

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA No.1282/KOL/2025
(Assessment Year:2011-12)**

**M/s Parama Construction Pvt.
Ltd.**

MSAV-20, Bengal Ambuja,
city Centre, Durgapur,
West Bengal-713216

Vs.

ITO, Ward 2(3)

Office of the Income Tax Officer,
Room No.405, 4th floor,
Aayakar Bhawan Annexe,
City Centre, Durgapur,
West Bengal, PIN-713216

(Appellant)

(Respondent)

PAN No. AAFCP6274M

Assessee by : Shri Abhishak Bansal, AR
Revenue by : Shri Manas Mondal, DR

Date of hearing: 18.09.2025
Date of pronouncement: 15.10.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 26.05.2025 for the AY 2011-12.

02. At the time of hearing the assessee raised a legal issue that the order passed by the learned AO u/s 144/ 147 dated 28.12.2016, is invalid and bad in law as the learned AO has failed to issue any notice u/s 143(2) of the Act at any point of time during the assessment proceedings.

03. The facts in brief are that the assessee filed the return of income on 16.03.2012, declaring total income at ₹77,360/- which were

processed u/s 143(1) of the Act. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act, after recording the reasons to belief u/s 148(2) of the Act on 30.03.2016. The assessee filed the return of income in response thereto on 21.12.2016, a copy of which is available at page no.74 of the Paper Book. In the said return the assessee declared total income at ₹77,360/- as was declared in the original return of income. Apparently, the assessee did not make any compliance before the learned AO within the time allowed u/s 148 of the Act and the assessment was framed u/s 144/147 of the Act. The learned AO made an addition of ₹2,35,00,000/- on account of unexplained cash credit u/s 68 of the Act in respect of share application money/ share premium received by the assessee though the learned AO computed the income by taking the return as per the return of income filed on 21.12.2016, wherein the assessee declared ₹77,316/- and then added ₹2,35,00,000/-. However, no notice u/s 143(2) of the Act was issued and this was also admitted by the learned DR during the course of hearing that it was not issued because assessee filed delayed return which is invalid and non-est.

04. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly no notice u/s 143(2) of the Act was issued by the learned AO during the assessment proceedings. The notice u/s 148 of the Act was issued by the learned AO on 30th June, 2016 but return of income was filed on 21.12.2016 in response thereto. Again reminder was issued on 17.05.2016, which was also not complied. Thereafter, the assessee furnished a part reply before the learned AO. The learned AO rejected the return as non-est which was filed on 21.12.2016. We note that if the return is non-est the same cannot be basis by making computation of income in the

assessment order as the learned AO has taken the income as per return of income of ₹77,376/- and added ₹2,34,00,000/- to the said income thereby assessing the total income at ₹2,34,77,316/- Thus, we find merit in the contention of the learned Authorized Representative that the assessment framed by the learned AO dehorse notice u/s 143(2) is bad in law. The case of the assessee is squarely covered by the decision of the co-ordinate Bench in case of Rishi Anand Vs. ITO in ITA No. 1407/KOL/2025, vide order dated 15.09.2025, wherein the co-ordinate Bench has held as under:-

"05. After hearing the rival contentions and perusing the materials available on record, we find that in this case though the assessee has not filed the return of income within the time limit allowed in the above notice as issued under section 148 of the Act on 26.3.2022. Nonetheless the assessee filed the return of income on 13.3.2023, declaring total income at ₹19,14,770. The Id. AO treated the return as non-est for the reason that the assessee had not filed the return within the prescribed time limit. However, we further note that the income shown in the return of income filed u/s 148 of the Act, which was treated by the AO as non est, had been taken for computation of total income by the AO. The relevant finding of the Id. AO is given in Para no.4.2 is extracted below: -

"4.2 In response to the notice issued u/s 148 of the Act, the assessee has filed his return for A.Y. 2018-19 vide Ack. No. 981038840130323 on 13.03.2023 declaring total income at ₹19,14,770/- and the same is treated as non-east as the assessee has not filed his ITR within the prescribed time limit, however the income shown by the assessee is taken for computation of income."

06. In our opinion, if the return of income filed by the assessee in response to notice under section 148 of the Act beyond the due date time which has been treated as non-est, then the basis for computation of income cannot be taken from the said return. Therefore, the action of the Id. CIT (A) is wrong and unsustainable in the eyes of law. We also note from the Para 11 of the assessment order that the Id. AO had taken the income as per ITR filed in response to notice under section 148 of the Act as the basis for computation and then made the additions thereto. Therefore, the order of the Id. CIT (A) cannot be sustained. The case of the assessee finds support from the decision of Delhi High Court in the case of PCIT Vs. M/s Dart Infrabuild (P) Ltd. in ITA No. 10/2022 Order dated 17-11-2023 wherein, via Para 15.1, the Hon'ble Court held that where the return of income filed by the assessee is not disputed and the ROI has taken into account, then before framing the assessment order, the

AO ought to have issued the notice under section 143(2) of the Act. The relevant part is extracted below: -

"15.1 The respondent/assessee became aware of the Section 148 notice being issued after it received the notice dated 12.06.2015 under Section 142(1) of the Act. The fact that the respondent/assessee had filed an ROI on 04.12.2015 is not disputed. The fact that this ROI, as noticed above, was taken into account is also not in dispute. Therefore, in our opinion, before framing an assessment order, the AO ought to have issued a notice under Section 143(2) of the Act. The submission advanced on behalf of the appellant/revenue that, while it could consider the invalid return while framing the assessment order, it was not obliged to issue a notice under Section 143(2) of the Act because it was not filed within the timeframe given in the Section 148 notice is untenable in law, since the ROI, which was belated, was considered by the AO while carrying out the assessment."

07. *Consequently, we quash the assessment framed by the Learned AO."*

05. We note while passing the above order the co-ordinate Bench has followed the decision of Hon'ble Delhi High Court in case of PCIT Vs. M/s Dart Infrabuild (P) Ltd.(supra). Accordingly, we quash the assessment framed by the learned AO.

06. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.10.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.10.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata