

(2011) 08 DEL CK 0010  
Delhi High Court  
Case No: Writ Petition (C) 9100 of 2007

General Electric  
Company and Another

APPELLANT

Vs

Deputy Director of  
Income Tax and  
Others

RESPONDENT

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Date of Decision: Aug. 12, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1922 - Section 10(A), 13, 41, 42, 43
- Income Tax Act, 1961 - Section 136, 160, 161, 162, 163

Citation: (2011) 7 AD 660 : (2011) 243 CTR 417 : (2011) 183 DLT 357 : (2012) 347 ITR 60 :  
(2011) 201 TAXMAN 341

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Harish Salve, Anuradha Dutt, Fereshte Sethna, Anish Kapur, Ekta Kapil, Kuber Dewan, Shweta and Pratyush Miglani, for the Appellant; Mohan Parasaran, A.S.G., Sanjeev Sabharwal, Senior Standing Counsel, Soheb Horrain, Alok P. Kumar and Aarthi Rajan, for the Respondent

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### Judgement

A.K. Sikri, J.

By the present petition, the Petitioners are challenging the legality and validity of the notices dated 10.04.2007 and 10.10.2007 issued u/s 163 of the Income Tax Act (hereinafter referred to as "the Act") vide which Respondent No. 1 proposes to treat Respondent No. 4 as an agent of the first Petitioner and make an assessment on Respondent No. 4 as a representative Assessee of the first Petitioner.

2. Vide impugned notices served upon the Respondent No. 4 treating as a representative Assessee of the Petitioner No. 1, the Department is seeking to bring

within the tax net the purported income generated by the Petitioner No. 1 as capital gains arising from the transfer of shares of Respondent No. 4 which were held by the Petitioner No. 1. The contention of the Petitioners is that such a transaction is not chargeable to tax in India when Petitioner No. 1, a non-resident company has transferred the share holding to another non-resident. However, that was not the issue canvassed before us. At present, the challenge to the validity of the aforesaid notice is confined on the ground that the Respondent No. 4 cannot be treated as representative Assessee of the Petitioner No. 1 and therefore, the impugned notice is without any jurisdiction. We would, thus, like to take stock of the relevant facts surrounding this issue.

3. The first Petitioner is a company incorporated in the State of New York in the United States of America its principal place of activity is the United States and it has business interests all over the world. It has been assessed to tax in India over the last several years in respect of its income taxable in India, as a non-resident, initially by the Deputy Commissioner of Income Tax 1(2) and currently by the Assistant Director of Income Tax, International Taxation, 3(1) at Mumbai. The second Petitioner is a company incorporated in Mauritius that holds shares of group companies and investments and had a wholly owned subsidiary in India called GE Capital International Services (for brevity "GECIS"), now known as Genpact India, which is registered under the Companies Act, 1956 and is Respondent No.4 herein. Respondent No. 1 is the Deputy Director of Income Tax, International Taxation, who has issued a notice u/s 163 of the Act to the Respondent No. 4, i.e., impugned in the present petition. Respondent No. 2 is the Assistant Director of Income Tax, who subordinate to Respondent No. 1 has taken further proceedings pursuant to the notice issued by the Respondent No. 1. Although the Respondent No. 4 is made a party to the petition, it has been added only as a proper/proforma party and No. relief has been sought or claimed against it.

4. GECIS was incorporated in or about 1997 under the Companies Act, 1956 to carry on the business of computer software, i.e., data entry conversion, data processing, data analysis, business support billing, etc. The entire share capital of GECIS was acquired by the second Petitioner along with certain individuals as nominee shareholders in 1998 with the approval of the Foreign Investment Promotion Board. The second Petitioner is a wholly owned subsidiary, through various intermediate holdings, of the first Petitioner. The remote business processing and offshore support operation that provided specified business process outsourcing services (BPO) to the first Petitioner and its affiliates were carried out from facilities located in India (through GECIS as explained aforesaid), as well as in China, Hungary, Mexico, the United Kingdom and the United States of America, through other, this BPO business grew, acquiring outside clients apart from the Petitioner's group of companies and gathered value. With certain investors evidencing interest in acquiring 60% of the Petitioner's BPO business and, with a view to divesting it worldwide ownership in companies through which such business was conducted,

the Petitioners? along with other affiliated companies embarked on a series of transactions in December, 2004.

5. The series of transactions entered into in transferring the shares with the objective of acquiring of the BPO business of the Petitioner is set out in Annexure-A to the writ petition. Though that may not be very relevant for deciding the controversy, for the sake of completing the narration of facts, we are reproducing the same as well:

#### Particulars of Series of Transactions Undertaken in December, 2004

1. The first step in the series of reorganization and restructuring transactions to consolidate Petitioners' BPO business in a single Luxembourg holding company was the transfer by the second Petitioner of the shares it owned in GECIS to GECIS India Investments by way of a gift. Certain individuals who were nominee shareholders of shares of GECIS likewise made a gift of the shares held by them to GECIS India Holdings. GECIS India Investments is a Mauritius incorporated company and a wholly owned subsidiary of GECIS India Holding, which is also incorporated in Mauritius and which, in turn, was set up as a wholly owned subsidiary of the second Petitioner.

The Second Petitioner had intimated to the Reserve Bank of India the factum of the gifts of the GECIS shares held by the First Petitioner as well as the nominee shareholders. The Reserve Bank of India, by its letter dated 16th June, 2005, had taken the transactions of the gift on its record as general permission was available for the gifts and the GECIS shares had initially been acquired after obtaining Reserve Bank of India approval. The Petitioners crave leave to refer to and rely upon the correspondence with Reserve Bank of India when produced.

2. The next step undertaken was that the Second Petitioner transferred the shares it held in GECIS India Investments to another subsidiary company incorporated in Mauritius viz., GECOS India Holdings at their fair value and in consideration of such transfer, it was issued shares in GECIS India Holdings.

3. Thereafter the Second Petitioner transferred its shareholding in GECIS India Holdings to another subsidiary company incorporated in Mauritius viz., GECIS India International and in consideration of such transfer, it was issued shares by GECIS India International.

