

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "A" BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.1332/Hyd/2024
Assessment Year 2018-2019

Satyanarayana Reddy Manne, Hyderabad PAN ADYPM2116L (Appellant)	vs.	The ACIT, Central Circle-2(4), Hyderabad. Telangana. (Respondent)
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For Assessee :	CA MV Prasad and Shri KS Rajendra Kumar
For Revenue :	Shri B. Bala Krishna, CIT-DR

Date of Hearing :	25.02.2025
Date of Pronouncement :	09.04.2025

ORDER

PER BENCH :

This appeal has been filed by the Assessee against the order dated 27.11.2024, of the learned Principal Commissioner of Income Tax (Central), Hyderabad relating to the assessment year 2018-2019.

2. The assessee has raised the following grounds in the instant appeal:

1. *The order of the Learned Principal Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961 is erroneous on the facts of the case and contrary to the provisions of law.*
2. *The Ld. Principal CIT erred in law in invoking the provisions of section 263 of the Act to revise the assessment order passed u/s 153A of the Act, though the powers of revision u/s 263 do not extend to such assessment order passed with the prior approval of the JCIT u/s 153D of the Act.*
3. *The Ld. Principal CIT erred in law in setting aside the approval given by the JCIT u/s 153D of the Act though such approval does not constitute an order passed under the Act which could be a subject matter of revision u/s 263 of the Act*
4. *The order u/s 263 which sought to revise the assessment order passed u/s 153A is without jurisdiction and unsustainable in law, as the said order has been passed based on the material seized during the search in the case of persons other than the assessee and since the scope of assessment u/s 153A does not extend to such material which is not seized in the case of the assessee.*

5. *On the facts and circumstances of the case, the Ld. Principal CIT erred in law in subjecting the assessment order u/s 153A of the Act to revision u/s 263 with regard to the issue of unexplained investment in the purchase of lands at Rangareddyguda, though such assessment order cannot be regarded as erroneous when the Assessing Officer has taken one of the plausible views after application of mind to the available material, while quantifying the amount of such unexplained investment in the assessments made u/s 153C of the Act for A.Y 2020-21/2021-22 in the cases of the companies which purchased the said lands.*
6. *On the facts and facts and circumstances of the case, the Ld. Principal CIT erred in law in relying on the seized material which is non-incriminating in nature for the purpose of rendering the finding that the seized material has a bearing on the determination of total income for the instant assessment year.*
7. *Any other legal and factual ground that may be urged at the time of hearing of the appeal*

3. Briefly stated facts of the case are that, the assessee is an individual, Director of M/s. MSN Laboratories Pvt Ltd. and M/s. MSN Pharma Chem Pvt. Ltd., having income from salary, Income from Other Sources and house property income, filed his return of Income for the

assessment year 2018-19 originally on 31-08-2018 admitting therein net Income of Rs.115,89,66,700/- and the same was processed u/sec.143(1) of the Income Tax Act, 1961 [in short "the Act"]. A search and seizure operations u/sec.132 of Act were carried-out in the case of M/s MSN Laboratories Group cases, on 24.02.2021, in connection with the same the assessee is also covered. In the case of the assessee, search & seizure operations were commenced on 24.02.2021 and the proceedings were finally concluded on 27.04.2021. Initially the case has been notified to the Central Circle-3(1), Hyderabad. Based on findings in Search and Seizure operations, notice U/s.153A was issued to the assessee on 05.10.2021. In response, the assessee filed its return of income on 02.11.2021 declaring total Income of Rs.115,89,66,700/-. The case was taken up for scrutiny and notice u/sec.143(2), dated 25.11.2021 was issued and served on the assessee through e-mail. Further, notices u/sec.142(1) dated 03.01.2022 were issued to the assessee calling for certain information. After considering the information submitted by the assessee, the Assessing Officer assessed the income of the assessee at Rs.115,89,66,700/- vide order dated 01.04.2023 passed u/sec.143(3) r.w.s.153A of the Income Tax Act, 1961.

4. During the course of assessment proceedings, the Assessing Officer noticed that a search operations u/sec.132 of the Act was conducted in MSN Group of cases

on 24.02.2021 and during the search, the residential premises of the appellant was also covered. During the course of search, at the Corporate office of MSN Laboratories Ltd and its associated concerns at MSN House, Sanath Nagar, Hyderabad, a photo image of an agreement for sale dated 04.06.2016 was found in the laptop of Shri M.Uday Kumar Reddy, an employee of the MSN group. The entire data found in the said laptop, including the said agreement for sale, was imaged into a hard disk and the same was seized vide Annexure-A/MSN/OFF/HD1. A copy of the said agreement for sale dated 04.06.2016 was also found during the course of the search conducted in the case of Shri J. Anirudh Reddy at his residence and the same was seized at Page Nos.49 and 50 of Annexure A/JAR/RES/01. The agreement for sale dated 04.06.2016 was executed by Shri J. Anirudh Reddy, Shri J. Dushyant Reddy and Smt. J. Sashikala Reddy, who are collectively referred to as "sellers" in the said agreement in favour of Shri M.S.N. Reddy, the CMD of MSN group companies and agreed to sell 400 acres of agricultural lands situated at Rangareddyguda @ Rs.14.50 lakhs per acre. The agreement did not contain any details of the payment of the consideration, except an advance of Rs.5 crores to be paid to the bank account of Smt. J. Sashikala Reddy through RTGS. The statement on oath was recorded from Shri J. Anirudh Reddy and in reply to Q.No.10, Shri J. Anirudh Reddy confirmed the contents of the said agreement and stated that the said agreement

was entered into with Shri M.S.N. Reddy for procurement and sale of 400 acres of agricultural lands at Rangareddyguda @ Rs.14.50 lakhs per acre. He added that, he had later on orally assured to acquire and sell another 40 acres of land at same location. Further, Shri J. Anirudh Reddy stated that Shri M.S.N. Reddy paid Rs.5 crores as advance consideration to the bank account of Smt. J. Sashikala Reddy by RTGS on 06.06.2016. He stated that he has received Rs.16 crores through RTGS on various dates from June 2016 for procuring the land. He further explained that, the registration value of the land was approximately Rs.4.00 lakhs per acre and the same was paid to the concerned parties through RTGS/cheque and the balance consideration over and above the said amount was paid in cash to the said parties. Shri J. Anirudh Reddy further stated that, he has received approximately Rs.42.80 crores from Shri Uday Kumar Reddy on various dates in installments of Rs.50 lakhs to Rs.3 crores each over a period of one year from June 2016 to July 2017. In response to Q.No.11, Shri J. Anirudh Reddy stated that he received a total amount of approximately Rs.63.80 crores for procurement of 440 acres of land for MSN Group of Companies and out of which, Rs.22.50 crores was received by RTGS and the balance amount of Rs.41.30 crores was received by cash. The statement of Shri M. Udaya Kumar Reddy, in whose laptop the photo/scanned image of the 'agreement for sale' was found during the search, was also

