92(3), 245N, 245R(2) and 245S 1. M/s Datex-Ohmeda (India) (P) Ltd. (for short the 'Datex') is an Indian company and is a tax resident of India. It is a wholly-owned subsidiary company of M/s Instrumentarium Corporation, Finland, a non-resident company, a tax resident of Finland (for short 'Instrumentarium') which has not been assessed under the IT Act, 1961 (for short the "Act"), in India. Instrumentarium is engaged in the business, inter alia, of manufacturing and selling of medical equipments. Datex operates as 'distributor' of the Instrumentarium in Indian market. On 26th Aug., 2002, Instrumentarium and Datex entered into a loan agreement under which Instrumentarium granted a loan in US dollar equivalent to Indian Rs. 360 million for the purpose of general business of Datex. The loan is said to be free of interest. Datex has filed copies of the loan agreement with the RBI to comply its requirement. The Convention between the Republic of India and the Republic of Finland for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital was concluded on 10th June, 1983, notified on 20th Nov., 1984,

and subsequently amended by notification dt. 13th Aug., 1998, (referred to in this ruling as the "Treaty").

Instrumentarium filed this application under Section 245Q(1) of the Act seeking advance ruling of the Authority on the following questions : (i) Whether the granting of loan amounting to Rs. 360 millions by the applicant, being a non-resident corporate assessee, in favour of Datex-Ohmeda (India) (P) Ltd. (hereinafter referred to as "Datex"), which is its wholly-owned subsidiary company incorporated in India, without charging any interest, and accordingly without adhering to the principles of arm's length price, actually results in the Government exchequer or the tax revenue of the country being benefited (ii) Whether any payment of interest by Datex on the loan amounting to Rs. 360 million granted in its favour by the applicant, upto the arm's length price would have entailed a tax saving in its hands to the extent of 36.75 per cent of such interest and that the said interest would have been subject to income-tax in India in the hands of the applicant at the rate of 10 per cent on gross basis, with the result that any payment of such interest would have actually eroded the tax revenue of India to the extent of the tax differential, namely, 26.75 per cent [36.75 per cent-10 per cent] of such interest (iii) Whether, having regard to the statement of objects and reasons of the legislation relating to transfer pricing, which clarifies the legislative intent in enacting the same, namely, to curb the practice adopted by multinational group of companies in India of manipulating the prices charged and paid in intra-group transactions, which led to erosion of tax revenues, where the granting of loan amounting to Rs. 360 million by the applicant in favour of Datex without charging any interest, and accordingly without adhering to the principles of arm's length price, actually results in the Government exchequer or the tax revenue of the country being benefited, the applicant is required to comply with the provisions of the IT Act, 1961 (hereinafter referred to as the "Act") containing the legislation relating to transfer pricing, namely, Sections 92 to 92F of the Act, with respect to the said transaction of loan and accordingly charged interest as per the principles of arm's length price from Datex 2. On 22nd April, 2004, the Authority permitted the applicant to urge the following two additional questions : (a) Whether, in view of the provisions of Article 25(1) of the DTAA entered into by the Government of India with the Government of Finland (hereinafter for the sake of brevity, referred

to as the "India-Finland Tax Treaty") in exercise of the powers conferred upon it by Section 90(1) of the IT Act, 1961 (hereinafter referred to as the "Act"), the applicant, being a company incorporated in Finland and accordingly both a national as well as a tax resident of Finland, is not subject to the rigours of the transfer pricing legislation of India contained in Sections 92 to 92F of the Act, with respect to the transaction of interest-free loan equivalent to Rs. - 360 million granted by it in favour of its wholly-owned subsidiary company incorporated in India, namely, Datex-Ohmeda (India) (P) Ltd. (hereinafter referred to as "Datex") and accordingly is not required to charge any arm's length price of interest on such loan (b) Whether, since any company, which is incorporated under the laws of India and is also a national and a tax resident of India, is not mandatorily required to charge any interest on loans given to its related parties, e.g., subsidiary companies, situated in India, inasmuch as, the Act is not empowered, in absence of any transfer pricing legislation relating to an element of income with respect to transaction between two entities, both of which are tax residents of India, to impose any income-tax on any notional interest in the hands of the Indian company granting the loan, in view of the provisions of non- discrimination contained in Article 25(1) of the India-Finland Tax Treaty, the applicant is also not required to charge any arm's length price of interest on the loan equivalent to Rs. 360 million granted by it in favour of Datex and accordingly, no income-tax may be imposed on the applicant with respect to any such notional interest by invoking the provisions of the transfer pricing legislation of India contained in Sections 92 to 92F of the Act 3. The Director of IT (International Taxation), Kolkata {for short the "CIT"}, submitted the following comments to the application. The applicant did not frame any question of law for seeking advance ruling.

The transaction of loan is between a non-resident company and its wholly-owned subsidiary Indian company which squarely comes within the arena of Section 92(1) of the Act. Once the transaction falls under Section 92, the other provisions viz., Sections 92C, 92D, 92E will apply and in appropriate cases Section 92CA will also apply. Section 92(1) has to be implemented as it stands. There is no ambiguity in the provision in regard to the international transaction which is defined in Section 92B(1) of the Act. The provisions of Sections 92 to 92F give rise to no mischief or absurdity and the assumption of the applicant that following those

provisions would produce unjust results is a figment of imagination. If it fails to comply with the requirements of Sections 92D and 92E of the Act, it has to face the consequences. The applicant is trying to sidetrack the provisions relating to transfer pricing. No determination on a question of law as is required under Section 245N of the Act by the Authority for Advance Ruling is called for and on the facts and in the circumstances of the present petition, no such question is involved. Neither any interest is paid by Datex to Instrumentarium nor any interest is payable as per the Agreement, therefore, advance ruling is sought not on actual facts but on hypothetical question. It is also submitted that cl. (ii) of Sub-section (2) of Section 245R of the Act enjoins the Authority not to allow the application involving determination of fair market value of any property. The AO has to determine, at an appropriate stage, the quantum of interest, which should be paid by Datex to Instrumentarium, having regard to the international market. It will also examine the question as to whether not charging of interest on the loan is a convenient strategy crafted by the non-resident company as part of its global strategy to avoid incidence of tax in the other Contracting State where the subsidiary company is located, i.e., India and the present application is an attempt to pre-empt any such exercise by the AO and, therefore, it should be rejected. The Parliament in its wisdom did not intend that issues arising from or related to an international transaction should not go through the entire gamut of the provisions of Sections 92 to 92F and there should be a prior determination by the Authority which is not a tax enforcing authority. In regard to the additional questions, it is stated that the term 'national' is defined under Article 3(l)(d) of the Treaty. The definition shows that Article 24 of the Treaty can be invoked by any individual, legal person, partnership and association. Companies are not included within the definition of "national". Therefore, the Instrumentarium is not entitled to the protection on the ground of 'nationality' under Article 24 of the Treaty. There is no discrimination in application of transfer pricing provisions to Instrumentarium vis-a-vis any national of India placed in the same circumstances. Transfer pricing provisions are based on the concept of residence and discrimination mentioned in Article 24 of the Treaty is based on the concept of nationality, and it requires that the nationals of Contracting State, placed in the same circumstances, shall not be discriminated against, on the basis of their nationality. In the present case, the

nationality of the Instrumentarium is not the reason for application of transfer pricing provisions but its residential status. An Indian national who is a resident of Finland will also be subjected to the same provisions of transfer pricing in case he enters into international transaction.

4. At the outset we may note that the aforementioned questions are more in the nature of paraphrases of questions rather than questions postulated in Section 245Q(1) of the Act. However, question No. 2 is not pressed and question No. 3 is reframed to read as under: "Whether the applicant is required to comply with the provisions of the IT Act, 1961 {hereinafter referred to as the "Act"}, containing the legislation relating to transfer pricing, namely, ss, 92 to 92F of the Act, with respect to the said transaction of loan and accordingly charge interest as per the principles of arm's length price from Datex." 5. Mr. Rahul Krishna Mitra, chartered accountant, appeared for the applicant; after pointing out the salient features of Sections 92, 92(1), 93(3) and the legislative intent in introducing the new transfer pricing legislation, he submitted that provisions of the Treaty would override the provisions of the Act in regard to the rate of tax applicable on interest as being more favourable to the applicant as per Section 90(2) of the Act; in regard to the transaction of granting loan of Rs. 360 million by the applicant to Datex, if negotiated as per the principles of arm's length price, the Government exchequer would have lost an amount of Rs. 9.63 million, being the tax differential computed at 26.75 per cent of arm's length price interest and would result in erosion to tax revenue in India; a literal interpretation of Section 92(1) of the Act which would require adherence to the principles of arm's length price and accordingly, charging of interest at arm's length rate by the applicant on the loan of Rs. 3.60 million granted to Datex would lead to frustrating the legislative intent in enacting the provisions of transfer pricing, as the same would actually result in erosion of tax revenue of the country, therefore, it is not intended to apply in cases where the adoption of arm's length price determined under the Act would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transaction. In Circular No. 14 of 2001, issued by the CBDT, which is binding on the IT Department, it is clearly stated that the legislation relating to transfer pricing is not intended to be applied in cases where the adoption of arm's length price determination under the Act would result in a decrease in the overall