4. Thereafter the Second Petitioner transferred the shares it held in GECIS India International to another subsidiary, GECIS Gibraltar (set up as a wholly owned subsidiary of the Second Petitioner) which was a company incorporated in Gibraltar and in consideration of such transfer, it was issued shares in GECIS Gibraltar.

5. Simultaneously a company incorporated in Luxembourg wholly owned by the Second Petitioner as the new holding company of the Petitioners' BPO business viz., GECIS Global Holdings directly and indirectly through its subsidiaries bought out the

shares/assets of the other operating companies which carried on the Petitioners' BPO business activity in the United States, the United Kingdom, Hungary Mexico and China.

6. The Second Petitioner thereafter transferred its shareholding in GECIS Gibraltar to GECIS Global Holdings for a consideration which was discharged by issue of common stock, preferred stock, as well as a payment of US \$37 million in cash by GECIS Global Holdings to the Second Petitioner. Subsequently GECIS Gibraltar was liquidated and hence the shares of GECIS India International which hitherto belonged to GECIS Gibraltar were distributed to GECIS Global Holdings in liquidation.

7. The Second Petitioner in turn transferred the preferred stock it received in GECIS Global Holdings to GE Luxembourg Investments S.a.r.l, a company incorporated in Luxembourg for a consideration which was secured by issue of promissory notes by GE Luxembourg Investment S.a.r.l.

8. GE Luxembourg Investments S.a.r.l thereafter transferred the preferred stock it held in GECIS Global Holdings to another company incorporated in Luxembourg called GECIS Global (Lux), and in consideration of such transfer was issued preferred and nominal common stock of GECIS Global (Lux).

9. These restructuring and reorganization transactions detailed in this Annexure A were taken by the various affiliates of the First and Second Petitioner pursuant to a Security Purchase Agreement dated November, 7, 2004 entered into between the First Petitioner, the Second Petitioner and certain of its affiliates and General Electric Capital Corporation of the one part, and Garuda Investments Company (which was subsequently substituted by GECIS Investments Company (Lux), of the other part.

10. Ultimately 99.1% of the preferred stock and 60.6% of the nominal common stock held by GE Luxembourg Investment S.a.r.l in GECIS Global (Lux) was transferred to GECIS Investments Company (Lux) for a consideration equivalent to its cost of acquisition.

11. The name of GECIS was changed to Genpact India and the name of GECIS India Investments was changed to Genpact India Investments. GE Luxembourg Investment S.a.r.l was liquidated in December 2006.

6. As per the Petitioners, these operations in different jurisdictions were carried out through various entities and controlled through separate entities keeping in mind the business expediency of the Petitioner. The investors who desired to take over these business entities, were desirous of acquiring shares of a single holding company entity - which required a reorganization of the structure. The net effect of these restructuring and reorganization transactions which were undertaken pursuant to a Securities Purchase Agreement dated 07.11.2004 entered into between the first Petitioner, second Petitioner and some of its affiliates and General

Electric Capital Corporation, of the one part, and Garuda Investment Company (which was subsequently substituted by Gecis Investments Company (Lux) (hereinafter referred to as the "Securities Purchase Agreement") of the other part. An amendment as well as ancillary agreements was also executed between these sets of parties.

7. The consequence of these agreements was that:

(a) The shares of the Indian company moved, by a gift, from GECIM a Mauritius company to GECIS India Investments - another Mauritius company.

(b) The shares of the GECIS India Investments were transferred to a holding company. The shares with the holding company were then transferred and so on in a series of transactions, and finally the holding company was GECIS Global Holdings, in which other BPO businesses from other countries were also consolidated.

(c) The shares of GECIS Global holdings were sold to a Luxembourg company, and through a series of transactions, the holding shares were acquired by Gecis Investments Company (Lux).

(d) In the aforesaid manner, Gecis Investments Company (Lux) acquired 99.1% of the preferred stock and 60.6% of the nominal common stock of GECIS Global (Lux) a newly organized Luxembourg company and which was a transfer of a capital asset situated outside India - i.e. shares in a company incorporated in Luxembourg.

8. As per the Petitioners, the only capital asset in India which was transferred in the course of the restructuring and reorganization transactions was the gift of the shares of CECIS by the second Petitioner - a Mauritius company and certain nominee shareholders to GECIS India Investments and GECIS India Holdings, respectively (each a Mauritius incorporated company). Therefore, No. income had accrued or arisen or can be deemed to accrue or arise in India. The Income Tax Department, on the other hand, maintains that it is a taxable event in India.

9. However, as pointed out above, we are not concerned with this aspect in the present proceedings. We are at a stage anterior to that as the question before us is as to whether the Respondent No. 4 can be treated as representative Assessee of the first Petitioner.

10. The first Petitioner had filed its return of income for the assessment year 2005-06 on 29th October, 2005 with the Assessing Officer, having jurisdiction over the first Petitioner's case, viz., the Assistant Director of Income Tax (International Taxation 3(1), Mumbai. The first Petitioner declared a total income of Rs. 2,64,07,840/- that accrued to it from rendering certain technical services to GECIS and had filed with its return of income a computation of its total income as well as the Transfer Pricing Report required to be furnished in Form 3CEB.

11. Thus, the first Petitioner though a non-resident is assessed in India in respect of income which it is earning from operations in India and which income can be deemed to accrue or arise out of transactions in India. Fact remains that the Petitioner No. 1 is assessable in India and comes within the jurisdiction of Assistant Director of Income Tax, Range 3(1), (International Taxation), Mumbai. As far as the Petitioner No. 2 is concerned, it had filed its Transfer Pricing Report (International Taxation) Mumbai stating that other than interest on which tax was deducted at source at the appropriate rates, No. other income is exigible to tax in India. On the basis, it was informed that the Petitioner No. 2 was not filing in income tax return.