recorded u/s 132(4) of the Act on 25.02.2021. He was questioned regarding the contents of said agreement and statement from Shri J. Anirudh Reddy and in response to the said question, he confirmed the contents of agreement and also payment of cash. The statement of Shri MSN Reddy-the appellant was also recorded u/sec.132(4) on 27.02.2021 and 27.04.2021. In question No.13 of his statement dated 27.02.2021, Shri M.S.N.Reddy was called-upon to offer his comments in respect of the statements recorded from Shri M. Udaya Kumar Reddy and Shri J. Anirudh Reddy, for which he stated that, whatever has been stated by both of them is true and correct and that cash was paid over and above the SRO registration value. However, he sought one week time to come forward with clear details as to the payment of on-money after verifying the records. Subsequently, in the course of statement u/sec.132(4) recorded on dated 27.02.2021, Shri M.S.N. Reddy was requested at Q.No.13 to reconcile the payment of on-money and in reply, he stated that, he has purchased 326 acres of land and registered in the name of various group companies and also agreed that he has paid on-money over and above the consideration stated as per the registered sale deed and accordingly, admitted additional income of Rs.32,66,77,750/- in the hands of various companies as on-money payments for purchase of lands. During the course of post-search investigation Shri MSN Reddy filed an affidavit dated 05.07.2021 before the DDIT-

(Inv), Unit-II(2), Hyderabad and reiterated his statement given during the course of search and also filed details of purchase of lands and payment of consideration through RTGS/cheque and also cash consideration and further agreed to offer additional income for the assessment years 2020-2021 and 2021-2022.

5. Consequent to search, the Assessing Officer issued notice u/sec.153C for assessment years 2015-2016 to 2021-2022 to eight group companies and in response, all eight companies had filed their return of income. However, did not admitted any additional income offered during the course of search towards on-money payment made for purchase of lands at Rangareddyguda. The Assessing Officer after considering relevant evidences found during the course of search coupled with the statement recorded from various parties, completed assessment of eight companies and made additions towards on-money payment for purchase of lands for the assessment years 2020-2021 and 2021-2022 . The aggregate addition made by the Assessing Officer in the assessments of eight group cases with regard to the issue of on-money payments made for purchase of the lands at Rangareddyguda was at Rs.32,66,77,750/-, which is same as the additional income disclosed by Shri M.S.N. Reddy on this issue in his statement dated 27.04.2021 and affidavit dated 05.07.2021. The additions so made u/sec.69 of the Act in the assessment orders for assessment years 2020-

2021 and 2021-2022 in the cases of the said group companies were deleted by the CIT(A) vide appellate orders dated 28.06.2024 on the reasoning that the said addition is not based on any incriminating material unearthed during the course of the search for the concerned assessment years. The CIT(A) further observed in the appellate order that, Shri J. Anirudh Reddy admitted having received an amount of Rs.42.80 crores in cash from MSN Group of companies. However, only Rs.32.66 crores was utilized as on-money and additions was made in various group companies assessments. The remaining amount of Rs.10.14 crores paid by the appellant and other group companies to Shri J. Anirudh Reddy has remained unexplained and the Assessing Officer is directed to examine the same and take appropriate action in suitable hands in appropriate assessment years.

6. The case has been, subsequently taken-up for revision proceedings and accordingly, a show cause notice u/sec.263 of the Act dated 23.09.2024 was issued and called upon the assessee to explain as to why the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153A of the Act dated 01.04.2023 shall not be revised. The PCIT, in the said show cause notice observed that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue since it was passed without bringing

into tax the on-money payment made in cash to the extent of Rs.2,89,71,429/- for purchase of lands at Rangareddyguda (v) by the appellant and its group companies. In response, the assessee submitted that, the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue, because the Assessing Officer has assessed on-money payments for purchase of lands by the 08 group companies of the appellant for the assessment year 2020-2021 and 2021-2022 after considering relevant evidences found during the course of search, coupled with, statement recorded from the appellant and other employees. The PCIT after considering relevant explanations of the assessee, has rejected the contention of the assessee and passed order u/sec.263 of the Act on 27.11.2024 on the ground that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of Revenue since it was passed without bringing into tax the on-money payment for purchase of land. The PCIT revised assessment order on the basis of page no.99 of the seized material A/SS-5/UBK/02 which contained the details of cheque payments made for the purchase of lands in the names of various MSN Group of Companies and as per the said seized document, all the cheque payments were made during the previous years relevant to assessment year 2017-2018 and 2018-2019. The PCIT further observed that, Shri J. Anirudh Reddy and Shri M. Udaykumar Reddy have

deposed in their sworn statement that, on-money payment in cash for purchase of land were made during the period from June, 2016 to July, 2017 and Shri MSN Reddy has confirmed the correctness of the said statements in his sworn statement dated 27.02.2021. The PCIT further observed that as per the material available on record, an amount of Rs.42.80 crores was paid in cash by MSN Group to Shri J. Anirudh Reddy while only Rs.32.66 crores was utilized as on-money. Further, the remaining amount of Rs.10.14 crores paid to Shri J. Anirudh Reddy is remained unexplained and the Assessing Officer has failed to verify as to the purpose of payment and thus, observed that the remaining amount of on-money paid is assessable in the hands of the appellant and accordingly, by taking note of fact that Shri J. Anirudh Reddy admitted having received on-money from June, 2016 to July, 2017 has apportioned Rs.10.14 crores for assessment year 2017-2018 and 2018-2019 to Rs.7,24,28,571/- and Rs.2,89,71,429/-, respectively. Accordingly, the PCIT observed that, on-money payment to the extent of Rs.2,89,71,429/- is assessable u/sec.69 of the Act in the hands of the assessee for the assessment year 2018-2019, however, the Assessing Officer failed to consider the same in the hands of the assessee. Thus, set-aside the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153A dated 01.04.2023 and the order of approval u/sec.153D of the Act issued by the JCIT, Central Range-2, Hyderabad are erroneous and

prejudicial to the interest of Revenue and direct the Assessing Officer to assess the unexplained investment of Rs.2,89,71,429/- by invoking relevant provisions of the Act.