tax incidence in India in respect of the parties involved in the international transaction. On the other hand, if no interest is paid by Datex to the applicant, as it is conceived of in the instant case, the Government exchequer is actually benefited and it is for this reason Sub-section (3) of Section 92 provides that where the adoption of arm's length price in relation to an international taxation has the effect of reducing income of an assessee and increasing its loss, then the provisions of Section 92(1) of the Act, which require any income arising from an international transaction to be computed having regard to the arm's length price, would not apply so as to confer a benefit on the assessee. The learned chartered accountant on the said premise persuaded us to so construe the provisions of Section 92 even by modifying the language used by the legislature or even doing some violence to it so as to achieve the obvious intention of the legislature as, in his submission, the plain literal interpretation of the statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature.

6. For the CIT initially, Mr. Sanjay Puri, Addl. DIT (International Taxation), Kolkata, appeared. Having regard to the complexity of the issues, we considered it appropriate to request the learned Solicitor General of India to assist us in this case. We record our appreciation of the learned Solicitor General for responding to our request. He placed the following written propositions on record and addressed us accordingly : 1. This is not a case of "interpretation". Section 92 cannot be displaced in the guise of interpretation.

2. The Authority in substance is being called upon to direct that Section 92 should not be given effect to. This cannot be done.

3. What is sought to be done at this stage is to enforce a premature application of Section 92(3), which can only be at the stage of assessment with full facts being placed before the AO. 4. If a notice were to be given to the applicant that interest on an "arm's length" basis ought to have been charged, and that income has escaped assessment, it would not be open to the applicant to resist the same saying that it would be detrimental to the interests of Revenue. This is not a defence available to a non-resident; it is a matter for the Revenue to decide.

5. The application is based on a hypothesis (p. 17) that the question of a loss does not make a difference. This is hardly an "admitted" position.

6. What is sought (to) be achieved is that the principle of "arm's length price" be not adhered to. The Authority has no jurisdiction to order "non-adherence" to statutory provisions.

7. The Authority has no jurisdiction to order that Section 92(1) be not applied or implemented. The Authority, which is constituted under the Act, has no such power and even a Court exercising Constitutional powers such as under Article 226 would be unable to do so.

In substance, the case of the applicant is that, as applying the arm's length price to give effect to Sub-section (1) of Section 92 in the case of the applicant results in loss to the Revenue, the provisions of Sub-section (3) ought to be applied and power under Section 92(1) should not be exercised. The contention of the learned Solicitor General is that the applicant is seeking to enforce a premature application of Sub-section (3) of Section 92 which can be invoked only at the stage of assessment with full facts being placed before the AO and that in the guise of interpretation, Section 92 cannot be displaced by seeking advance ruling from the Authority that the principle of arm's length price be not adhered to. It is argued that the Authority has no jurisdiction to order "non-adherence" to statutory provisions and that a Court exercising Constitutional powers such as under Article 226 would be unable to do so, therefore, the Authority which is constituted under the Act, could not exercise such a power.

7. Before advertng to the above contentions, it would be necessary to refer to the provisions of the Act dealing with advance rulings.

Section 245N(a) defines "advance ruling" as follows : (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or (ii) a determination by the Authority in relation to [the tax liability of a non- resident arising out of] a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any

question of law or of fact specified in the application.

The definition of advance ruling comprises of three categories of determination by the Authority. The first category speaks of a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, referred to in Sub-clause (i) which is couched in wider terms; such a transaction may be with a resident or another non-resident. Notwithstanding the width of the language of Sub-clause (i) a proposed question of law or of fact must relate to tax liability (income-tax including capital gains) of the applicant arising out of such transaction and not to consequences of implementation of provisions of the Act on the State exchequer and the like. The second category relates to a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident and a proposed question of law or of fact concerning the tax liability of such a non-resident. A determination or decision on a question of law or of fact by the Authority in respect of an issue relating to computation of total income which is pending before any IT authority or the Tribunal, falls under the third category. The proposed questions in this application do not evidently pertain to the second or the third category.

Our determination in regard to the proposed questions will, therefore, be confined to the issues insofar as they fall within Sub-clause (i) of cl. (a) of Section 245N. It will be apposite to observe at this stage that, having regard to both the concept of advance ruling as well as the language employed in cl. (a) of Section 245N-transaction proposed to be undertaken-determination of a question of law or of fact by the Authority has to be much before the stage of assessment/ determination by the AO. Indeed, in view of Section 245S of the Act, the ruling of the Authority in respect of an applicant and the transaction, is binding on the CIT and the IT authorities subordinate to him, therefore, the AO has to give effect to the advance ruling in assessment and the other proceedings. It would, therefore, be incorrect to contend that before the assessment by the AO, the question in regard to transfer pricing cannot be determined by the Authority, if otherwise it is open to it so to do.