12. Respondent No. 1 who is the Deputy Director of the Income Tax (International Taxation) in New Delhi issued a show cause notice dated 11.04.2007 to the Respondent No. 4. In this notice, it was stated that from the records available with him, it appeared that General Atlantic Partners and Oak Hill Capital had purchased 60% shareholding in Respondent No. 4 from the first Petitioner. The notice further recites that the said shareholding transferred which was valued at US Dollar \$500 million and that No. application was made u/s 197 of the Act by the payee "with regard to the transactions relating to the sale of the stake" in Respondent No. 4. It was further stated that the income arising to the first Petitioner from the sale of its direct/indirect stake in Respondent No. 4 is liable to tax in India in view of the deeming provisions contained in Section 9(1)(i) of the Act. It was proposed in the notice to treat the Respondent No. 4 as an agent and consequently, the representative Assessee of the first Petitioner under the provisions of Section 136 read with Sections 160 and 161 of the Act and proposed to proceed to act in accordance with law. This show cause notice also referred to the earlier notice dated 02.11.2006 issued to the Respondent No. 4 stating that such information had not been furnished. Accordingly, the Respondent No. 4 was required to show cause as to why such action of treating the Respondent No. 4 as representative Assessee be not taken and income accrued to the Petitioner No. 1 assessed in accordance with the law.

13. Respondent No. 4 submitted its reply to the said show cause notice, inter alia, stating that it had No. obligation to deduct the tax at source in respect of such transactions between the Petitioners on the one hand and General Atlantic Partners and Oak Hill Capital on the other hand. According to it, merely because by the said transaction, shareholding of Respondent No. 4 was transferred by one party to other, both being non-resident, the Respondent No. 4 could not be treated as representative Assessee. Since none of the conditions specified in Section 13 of the Act were fulfilled. It was also submitted that the Petitioner No. 1 is not and had never been a direct shareholder of Respondent No. 4 and therefore, question of any income accruing or arising to the Petitioner, which is chargeable to tax in India would not arise.

14. Nothing happened for almost six months. However, a letter dated 10.10.2007 was addressed by the Respondent No. 2 to Respondent No. 4 asking for some more information. It is averred in the petition that this letter could not be served upon the Respondent No. 4 and, therefore, it was again sent and served upon the Respondent No. 4 along with letter dated 26.10.2007. From this letter, the Petitioners were informed about the proposed move of the Respondent No. 1 to 3 to treat the Respondent No. 4 as an agent of the first Petitioner. ]

15. After receiving this information, the Petitioners filed the present petition in December, 2007 questioning the proprietary, validity and legality of the aforesaid show cause notice. Notice in this involved writ petition and stay application was issued on 06.12.2007, but No. ex parte stay was granted by this Court. Against non-grant of interim relief, the Petitioners filed SLP in which orders dated 14.12.2007 were passed restraining Respondent Nos. 1 to 3 from passing final orders pursuant to show cause notices issued by the Respondents. This stay was made applicable till 13.02.2008 when the matter was coming up before this Court. This Court has thereafter extended the said interim directions from time to time. Vide orders dated 23.03.2008, the interim orders passed by the Supreme Court on 14.02.2008 was continued till the disposal of the writ petition.

16. On 18.01.2008, in reply to show cause notice, an affidavit was filed on behalf of the Respondent Nos. 1 and 2 to which rejoinder affidavit was also filed by the Petitioners. However, thereafter a detailed counter affidavit dated 17.07.2008 was filed by the Department which is more comprehensive and incorporates the submissions made in earlier affidavit dated 18.1.2008 as well. We would like to point out at this stage that in the writ petition, the Petitioners have also stated that from the transactions in question, No. income has accrued or arisen to the Petitioner No. 1 which is taxable in India. This position is contested by the Official Respondents explaining their stand in much detailed in the counter affidavit. However, as pointed out above, since we are not concerned with that issue in the present Petitioner, which was not pressed or argued by the Petitioners, we are avoiding to take note of such averments for this reason.

17. The Respondents have challenged the maintainability of the writ petition by raising certain preliminary objections. The main emphasis of the Respondents in the counter affidavit and in particular the argument that was pressed at the time of hearing was that the matter is still at the show cause notice as to why the Respondent No. 4 be not treated as agent of Petitioner No. 1 and writ petition challenging show cause notice is not maintainable and the statute provides for efficacious remedy of appeal under the Act. It is also contended that writ petition is pre-mature as well. Maintainability is also challenged on the ground that disputed questions of fact arise and the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India would not exercise its discretionary powers in such a scenario.

18. The official Respondents have also narrated the facts which led to the issuance of the show cause notice proposing to treat the Respondent No. 4 as the representative Assessee. It is stated in this behalf that the Respondent No. 4, i.e., Genpact India was earlier known as GE Capital International Services (GECIS)/BPO company. The BPO company was created for providing BPO/IT-enabled services to Petitioner No. 1 and its affiliates with a paid up capital of Rs. 3,60,00,000/-, comprising of 36,00,000 equity shares of Rs. 10 each. It was the captive BPO unit of the GE Group. That out of 36,00,000 shares, GE Capital International Mauritius (GECIM) (hereinafter referred to as "the Mauritius company") was holding 35,99,980 shares till 31.12.2004. The said Mauritius company was in turn held by another Indian company, i.e., M/s GE Indian Services Holding Pvt. Ltd., which through the maze of various intermediate companies was ultimately held by General Electric Company, a corporation of United States of America, the Petitioner herein. The income of BPO company during Financial Year ended 31.03.2004 and 31.03.2005 was of `2,630 Crores. BPO company has been claiming deduction u/s 10A of Act for various years in respect of its income earned from BPO services. The company had not distributed/paid any dividends since its inception. The name of GECIS/BPO company was changed to Genpact India with effect from 06.06.2006, after the so-called reorganization of December, 2004. Genpact India/BPO company, through its authorized representative RSM & Company, filed an application u/s 195 of the Act on 25.07.2006 to the Income Tax Officer, (TDS), Ward (1), International Taxation, New Delhi, seeking a "NIL" withholding certificate with regard to payment of Rs. 4800 lacs to another Mauritius company Genpact India Investments, Mauritius for the proposed buy-back of shares by the BPO company. Genpact India brought back 32,000 equity shares at a price of `15,000/- per share. This transaction is different from the transactions during the year 2004 for which the Petitioners have filed the present writ. During the proceedings u/s 195(2) of the Act, BPO company submitted that on 30.12.2004, GECIM (Mauritius company) contributed shares of BPO company to GECIS India Investments, Mauritius (GII) - another Mauritius company, which is wholly owned subsidiary of Mauritius company. This wholly owned subsidiary was incorporated in Mauritius on 07.12.2004 (i.e., after the Securities Purchase Agreement of 17.11.2004) and its name was subsequently changed to Genpact India Investment on 04.10.2005. These facts, which became available, indicated that the shares of BPO company, which were valued at Rs. 15,000/- per share in 2006 were transferred by Mauritius company to GII at "Nil" value in December, 2004. In fact, the General Atlantic Partners, General Electric and Oakhill Capital Partners issued a joint press release on November 08, 2004. Upon perusal of press release, it is noticed that the transaction values GECIS/BPO company at \$800 million. Upon closing GE rain a 40% stake in GECIS and receive cash proceeds approximately \$500 million. It also states that the parties aim to complete the transaction sometime in the next six months. Further, BPO company was carrying on a successful business and had potential to grow further. Its operations centres were not confined to Gurgaon only, but were started at other places also. It had hung reserves and