7. Aggrieved by the PCIT Order, the assessee is now in appeal before the Tribunal.

8. Learned Counsel for the Assessee CA MV Prasad submitted that, the PCIT erred in revising assessment order passed by the Assessing Officer u/sec.263 of the Act without appreciating the fact that once assessment order has been passed u/sec.153C of the Act with the prior approval of JCIT u/s 153D, then, the same cannot be revised u/sec.263 of the Income Tax Act, 1961. The Learned Counsel for the Assessee submitted that, the powers of revision u/sec.263 of the Act of the PCIT do not extend to an assessment order passed u/sec.153C with the prior approval of the JCIT u/sec.153D and consequently, the orders passed by the PCIT in the cases of the appellant for assessment year 2018-19 by invoking the revision powers u/sec.263 are bad in law and legally unsustainable. He also drew the attention of the Bench the provisions of sec.263(1) and Explanaton-1 to sec.263(1) and submitted that the statute does not provide for revision of assessment orders passed u/sec.153A and 153C u/sec.263 of the Act. He, therefore, submitted that the orders of the PCIT passed u/sec.263 of the Act for the assessment year 2018-2019 is without the authority of law and the same are legally

unsustainable. In support of this contention, the Learned Counsel for the Assessee relied on the decisions of Hon'ble Madhya Pradesh High Court in the case of Pr. CIT vs. Prakhar Developers (P.) Ltd., [2024] 162 taxmann.com 48 (MP); Hon'ble Allahabad High Court decision in the case of CIT vs. Ashok Kumar in IT Appeal No.192 of 2000; Hon'ble Jharkhand High Court in the case of Pr. CIT vs. Padma Kumar Jain in Tax Appeal No.7 of 2021 and order of ITAT, Chennai Bench in the case of Saravana Global Holdings Ltd., vs. DCIT in ITA.No.1383 and 1384/ CHNY./2017 and placed the orders on record. He accordingly submitted that the orders of the PCIT passed u/sec.263 of the Act be set aside in respect of the assessment years under appeals.

8.1. Learned Counsel for the Assessee, further submitted that the PCIT erred in revision of assessment order based on material seized during the course of search in the course of other persons without appreciating the fact that in respect of material seized during the course of search in the case of a searched person which pertains to or contains information relating to other person, the assessment based on such material in the case of the other person is required to be made u/sec.153C after recording a satisfaction regarding the fulfilment of mandatory conditions as laid down in sec.153C(1) of the Act and an assessment made u/sec.153A in the case of the other person on the basis of such material is *abinitio void* and bad

in law. On the same legal principle, it is not legally permissible to subject an assessment order passed u/sec.153A to revision u/sec.263 of the Act based on material seized during the course of search in the case of the other person. In this regard, he relied upon the decision of Hon'ble Telangana High Court in the case of Kanakanala Ravinder Reddy vs. ITO [2023] 156 taxmann.com 178 (Telangana). The learned Counsel for the Assessee further referring to the decision of Honble Delhi High Court in the case of Pr.CIT vs. Subhash Khattar in ITA.No.60/2017 dated 25.07.2017 submitted that the Honble High Court clearly held that the Revenue cannot proceed against the assessee u/sec.153A on the basis of the documents seized during the course of search in the case of other persons and it has to proceed under any other applicable provisions of law, but, certainly not u/sec.153A of the Act. Therefore, he submitted that since the Assessing Officer could not have taken cognizance of the material found and seized in the course of the search in the case of Shri M. Uday Kumar Reddy at his residence, while framing the order of assessment u/sec.153A of the Act in the case of the appellant for assessment year 2018-2019, the PCIT invoking his revisionary jurisdiction u/sec.263 of the Act on the basis of the said material is invalid and contrary to law.

8.2. The learned Counsel for the Assessee further submitted that, the PCIT has relied upon seized material

which is non-incriminating in nature for revising the assessment order passed u/sec.153A of the Act, without appreciating the fact that, the sole seized document relied on by the PCIT in the revision order cannot be considered to be in the nature of incriminating material since the same merely contains the details of cheque payments made for purchase of lands at Rangareddyguda which are routed through the bank account. Further, the said seized document admittedly does not contain any details of cash payments made towards on-money over and above the said cheque payments. In the absence of any incriminating information in the said seized document, the same cannot be relied upon for drawing any inference regarding the quantum of on-money payment and the period during which, such on-money payments were made. Therefore, he submitted that the reliance placed by the PCIT on the said seized document for the purpose of arriving at the finding that, on-money payments were made for the assessment year 2018-2019 and for holding that the assessment order u/sec.153A in the case of the appellant is erroneous and prejudicial to the interest of revenue on account of failure to make addition therein towards the on-money payments made during the assessment year 2018-2019 for the purpose of revision of the said assessment order is misplaced and the same is untenable on facts. The learned Counsel for the Assessee further submitted that, the PCIT come to the conclusion that remaining amount of Rs.10.14

crores is unexplained and the same needs to be assessed in the hands of the assessee on complete assumption and presumptions without there being any evidence to suggest on-money payment by the appellant except the statement given by Shri J. Anirudh Reddy where he has stated to be received Rs.41.30 crores in cash even though, the assessee has explained the difference with agreed extent of land to be purchased and actual extent land purchased and registered in the names of various Group companies. Therefore, he submitted that the reasons given by the learned PCIT that the assessee paid on-money which needs to be taxed for the assessment year 2018-2019 is not based on any material, but, purely on suspicious and, therefore, the assumption jurisdiction by the PCIT is not in accordance with law and the same needs to be set aside.

8.3. The learned Counsel for the Assessee further submitted that, the PCIT erred in revision of assessment order u/sec.263 of the Act without appreciating the fact that the Assessing Officer has adopted one of the plausible views on the basis of material available on record, and such view taken by the Assessing Officer is not unsustainable law. The learned Counsel for the Assessee referring to the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., vs., CIT [2000] 243 ITR 83 (SC) submitted that, every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the

interest of Revenue. For example, when the Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue or where two views are possible and the ITO has taken one view, with which, the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. The learned Counsel for the Assessee referring to various evidences including assessment order passed by the Assessing Office for the assessment year 2020-2021 and 2021-2022 in the case of 08 Group companies submitted that, the Assessing Officer has discussed the issue thread bear and came to the conclusion that, on-money to the extent of Rs.32.66 crores is assessable in the hands of 08 Group companies and at the time of assessment proceedings, the Assessing Officer was having the benefit of the statement recorded from Shri J. Anirduh Reddy and, therefore, the PCIT cannot allege that the Assessing Officer has not considered the relevant information to assess the on-money payment made for purchase of land. Therefore, he submitted that the assumption of jurisdiction and consequent revision order passed by the PCIT is totally on assumption without there being any evidences to suggest that the assessee has paid on-money for the assessment year 2018-2019 and thus, the order passed by the PCIT should be set-aside.

9. The Learned CIT-DR Shri B Bala Krishna, on the other hand, relied on the orders of the PCIT and submitted that the statute did not explicitly made it clear that if an assessment order passed by the Assessing Officer with the approval of JCIT u/sec.153D of the Act, cannot be revised by the PCIT in exercise of his revisionary powers u/sec.263 of the Act. He, therefore, submitted that the order of PCIT passed u/sec.263 of the Act is in accordance with law and should be upheld. Further, since the income chargeable to tax has escaped assessment and as per the seized material the income pertains to the previous assessment years, the learned PCIT has rightly exercised his revisional powers u/sec.263 of the Act and the orders of the PCIT should be upheld as the assessment orders passed by the Assessing Officer are not only erroneous but also prejudicial to the interest of the revenue. He accordingly submitted that the order of the PCIT is in accordance with law and, therefore, he submitted that the order of the PCIT should be upheld in the interest of substantial justice.

9.1. Learned CIT-DR further submitted that, as per sec.263 of the Act, the PCIT can revise any order passed under this Act which means order passed by the Assessing Officer includes the order passed by the ACIT/Addl. CIT and, therefore, the arguments of the Counsel for the Assessee that assessment order passed by the Assessing Officer with the approval of Addl. CIT u/sec.153D cannot be

revised is devoid of merit and cannot be accepted. Learned CIT-DR further submitted that during the course of search incriminating material was found in the form of agreement to sale for purchase of land and as per the said incriminating material, the assessee has agreed to purchase the land at a particular price, whereas the final sale deed has been executed for a different amount. Further, another statement was found during the course of search which contains details of total payment made for purchase of land and payment in cash and cheque and when these incriminating documents were confronted to the employees of the appellant company, they have agreed that there is on-money payment for purchase of land through Shri Anirudh Reddy. The Department has recorded the statement from Shri Anirudh Reddy where he has clearly admitted to have received consideration in cash for sale of land. The said statement has been confronted to Shri MSN Reddy, Managing Director of the appellant-company where he has admitted on-money payment for purchase of land and also declared additional income towards on-money for the assessment year 2020-2021. The learned CIT-DR further submitted that, the Assessing Officer has passed the assessment order without considering the relevant materials which is evident from the fact that although, as per the statement of Shri J. Anirudh Reddy total on-money paid for purchase of lands was at Rs.41.30 crores, but, the Assessing Officer assessed total on-money in the hands of

08 different companies for Rs.32.66 crores only on the basis of admission of Shri MSN Reddy, even though, remaining Rs.10.14 crores is unexplained. Since the Assessing Officer has not considered the issue in light of relevant evidences, the assessment of total on-money paid by the assessee, is under assessed which resulted an erroneous order passed by the Assessing Officer caused prejudice to the interest of Revenue. The PCIT after considering the relevant facts has rightly set-aside the assessment order passed by the Assessing Officer and thus, the order of PCIT should be upheld.

10. We have heard both the parties, perused the material on record and the orders of the authorities below. The PCIT has invoked his jurisdiction u/sec.263 of the Act and set-aside the assessment order dated 01.04.2023 passed by the Assessing Officer u/sec.153A of the Act on the ground that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, inasmuch as, the Assessing Officer has failed to take into account the relevant seized material found during the course of search in the case of M/s. MSN Group of companies on 24.02.2021 which clearly shows on-money payment for purchase of land by the appellant and other group companies. The PCIT further observed that, although, the Assessing Officer has assessed the on-money payment for purchase of land for assessment

years 2020-2021 and 2021-2022 in the name of 08 Group companies, but, such assessment is based on the admission of Shri MSN Reddy in the statement recorded u/sec.132(4) of the Act during the course of post-search investigation, but, not based on relevant incriminating material found during the course of search, more particularly, page-99 of Annexure-A/SS-5/UBK/02 which contains the details of transfer of funds through RTGS and cheques on various dates for purchase of land. The said document further triggered the enquiry which reveals that the appellant company has paid on-money in cash to Shri J. Anirudh Reddy through Shri Uday Kumar Reddy for Rs.41.30 crores which is evident from the statement recorded from both of them u/sec.132(4) of the Act where they have clearly admitted to have received cash payments from the appellant group companies between June, 2016 to July, 2017. Although, the evidences clearly shows payment of on-money of Rs.41.30 crores and the assessee has admitted undisclosed income of Rs.32.66 crores in 08 Group companies names for different assessment years, but, the Assessing Officer has failed to verify the source for remaining unexplained investment of Rs.10.14 crores which rendered the assessment order erroneous and prejudicial to the interest of the Revenue.

11. The provisions of sec.263 of the Income Tax Act, 1961 deals with revision powers of the Principal CIT and as per the said provisions if the PCIT satisfies that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue, then the assessment order passed by the Assessing Officer can be revised. But, in order to invoke the provisions of sec.263 of the Act, the PCIT should satisfy that the twin conditions provided under the Act are satisfied i.e., (1) order of the Assessing Officer is erroneous and further (2) It is prejudicial to the interest of revenue. Unless the PCIT makes-out a case that twin conditions mentioned therein are satisfied, the PCIT cannot assume his revisionary jurisdiction and revise the assessment order passed by the Assessing Officer in terms of sec.263 of the Act.

12. The PCIT relied on the seized material which is non-incriminating in nature for rendering the finding that the assessment made u/s 153A for A.Y 2018-19 is erroneous and prejudicial to the interests of revenue in order to exercise the powers of revision u/s 263 of the act. In our considered view, the revision order passed by the PCIT is not sustainable in the facts and circumstances of the case, since the assessment order sought to be revised by him cannot be regarded as erroneous and prejudicial to the interests of revenue on the basis of the seized material and sworn statements relied by him. The sole seized document

relied on by the PCIT in the revision order cannot be considered to be in the nature of "incriminating material" since the same merely contains the details of cheque payments made for purchase of lands at Rangareddyguda, which are routed through the books of account. The said seized document admittedly does not contain any details of cash payments made towards on-money over and above the said cheque payments. In the absence of any incriminating information in the said seized document, the same cannot be relied upon for drawing any inference regarding the quantum of on-money payments and the period during which such on-money payments were made. Consequently, the said seized document does not constitute incriminating material to facilitate any conclusion regarding payment of on-money by the appellant during the previous years relevant to AYs 2017-18 and 2018-19. Therefore, the reliance placed by the PCIT on the said seized document for the purpose of arriving at the finding that on-money payments were made during the previous years relevant to A.Ys 2017-18 and 2018-19 and for holding that the assessment order u/s 153A for A.Y 2018-19 in the case of the appellant is erroneous and prejudicial to the interests of revenue on account of failure to make addition therein towards the on-money payments made during the A.Y 2018-19 for the purpose of revision of the said assessment order is misplaced and the same is untenable on facts.

