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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: August 08, 2024**

\+ W.P.(C) 7784/2022

GENPACT LUXEMBOURG S.A.R.L. .....Petitioner

Through: Mr. Sachit Jolly, Ms. Disha Jham, Ms. Soumya Singh, Mr. Rishabh Malhotra, Mr. Devansh Jain and Mr. Raghav Dutt, Advs. for Mr. Percy Pardiwalla, Sr. Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(3)(1), INTERNATIONAL TAXATION, NEW DELHI AND ANR. .....Respondent

Through: Mr. Puneet Rai, SSC along with Mr. Rishabh Nangia and Mr. Ashvini Kumar, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 08.08.2024

1. The writ petitioner impugns the initiation of reassessment pertaining to **Assessment Year**[1] 2018-19 and which has been commenced in terms of the impugned order dated 29 March 2022 under Section 148A(d) the **Income Tax Act, 1961**[2] read along with the consequential notice dated 30 March 2022 under Section 148 thereof.

[1] AY
[2] Act

2. As would be evident from the initial notice under Section 148A(b) dated 11 March 2022, the respondents had taken the position that on perusal of the information available with the Department, it appeared that interest income derived from **Non-convertible Debentures**[3] floated by **Genpact India Private Limited**[4] had not been appropriately offered to tax due to mischaracterization of income. The petitioner was consequently called upon to show cause why an amount of INR 5,06,00,00,000/- should not be treated as income having escaped assessment.

3. The reasons which accompanied the aforesaid notice which appear at page 40 of our record are reproduced hereinbelow:-

> "This case has been picked up by the Risk management Strategy of Insight. On perusal of the information available with the Department, it appears that the alleged interest income derived from NCDs floated by Genpact India Pvt. Ltd. has not been appropriately offered to tax due to mischaracterization of income.
> 2. Moreover, on perusal of the records of the assessee it is seen that your case has not been picked up for scrutiny assessment u/s 143(3) of the Income-tax Act,1961. Hence, the true character of these receipts could not be ascertained.
> 3. You are therefore required to show cause why the amount of Rs. 5,06,00,00,000/-shall not be treated as income escaping assessment and proceedings be initiated u/s 147/148 of the Act.
> 4. You are required to justify your claim with the relevant bank statement/documentary evidence. You are required to submit the details within 7 days of the receipts of this notice."

4. The petitioner is stated to have furnished a response on 26 March 2022 to the aforesaid notice taking various objections to the proposed assumption of jurisdiction. On 29 March 2022, however, the respondents proceeded to pass an order referable to Section 148A(d) of the Act and in which the following reasons stood recorded:-

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[3] NCDs
[4] GIPL

"3. In view of the above, the assessee was asked to show-cause vide notice dated 11.03.22 issued under section 148A(b) of the Act as to why a notice u/s 148 of the Act should not be issued to him. The due date for compliance was 18.03.22. **The assessee submitted its reply on 26.03.22 – delayed beyond the period granted to it, as requested - in any case the assessee's submission was taken on record**. The assessee has contended that information in the show cause notice does not suggest that income has escaped assessment. In this regard, the assessee's attention is drawn to the SCN u/s 148A(b) of the Act, wherein it was stated, "*required to show cause why the amount of Rs. 5,06,00,00,000/- **shall not be treated as income escaping assessment***."The assessee has also contended that the principle of *Res Judicata* is inapplicable considering the Principle of Consistency. Time and time again, courts have upheld the view that res judicata does not apply to matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct.