surpluses. The Petitioner No. 1 through its various subsidiaries/affiliated companies sold 60% of its stake in GECIS/BPO company for approximately US\$ 500 million. That on the basis of information collected during TDS proceedings and also information available in public domain, a prima facie belief was formed that as per the provisions of Section 9(1)(i) of the Act, the income arising from these transactions, which otherwise was taxable in India but had not been offered to tax. The official Respondents have maintained in the counter affidavit that conditions stipulated in Section 163 of the Act are satisfied and therefore, impugned show cause notice being perfectly valid, has rightly been issued.

19. Respondent No. 4 has also filed the counter affidavit supporting the aforesaid legal stand taken by the Petitioners questioning the validity of the impugned show cause notice.

20. Mr. Harish Salve, learned Senior Counsel appeared for the Petitioners, has advanced detailed arguments in support of the plea that the Respondent No. 4 could not be treated as representative Assessee qua the purported incomes of the first Petitioner as the ingredients of Sections 161 and 163 have not been satisfied in the present case.

21. Frontal attack to the impugned show cause notice by Mr. Salve was predicated on the admitted position prevailing on the record of this case, which according to him, was as follows:

The transaction in relation to which the present proceedings have been initiated relates to the transfer of shares of a holding company (which through downstream companies) controlled indirectly shares in a company was GE Capital International Services - Respondent No. 4).

According to him, it is not in dispute that prior to the transfer (December, 2004), the shares in Genpact India were held by a Mauritius based entity - GE Capital International Mauritius (GECIM) - Petitioner No. 2. Above GECI, there were other holding companies and the ultimate controlling interest was with General Electric Company US - Petitioner No. 1. It is also not in dispute that as a result of the transfer of the shares of the upstream holding company, ownership (direct/indirect) to the extent of 60% approx of the shares of Genpact India stood transferred, and consequently the control also stood transferred. The question whether this transfer of shares of an upstream company resulted in a capital gain in the hands of the transferor - or Petitioner No. 1 - is a matter that would require consideration. The issue of the validity of the show cause notice has, in the first instance, to be decided on the applicability of Section 163 on the facts as alleged in the show cause notice on a demurrer assuming them to be correct.

Respondent No. 4 is the "target company", i.e., the company, the control of which has shifted on account of sale of shares (of the Luxembourg Company) - prior to the transaction, it was known as GE Capital International Services (GECIS India). GECIS

India is the Indian company whose control passed pursuant to the transaction.

22. Mr. Salve's argument was that the aforesaid facts clearly demonstrate that conditions stipulated in Section 163 of the Act for the purpose of treating Respondent No. 4 as an agent of the Petitioner No. 1 had not been fulfilled. His submission was that Section 163 of the Act has to be read in conjunction with Section 161, which provides that the specified person can be treated as Assessee "...as regards the income in respect of which he is a representative-Assessee..." Therefore, an agent can only be a representative-Assessee as regards the income in respect of which the alleged agent has business connection and/or from or through directly and/or indirectly the income was received.

23. In support of the aforesaid propositions, Mr. Salve relied upon the following case laws:

(1 AIR 1936 1 (Privy Council)

(2) [Commissioner of Income Tax, Bombay South Vs. Ramnarayan Rajmal,](#)

(3) [P. Subramania Chetty Vs. Commissioner of Income Tax, Madras,](#)

(4) [C.R. Nagappa Vs. Commissioner of Income Tax,](#)

(5) [Commissioner of Income Tax, Andhra Pradesh Vs. Toshoku Ltd., Guntur and Others,](#)

(6) [Commissioner of Income Tax Vs. Fertilizers and Chemicals \(Travancore\) Ltd.,](#)

24. Mr. Mohan Parasaran, learned A.S.G. pressed for dismissal of the writ petition as pre-mature and not maintainable at the show cause notice stage, forcefully contending that the matter was still at the stage of investigation and was being investigated. According to him, it was in the realm of disputed questions of fact and further facts could be gathered during investigation and therefore, this Court should not interfere at this stage, particularly, when the Petitioners were not remediless, as the statute, viz., Income Tax Act provides for the remedies of appeal, writ petition, etc. In the wake of such alternative remedies available, the writ petition should be thrown at the threshold, was the vehement submission of Mr. Parasaran. He further submitted that in any case the main notice vide which the Respondent No. 4 was sought to be assessed as the representative Assessee of the Petitioner No. 1 was perfectly in accordance with the law as all the conditions for treating it as an agent of Petitioner No. 1 were satisfied. Referring to Section 163 of the Act, he submitted that any agent in relation to a non-resident includes any person in India, who has business connection with non-resident which fact was established on record in the present case. In this behalf, he submitted that the business connection between the Petitioner No. 1 and Respondent No. 4 were clearly established in view of the following factual position:

The Secretariat for Industrial Approvals, Foreign Collaboration-II Section of the Government of India had allowed GE Capital Services India Ltd., New Delhi to have GE Capital Services, USA as the foreign collaborator for setting up the wholly owned subsidiary companies to undertake the business of hire purchase and lease financing and financial billing and services company.