8. Chapter X of the Act embodies special provisions relating to avoidance of tax. Section 92 which deals with computation of income from international transaction

having regard to arm's length price, Section 92A which defines "associated enterprise" and Section 92B which incorporates "meaning of international transaction" for purposes of Sections 92, 92C, 92D, 92E, fall within the said Chapter. There is no controversy about the applicant and Datex being associated enterprises within the meaning of Section 92A and the transaction of granting (interest-free) loan by the applicant to Datex falling within the meaning of Section 92B, respectively. The main issue relates to application of Sub-sections (1) and (2) of Section 92 to the transaction in question in the light of the provisions of Sub-section (3) of Section 92 of the Act.

(1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation : For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(3) The provisions of this section shall not apply in a case where the computation of income under Sub-section (1) or the determination of the allowance for any expense or interest under that sub-section, or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under Sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.

The mandate contained in Sub-section (1) of Section 92 is that any income arising from an international transaction shall be computed having regard to the arm's length price. Sub-section (2) of Section 92 requires that where, in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to any costs or expenses incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or as the case may be, contributed by such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be. The centre of controversy in this case is Sub-section (3) of Section 92 which enjoins that the provisions of Section 92 shall not be applied in a case where the computation of income under Sub-section (1) or the determination of the allowance for any expense or interest under that sub-section or the determination of any cost or expense allocated or apportioned, as the case may be, contributed under Sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.

9. With the expansion of global operations of multinational companies well-equipped in tax planning to minimize tax incidence of various countries in which they operate, there has been a corresponding legislative activity to counter such measures. The application of principle of transfer pricing is one such measure. The provisions of transfer pricing were first introduced by substituting Sections 92 to 92F for the then existing Section 92 by Finance Act, 2001; however, they were also substituted by new set of provisions-ss. 92 to 92F- by the Finance Act, 2002, w.e.f. 1st April, 2002. The said new provisions, supported by the rules, now provide a detailed statutory machinery for computation of reasonable and equitable profits and tax in India in the case of multinational enterprises.

The increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be

controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, new provisions are proposed to be introduced in the IT Act. These provisions relate to computation of income from international transactions having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, determination of arm's length price, keeping and maintaining of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into such transactions and definitions of certain expressions occurring in the said sections.

It is proposed to substitute Section 92 with a new section to provide that any income arising from an international transaction shall be computed having regard to the arm's length price. It further provides that the costs or expenses allocated or apportioned between two or more associated enterprises shall be at arm's length prices.

The proposed new Sections 92A and 92B provide meanings of the expressions "associated enterprise" and- "international transaction" with reference to which the income is to be computed under the new Section 92....." After coming into force of the said provisions, CBDT issued Circular No. 14 of 2001 on 11th May, 2001 (22nd Nov., 2001), containing explanatory notes, inter alia, on transfer pricing in para 55.5 which, insofar as they are relevant, read : "The basic intention underlying the new transfer pricing regulation is to prevent shifting out of profits by manipulating prices charged or paid in international transaction, thereby eroding the country's tax base. The new Section 92 is, therefore, not intended to be applied in cases where the adoption of the arm's length price determined under the regulations would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transaction." From a plain reading of the material quoted above, it becomes evident that where the adoption of arm's length price under Sub-sections (1) and (2) of Section 92 would result in

decrease in the overall tax incidence in India in respect of the parties involved in the international transaction, Sub-section (3) enjoins that principle of arm's length price shall not be given effect to.

11. Of the questions posed before us, referred to above, question No. 1 requires us to determine whether loan of Rs. 360 million by the applicant to Datex without charging interest and without adhering to the principle of arm's length price actually results in the Government exchequer or the tax revenue of the country being benefited. And question No. 3 is consequential, at least in part, to our ruling on the first question. Apparently question No. 1 appears to fall under Sub-clause (i) of cl. (a) of Section 245N but on a close examination, it becomes clear that it falls outside the ambit of the sub-clause because the question requires us to determine the effect of the transaction of loan between the applicant and Datex on Government exchequer or the tax revenue of the country as to whether it is being benefited or not. This implies a determination by Authority not in regard to tax implications of the transaction on the non- resident applicant but the impact of adhering to the principle of arm's length price embodied in Sub-sections (1) and (2) of Section 92 on the revenue of the State. We are afraid that such a determination is clearly outside the ambit of and not within the meaning of the expression "advance ruling" incorporated in Sub-clause (i) of cl. (a) of Section 245N of the Act.