4. It is well-settled that in taxation proceedings each Assessment Year ["AY"] is a separate cause of action. For this reason, the concept of Estoppel or Res Judicata has no application to tax proceedings. Even if it be assumed that the AO has taken an erroneous decision in prior years, in subsequent AY he is not precluded from examining the matter afresh and taking a correct decision. [**Hon'ble Supreme Court in Joshi Technologies International Inc. v. UOI (2015)7 SCC 728/ Para 44**]. The assessee has also contended that the fact that return has been processed under section 143(1) of the Act, does not give the Assessing Officer right to issue a re-opening notice to make fishing enquiries. In this regard, the assessee has submitted the Assessment Orders for A.Y. 2015-16 and 2016-17. However, the assessee has conveniently disregarded the proceedings for A.Y. 2017-18, wherefrom, information was available to the department. The assessee has also requested evidence and grounds under which the case has been flagged by the Risk Management Strategy of the Department. In this regard, this demand of the assessee, at this stage is certainly unwarranted. **It is reiterated that these issues will be taken during the course of assessment proceedings & assessee will be afforded adequate opportunity to explain the case and the resultant assessment order will be passed after an objective appraisal of the evidence available**. Consequently, all the contentions of the assessee are dismissed as untenable.

5. Therefore, in view of the above facts and circumstances, I consider it is a fit case to issue notice u/s 148 of the Act as income

> has escaped assessment. Hence notice under Section 148 of the Income-tax Act, 1961 is being issued in the case of the assessee for A. Y 2018-19 along with this order u/s 148(d) the Income-tax Act, 1961 with due approval of the competent authority as per the provisions u/s 149(1)(a) and 151(i) of the Income-tax Act, 1961."

5. As would be apparent from a reading of the impugned order, the respondents principally placed reliance upon an order passed by the **Commissioner of Income Tax (International Taxation)-2, New Delhi**[5] under Section 263 of the Act in the case of **M/s. Headstrong Consulting (Singapore) Pte. Ltd. (now known as Genpact Consulting (Singapore) Pte. Ltd.)**[6] to allege that the transaction, although allegedly structured as an interest pay out on a NCD, in fact constituted remittances arising from the reserves and surplus of the Indian entity post-merger under the garb of principal and interest payments. The respondents further allege that since both Headstrong Consulting Singapore Pte. Ltd. and Genpact Luxembourg S.A.R.L. (the petitioner herein) have common holding companies, the funds though taken out in the form of interest payment, in fact constitute dividend. This, according to them, resulted in the recharacterization of what should have actually been payment of dividend to principal payments resulting in the evasion of tax. According to them, the aforesaid remittances could not have been made without payment of a **Dividend Distribution Tax**[7]. This becomes apparent from a reading of paragraph 2 of the said order which is reproduced hereinbelow:-

> "2. The E-filing record in the case of the assessee has been verified. It is seen that the assessee has filed its return of income for the assessment year 2018-19.As per information available with the department, it was found that information was received from

[5] CIT (IT)
[6] Headstrong Consulting Singapore Pte. Ltd.
[7] DDT

the office of Commissioner of Income-tax (International Taxation)-2, New Delhi by way of an order u/s 263 of the Income-tax Act, 1961 in the case of M/s Headstrong Consultancy Singapore. It was found that the transaction structured as an alleged debenture was in fact, remittances arising from reserves and surplus of the Indian entity post-merger under the garb of principal and interest payments - not supported by commercial substance.

Thus, it was held in other assessment years that an artificial liability was created on Genpact India Pvt. Ltd. to the assessee so as to remit funds under the garb of interest and principal repayments on NCDs. Whereas the actual transaction was held to be arising out of a share-restructuring arrangement within the Genpact Group involving 'Empower Research Knowledge Services' ('EKRS') and Genpact Ltd. Bermuda.