13. Further, the support sought to be drawn by the PCIT from the sworn statements of Sri.J.Anirudh Reddy and Sri.M.Uday Kumar Reddy dated 25.02.2021 to conclude that the on-money payments in cash for purchase of Rangareddyguda lands were made to the extent of Rs.42.80 crores and they were made during the period from June 2016 to July 2017, which falls under the A.Ys 2017-18 and 2018-19, is also not tenable, because it may be seen on perusal of the answer given by Sri.J.Anirudh Reddy to Q.No.10 that the same contained an internal contradiction. On one hand, he stated that he received on-money payments in cash as and when the land is ready for registration. On the other hand, he stated in the very next sentence that the on-money payments in cash were received during the period from June 2016 to July 2017. Since the registration of the lands at Rangareddyguda took place during the previous years relevant to A.Ys 2020-21 and 2021-22, the on-money could not have been received by him during the period from June 2016 to July 2017 going by his own averment that the cash was received as and when the lands were ready for registration. This clearly shows that the statement of Sri.J.Anirudh Reddy contained an internal contradiction, which has rendered the statement as unreliable for drawing any conclusion regarding the period during which on-money payments were made. Moreover, the claim that on-money payments in cash were received by him during the period from June 2016 to July 2017, when the

facts available on record unmistakably show that the registration of the lands at Rangareddyguda took place during the previous years relevant to A.Ys 2020-21 and 2021-22, runs completely contrary to the prevailing commercial practice of making on-money payments closer to the date of registration of lands. Such a claim which is against the prevailing commercial practice needs to be backed by documentary evidence in order to be considered as reliable and acceptable, which is absent in the present case. Further, it may be seen on perusal of the answer given by Sri.J.Anirudh Reddy to Q.No.11 that the same is inconsistent with and contradictory to the answer given by him to Q.No.10 regarding the quantum of on-money payments received by him. In his reply to Q.No.10, Sri.J.Anirudh Reddy stated that he received Rs.21 crores through RTGS/Cheques and Rs.42.80 crores through cash. However, he stated in his reply to Q.No.11 that he received Rs.22.50 crores through RTGS/Cheques and Rs.41.30 crores through cash. This clearly reveals that the statement of Sri.J.Anirudh Reddy contained another internal contradiction which rendered the statement as unreliable for drawing proper conclusion regarding the quantum of on-money payments received by him also, apart from the period during which such payments were made to him. Moreover, the reliability of the statement of Sri.J.Anirudh Reddy is also required to be judged having regard to the time period that has elapsed from the time the cash payments were

claimed to have been received by him till the date of recording of his sworn statement. Based on the normal human conduct and probabilities, it is not practically feasible for any person to remember the exact quantum of cash payments received and the exact period during which such payments were received after the lapse of more than 4 years from the stated period of receipt of the on-money payments in cash. This becomes all the more significant and critical in the backdrop of the fact that Sri.J.Anirudh Reddy did not have the benefit of any document maintained by him containing the details of dates of receipt and quantum of receipts of on-money payments in cash, which could enable him to make such an averment regarding the quantum and period of receipt of the on-money payments. The above mentioned facts completely militate against the reliability of the statement of Sri.J. Anirudh Reddy.

14. As regards the statement of Sri.M.Uday Kumar Reddy, it may be seen that he did not state anything regarding the total quantum of on-money payments and the period during which the on-money payments were made in his answers to Q.Nos.24 to 27, when his statement was recorded with reference to the seized agreement for sale whose photo image was found in his laptop. It was only when he was shown the statement of Sri.J. Anirudh Reddy in Q.No.34 that he agreed with the quantum as well as the period as stated by Sri.J.Anirudh Reddy i.e Rs.42.80 crores

of on-money payments and the period of payments as June 2016 to July 2017. Therefore, in our considered view, the reply to Q.No.34 of the statement of Sri.M.Uday Kumar Reddy does not carry evidentiary value as the same is in the nature of response to a leading question.

15. With regard to the averment of the PCIT in the revision order that Sri.M.S.N.Reddy has confirmed in his sworn statement dated 27.02.2021 regarding the correctness of the statements of Sri.M.Uday Kumar Reddy and Sri.J.Anirudh Reddy that on-money payments in cash for purchase of Rangareddyguda lands were made during the period from June 2016 to July 2017, we find that said averment is totally incorrect on facts. It may be seen that in Q.No.13 of the statement dated 27.02.2021, Sri.M.S.N.Reddy was shown the answers given by Sri.M. Uday Kumar Reddy to Q.Nos.24 to 27 only of his sworn statement dated 25.02.2021 and Sri.M.S.N.Reddy stated in his response that what has been stated by Sri.M.Uday Kumar Reddy in his answers to the said questions is correct. However, since Sri.M. Uday Kumar Reddy did not state anywhere in his replies to the said questions that the on-money payments were made during the period from June 2016 to July 2017, the answer given by Sri.M.S.N.Reddy to Q.No.13 cannot be considered to be confirming the correctness of the said period of payment of on-money payments. The conclusion drawn by the PCIT that

Sri.M.S.N.Reddy had agreed with the period of payment of on-money to be June 2016 to July 2017 as deposed by Sri.M.Uday Kumar Reddy, in his sworn statement dated 27.02.2021 is therefore untenable on facts. Similarly, it may be seen that in Q.No.15 of the statement dated 27.02.2021, Sri.M.S.N.Reddy was shown the answers given by Sri.J.Anirudh Reddy to Q.Nos. 10 to 12 of his sworn statement dated 25.02.2021. It may be seen that Sri.M.S.N.Reddy did not state anything in his reply with regard to the period of payment of on-money to be June 2016 to June 2017 as deposed by Sri.J.Anirudh Reddy. Hence, the answer given by Sri.M.S.N.Reddy to Q.No.15 cannot be considered to be confirming the correctness of the said period of payment of on-money payments. The conclusion drawn by the PCIT that Sri.M.S.N.Reddy had agreed with the period of payment of on-money as deposed by Sri.M.Uday Kumar Reddy, in his sworn statement dated 27.02.2021 is therefore untenable on facts.

