आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

(HYBRID HEARING)

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आईटीए. नं. / ITA Nos. 290 & 291/VIZ/2025
निर्धारण वर्ष/ **Assessment Years:2018-19 & 2019-20)**

Veera Venkata Ramakrishna Mohana Rao Koduri Flat No. 201, Sri towers NH-16 Venkateswara Nagar Syamalanagar East Godavari District - 533103 Andhra Pradesh **[PAN:AFRPK0888C]**	*v.*	**ACIT – Circle – 1** Ayakkar Bhawan Veerabadhrapuram Rajahmundry – 533105 Andhra Pradesh
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

आईटीए. नं. / ITA Nos. 293 & 294/VIZ/2025
निर्धारणवर्ष/ **Assessment Years:2018-19 & 2019-20)**

Satya Venkata Krishna Ravi Prasad Koduri 81-10-3/6, Venkateswaranagar Near IMA Halla, Danavaipeta East Godavari District Andhra Pradesh **[PAN:AFRPK0889D]**	*v.*	**ACIT – Circle – 1** Ayakkar Bhawan Veerabadhrapuram Rajahmundry – 533105 Andhra Pradesh
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt Hemalatha K, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	05.08.2025
घोषणा की तारीख/Date of Pronouncement	:	22.08.2025

आदेश /O R D E R

PER BENCH:

1. These four appeals are filed by two different assessees against different orders of Principal Commissioner of Income Tax, Visakhapatnam – 1 vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 290/VIZ/2025 (A.Y. 2018-19)	ITBA/COM/F/17/2024-25/1072036402(1)	09.01.2025
ITA No. 291/VIZ/2025 (A.Y. 2019-20)	ITBA/COM/F/17/2024-25/1074350058(1)	11.03.2025
ITA No. 293/VIZ/2025 (A.Y. 2018-19)	ITBA/COM/F/17/2024-25/1074335534(1)	11.03.2025
ITA No. 294/VIZ/2025 (A.Y. 2019-20)	ITBA/COM/F/17/2024-25/1074334208(1)	11.03.2025

2. Since the appeals are belonging to same family group and grounds raised by the assessees in all these appeals are common and identical, all these appeals are clubbed and heard together and a consolidated order being passed. Firstly, we take up the appeal in ITA No. 290/VIZ/2025 (A.Y. 2018-19) in the case of Veera Venkata Ramakrishna Mohana Rao Koduri and brief facts are culled out therefrom.

ITA No. 290/VIZ/2025 (A.Y. 2018-19)

3. This appeal is filed by the assessee against order u/s 263 of Principal Commissioner of Income Tax, Visakhapatnam – 1 [hereinafter in short

"Ld.Pr.CIT"] vide DIN & Order No. ITBA/COM/F/17/2024-25/1072036402(1) dated 09.01.2025 for the A.Y. 2018-19 arising out of order passed under section 153C of Income Tax Act, 1961 (in short 'Act') dated 27.09.2022.

4. Brief facts of the case are that, assessee being an individual deriving income from Metal & Mineral and Automobile business, has not filed his return of income for the A.Y. 2018-19. A Search and Seizure operation under section 132 of the Act was conducted on 28.01.2021 in the group case of Sri Godavari Satya Venkata Phani Bhushan. The case was later centralized with the approval of the Principal Commissioner of Income Tax-1, Visakhapatnam. During the course of search proceedings under section 132 of the Act in the case of Sri Godavari Satya Venkata Phani Bhushan certain incriminating material relating to assessee were found and seized vide ANN/GPB/RES/24 from Page No. 1 to 104 and Page No. 4 of ANN/GPB/RES/28. Accordingly, on being satisfied, notice under section 153C of the Act was issued on 13.01.2022 and served electronically. In response, assessee filed return of income on 30.03.2022 admitting a total income of Rs.19,64,780/- and agricultural income of Rs.4,60,000/-. Thereafter, statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee on 09.05.2022. In response to the notices, assessee furnished information before Ld. AO. After considering and examining the information furnished by the assessee, the Ld. AO accepted

the returned income filed in response to notice under section 153C of the Act. However, the Ld. AO has not recorded any satisfaction regarding the initiation of penalty proceedings.

5. Subsequently, Ld.Pr.CIT in exercising of powers vested under section 263 of the Act after examining the assessment records found that the assessee has under-reported the income to the extent of Rs.19,64,730/- which attracts penalty under section 270A of the Act of Rs.2,49,991/- excluding interest. He further observed that the Ld. AO omitted to initiate the penalty under section 270A of the Act in the assessment order passed under section 153C of the Act dated 27.09.2022. Thus, he considered the assessment order for the A.Y.2018-19 passed under section 153C of the Act on 27.09.2022, prima facie to be erroneous and prejudicial to the interest of the revenue. Thereafter he issued a show-cause notice to the assessee to submit any representation along with supporting documents. In response, assessee furnished explanation through e-proceedings. After considering the information furnished by the assessee, the Ld.Pr.CIT by placing reliance on various judicial precedents considered the assessment order as erroneous and prejudicial to the interest of the revenue thereby set-aside the assessment order by directing the Ld. AO to initiate the penalty proceedings under section 270A of the Act after providing reasonable opportunity of being heard.