The interest claimed liability was fictitious in nature and was only a garb to takeaway funds without paying taxes. As both Headstrong Consulting Singapore Pte Ltd and Genpact Luxembourg have common holding companies and common ultimate holding company, funds were taken out in the form of interest payment on artificial liability instead of declaring dividend. This helped in re-characterizing, what should have been dividend payment, to principal payment, leading to evasion of taxes which should have been paid as dividend distribution tax. Thus, on amount of interest payment out of claimed interest expense, GIPL was needed to pay DDT before remitting it out of country. Headstrong Consulting Singapore Pte. Ltd. played a key role in this scheme and claimed exempt short term capital gain which was not genuine in nature. AO by accepting the claim of Headstrong Consulting Singapore Pte Ltd. without conducting any enquiry has passed an order which is erroneous and prejudicial to the interest of revenue. This interest expenses are claimed against a fictitious liability i.e., funds which were never utilized by the company, but it had to bear the liability. This has led to inflation of business expense and reduction of profitability leading evasion of taxes in India. No scrutiny assessment u/s 143(3) of the Income-tax Act, 1961 was conducted. The nature and source of these receipts have not been scrutinized. The income from the aforementioned receipts has not been offered to tax, and no satisfactory justification has been provided for the same. The information suggests that income earned by the assessee has not been appropriately declared to the tax authorities. Therefore, the aforementioned information suggests that the income chargeable to tax in the case of the assessee for the A.Y. 2018-19 has escaped assessment."

It is the validity of the aforesaid order as well as the

consequential notice which is assailed by the petitioners.

6. For the purposes of disposal of the instant writ petition, we deem it apposite to take note of the following salient facts. The petitioner is stated to be a company incorporated under the laws of Luxembourg and a tax resident. In evidence of the above, it has also placed for our consideration a valid Tax Residency Certificate. In the concerned AY, the petitioner who is also a registered **Foreign Portfolio Investor**[8] under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 subscribed to 4600 rated NCDs' of a face value of INR 100,00,000/- each aggregating INR 4600 crores issued by GIPL. These NCDs were to carry a coupon rate of 11% per annum and were also listed on the Bombay Stock Exchange.

7. The petitioner is stated to have filed its Return of Income declaring the interest income received from the aforenoted NCDs and offered the same to tax at the rate of 5% under Section 194LD of the Act. The record further bears out that on 17 December 2018 and 27 December 2019, the first respondent is stated to have framed assessment orders referable to Section 143(3) pertaining to AY 2015-16 and 2016-17 and accepted the income derived from the aforesaid NCDs in terms of Section 194LD. According to the writ petitioner, it also received an intimation under Section 143(1) for the concerned AY, namely, 2018-19, where consistent with the treatment accorded to interest income in the past, the same was duly acknowledged. It is thereafter that, the respondents chose to initiate action for assessment

[8] FPI

in terms of the notice under Section 148A(b) dated 11 March 2022. The said notice ultimately culminated in the passing of the Section 148A(d) order and the consequential notice under Section 148 which stands impugned herein.

8. We had in terms of our order of 19 July 2024 taken note of the principal submissions which were advanced by Mr. Pardiwala, learned senior counsel appearing in support of the writ petitioner on that day. Having heard Mr. Sachit Jolly as well as Mr. Puneet Rai, learned counsels appearing for the respective sides, we find that the following indisputable facts emerge from the record.

9. As is evident from a reading of the initial notice under Section 148A(b), the respondents had taken the stand that the interest income derived from the NCDs floated by GIPL had not been appropriately offered to tax on account of mischaracterization of income. By the time the Section 148A(d) order came to be passed, the respondents sought to buttress their case of proposed reassessment on an order under Section 263 of the Act passed by the CIT (IT) in the case of Headstrong Consulting Singapore Pte. Ltd. The principal allegation now laid was that although the funds were taken out in the form of interest payments, they were in fact liable to be declared as dividend and subjected to DDT.

10. It is in the aforesaid backdrop that Mr. Jolly had contended that there is an evident and manifest variation between the reasons which had been originally recorded in the notice dated 11 March 2022 and the final order passed by the respondents disposing of the objections of the petitioner on 29 March 2022.