16. The revision order proceeds on the factual premise that the total quantum of on-money payments is Rs.42.80 crores and an amount of Rs.10.14 crores out of the same has to be considered in the hands of the appellant for the A.Ys 2017-18 and 2018-19, since the balance on-money payments of Rs.32.66 crores were considered in the hands of the eight group companies which purchased the lands at Rangareddyguda. The support for this factual

premise has been taken by the PCIT from the sworn statement of Sri.J.Anirudh Reddy dated 25.02.2021 since Sri.J. Anirudh Reddy stated in his answer to Q.No.10 of the statement that the total quantum of payments received by him amounted to 63.80 crores (Rs.21 crores through RTGS/Cheques + Rs.42.80 crores through cash). However, it may be noted on perusal of the reply given by Sri.J.Anirudh Reddy to Q.No.11 of his sworn statement that the said amount of Rs.63.80 crores was arrived at by him by computing the total consideration for 440 acres at the agreed rate of Rs.14.50 lakhs per acre as per the seized agreement for sale. However, as deposed by Sri.M.Uday Kumar Reddy in his answer to Q.No.26 of his statement dated 25.02.2021, the registration was done for 354 acres of land only though it was agreed to purchase 400 acres of land as per the seized agreement for sale and an additional 40 acres as per the oral understanding. Moreover, the registration was actually done for 326 acres of land as clarified by Sri.M.S.N.Reddy in his answer to Q.No.13 of his sworn statement dated 27.04.2021 and as verified and accepted by the AO during the course of the assessment proceedings u/s 153C in the cases of eight group companies which purchased the lands at Rangareddyguda. Hence, it is evident that the quantum of on-money payments of Rs.42.80 crores stated to have been received by Sri.J.Anirudh Reddy as per his sworn statement is based on a wrong factual premise of purchase of 440 acres of land,

instead of 326 acres of land actually purchased by the MSN group companies. If the quantum of on-money payments is correctly computed based on 326 acres of land actually purchased by the group companies, the same works out to Rs.32,66,77,750/- only as per the details furnished by Sri.M.S.N.Reddy in his answer to Q.No.13 of his sworn statement dated 27.04.2021 and the working shown by the AO in the assessment orders u/s 153C passed in the cases of the eight group companies which purchased the said lands. Further, though Sri.M.S.N.Reddy stated in his reply to Q.No.13 of his statement dated 27.02.2021 that what has been stated by Sri.M.Uday Kumar Reddy in his answers to Q.Nos.24 to 27 is correct, the same cannot be regarded as confirming the quantum of on-money payments at Rs.42.80 crores since the said replies of Sri.M.Uday Kumar Reddy did not contain any deposition to the said effect. As regards the reply given by Sri.M.S.N.Reddy to Q.No.15 of his statement dated 27.02.2021 on being shown the replies given by Sri.J.Anirudh Reddy to Q.Nos.10 to 12 of his statement, it may be seen that he confirmed the total payment of 63.80 crores only by explicitly multiplying the agreed extent of land of 440 acres and the agreed sale consideration of Rs.14.50 lakh per acre. The said confirmation is patently incorrect on facts since the extent of land actually purchased by the group companies is 326 acres only. Further, it is also pertinent to point out that Sri.M.S.N.Reddy has stated in the said reply to Q.No.15 that

he requests for a week's time to come forward with a disclosure of undisclosed income after verifying the payments made over and above the stamp duty value and consulting with his finance team. After such verification and consultation, Sri.M.S.N.Reddy has confirmed the payment of on-money at Rs.32.66 crores for 326 acres instead of Rs.42.80 crores for 440 acres as erroneously stated by Sri.J.Anirudh Reddy without any supporting documentary evidence. Therefore, in our considered view, the very factual premise of the revision order that on-money payments to the extent of Rs.42.80 crores were paid to Sri.J.Anirudh Reddy, out of which Rs.32.66 crores were considered in the assessments of the group companies which purchased the lands and the balance amount of Rs.10.14 crores paid remains unexplained in the hands of the appellant is untenable on facts being factually incorrect and not supported by any evidence.

17. Besides the above, since the seized document relied on by the PCIT in the revision order is neither incriminating nor relevant to the issue of quantum of on-money payments made for purchase of lands at Rangareddyguda, in our considered view, the revision of the assessment order for A.Y 2018-19, for the purpose of making an addition in the hands of the appellant towards on-money payments over and above the on-money payments of Rs.32.66 crores considered for addition in the

hands of the eight group companies which purchased the lands at Rangareddyguda, is solely based on the sworn statements of Sri.J.Anirudh Reddy and Sri.M.Uday Kumar Reddy without any supporting seized material is incorrect. Further, there is absolutely no evidence in the seized material regarding the payment of on-money to the tune of Rs.42.80 crores for the purchase of lands at Rangareddyguda, which is corroborated by the fact that no such material has been brought on record by the PCIT in the revision order. Therefore, we are of the considered view that the revision order which relies solely on sworn statements is unsustainable in law, since it is a settled law that the addition made in search assessments based solely on statements recorded during the search, which are not based on incriminating evidence unearthed during the search, is legally untenable.

18. The appellant places reliance on certain judicial precedents in support of the said contention. In the case of CIT v. Harjeev Aggarwal [2016] 70 taxmann.com 95 (Delhi), the Hon'ble Delhi High Court held that statements recorded u/s 132(4) which are on a standalone basis without reference to any other material discovered during the search would not empower the AO to make block assessment merely because any admission was made by the assessee during the search operation. The Hon'ble High Court held that the undisclosed income of an assessee has to be

computed on the basis of evidence and material found during the search and there must be a nexus between the statement recorded and the evidence/material found during the search for an assessment to be based on the statement recorded. In the case of Pr.CIT v. Anand Kumar Jain (HUF) & Others in ITA Nos.23, 26 to 31 of 2021, the Hon'ble Delhi High Court held that a statement u/s 132(4) alone cannot justify the addition made by the AO in an assessment u/s 153A, where the revenue fails to produce any corroborative material to justify the addition. In the case of CIT v. Raj Pal Bhatia [2011] 10 taxmann.com 191 (Delhi), the Hon'ble Delhi High Court held that a statement is not a document which was found during the search, and it is a document which came to be created during the search as it is recorded during the search. The Hon'ble High Court held that it cannot be said that the statement was "seized" during the search for this reason, and it would not qualify the expression "documents" having been seized during the search. In the case of CIT v. Naresh Kumar Agarwal [2015] 369 ITR 171 (Andhra Pradesh), the Hon'ble Andhra Pradesh High Court held that a mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made the statement

19. In this view of the matter and considering facts of the present case, we are of the considered view that the PCIT is erred in revision of the assessment order u/s 153A

for A.Y 2018-19 on the ground that the assessment order is erroneous and prejudicial to the interests of revenue is not sustainable on facts and in law.