Adverting to question No. 3, as reframed, it will be necessary to bear in mind the scheme of Sections 92, 92A, 92B. The AO is enjoined to work out the arm's length price as per Sub-sections (1) and (2) of Section 92 following the method outlined in Section 92C. If he considers necessary or expedient so to do, he may with the previous approval of the CIT, refer the computation of arm's length price in relation to the international transaction to the Transfer Pricing Officer under Section 92CA. The Transfer Pricing Officer has to determine the arm's length price after notice to the assessee. On the basis of such determination, the AO has to compute the total income of the assessee. It is only if the AO comes to the conclusion that the interest of the Revenue would be better served by not applying Sub-sections (1) and (2) than by adhering to them, Sub-section (3) would be attracted and the AO will have to proceed with the assessment without giving effect to Sub-sections (1)

and (2). Without complying with the statutory requirements it will be too presumptuous to assume the said transaction is beneficial for the Revenue and then invoke Sub-section (3) of Section 92.

12. To consider the applicability of Sub-section (3) of Section 92, we have perused the loan agreement between the applicant and the Datex, dt. 26th Aug., 2002. Clauses 5, 6 and 7 of the agreement are relevant for our purpose.

The borrower shall repay the principal amount of the loan in a bullet payment of three years maturity calculated from the first day of loan period.

On the maturity of the loan the borrower will pay back to the lender equivalent amount in US dollars of 360,000,000 rupees (Rupees Three Hundred and sixty million only) at the exchange rate prevalent on the date of repayment of the loan as full discharge of the loan.

The loan will be made available by the lender to the borrower free of any interest.

If the payment is delayed, default interest of 16 per cent will be charged. Overdue interest is calculated for the period beginning from the maturity date and ending to date the principal amount is received to the lender's bank account. The overdue interest shall be paid with the principal amount." Though Clause 6 provides that the loan will be made available by the lender to the borrower free of any interest, Clause 7 stipulates that if the payment is delayed, default interest of 16 per cent will be charged which has to be calculated for the period beginning from the maturity date and ending to date the principal amount is received to the lender's bank account. The overdue interest has to be paid with the principal amount. Clause 5 requires that the borrower shall repay the principal amount of loan in a bullet payment of three years maturity calculated from the first day of loan period. It appears to us that Clause 6 cannot be read in isolation; it has to be taken in conjunction with els. 5 and 7 which stipulate about repayment of loan and for payment on overdue interest. Without knowing the exact position in regard to the repayment of loan or the applicability of overdue interest, it will be premature to assume that the rate of interest is 0 per cent and proceed to pronounce ruling on that premise.

13. In this context, it is important to notice proviso (ii) to Sub-section (2) of Section 245R of the Act, which gives no option to the Authority except to reject the application where the question raised in the application involves determination of fair market value of any property. There can be no dispute that determination of arm's length price involves determination of fair market rate of interest.

The sine qua non for applicability of Sub-section (3) of Section 92 is the finding that the computation of income under Sub-section (1) or determination of the allowance for any expense or interest under that sub-section read with the Explanation or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under Sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into. Having regard to the aforementioned provision-proviso (ii) to Sub-section (2) of Section 245R of the Act-it is a prohibited exercise for the Authority. Indeed the Authority is enjoined to reject the application if the question involves determination of fair market value of the property. It follows that the Authority cannot pronounce any ruling on the applicability of Sub-section (3) of Section 92 of the Act.

14. In the light of the above discussion, the applicant has no option but to comply with the provisions of the Act including the legislation relating to transfer pricing, namely, Sections 92 to 92F of the Act with respect to the said transaction of loan. Whether or not the applicant would charge the interest, as per the principles of the arm's length price, on the said loan advanced to Datex, having regard to its contractual obligation, is a matter for the applicant to consider but for the purposes of the Act the rate of interest will have to be taken as per the principles of arm's length price.

(i) question No. 1 that the question does not fall within the meaning of the expression "advance ruling" incorporated in Sub-clause (i) of cl. (a) of Section 245N of the Act; (ii) question No. 2, we decline to pronounce any ruling as it is not pressed; (iii) question No. 3 that the applicant is required to comply with the provisions of the IT Act containing the legislation relating to transfer pricing namely

Sections 92 to 92F with respect to the said transaction of loan and accordingly, interest for purposes of those provisions will be chargeable as per the principles of arm's length price.

Before parting with this case, we thank the learned Solicitor General for rendering useful assistance to the Authority.

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