11. The ineffaceable connect which must exist between the reasons

initially disclosed proposing reassessment and which constitute the basis for formation of opinion with respect to escapement of income and the final decision to commence reassessment, was an aspect which was duly highlighted by us in our judgment in **ATS Infrastructure Limited Vs. Assistant Commissioner of Income Tax Circle 1(1) and Others**[9]. We had in that decision observed as follows:-

> "**7.** It becomes pertinent to observe that the validity of the proceedings initiated upon a notice under Section 148 of the Act would have to be adjudged from the stand point of the reasons which formed the basis for the formation of opinion with respect to escapement of income. That opinion cannot be one of changing hues or sought to be shored upon fresh reasoning or a felt need to make further enquiries or undertake an exercise of verification. Ultimately, the Court would be primarily concerned with whether the reasons which formed the bedrock for formation of the requisite opinion are tenable and sufficient to warrant invocation of Section 148 of the Act.
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> **8.** We in this regard find the following pertinent observations which appear in a decision of the Bombay High Court in *Indivest Pe. Ltd.* v. *Additional Director of Income-tax*[5]
>
> > "11. Reading the reasons of the Assessing Officer, it is evident that there is absolutely no tangible material on the basis of which the assessment for the assessment year 2006-2007 could have been reopened. Upon the return of income being filed by the assessee both in the electronic form and subsequently in the conventional mode, the assessee received an intimation under section 143(1). The Assessing Officer would have been legitimately entitled to issue a notice under section 143(2) within the statutory period. That period has expired. We must clarify that the non-issuance of a notice under section 143(2) does not preclude the Assessing Officer from reopening the assessment under section 147. For that matter, as has been held by the Supreme Court in *Asst. CIT* v. *Rajesh Jhaveri Stock Brokers P. Ltd.*, (2007) 291 ITR 500 (SC), the failure of the Assessing Officer to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when an intimation under section 143 (1) has been issued. But it is also a settled principle of law that when the Assessing Officer issues a notice under section 148, at that stage the only question is whether there was relevant material

[9] 2024 SCC OnLine Del 5048

on which a reasonable person could have formed a requisite belief (*Rajesh Jhaveri* (supra). At that stage, an established fact of the escapement of income does not have to be proved, since it is not necessary that the Assessing Officer should have finally ascertained that income has escaped assessment. The nature of the jurisdiction of the Assessing Officer which was dealt with by the judgment of the two learned judges of the Supreme Court in *Rajesh Jhaveri's case* was revisited in a decision of three learned judges in *CIT* v. *Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC). The Supreme Court has held that though after April 1, 1989, a wider power has been conferred upon the Assessing Officer to reopen an assessment, the power cannot be exercised on the basis of a mere change of opinion nor is it in the nature of a review. The Supreme Court has laid down the test of whether there is tangible material on the basis of which the Assessing Officer has come to the conclusion that there is an escapement of income. The Supreme Court held thus (page 564):

"However, one needs to give a schematic interpretation to the words 'reason to believe' failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of 'change of opinion' is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after April 1, 1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words 'reason to believe' but also inserted the word 'opinion' in section 147 of the Act. However, on receipt of representations from the companies against omission of the words 'reason to believe', Parliament reintroduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the Assessing Officer."

12. If the test of whether there exists any tangible material

were to be applied in the present case, it would be evident that the Assessing Officer has not acted within his jurisdiction in purporting to reopen the assessment in exercising the powers conferred by section 148. There was a disclosure clearly by the assessee that it is a body corporate incorporated in Singapore, the principal business of which is to invest in Indian securities; that the assessee is a tax resident of Singapore and that the profits which the assessee realised from its transactions in securities constituted its profits from business. The assessee stated that it had no permanent establishment in India as defined in article 5 of the DTAA and that based on the provisions of article 7 the profits of Rs. 131.70 crores from transactions in Indian securities were not liable to tax in India. The only basis on which the assessment is sought to be reopened is on the assumption that the provisions of section 115AD would stand attracted. That is on the assumption that the assessee is an FIL Though the attention of the Assessing Officer was drawn to the fact that the assessee is not an FII and that the provisions of section 115AD would not be attracted, the Assessing Officer persisted in rejecting the objections to the reopening of the assessment. In the order disposing of the objections which were raised by the assessee, the succeeding Assessing Officer has clearly attempted to improve upon the reasons which were originally communicated to the assessee. The validity of the notice reopening the assessment under section 148 has to be determined on the basis of the reasons which are disclosed to the assessee. Those reasons constitute the foundation of the action initiated by the Assessing Officer of reopening the assessment. Those reasons cannot be supplemented or improved upon subsequently. While disposing of the objections of the assessee, the Assessing Officer has purported to state that the assessee had filed only sketchy details in its return filed in the electronic form. As we have noted earlier, the relevant provisions expressly make it clear that no document or report can be filed with the return of income in the electronic form. The assessee has an opportunity to do so during the course of the assessment proceedings if a notice is issued under section 143(2). The Assessing Officer was, in our view, not entitled, when he disposed of the objections to travel beyond the ambit of the reasons which were disclosed to the assessee. For all these reasons, we are of the view that the exercise of the jurisdiction under section 147 and section 148 in the present case is without any tangible material. The notice of reopening does not meet the requirements as elucidated in the judgment of the Supreme Court in *Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC) For

these reasons, we make the rule absolute by quashing and setting aside the notice dated March 16, 2011, and the order passed by the Assessing Officer on December 20, 2011."

9. Reiterating the aforesaid position this Court in *Northern Exim Pvt. Ltd.* v. *Deputy Commissioner of Income-tax*[6], held that the validity of assumption of jurisdiction under Section 147 of the Act can be tested only with reference to the reasons as recorded in the Section 148(2) notice and the AO has no authority to refer to any other reasons, even if they be otherwise deducible from the records. The Court pertinently observed that the AO must record all reasons in support of assumption of jurisdiction and cannot be permitted to record additional reasons in support of that action subsequently. We extract the following paragraphs from that decision:—

"14. The learned standing counsel for the Income-tax Department drew our attention to the entry made on January 22, 2001, in the proceedings sheet recorded in the course of the reassessment proceedings. We have already seen that the said entry records that the authorised representative of the petitioner was asked to show cause why the difference in the amount of profit before tax and the amount declared under the VDIS cannot be treated as its income for the assessment year 1997-1998 as no return of income had been filed. The entry made in the proceeding sheet is perhaps more elaborate and informative than the reasons recorded under section 148(2) in the sense that it also states one more reason for initiating re-assessment proceedings, namely, that there is a difference between the profit before tax (Rs. 42,79,340) and the amount declared in the VDIS (Rs. 7,23,490). The reasons recorded, however, are not so explicit and do not refer to this fact. We are to be guided only by the reasons recorded for reassessment and not by the reasons or explanation given by the Assessing Officer at a later stage in respect of the notice of reassessment. This legal position is well settled and if any authority is needed, reference may be made to the following judgments:

(i) *Jamna Lal Kabra* v. *ITO*, (1968) 69 ITR 461 (All);

(ii) *CIT* v. *Agarwalla Brothers*, (1991) 189 ITR 786 (Patna);

(iii) *C.M. Rajgharia* v. *ITO*, (1975) 98 ITR 486 (Patna);

(iv) *Asa John Devinathan* v. *Addl. CIT*, (1980) 126 ITR 270 (Mad);

(v) *East Coast Commercial Co. Ltd.* v. *ITO*, (1981) 128 ITR 326 (Cal);

(vi) *Equitable Investment Co. P. Ltd.* v. *ITO*, (1988) 174 ITR 714 (Cal); and

(vii) *S. Sreeramachandra Murthy* v. *Deputy CIT*, (2000)

243 ITR 427 (AP).

15. The ratio laid down in all these cases is that, having regard to the entire scheme and purpose of the Act, the validity of the assumption of jurisdiction under section 147 can be tested only by reference to the reasons recorded under section 148(2) of the Act and the Assessing Officer is not authorised to refer to any other reason even if it can be otherwise inferred and/or gathered from the records. He is confined to the recorded reasons to support the assumption of jurisdiction. He cannot record only some of the reasons and keep the others up his sleeves to be disclosed before the court if his action is ever challenged in a court of law.

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18. From the record made available to us by the learned standing counsel for the Income-tax Department in the course of the hearing we found that the petitioner, in the return of income filed for the assessment year 1998-1999 had stated that the return of income for the assessment year 1997-1998 was filed under the VDIS. For this reason also, the Assessing Officer could not have had reason to believe that income chargeable to tax had escaped assessment for the assessment year 1997-1998, because of any failure to file the return.

19. For the above reasons, we hold that no income chargeable to tax had escaped assessment for the assessment year 1997-1998. The reasons recorded for issue of notice under section 148 are factually incorrect. They cannot, therefore, form the basis for the belief that there was escapement of income. The notice is accordingly quashed as also the proceedings taken consequent thereto. The writ petition is allowed with no order as to costs.

10. Our attention was lastly drawn to the recent judgment passed by this Court in *Catchy Prop-Build Pvt. Ltd.* v. *Assistant Commissioner of Income-tax*[7]. We deem it apposite to extract the following passage from the decision:

> "8. This court is further of the opinion that if the foundational allegation is missing in the notice issued under section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice"

12. Quite apart from the above, the impugned proceedings are liable to be quashed on a more fundamental ground. Undisputedly, the petitioner had offered the interest income to tax in terms of the provisions contained in Section 194LD of the Act. The ultimate order

under Section 148A(d), however, alleges that the remittance in fact, constituted dividend and which was liable to be taxed in terms of Section 115-O of the Act.

13. Section 115-O, insofar as it is relevant for our purposes, is extracted hereinbelow:-

> "**115-O.** Tax on distributed profits of domestic companies.—[(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003 [but on or before the 31st day of March, 2020], whether out of current or accumulated profits shall be charged to additional income tax (hereafter referred to as tax on distributed profits) [at the rate of fifteen per cent] :]
> [Provided that in respect of dividend referred to in sub-clause (e) of clause (22) of Section 2, this sub-section shall have effect as if for the words "fifteen per cent.", the words "thirty per cent." Had been substituted;]
>
> [(1-A) The amount referred to in sub-section (1) shall be reduced by,—
> [(i) the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—
> (a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or
> (b) where such subsidiary is a foreign company, the tax is payable by the domestic company under Section 115-BBD on such dividend:
> Provided that the same amount of dividend shall not be taken into account for reduction more than once;] (ii) the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of Section 10.
> Explanation.—For the purposes of this sub-section, a company shall be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company.]
>
> [(1-B) For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1) as reduced by the

> amount referred to in sub-section (1-A) [hereafter referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits:] [Provided that this sub-section shall not apply in respect of dividend referred to in sub-clause (e) of clause (22) of Section 2.]"

14. As is plainly evident from a reading of that provision, DDT is liable to be paid by the company which declares, distributes or pays the same. The petitioner herein was merely the recipient of the interest income and it was thus, clearly not the entity which had either declared or paid the dividend. Viewed in that context, even if the payment were to be assumed to be dividend, the liability to pay tax thereon could have only been foisted upon the company which had declared, distributed or paid the same. That in the facts of the present case and even if the allegation laid by the respondents were to be accepted would have been GIPL.

15. We also note that the issues emanating from the order of the CIT (IT) under Section 263 of the Act presently forms subject matter of challenge in **Commissioner of Income Tax (International Taxation)-2 Vs. Genpact Consulting Singapore Pte Ltd. (Earlier known as Headstrong Consulting Pte. Ltd.)**[10]. While issues relating to the merits and the validity of the view taken by the CIT (IT) would have to be examined in that pending appeal, the same would clearly not sustain the action for reassessment which is impugned herein.

16. We accordingly allow the instant writ petition and quash the impugned notice under Section 148A(b) dated 11 March 2022, impugned order under Section 148A(d) dated 29 March 2022 and the

[10] ITA 103/2023

consequential notice issued under Section 148 dated 30 March 2022.

17. We leave it open to the respondents to adopt such other measures as may be otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 08, 2024/*neha*