The Government of India, Ministry of Industry, Department of Industrial Policy and Promotion, Secretariat for Industrial Assistance, EOU Section vide letter No. FC/98/EOP/46/97 had allowed M/s GE Capital International Services, AIFACS Building, 1 Rafi Marg, New Delhi had conveyed approval to their foreign collaboration proposal. The name of foreign collaborator and country was GE Capital International (Mauritius), Mauritius (a subsidiary of M/s General Electric Capital Corporation, USA). The approval was for the manufacture of computer software. This approval dated 09.01.1998 was amended on 02.03.1998 as per request letter dated 20.02.1998 of M/s GE Capital International Services. As per the amendment, the foreign collaborators were M/s GE Capital International (Mauritius), Mauritius and M/s GE Capital Indian Service, Netherlands. The approved items of manufacture were computer software (data entry, conversion, data processing, data analysis, business support, billing, etc.) GE Capital International Services (Genpact India) has rendered IT-enabled services to General Electric Corporation and its affiliated companies since its incorporation in India. During the year ended 31.03.2005, the income of Respondent No. 4 from IT-enabled services were of Rs. 13,518,433,002/-. Such income was Rs. 12,788,233,532/- for the year ended 31.03.2004. The accounts of the company show the following transactions with the related parties with regard to each income:

Further, the Respondent No. 4 (Genpact India) was a wholly owned subsidiary of the first Petitioner and the latter is carrying on its IT-enabled services business in India through this subsidiary. This is an admitted position in para No. 8 & 9 of the writ petition. The term business connection is not exhaustively defined in the Income Tax Act, 1961. However, various authorities have time and again interpreted this term.

25. In support of his submissions, he relied upon the judgment of the Supreme Court in the case of [Commissioner of Income Tax, Punjab Vs. R.D. Aggarwal and Company](#), wherein the Apex Court had enumerated the broad characteristics of the concept of business connection in the following words:

Business connection contemplated by Section 42 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non-resident and the activity in the taxable territories, a stray or isolated transaction not being normally regarded as a business connection. Business connection may take several forms: It may include carrying on a part of the main business or activity incidental to the main business of the non-resident through an

agent, or it may merely be a relation between the business of the non-resident and the activity in the taxable territories, which facilitates or assists the carrying on of that business. In such cases the question whether there is business connection from or through which income, profits or gains arise or accrue to a non-resident must be determined upon the facts and circumstances of the case. The expression "business connection" postulates a real and intimate relation between the trading activity carried on outside the taxable territories and the trading activity within the territories, the relation between the two contributing to the earning of income by the non-resident in his trading activity.

26. Mr. Parasaran submitted that the issue of jurisdiction for the issue of notice u/s 163 of the Act came up for consideration before the Kerala High Court. The Kerala High Court in the case of Commissioner of Income Tax v. Fertilizers and Chemicals (Travancore) Ltd. (1987) 166 ITR 0823 held that a non-resident may have several representative Assessee in respect of several heads under which income is derived by him. There can, therefore, be more than one assessment in respect of income accrued or arisen to a non-resident provided that there is more than one representative Assessee. Direct assessment on the non-resident in respect of other income would not affect the jurisdiction of the Income Tax Officer to assess the agent of the non-resident on income arising to the non-resident through him. Moreover, the Respondent No. 2 exercises jurisdiction in respect of persons being non-residents including foreign companies within the meaning of Sub-section (23A) of Section 2 of the Act and having a permanent establishment "in terms of the applicable Double Taxation Avoidance Agreement in the areas lying within the territorial limits of National Capital Territory of Delhi or having a business connection" or having any source of income accruing or arising or deemed to be accruing or arising in the areas lying within the territorial limits of National Capital Territory of Delhi. Respondent No. 4 (Genpact India) is a company incorporated under the Companies Act, 1956 and having its registered office at Delhi Information Technology Park, Shastri Park, Delhi - 110053. Therefore, the jurisdiction over the first Petitioner, who is having business connection as well as the source of income within the territorial limits of National Capital Territory of Delhi lies with Respondent No. 2.

27. In order to appreciate their respective contentions and to find out as to whether the conditions stipulated in Section 163 read with Section 161 of the Act for the purposes of treating the Respondent No. 4 as representative of Petitioner No. 1 is satisfied or not, it would be apposite to first take note of the relevant provisions of the statute. These provisions fall in Chapter XV with caption "Liability in Special Cases". Section 159 fastens the liability upon the "Legal Representatives" under certain circumstances when a person is liable to pay tax dies. Section 160 defines "Representative Assessee" and Section 161 gives the circumstances under which liability of representative Assessee arises. When representative Assessee has to pay tax on behalf a person, Section 162 of the Act confers right upon such

representative Assessee to recover the tax paid from person on whose behalf it is paid. Section 163 of the Act comes under Chapter XV-C titled "Representative Assessee - Special Cases" and stipulates as to who may be regarded as an agent. Since in the present case, we are concerned with Sections 160 to 163 of the Act, relevant portions of these provisions are extracted below:

#### B-Representative Assessee - General provisions

##### Representative Assessee

160. (1) For the purposes of this Act, "representative Assessee" means -

(i) In respect of the income of a non-resident specified in Sub-section (1) of Section 9, the agent of the non-resident, including a person who is treated as an agent u/s 163;

xxx xxx xxx

(2) Every representative Assessee shall be deemed to be an Assessee for the purposes of this Act.

##### Liability of representative Assessee.

161. 1) Every representative Assessee, as regards the income in respect of which he is a representative Assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

##### Right of representative Assessee to recover tax paid.

162.(1) Every representative Assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative Assessee, or any person who apprehends that he may be assessed as a representative Assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative Assessee or person as to the amount to be so retained such representative Assessee or person may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the

liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative Assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative Assessee or person may at such time have in his hands additional assets of the principal.

C-Representative Assessee - Special cases.

