

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2278/Kol/2025  
Assessment Year: 2017-18**

<b>Jyoti Shroff</b>		<b>DCIT, Circle-29, Kolkata</b>
C/o Sri Jitendra Kaushik, Advocate, 19-D, Muktaram Babu Street, Kol-7. (PAN: ALXPS7735A)	Vs	
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Sunil Surana, A.R  
Revenue by : Shri Pankaj Pandey, Sr. DR

Date of Hearing : 02.03.2026  
Date of Pronouncement : 02.03.2026

**ORDER**

**PER GEORGE MATHAN:**

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter referred to as the 'CIT(A)'] in appeal no.NFAC/2016-17/10098752 dated 16.09.2025 for the assessment year 2017-18.

2. Shri Sunil Surana, A.R represented on behalf of the assessee and Shri Pankaj Pandey, Sr. DR represented on behalf of the revenue.

3. It was submitted by the ld. AR by filing additional ground that in this case, the notice u/s 148 of the Act dated 30.03.2021 was issued by ACIT, Circle-29, Kolkata. It was also submitted that the assessment order has been passed by the ACIT, NFAC. It was the submission that the returned income declared by the assessee was Rs.10,85,540/-. It was further submitted that the notice u/s 148 could not have been

issued by the ACIT in so far as the monetary limit for non-corporate returns in Metro cities upto 20 lacs is ITO and above 20 lacs is DC/ACs. It was the submission that the returned income in the case of the assessee is below 20 lacs, therefore, the notice was required to be issued by ITO and not ACIT, Circle-29, Kolkata. The ld. AR placed reliance on the CBDT Instruction No.1/2011 dated 31.01.2011. The ld. AR therefore submitted that the notice u/s 148 in this case is required to be quashed. The ld. AR further submitted that assessment order has been passed on 02.02.2022 by NFAC whereas the power to pass assessment order by NFAC came into effect on 29.03.2022. It was the submission that on this ground also, the assessment order passed by NFAC is liable to be quashed.

4. In reply, the ld. DR submitted that the income escaped assessment is Rs.25,00,000/-, therefore, the notice issued u/s 148 by the ACIT, Circle-29, Kolkata is a valid one. He vehemently supported the order of the Assessing Officer and also the order of the ld. CIT(A).

5. We have considered the rival submissions. A perusal of the notice u/s 148 of the Act dated 30.03.2021 clearly shows that the said notice was issued by ACIT, Circle-29, Kolkata. The returned income of the assessee as mentioned in the assessment order itself is Rs.10,85,540/-. We find that under similar circumstances, the Coordinate Bench of this Tribunal in the case of APE Power Pvt. Ltd. vs. DCIT in ITA No.1646/Kol/2025 has held as under:

*"5.2 After hearing the rival contentions and perusing the materials available on record, we find merit in the argument of the ld. AR that notice u/s 143(2) of the Act dated 11.04.2016, was issued by the ITO, Ward 7(1), Kolkata, which is in violation of pecuniary jurisdiction of the CBDT instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011. According to the said instruction, the ITO has pecuniary jurisdiction where the income is upto 20 lacs in the Metro Cities and 15 lacs in Mofussil areas whereas the DC/AC have jurisdiction above 20 lacs in Metro cities and above 15 lacs in the Mofussil areas. The said instructions reads as under:-*

**SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES –  
INSTRUCTIONS TO SUBORDINATE AUTHORITIES  
INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011**

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)		Income Declared (Metro cities)	
	ITOs	ACs/DCs	ITOs	DCs/ACs
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs	Upto Rs. 30 lacs	Above Rs. 30 lacs
Non-corporate returns	Upto Rs. 15 lacs	Above Rs. 15 lacs	Upto Rs. 20 lacs	Above Rs. 20 lacs

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.

5.3 In the present case, the assessee filed the return of income u/s 139(1) of the Act on 29.09.2015, disclosing total income of ₹49,24,210/-. We note that notice u/s 143(2) was issued on 11.04.2016 by ITO, Ward 7(1), Kolkata which is in violation of the CBDT Instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011. Therefore, the said notice has been issued by non-jurisdictional AO while the assessment was framed u/s 143(3) of the Act and cannot be sustained. The case of the assessee find support from the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. M/s Shree Shoppers Ltd. in ITAT 39/2023, IA No. GA/1/2023, dated 15.03.2023, wherein the Hon'ble Court has decided the issue in favour of the assessee by upholding the order of the Tribunal. The Tribunal in ITA No. 865/KOL/2018 for A.Y. 2012-13 in case of M/s Shree Shoppers Ltd. Vs. DCIT has held that notice issued by ITO, Ward 39(4), Kolkata, u/s 143(2) of the Act was without valid jurisdiction and therefore the consequent assessment framed by the DCIT, circle 9(2), Kolkata is invalid. The Hon'ble Tribunal followed the decision of jurisdictional High Court in

case of *PCIT vs. Nopany & Sons (2022) 136 taxmann.com 414 (Cal)*, while passing the order.

5.4 Considering the facts and circumstances of the case and also relying on the above decisions, we hold that the assessment framed by the AO, DCIT, Circle 7(1), Kolkata is invalid and is accordingly quashed.

6. In the result, the appeal of the assessee is allowed.”

6. Similar view has also been taken by the Coordinate Bench of this Tribunal in the case of *Vinod Kumar Giri vs. ITO* in ITA No.716/Kol/2025 wherein the Coordinate Bench has held as under:

“5. The ld. A.R. of the assessee challenges the very impugned order by taking legal grounds that the assessment order is bad in law for the reason that the ld. Assessing Officer having no jurisdiction over the assessee, in fact, not issued notice under section 148 of the Act. The ld. A.R. further challenges that as per the CBDT Instruction, monetary limits for assigning cases being non-corporate assessee, have been fixed, but in the present case, notice under section 148 of the Act has been issued by the ITO, Ward-47(1), though he has got no jurisdiction to issue the notice. The ld. A.R. further submits that the assessee has filed the Income Tax Return acknowledgment to establish that the total income was Rs.30,88,650/- and also brought the attention of the Court regarding the CBDT Instruction No. 1/2011 and CBDT Notification No. 15/2020. He has also placed reliance over the following decision of the Court:-

(i)	<i>Ashok Devichand Jain-vs.- Union of India</i>	<i>Bombay High Court</i>
(ii)	<i>Hirak Sarkar -vs.- ACIT</i>	<i>ITAT, 'SMC' Bench, Kolkata</i>
(iii)	<i>PCIT -vs.- Shree Shoppers Ltd.</i>	<i>Calcutta High Court</i>
(iv)	<i>M/s. J.R. Road Lines Pvt. Ltd.</i>	<i>ITAT, 'C' Bench, Kolkata</i>
(v)	<i>Bhartiya International Ltd., New Delhi-vs.-DCIT</i>	<i>ITAT, 'T' Bench, Delhi</i>
(vi)	<i>CIT -vs.-Tejua Rohitkumar</i>	<i>Gujrat High Court</i>
(vii)	<i>PCIT-vs.- Rohit Baid</i>	<i>Calcutta High Court</i>
(viii)	<i>Rohit Baid -vs.- ITO</i>	<i>ITAT, 'B' Bench, Kolkata</i>

6. The ld. Departmental Representative supports the impugned order of ld. CIT(Appeals) and he has also cited the decision passed by the Hon'ble High Court of Judicature at Madras in the case of *C. Krishnan -vs.- ITO* passed on 27<sup>th</sup> November, 2014.

7. Upon hearing the submissions of the ld. Counsel of the respective parties, we have perused the grounds taken by the assessee and also perused the documents filed by the assessee. We admit that no doubt, notice under section 148 of the Act was issued by ITO, Ward-47(1), Kolkata. On perusal of the ITR acknowledgment in A.Y. 2018-19, there is no denial of the fact that total income was declared at Rs.30,88,650/-. The ld. A.R. brought the attention of the Bench over the CBDT Instruction No. 1/2011, which is as under:-

*Section 119 of the Income-tax Act, 1961 - Instructions to subordinate authorities - Instructions regarding income limits for assigning cases to Deputy Commissioners/Assistant Commissioners/ITOs.*

*INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011*

*References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.*

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income declared (Mofussil areas)		Income declared (Metro cities)	
	ITOs	Acs/DCs	ITOs	DCs/ACs
Corporate returns	Upto Rs.20 lacs	Above Rs.20 lacs	Upto Rs.30 lacs	Above Rs.30 lacs
Non-Corporate returns	Upto Rs.15 lacs	Above Rs.15 lacs	Upto Rs.20 lacs	Above Rs.20 lacs

8. We had heard both the sides and perused the order passed by the ITAT, Kolkata in the case of Rohit Baid -vs.- ITO, Ward-36(1), Kolkata cited by the Id. A.R. We find that the issue of the present case and the issue of above cited decisions are the same. It is important to mention here that the order passed by the ITAT, Kolkata in Rohit Baid's case has been challenged by the Revenue in the Calcutta High Court and the Hon'ble Calcutta High Court in the recent decision passed on 6<sup>th</sup> May, 2025, as cited by the Id. A.R., has confirmed the order passed by the ITAT by dismissing the appeal of the Revenue. Since the issues are the same, hence we have gone through the order passed by the ITAT, Kolkata in the case of Rohit Baid and it is important to quote the relevant paragraph of the order, which is as under:-

"3. Though the assessee through its grounds of appeal has agitated the confirmation of the impugned additions made by the Assessing Officer both on legal grounds as well as factual merit, however, the Id. counsel has firstly raised the legal issue relating to the pecuniary jurisdiction of the concerned Assessing Officer who issued notice u/s 148 of the Income Tax Act to assume jurisdiction to reopen the assessment u/s 147 of the Act. The Id. counsel in this respect has invited our attention to the copy of notice dated 31.03.2021 issued u/s 148 of the Act to submit that the same has been issued by ITO, Ward- 36(1), Kolkata. He has further invited our attention to the copy of the ITR acknowledgement for assessment year 2015-16 to show that the assessee had returned total income of Rs.17960490/-. The Id. counsel has further referred to the provisions of section 120 of the Act r.w. CBDT Instruction No.1/2011 [F.No.187/12/2010-IT(A-I), Dated 31.01.2011 to submit that as per the relevant statutory provisions not only the Assessment Year: 2015-16 Rohit Baid territorial jurisdiction but also the pecuniary jurisdiction of the Income Tax Officers/Assessing Officer has been fixed by the CBDT and that if the returned income is less than Rs.20 lakhs for non-corporate assessee, the jurisdiction to frame to assessment lies to the Income Tax Officer, whereas, if the returned income is more than Rs.20 lakhs, the jurisdiction lies with the concerned ACIT/DCIT. He has submitted that in this case, the notice u/s 148 has been issued by ITO, Ward-36(1), Kolkata, whereas, the jurisdiction to issue the notice u/s 148 lied with concerned ACIT/DCIT. He has further submitted to assume jurisdiction to reopen the assessment u/s 147 of the Act, a valid notice u/s 148 of the Act was required to be issued by the competent authority/Assessing Officer having jurisdiction over the assessee. The Id. counsel has submitted that the notice u/s 148 of the Act has not been issued to the assessee by the Assessing Officer having pecuniary jurisdiction over the assessee. He, therefore, has submitted that the reopening of the assessment by non-jurisdictional officer was bad in law. The Id. Counsel has submitted that the issue is squarely covered by the recent decision of the jurisdictional Hon'ble Calcutta High Court in the case of PCIT vs. Shree Shoppers Ltd. in ITAT/39/2023 in LA N0.GA/1/2023 dated

15.03.2023. The Id. Counsel for the assessee has further relied on the decision of the Coordinate 'C' Bench of the Tribunal in the case of M/s J R Roadlines Pvt. Ltd. vs. DCIT in ITA N0.2534/KOI/2019 order dated 27.05.2022.

9. We have also gone through the order dated 6<sup>th</sup> May, 2025 passed by the Hon'ble High Court at Calcutta in the case of Principal Commissioner of Income Tax-5, Kolkata -vs.- Rohit Baid in ITAT/44/2025 in IA No. GA/1/2025, which reads as under:-

"The Court : This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short, the Act) challenging the order dated September 12, 2024 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (in short, the Tribunal) in ITA/15/Kol/2024 for the assessment year 2015-16.