20. Coming to second limb of arguments of the assessee. The counsel for the assessee submits that the assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue, because the AO has taken one plausible view on the issue which is evident from the assessment orders passed by the AO in eight group company's cases. We find force in the arguments of the counsel for the assessee for the simple reason that, the AO of the appellant and the AO of the eight group companies which purchased the lands at Rangareddyguda is one and the same. Consequent to the search in MSN group of cases including the appellant, the AO completed the search assessments of the appellant u/s 153A of the Act for A.Ys 2015-16 to 2020-21. Further, the AO recorded consolidated satisfaction notes u/s 153C for A.Ys 2015-16 to 2021-22 in the cases of the eight group companies which purchased the lands at Rangareddyguda, based on the material seized during the course of the search in the case of MSN Laboratories Ltd and its associated concerns and completed the assessments u/s 153C for the said assessment years. In the satisfaction notes of the eight group companies, the AO recorded that the on-money payments for purchase of lands at Rangareddyguda were made during the A.Y 2020-

21/2021-22 as the case may be, as per the seized material and the sworn statements and the same need to be brought to tax in the hands of the said assesseees for the A.Y 2020-21/2021-22, since the seized material has a bearing on the determination of total income of the said assesseees for the A.Y 2020-21/2021-22. Further, in the assessments made u/s 153C for the A.Y 2020-21/2021-22 in the cases of the eight group companies, the AO made the addition u/s 69 towards the on-money payments made in cash for purchase of lands at Rangareddyguda by the said companies and the aggregate addition made by the AO in all the eight cases put together amounted to Rs.32,66,77,750/-. The AO considered the quantum of on-money payments made for the purchase of the lands by the group companies at Rs.32,66,77,750/- after giving due consideration to the sworn statements of Sri.J.Anirudh Reddy (land aggregator), Sri.M.Uday Kumar Reddy (employee who handled the land purchase) and Sri.M.S.N.Reddy and the affidavit of Sri.M.S.N.Reddy dated 05.07.2021 submitted during the post search proceedings. Since the questions regarding the on-money payments for purchase of Rangareddyguda lands were posed to the deponents in the said sworn statements based on the photo image of agreement for sale dated 04.06.2016 found in the laptop of Sri.M.Uday Kumar Reddy and seized during the course of the search at the corporate office premises of MSN Laboratories Pvt Ltd and associated companies of the MSN group, it is evident that the said

seized material was taken into consideration by the AO for making the addition u/s 69 in the assessments made u/s 153C for the A.Y 2020-21/2021-22 in the cases of the said group companies. Further, it may be seen that the seized material by way of the Agreement for sale dated 04.06.2016, which has mentioned the sale consideration of Rs.14.5 lakhs per acre as agreed upon between the land aggregators and Sri.M.S.N.Reddy, did not contain any details of payments made in cash towards such sale consideration. The dates of making payments in cash and the amounts paid in cash on each date are not available in the said seized document. However, Sri.J.Anirudh Reddy stated in his sworn statement that the cash payments made to him towards the purchase of lands at Rangareddyguda amounted to Rs.42.80 crores and that the said payments were made during the period from June 2016 to July 2017. As already stated earlier, the said statement of Sri.J.Anirudh Reddy regarding the quantum of on-money payments and the period of such payments is not based on any seized document and the said statement suffers contradictions/inconsistencies rendering it unreliable. Further, as noted earlier, Sri.M. Uday Kumar Reddy did not state anything regarding the quantum and period of on-money payments on being questioned with reference to the seized agreement for sale in his responses to Q.Nos.24 to 27 of his statement. He agreed with the statement of Sri.J.Anirudh Reddy with regard to the said matters only

when a leading question was posed to him vide Q.No.34 by showing the statement of Sri.J.Anirudh Reddy. His reply to the said effect does not carry evidentiary value due to this reason. Further, Sri.M.S.N.Reddy did not make any comments with regard to the quantum of on-money payments and the period of such payments, when he was confronted with the replies to Q.Nos.24 to 27 of the statement of Sri. M. Uday Kumar Reddy, in Q.No.13 of his statement dated 27.02.2021. Though he stated in his response that what has been stated by Sri.M.Uday Kumar Reddy is correct, it did not amount to any admission with regard to the quantum and period of on-money payments since nothing was stated by Sri.M.Uday Kumar Reddy in his replies to Q.Nos.24 to 27 of his statement regarding the said matters. Further, as regards the reply given by Sri.M.S.N.Reddy to Q.No.15 of his statement dated 27.02.2021 on being shown the replies given by Sri.J.Anirudh Reddy to Q.Nos. 10 to 12 of his statement, it may be seen that he confirmed the total payment of 63.80 crores only by explicitly multiplying the agreed extent of land of 440 acres and the agreed sale consideration of Rs.14.50 lakh per acre. The said confirmation is patently incorrect on facts since the extent of land actually purchased by the group companies is 326 acres only. Moreover, the said confirmation was merely tentative since Sri.M.S.N.Reddy stated in the said reply to Q.No.15 that he requests for a week's time to come forward with a disclosure

of undisclosed income after verifying the payments made over and above the stamp duty value and consulting with his finance team. After such verification and consultation, Sri.M.S.N.Reddy has confirmed the payment of on-money at Rs.32.66 crores for 326 acres instead of Rs.42.80 crores for 440 acres, as erroneously stated by Sri.J.Anirudh Reddy without any supporting documentary evidence.

21. Therefore, it is necessary for us to understand the reasons given by the PCIT in light of the assessment orders passed u/s 153C in the cases of the eight group companies in the above mentioned background of the nature of the seized material and the sworn statements. It may be seen on perusal of the said assessment orders that the AO has examined the statements of Sri.J.Anirudh Reddy and Sri.M.Uday Kumar Reddy as explicitly mentioned by him at Para 5.3 of the said orders. The AO has also examined the statements of Sri.M.S.N.Reddy as mentioned by him in the said paragraph. Further, the AO has listed the registered sale deed wise details of the registration of the lands purchased by each of the said companies at Rangareddyguda and the corresponding on-money payments, as furnished by said assesses, at Para 5.2 of the assessment orders. The aggregate on-money payments as per the said details amounted to Rs.32,66,77,750/- in respect of the eight group companies. Since the AO did not point out any discrepancies with regard to the said details,

it is clear that the AO was satisfied regarding their correctness on verification. Further, after cumulative appreciation of the sworn statements of Sri.J.Anirudh Reddy, Sri.M.Uday Kumar Reddy and Sri.M.S.N.Reddy and the underlying seized material by way of the agreement for sale dated 04.06.2016 and due application of his mind to the said evidences, the AO has reached the conclusion that the total on-money payments made for purchase of lands at Rangareddyguda amounted to Rs.32,66,77,750/- only, as against Rs.42.80 crores as deposited by Sri.J.Anirudh Reddy. The AO has also arrived at the conclusion that the said on-money payments were made during the previous years relevant to A.Y 2020-21 and 2021-22 when the lands were registered. The AO has taken a conscious decision in this respect after considering all the relevant evidences as referred to by him in the assessment orders and applying his mind to the same. The fact that the JCIT has given prior approval u/s 153D to the said assessment orders u/s 153C for A.Y 2020-21/2021-22 shows that the JCIT has also applied his mind to the material cited in the assessment orders consisting of the seized material, sworn statements and the affidavit. Therefore, in our considered view, the AO has adopted one of the plausible views on the basis of the said material after necessary application of mind and appreciation of evidences that the aggregate on-money payments for purchase of lands at Rangareddyguda amounted to Rs.32,66,77,750/- only and the same were

made during the previous year relevant to A.Y 2020-21/2021-22. However, the PCIT has taken another view that the aggregate on-money payments for purchase of lands at Rangareddyguda amounted to Rs.42.80 crores and the same were made during the previous years relevant to A.Ys 2017-18 and 2018-19. The said view was taken based on his appreciation of the seized document referred to by him in the revision order and the statements of Sri.J.Anirudh Reddy, Sri.M.Uday Kumar Reddy and Sri.M.S.N.Reddy. From the above, it is undisputedly clear that the Assessing Officer has taken one of the plausible view after analysing the relevant seized material and also statements recorded from various persons including Shri MSN Reddy and thus, in our considered view, once there is a view taken by the Assessing Officer, even if such view is not acceptable to the PCIT, then the PCIT cannot proceed with revision of the assessment order unless the assessment order passed by the Assessing Officer is unsustainable in law. Therefore, on this ground also, the revision order passed by the PCIT u/sec.263 of the Act cannot be sustained.

22. In this regard, the appellant places reliance on the judgment of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd v. CIT [2000] 243 ITR 83 (SC). The Hon'ble Supreme Court held therein that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the

Assessing Officer. It was held that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Assessing Officer is unsustainable in law. The said legal principle was reiterated by the Hon'ble Supreme Court in the case of CIT v. Max India Ltd [2008] 295 ITR 282 (SC). Further, the Hon'ble Supreme Court, in the case of PCIT v. Dhana Reddy & Co [2018] 100 taxmann.com 358 (SC), has dismissed the SLP filed against the judgment of Hon'ble Telangana and Andhra Pradesh High Court. The Hon'ble Telangana and Andhra Pradesh High Court, in its judgment reported at PCIT v. Dhana Reddy & Co [2018] 100 taxmann.com 357 (Andhra Pradesh & Telangana) held that the view taken by the AO being a plausible one and even assuming there was another view possible, the CIT could not have invoked the revisional power under Section 263 of the Act, as it is well-settled that such ground is not available for revising the orders in view of the judgments of the Hon'ble Supreme Court in the cases of Malabar Industrial Co. Ltd v. CIT (supra) and Max India Ltd (supra). The said legal proposition was also laid down by the Hon'ble

jurisdictional Andhra Pradesh and Telangana High Court in the case of CIT v. Srinivasa Hatcheries (P.) Ltd [2015] 60 taxmann.com 207 (Andhra Pradesh and Telangana). The Hon'ble High Court held therein that the principle governing the exercise of power in a revision u/s 263 is to the effect that where two views of a particular aspect are possible for an Assessing Officer and he has chosen one view, the Commissioner cannot reopen the matter u/s 263 on the ground that another view is possible. Further, the issue was dealt by the Hon'ble Andhra Pradesh High Court in the case of Spectra Shares & Scrips (P.) Ltd v. CIT [2013] 36 taxmann.com 348 (Andhra Pradesh) wherein it was held that an order where the assessing officer has adopted one of the courses permissible in law and it has resulted in loss of Revenue or where two views are possible and the assessing officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law.

23. In the case of the appellant, it is evident from the facts of the case as observed earlier that the AO has adopted one of the plausible views on the basis of the seized material, sworn statements and affidavit after necessary application of mind and appreciation of evidences that the on-money payments for purchase of lands at Rangareddyguda aggregated to Rs.32.66 crores only and

that they were made during the previous year relevant to A.Y 2020-21/2021-22 while making assessments u/s 153C in the hands of the group companies which purchased the said lands. Therefore, we are of the considered view that the revision order passed by the PCIT u/s 263 of the Act for A.Y 2018-19 by adopting a different view from that of the AO is not sustainable in law, as adoption of one plausible views by the AO does not render the assessment order to be erroneous and prejudicial to the interests of revenue within the meaning of section 263 of the Act.

24. In this view of the matter and considering the facts and circumstances of the case and also by following ratios of various case laws discussed hereinabove, we are of the considered view that the assessment order passed by the Assessing Officer u/sec.153A of the Act for the assessment year 2018-2019 is neither erroneous nor prejudicial to the interest of revenue. The PCIT without appreciating the relevant facts, set-aside the assessment order passed by the Assessing Officer in terms of sec.263 of the Act. Thus, we quash the order passed by the PCIT u/sec.263 of the Act. Accordingly, the appeal of the assessee is allowed.

25. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 09.04.2025

[VIJAY PAL RAO]
VICE PRESIDENT

[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 09th April, 2025

VBP

Copy to

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2.	The ACIT, Circle-10(1), Hyderabad. Telangana.
3.	The Pr. CIT-(Central), Aaykar Bhavan, Opp. LB Stadium, Basheerbagh, Hyderabad – 500 004. Telangana.
4.	The DR ITAT “A” Bench, Hyderabad.
5.	Guard File.

//By Order//

//True Copy//