163. Who may be regarded as agent

(1) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India -

(a) Who is employed by or on behalf of the non-resident; or

(b) Who has any business connection with the non-resident; or

(c) From or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(d) Who is the trustee of the non-resident; and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India:

xxx xxx xxx

Explanation.- For the purposes of this Sub-section, the expression "business connection" shall have the meaning assigned to it in Explanation 2 to Clause (i) of Sub-section (1) of Section 9 of this Act.

(2) No. person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

28. A conjoint reading of the aforesaid provisions would show that under the given circumstances, certain persons can be treated as representative Assessee on behalf of non-resident specified in Sub-section(1) of Section 9 of the Act. This would include an agent of non-resident and also who is treated as an agent u/s 163 of the Act. Section 163 deals with special cases where a person can be regarded as an agent. These are:

(i) who is employed by or on behalf of the non-resident: or

(ii) who has any business connection with the non-resident; or

(iii) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(iv) who is the trustee of the no-resident; or

(v) any other person, a resident or even a non-resident, who has acquired a capital asset in India by means of transfer.

29. Once a person comes within the net of any of the aforesaid Clauses, such a person would be the "agent" of the non-resident for the purposes of the Act. However, merely because a person is an agent or is to be treated as an agent, it would lead to an automatic conclusion that he becomes liable to pay taxes on behalf of the non-resident. That would only mean that he would be treated as representative Assessee. However, liability of such a representative Assessee only if the eventualities stipulated in Section 161 of the Act are satisfied. Section 161 of the Act makes a representative Assessee liable only "as regards the income in respect of which he is a representative Assessee".

30. of course, once a representative Assessee is held liable, then he will be liable in the same manner as a non-resident and tax shall be levied and recovered from him in the same manner it could be recovered from the person represented by him. Since tax is recovered from such a representative Assessee treating him as agent of other person, Section 162 of the Act gives representative Assessee right to recover the sum paid by him from the person on whose behalf it is paid. This Section even makes a provision allowing representative Assessee to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid. In the event, the principal question is right to retain such an amount, the representative Assessee or person may secure from the (Assessing) Officer a certificate stating the amount to be so retained pending final settlement or the liability, and the certificate so obtained shall be his warrant for retaining that amount. Issuance of such certificate even secures the representative Assessee as at the time of final settlement, the amount recoverable from such representative Assessee or person at the time of final settlement shall not exceed the amount specified in such certificate. The only exception is that when such representative Assessee or person may at such time may have in his hands additional assets of the principal, as in that even, even if excess amount stipulated in certificate is recoverable from the representative Assessee, he is secured by having additional assets of the principal in his hands from where the representative Assessee can always recompense.

31. In the present case we proceed on the premise that the Respondent No. 4 has business connection with the Petitioner No. 1 as explained by the official Respondents on the basis of business relation between them reflected through the transactions entered into between the Petitioner No. 1 and Respondent No. 4 over a period of time. Therefore, conditions prescribed in Clause (b) of Sub-section (1) of Section 163 can be treated to have been, prima facie, fulfilled. Thus, Respondent No. 4 can be treated as "an agent in relation to the Petitioner No. 1 - a non-resident". As an agent Respondent No. 4 would be the representative Assessee within the meaning of Section 161(1) of the Act. The question before us is as to whether in its

capacity as representative Assessee of the Petitioner No. 1, liability of the Respondent No. 4 arises within the meaning of Section 161 of the Act and it would be assessed in that representative capacity. To put it otherwise, whether the purported income earned by the Petitioner No. 1 through transfer of shares can be treated as the income in respect of which he is a representative Assessee. It is because of the reason that Section 161 makes him liable only as regards that particular income.

32. This very aspect has been considered and explained in various judgments. In fact, similar provision existed in the Income Tax Act 1922 which repeatedly came up before the Courts for interpretation. We may start our discussion from the Privy Council's judgment rendered in 1936. Name of the case is AIR 1936 1 (Privy Council)

That was a case where the Respondent company was assessed as agent of His Exalted Highness the Nizam of Hyderabad. The order was made in respect of income tax for the year of Assessee 1931-32. Two items were included in the order, viz:

(i) The sum of Rs. 27,960/- being income tax claimed to be due from the Nizam under the head "property" in respect of house property in Mumbai of which he was the owner.

(ii) A sum of Rs. 3,15,214/- being the amount received in the year of account by the Nizam from the Respondent company as interest due upon a loan of Rs. 50,00,000 made by Nizam to the Respondent company upon the terms of a written instrument dated 16.08.1929.

33. The question was as to whether the Assessee could be treated as representative Assessee qua the interest income earned by the Nizam in the aforesaid circumstances. As pointed out above, this interest income was earned by the Nizam from the property in Mumbai and insofar as this property is concerned, representative Assessee had No. concern or connection therewith. The business connection of the representative Assessee was only qua the interests paid by it in respect of loan taken from the Nizam. On these facts, the Privy Council held that the income from house property could not be assessed at the hands of the Respondent and the Respondent could not be treated as representative Assessee qua that income as it had No. connection with the same. Following observations of the Privy Council, in the process, are worth to quote:

14. In the result, therefore, their Lordships come to the conclusion that the interest income in respect of which the Respondent company has been assessed to tax as agent for the Nizam, is not to be deemed to have accrued or arisen within British India at all, and is, therefore, not liable to tax. The income tax Officer's order of June 5, 1931, whereby the Respondent company was deemed to be an agent of the Nizam and liable to be made Assessee in respect of these monies is without foundation and altogether invalid. In these circumstances it does not appear to their



Lordships to be necessary that they should discuss any of the questions raised u/s 44 of the Act. It would indeed be strange if the Respondent company as mere debtors to a non-resident paying him outside British India monies which are not assessable to Indian income tax at all, could be made liable for the income tax due on the nonresident's house property in Bombay with which they had No. concern, and this notwithstanding that tax had hitherto been duly assessed upon and paid by the person managing the property on behalf of the non-resident...