The revenue has raised the following substantial question of law for consideration:

"WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was justified in holding the assessment order passed by the Assessing Officer under Section 147 read with Section 144B of the Income Tax Act, 1961 on March 28, 2022 as bad in law based on an incorrect understanding of the provisions of Section 120 of the Income Tax Act, 1961 read with CBDT's Instruction No.1/2011 issued vide F. No. 187/12/2010-IT(A-I) dated January 31, 2011 which does not fix any rigid jurisdiction but is made for equitable distribution of work and thereby failing to appreciate that the Notice under Section 148 was correctly issued by the ITO, Ward 36(1), Kolkata who was the Assessing Officer having PAN jurisdiction over the assessee and subsequent assessment passed by the Faceless Assessing Officer was a valid assessment?"

We have heard Mr. Prithu Dhudhoria, learned senior standing counsel appearing for the appellant/revenue. Though notice has been served, none appears for the respondent/assessee. On perusal of the impugned order passed by the learned Tribunal, we find that the issue is squarely covered in favour of the assessee by the decision of this Court in the case of Principal Commissioner of Income Tax- 11, Kolkata Vs. M/s. Nopany & Sons in ITAT/58/2017 dated February 4, 2022. The operative portion of the judgment reads as follows:

"The short issue which falls for consideration is whether the assessing officer, who had jurisdiction over the assessee at the relevant time had issued notice under Section 143(2) of the Act before taking up the scrutiny assessment under Section 143(3). Before we go into the facts, we take note of the legal position as laid down by the Hon'ble Supreme Court in Asst. CIT vs. Hotel Blue Moon [2010] 321 ITR 362 [SC], wherein the Hon'ble Supreme Court held that omission on the part of the assessing officer to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. Further, we also take note of the decision in the case of Commissioner of Income Tax -vs.- Gitsons Engineering Company, reported in [2015] 370 ITR 87, wherein it was held that the word 'shall' employed in Section 143(2) of the Act, contemplates that the assessing officer should issue notice to the assessee so as to ensure that the assessee has not understated income or has not computed excessive loss or has not under paid the tax in any manner. It was further held that when the assessing officer considers it necessary and expedient to ensure that tax is paid in accordance with law, he should call

upon the assessee to produce evidence before him to ensure that the tax is paid in accordance with law. The section makes it clear that service of notice under Section 143(2) of the Act within the time limit prescribed is mandatory and it is not a mere procedural requirement. At this juncture, it would be relevant to take note of the definition of assessing officer as defined in Section 2(7A) of the Act. The said provision defines 'assessing officer' to mean the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income Tax Officer, who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-Section (1) or sub-Section (2) of Section 120 or any other provision of the Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, who is directed under clause (b) of sub-Section (4) of Section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to, an assessing officer under this Act. In the instant case, the order of assessment was challenged on several grounds and, particularly, on the ground that no notice under Section 143(2) of the Act was issued within the time prescribed by the assessing officer, who had jurisdiction over the assessment file of the assessee at the relevant time. The Commissioner of Income Tax (Appeals)-XXXVII, Kolkata, (CIT(A)) did not agree with the contentions raised by the assessee that there is failure to comply with the mandatory statutory requirement. The CIT(A) opined that the assessing officer, who originally dealt with the e-return filed by the assessee had issued notice under Section 143(2) of the Act. With regard to the merits of the matter, the CIT(A) held it in favour of the assessee. Therefore, the revenue was on appeal before the Tribunal and cross-objection was filed by the assessee questioning that portion of the order of the CIT(A) which held that there is no procedural irregularity committed by the assessing officer. The Tribunal considered the correctness of the finding of the CIT(A) and, on facts, found that both the assessing officers, namely, the assessing officer, who had jurisdiction over the assessee till 06.04.2009 and the assessing officer, who had jurisdiction post the said date had not issued notice under Section 143(2) of the Act within the prescribed period of six months from the end of the financial year in which the return was filed. This factual position could not be controverted by the revenue before us. As pointed out by the Hon'ble Supreme Court in the case of Asst. CIT vs. Hotel Blue Moon (supra), non-issuance of notice under Section 143(2) is not a procedural irregularity and, therefore, it is not curable. Thus, on facts, it having been established that no notice was issued under Section 143(2) of the Act, the order passed by the Tribunal was perfectly legal and valid. The revenue also sought to rely upon Section 292BB of the Act to justify their stand that notice is deemed to be valid and sought to bring the assessee's case under the circumstances mentioned in Section 292BB. This question was considered by the Tribunal and it was pointed out that Section 292BB provides that where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any of the provision of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner. This amendment to the Act was introduced with effect from 01.04.2008 and the assessment year under consideration is AY 2007-08. In any event, the Tribunal examined as to whether at all the revenue can rely upon Section 292BB of the Act and noted that the assessee has

*filed an objection vide letter dated 16.11.2009 objecting to the issuance of notice under Section 142(1) of the Act without valid service of notice under Section 143(2) of the Act. Taking note of the said letter the Tribunal, in our view, rightly held that the proviso to Section 292BB would not stand attracted and the said Section cannot be made applicable to the assessee's case. The Tribunal, thereafter, analysed as to the correctness of the submission of the revenue seeking to sustain their stand by referring to a notice issued by the assessing officer, who at the relevant point had no jurisdiction over the assessee and, on facts, found that there is no valid compliance of Section 143(2) of the Act as the notice issued under Section 143(2) of the Act by the assessing officer/Income Tax Officer, Ward-3(1) had no jurisdiction over the assessee at the relevant time. The Tribunal to support its conclusion placed reliance in the case of CIT & Another Vs. Mukesh Kumar Agarwal [2012] 345 ITR 29 (Allahabad), wherein it was held that the assessing officer did not have jurisdiction to proceed further and make assessment since notice under Section 143(2) of the Act was admittedly not issued. As in the case on hand, the revenue sought to take coverage under Section 292BB of the Act which was rejected on the ground that the very foundation of the jurisdiction of the assessing officer was on the issuance of notice under Section 143(2) of the Act and the same having been complied with, the revenue cannot take shelter under the provisions of Section 292BB of the Act."*

*The learned Tribunal has taken note of the above decision while allowing the assessee's appeal. Apart from that, the other decision of this Court is in the case of PCIT Vs. Cosmat Traders (P) Ltd. reported at [2023] 146 taxmann.com 207 (Calcutta). The above decisions were rendered following the decision of the Hon'ble Supreme Court in the case of Asst. CIT Vs. Hotel Blue Moon, reported at [2010] 321 ITR 362 (SC). Thus, the issue is fully covered against the revenue.*

*In the result, the appeal stands dismissed and the substantial question of law is answered against the revenue. The connected application stands closed".*

10. *As we have already discussed in the preceding paragraph, the issue in the present case is squarely covered with the cited decision as discussed above, hence, the assessment order, which has been passed on the ground of jurisdiction is hereby quashed. The assessment framed under section 143(3) read with section 147 of the Act in this case is also bad in law and accordingly the assessment proceeding is also hereby quashed."*

7. We note that the notice u/s 148 is issued by the ACIT, Circle-29, Kolkata who did not have the pecuniary jurisdiction to issue notice u/s 148 of the Act. The notice issued u/s 148 dated 30.03.2021 by the ACIT, Circle-29, Kolkata is held to be invalid and quashed and the consequent impugned assessment order passed on the basis of the said notice u/s 148 also stands quashed. We are not going into the other legal issues as the notice u/s 148 has already been quashed. Our above view is also

supported by the decision of Hon'ble Calcutta High Court in the case of PCIT vs. Shree Shoppers Ltd. in ITAT/39/2023.

8. In view of the above, the appeal of the assessee is allowed.

***Kolkata, the 2<sup>nd</sup> March, 2026.***

Sd/-

**[Rajesh Kumar]**

लेखा सदस्य/Accountant Member

Sd/-

**[George Mathan]**

न्यायिक सदस्य/Judicial Member

Dated: 02.03.2026.

RS

*Copy of the order forwarded to:*

1. Appellant -
2. Respondent –
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches