

IN THE INCOME TAX APPELLATE TRIBUNAL
“CUTTACK BENCH, CUTTACK
VIRTUAL HEARING AT KOLKATA

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

ITA Nos.732, 733 & 734/CTK/2025
Assessment Years 2006-07, 2005-06 & 2004-05

ACIT, Bhubaneswar	Circle-1(1),	Vs	Rajdhani Systems & Estates Pvt. Ltd. Bhubaneswar, Odisha- 751007. (PAN: AABCR8271L)
(Appellant)		(Respondent)	

ITA Nos.737 & 738/CTK/2025
Assessment Years 2003-04 & 2004-05

ACIT, Bhubaneswar	Circle-1(1),	Vs	HI Tech Estates & Promoters Pvt. Ltd. Bhubaneswar, Odisha- 751007. (PAN: AAACH9591G)
(Appellant)		(Respondent)	

Assessee by : Shri B. D. Ojha & Abhishek Ojha, ARs
Revenue by : Shri Ashim Kr. Chakraborty, CIT- DR

Date of Hearing : 16.03.2026
Date of Pronouncement : 16.03.2026

ORDER

PER BENCH:

All the captioned appeals filed by the different assessees against the orders of the CIT(Appeals)-2, Bhubaneswar [hereinafter referred to as the 'CIT(A)'] dated 31.10.2025 & 22.10.2025 respectively. Since identical issues are involved in all the appeals, therefore, these appeals were heard together and we are going to dispose of these appeals by passing a consolidated order. ITA No.732/CTK/2025 is taken as lead case.

2. Shri B. D. Ojha & Abhishek Ojha, ARs represented on behalf of the assessee and Shri Ashim Kr. Chakraborty, DR represented on behalf of the revenue.

3. It was submitted by the ld. DR that two issues have been raised by the revenue. It was the submission that there was search and seizure operation on the premises of the assessee on 30.09.2005. The original assessment was completed u/s 153A(b) r.w.s. 144 on 31.12.2007. The Coordinate Bench of this Tribunal vide order dated 14.12.2012 had set aside the order of the ld. CIT(A) and restored the issues to the file of the Assessing Officer for de novo assessment with the direction to the assessee to file the return of income within three months from the date of receiving the ITAT order. In compliance with the order of the ITAT, the assessee filed its return of income on 12.03.2013 and the Assessing

Officer made various additions and appeal was preferred by the assessee before the ld. CIT(A). It was the submission that the ld. CIT(A) allowed the assessee's appeal on two grounds. The first being that no notice/s 143(2) had been issued to the assessee in respect of return filed by the assessee and the second is that there is no incriminating material found in the course of search which has been used for the purpose of assessment and consequently applied the principle laid down by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. [2023] 149 taxmann.com 399 (SC) dated 24.04.2023. It was the submission that the findings of the ld. CIT(A) that no notice u/s 143(2) had been issued could not be sustained in so far as the return filed by the assessee as a consequence to the direction given by the Tribunal was only for the purpose of computation of income, it was not the return u/s 139 of the Act. It was the submission that in the absence of return under the provisions of section 139 of the Act, no notice u/s 143(2) can be issued. It was further submitted that the issue of incriminating material and the applicability of the decision of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. referred supra would not be applied in so far as this was the set aside assessment for de novo assessment. It was prayed that the order of the ld. CIT(A) is liable to be reversed and that of the Assessing Officer be restored.

4. In reply, the ld. AR submitted that the Tribunal had granted liberty to the assessee to file return and the return having been filed on the direction of the Tribunal, the same is liable to be treated as return filed u/s 139(1). It was prayed that the notice has not been issued u/s 143(2) in regard to return filed by the assessee and the assessment had been quashed by the ld. CIT(A). It was further submitted that the issue of incriminating material was a legal issue and in view of the decision of the Hon'ble Apex court in the case of National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383, the legal issue can be raised at any point of time. Therefore, as no incriminating materials have been found in the course of search relating to impugned assessment year, the ld. CIT(A) has rightly applied the principle laid down by the Hon'ble Apex Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra). The ld. AR vehemently supported the order of the ld. CIT(A).

5. We have considered the rival submissions. An order passed by the Tribunal is under the provisions of section 254(1) of the Act. A reading of provision of section 254(1) of the Act shows that the Tribunal, may after giving both the parties to the appeal an opportunity of being heard, pass such order thereon as they deem fit. Obviously, this cannot be interpreted to say that the Tribunal has got the powers granted by the Constitution under Article 32 or Article 141 of the Constitution of India.

The Tribunal is a creature of statute. The Tribunal is bound by the statute and the Tribunal admittedly cannot lift the limitations. The power of the Tribunal is only for the purpose of condoning of delay, should there be any issue of limitation and provisions are available for condoning such limitation. When the Tribunal permits the assessee to file return beyond the time prescribed under the Act, it should be read by applying the principles laid down by the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs CIT reported in 284 ITR 323 (SC). Basically what is being permitted by the Tribunal is to file revised computation sheet and not original return u/s 139(1), 139(4) or 139(5) of the Act. As long as there is no return filed u/s 139(1), 139(4) or 139(5) of the Act, no notice u/s 143(2) can be issued. It is admitted fact that no original return has been filed by the assessee for the impugned assessment years or in response to notice u/s 153A of the Act. The return was filed by the assessee are in consequence to the direction of the Tribunal to file computation before the Assessing Officer. This being so, it cannot be said that the notice u/s 143(2) is liable to be issued on such return. This being so, the findings of the Id. CIT(A) on this issue of non-issuance of notice u/s 143(2) stand reversed.

5.1 Coming to the issue of incriminating material, it is admitted fact that when the assessment was originally done, the decision of the

Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. referred supra, was not available and the said decision of the Hon'ble Supreme Court came on a subsequent date. Once the Hon'ble Supreme Court decides an issue or lays down the law, it becomes the law from the beginning of time. It becomes a legal issue and the assessee can raise legal issue at any point of time in the course of assessment or in the appellate proceedings. This being so, we find no error in the order of the Id. CIT(A) in admitting legal issue of incriminating material giving the findings that there was no incriminating material in the course of search relating to the impugned assessment year. We are of the view that the Id. CIT(A) was right in quashing the assessment on account of non-availability of any incriminating material relating to the impugned assessment year following the decision laid down by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. referred supra. Under the circumstances, ITA 732/CTK/2025 filed by the revenue stands partly allowed.

6. ITA Nos.733 & 734/CTK/2025 & ITA Nos.737 & 738/CTK/2025 - Since the identical facts and issues are involved in all the instant appeals to that of ITA No.732/CTK/2025, therefore, our findings given in ITA No.732/CTK/2025 will mutatis mutandis will apply to all the instant

appeals also. Thus, ITA Nos.733 & 734/CTK/2025 & ITA Nos.737 & 738/CTK/2025 filed by the revenue are partly allowed.

7. In the result, all the captioned appeals filed by the revenue are partly allowed.

Kolkata, the 16th March, 2026.

Sd/-

[Rajesh Kumar]

लेखा सदस्य/Accountant Member

Sd/-

[George Mathan]

न्यायिक सदस्य/Judicial Member

Dated: 16.03.2026.

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