34. Next case of some relevance would be the judgment of Bombay High Court in the case of [Abdullabhai Abdul Kadar Vs. Commissioner of Income Tax, Bombay City](#), In that case, M/s Ramnarayan Rajmal Rathi was treated as representative Assessee by the Department and the assessment was made on it as against the non-resident, M/s. Shivnarayan Brothers of what was the former Hyderabad State. Ramnarayan Rajmal were the agent of the non-resident in respect of transactions effected by the non-resident principal through the Assessee and it was not disputed that they had been rightly appointed an agent u/s 43 of the Income Tax Act, 1922 (which corresponds to Section 161 of 1961 Act). There was, thus, a business connection between the Assessee/agent and the non-resident. However, the question was as to whether income which accrues to or earned by non-resident from business done through parties other than the agent and whether the Appellant could be treated as representative Assessee/agent. Answering this question in the negative, the Court held that even if because of business connection such an Appellant is treated as agent, its liability was restricted to the income earned through his agency, i.e., income arising in respect of head qua which he was an agent. The Court relied upon the judgment of Privy Council in Currimbhoy Ibrahim & Sons Ltd. (supra) for arriving at this conclusion. The Court was of the opinion that provisions of Section 42 incorporated the principle of "vicarious liability" and the limit of that liability was that the agent must be concerned with the head in respect of which the principal is sought to be taxed. There was an interesting argument raised by the Department, viz., if this be accepted, then it may lead to multiplicity of assessments at the hands of several agents in respect of several heads under which the income is deemed to accrue or arises. The Court answered by observing that there could be more than one assessments, in the following words:

8. It is then urged by Sir Nusserwanji that this interpretation might lead to multiplicity of the assessments. It is said that a non-resident may have several agents in respect of several heads under which income is deemed to accrue or arise within the taxable territories. We see No. objection in principle as to why there should not be more than one assessment. If the taxing Department chooses to tax non-resident in his own name, No. difficulty can arise, because then there would be one assessment. But if the taxing Department chooses to tax a non-resident in the name of his agent, then in respect of each agency there must be a separate assessment because each agent is a separate Assessee and treated as an Assessee for all purposes under the Act. Therefore it is not a case of multiplicity of

assessments in respect of one Assessee. What Sir Nusserwanji overlooked is that each agent in respect of each business or each head u/s 42 is a separate Assessee and there must be a separate assessment in respect of every Assessee under the Indian income tax Act. Therefore we see No. objection on principle to several agents of the non-resident being assessed and there being separate assessments.

35. According to the High Court, the Department was making an almost impossible claim by seeking to tax the Appellant as agent on behalf of principal in connection with qua a particular income with which there was No. connection. The judgment opened with the following interesting remarks:

1. The income tax Department is known to cast its net very wide in order to collect as much tax as possible. To the extent that its activities are legal and supported by the law, we have given every encouragement to the Department, but this is a striking case where there does not seem to us the slightest justification for the attempt made by the Department to collect the tax from this particular Assessee.

36. The Supreme Court has also accorded the same reasoning in the case of [C.R. Nagappa Vs. Commissioner of Income Tax](#), . In that case, the Apex court was concerned with the present Income Tax Act of 1961 and the same provisions, viz., Sections 160 and 161 of the Act, though these provisions came up for interpretation in the context of assessment of income at the hands of trustee u/s 64(v) of the Act. We may quote the following passage from the said judgment for our benefit:

14. In our view Chagla C.J. was right in observing in Balwantraji Jethalal Vaidya's case in dealing with the scheme of Section 41 of the Income- tax Act, 1922, that "

...it is clear that every case of an assessment against a trustee must fall u/s 41, and it is equally clear that, even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter III.... Section 41 only comes into play after the income has been computed in accordance with Chapter III. Then the question of payment of tax arises and it is at that stage that Section 41 issues a mandate to the taxing department that, when they are dealing with the income of a trustee, they must levy the tax and recover it in the manner laid down in Section 41.

37. The issue came up for consideration, in a more direct manner, before the Supreme Court in the case of [Commissioner of Income Tax, Andhra Pradesh Vs. Toshoku Ltd., Guntur and Others](#), In that case, during the previous year, relevant to the assessment year 1962-63, B, a dealer in tobacco in India, purchased tobacco and exported it to Japan and France through non-resident sales agents, a Japanese company and a French business house respectively. Under the terms of the agreement, the Japanese company, which was appointed as exclusive sales agent in Japan for tobacco exported by B., was entitled to a commission of 3 per cent of the invoice amount. The sale price received on the sale in Japan was remitted wholly to B in India and B debited his commission account and credited the amount of commission payable to the Japanese company in his account books and later

remitted the amount to the Japanese company. There was a similar agreement with the French business house in relation to the corresponding area and similar credit and debit entries and subsequent remittance of the commission were made. The question was whether the commission earned by the non-resident sales agents could be taxed in India, treating B as a representative Assessee u/s 161 of the I.T. Act, 1961. The Court held as under:

It could not be said that the making of the entries in the books of B amounted to receipt, actual or constructive, by the non-resident sales agents as the amounts so credited in their favour were not at their disposal or control; they could not, therefore, be charged to tax on the basis of receipt of income, actual or constructive, in the taxable territorial's. The non-residents did not carry on any business operations in the taxable territories: they acted as selling agents outside India. The receipt in India of the sale proceeds of tobacco remitted or caused to be remitted by the purchasers from abroad did not amount to an operation carried out by the non-residents in India as contemplated by Clause (a) of the Explanation to Section 9(1)(i) of the I.T. Act, 1961. The commission amounts which were earned by the non-residents for services rendered outside India could not be deemed to be income which had either accrued or arisen in India.

38. While so holding, the Court explained the scope of Section 160, 161 and 163 of the Act in the manner already stated by us hereinbefore. [Commissioner of Income Tax Vs. Fertilizers and Chemicals \(Travancore\) Ltd.,](#) In that case, the Assessee-company had entered into a collaboration agreement with a foreign company for construction of a synthesis gas plant. The Assessee was to pay certain amount to the foreign company for construction of a synthesis gas plant. The Assessee was to pay certain amount to the foreign company. The income tax Officer treated the Assessee-company as the agent of the non-resident foreign company u/s 163 of the Act and assessed the aforesaid amount in the hands of the Assessee. The Appellate Assistant Commissioner cancelled the assessment as also the orders u/s 163 on the ground that the Assessee company could not be treated as an agent of the foreign company as there was No. business connection between the foreign company and the Assessee. The Appellate Assistant Commissioner also found that since the non-resident foreign company had already been assessed directly in India, the said foreign company should not have again been assessed "through an agent". The Appellate Tribunal upheld the order of the Assistant Commissioner. On a reference, the High Court held that the Tribunal had not considered the question whether the Assessee had any business connection with the non-resident so as to treat it as an agent of the non-resident u/s 163 of the Act. Only on deciding this issue, the question whether the orders passed by the Income Tax Officer u/s 163 and the assessment for the year of assessment 1968-69 could be said to be valid or not. The question required to be considered afresh.

40. While doing so, the Court delineated the scope of these provisions in the following words:

Chagla C.J. in [Commissioner of Income Tax, Ahmedabad Vs. Balwantrai Jethalal Vaidya and Others](#), has observed as follows (at pages 194 and 195):

If the assessment is upon a trustee, the tax has to be levied and recovered in the manner provided in Section 41. The only option that the Legislature gives is the option embodied in Sub-section (2) of Section 41, and that option is that the Department may assess the beneficiaries instead of the trustees, or having assessed the trustees, it may proceed to recover the tax from the beneficiaries. But, on principle, the contention of the Department cannot be accepted that, when a trustee is being assessed to tax, his burden which will ultimately fall upon the beneficiaries should be increased and whether that burden should be increased or not should be left to the option of the Department. The basic idea underlying Section 41, and which is in conformity with principle, is that the liability of the trustees should be co-extensive with that of the beneficiaries and in no sense a wider or a larger liability. Therefore, it is clear that every case of an assessment against a trustee must fall u/s 41, and it is equally clear that, even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter III..... Section 41 only comes into play after the income has been computed in accordance with Chapter III. Then the question of payment of tax arises and it is at that stage that Section 41 issues a mandate to the Taxing Department that, when they are dealing with the income of a trustee, they must levy the tax and recover it in the manner laid down in Section 41.

41. We, thus, agree with the submission of Mr. Salve, learned Senior counsel appearing for the Assessee, that a harmonious reading of Sections 160, 161, 162 and 163 would show that:

- (i) In order to become liable as a representative Assessee, a person must be situated such as to fall within the definition of a representative Assessee;
- (ii) The income must be such as is taxable u/s 9;
- (iii) The income must be such in respect of which such a person can be treated as a representative Assessee;
- (iv) The representative Assessee has a statutory right to withhold sums towards a potential tax liability;
- (v) Since the liability of a representative Assessee is limited to the profit representative Assessee, there can be multiple representative Assesseees in respect of a single non-resident entity - each being taxed on the profits or gain relatable to such representative Assessee.

42. The scheme underlying the aforesaid provisions is explained with clarity and precision in the commentary on Section 163 of the Act in "The Law and Practice of Income Tax (Kanga and Palkhivala at page No. 1280, English Edition), the relevant extract is reproduced:

...Thus Section 163 really provides only the machinery for giving effect to Sections 160 and 161, and the mere appointment of an agent u/s 163 would be of No. consequence unless there is income in respect of which the agent can be held to be a representative-Assessee u/s 160 and can be assessed as such u/s 161 of the Act. In other words, any person appointed an agent u/s 163 is not necessarily assessable as a representative Assessee in respect of the non-resident's income; it is only in relation to the income covered by Section 160 that the status of representative Assessee emerges and the liability to be assessed u/s 161 arises. For instance, though there may be a business connection between a resident and non-resident company, where there is No. evidence to show that any profits accrued to the non-resident company through the business connection, No. assessment can be made on the resident company as the agent of the non-resident company and the mere appointment of the resident company as such agent under this section would be of No. avail.

43. In view of our discussion, it would be difficult to accept the contention of Mr. Parasaran. From his arguments taken note of above, it is clear that the entire thrust is that there is a business connection between the Petitioner and the Respondent No. 4. We have ourselves proceeded with the matter on that basis. But that by itself would not be sufficient for the Revenue to sail through. Even if business connection is proved, it would at the most make the Respondent No. 4 an agent of the Petitioners and in that eventuality, the Income Tax Department can treat the Respondent No. 4 as representative Assessee of the first Petitioner. However, in order to assess a particular income, it has to be further established by the Department that the Respondent No. 4 had some connection with the income earned by the first Petitioner which is sought to be taxed at the hands of the Respondent No. 4. Even when we examine the case treating the allegations made by the Department as correct, we find No. such live link of income earned by the first Petitioner and the Respondent No. 4 in respect of the transaction which is sought to be taxed. As already held by us that Section 163 has to be read in conjunction with Section 161 which provides that the specified person can be treated as assessed "...as regards the income in respect of which he is a representative - Assessee..." Therefore, an agent can only be a representative - Assessee as regards the income in respect of which the alleged agent has business connection and/or from or through directly and/or indirectly the income was received.

44. At this stage, it would be necessary to deal with another contention of Mr. Parasaran, questioning the maintainability of this writ petition at this stage on the ground that it is pre-mature proceeding only a show cause notice has been issued

and the facts are yet to be ascertained/investigated. We are not impressed with this argument either. We may point out that the Petitioners have gone to the extent of arguing that it has No. business connection with Respondent No. 4. However, we have proceeded on the basis that allegations in the show cause notices to this effect are correct. Even then, the ingredients of Section 161 are not satisfied as the Petitioner as Assessee could be taxed only as regards the income and in respect of which he is a representative Assessee. No. case is made out by the Department that in respect of transaction in question, viz., transfer of share to third party, that too, outside India. Respondent No. 4 is sought to be taxed as representative Assessee when he had No. role in the said transfer. Merely because those shares relate to the Respondent No. 4 company, that would not make Respondent No. 4 as agent qua deemed capital gain purportedly earned by the Petitioner. Therefore, writ petition is maintainable.

45. As a result, rule is made absolute. Impugned show cause notices are hereby quashed and this writ petition is allowed. We make it clear that it would be open to the Department to issue notice to the Respondents which is though a non-resident is an Assessee in India, subject to the condition that such an action is still permissible under the Act. However, on the facts of this case, we order parties to bear their respective costs