6. On being aggrieved by the order of the Ld.Pr.CIT, assessee is in appeal before us by raising following grounds of appeal: -

> *"1. That under the facts and circumstances of the case, the order passed by the Ld. Principal Commissioner of Income-tax (in short 'Ld. PCIT') u/s 263 of the IT Act dt. 11-03-2025, is not in accordance with the provisions of law:*
>
> *2. Ld.PCIT erred in invoking the provisions of section 263 of the IT Act to revise the assessment order passed u/s 153C r.ws 143(3) of the IT Act dt.27-09-2022stating that.Ld.AO failed to initiate penalty u/s 270A of the IT Act in the said assessment order.*
>
> *3. Ld.PCIT erred in invoking the provisions of section 263 of the IT Act with view of initiating penalty u/s 270A, in the absence of any satisfaction being recorded bythe Ld. Assessing Officer in his order passed u/s 153C r.W.s 143(3) to initiate levy of penalty u/s 270A of the IT Act.*
>
> *4. Ld.PCIT ought to have appreciated that the levy or non-levy of penalty is at the discretion of Ld.AO and that the same cannot be intervened by the Ld. PCIT invoking the powers u/s 263 of the IT Act, as held by Judiciary in several cases.*
>
> *5. Ld.PCIT erred in invoking the provisions of section 263 of the IT Act for the sole reason to initiate levy of penalty u/s 270A of the IT Act, without appreciating the fact that penalty proceedings is different from assessment proceedings and theunderlying assessment order cannot be revised for the reason of non-initiation of penalty.*
>
> *6. **Without prejudice to the above grounds,**Ld.PCIT failed to appreciate that the penalty u/s 270A is not leviable in the present case, considering the facts that the returned income u/s 153C has been accepted by AO while completing the assessment, which case does not fall under any of the 7 clauses of 270A(2) (a) to(g) to be termed as under-reporting of income, and hence, the intention of Ld. PCIT to initiate penalty u/s 270A is not in accordance with law:*
>
> *7. For these and other reasons that are to be urged at the time of hearing of the appeal the appellant prays that there is no error in the order passed by AO and in fact the order passed by Ld. PCIT itself is erroneous both on fact and as well as in law, therefore, the same needs to be set aside in the interest of justice."*

7. Ground Nos. 1 & 7 are general in nature and needs no adjudication.

8. Ground Nos. 2 to 6 challenges the revisionary proceedings initiated by the Ld.Pr.CIT under section 263 of the Act. On this issue, Ld. Authorised Representative [hereinafter "Ld.AR"] submitted that the Ld. AO during the assessment proceedings did not initiate the penalty under section 270A of the Act. She vehemently argued that the failure of the Ld. AO to initiate the penalty proceedings cannot make the assessment order erroneous and prejudicial to the interest of the revenue, inviting revisionary proceedings under section 263 of the Act by the Ld.Pr.CIT. She further submitted that penalty under section 270A of the Act can be levied for under-reporting of the income or misreporting of the income, where there is a difference between income returned and the assessed income. In the instant case, she argued that there is no difference between the income returned and assessed income. She also submitted that various judicial precedents as listed in the paper book, wherein it was held that the Ld.Pr.CIT cannot invoke the provisions of section 263 of the Act directing the Ld. AO to initiate penalty proceedings. She placed heavy reliance in the decision of the Hon'ble High court of Delhi in the case of Addl. CIT *v.* J.K.D's Costa [9 Taxman 88 (Delhi)]. She also submitted that the decision of the Hon'ble Delhi High Court has been followed by the Hon'ble

Rajasthan High Court in the case of CIT *v.* Keshrimal Parashmal [27 Taxman 447 (Rajasthan)]. She also placed reliance on the following cases:

i. *ACIT v. Achal Kumar Jain reported in (1983) 142 ITR 606 (Delhi)*

ii. *CIT V. Chennai Metro Rail Ltd. reported in [2018] 92taxmann.com 329 (Madras)*

iii. *Mumbai ITAT in the case of G M Builders in ITANo.2192/MUM/2024*

iv. *Raipur ITAT in the case of Savitri Verma V. PCIT in ITA No.223/RPR/2024*

v. *Mr. Combatore Vaiyapuri Maathesh V. ITO in ITANo.373/Chny/2021*

vi. *Gujarat High Court in the case of CIT vs. Parmanand M. Patelreported in 278 IT 3 (Gujarat)*

vii. *Ahmedabad ITAT in the case of Vijay D. Patel V, ACIT in I.T.A No. 2022/Ahd/2015.*

viii. *Ahmedabad ITAT in the case of Easy Transcription & Software Pvt. Ltd. V. PCIT in ITA No.759/Ahd/2015.*

ix. *Calcutta High Court in the case of PCIT V. UDAY CHAKRABORTY in ITAT NO.411 of 2017*

x. *Mumbai ITAT In Habibullah Khanyari reported in [2007] 108ITD 321 (MUM.)*

9. Further, on merits of the case, she argued that as per provisions of section 270A sub sec (3)(i) sub clause (b) of the Act, clearly states as follows: -

> *"270A(3) The amount of under-reported income shall be, –*
>
> *(i) in a case where income has been assessed for the first time,—*
>
> *(a) if return has been furnished, the difference between the amount of income assessed and the*

amount of income determined under clause (a) of sub-section (1) of section 143;

(b) in a case where no return of income has been furnished or where return has been furnished for the first time under section 148,

—(A) the amount of income assessed, in the case of a company, firm or local authority; and

(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);

(ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order"

10. She also reiterated in her written submissions the various scenario under which the penalty under section 270A leviable, which is reproduced below: -

Scenarios	**Applicability for assessee's case**
a. when the assessed income is greater than the returned income; (refer 270A(2))	Not Applicable since there is no difference between assessed income and returned income
b. where return was filed and assessed income is more than income as per return processed u/s 143(1) (refer 270A(3)(a))	Not Applicable since there is no processing of return u/s 143(1)
c. where no return was filed at all by assessees; (refer 270A(3)(b))	Not Applicable since assessee filed his return u/s 153C
d. where return was filed for the first time in response to notice us. 148 of the IT Act. (refer 270A (3)(b))	Not Applicable since assessee's case is not a case of notice issued u/s148

11. She argued that assessee case does not fall in any of the above categories and hence even on merits penalty cannot be levied in the instant case.

12. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] submitted that as per section 270A, the return furnished under section 148 is on the same footing as the return has been furnished under section 153C of the Act and hence provisions of sub-section 3 of section 270A of the Act are squarely applicable to the assessee's case and hence invoking provisions of section 263 of the Act by the Ld.Pr.CIT is valid in law. He prayed for upholding the same.

13. We have heard both the sides and perused the material available on record including the written submissions and the decisions relied on by the Ld.AR. The contention of the Ld.Pr.CIT is that the assessee did not file his return of income under section 139(1) of the Act whereas subsequently filed the return of income for the first time in response to notice issued under section 153C of the Act, thus, it is considered as underreporting of income. The Ld.Pr.CIT observed that the Ld.AO omitted to initiate penalty proceedings under section 270A of the Act and therefore found that the order of the Ld. AO to be erroneous and prejudicial to the interest of the revenue. It is an undisputed fact that the assessee has not filed his return of income voluntarily under section 139(1) of the Act but filed his return of income in response to notice issued under section 153C of the Act, consequent to search and survey proceedings under section 132 of the Act. The Ld. AO accepted the return of income of the

assessee filed under section 153C of the Act, after examining the various information furnished by the assessee.

14. The only issue in the instant case, whether the Ld.Pr.CIT can exercise his powers under section 263 of the Act and direct the Ld. AO to initiate the penalty under section 270A of the Act. It is evident from the assessment order that there was neither record of satisfaction for initiating penalty proceedings under section 270A of the Act nor there is any observation of the underreporting or misreporting of income by the assessee. The Ld.Pr.CIT placed reliance on the decision of Hon'ble Allahabad High Court in the case of CIT *v.* Associated Contracts Corpn. (2005) 275 ITR 123 (Allahabad) wherein the Hon'ble High Court held that non-initiation of penalty proceedings by the Assessing Authority in the course of assessment proceedings renders order erroneous and prejudicial to the interest of the revenue and therefore can be subject matter of revision under section 263 of the Act. However, the Hon'ble Madras High Court in the case of CIT *v.* Chennai Metro Rail Ltd., [92 taxmann.com 329 (Madras) observed as follows: -

> *"14. In view of Section 271(1) read with Section 263 of the Act, the Principal Commissioner might pass such order as the circumstances of the case might justify, which could include an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment. Directing fresh assessment would, in our view, include assessment of penalty. It cannot, therefore, be said that the Principal Commissioner had no jurisdiction to pass such order. The issue has been decided by a Division Bench of the High Court of Allahabad in CIT v.*

Surendra Prasad Agrawal [2005] 142 Taxman 653.However, the Principal Commissioner, we find, has recorded a finding that "on examination of the records, it is found that the Assessing Officer had in the assessment order established that the Assessee had concealed his income by filing inaccurate particulars". There is no such finding in the order of assessment. The Principal Commissioner seems to have distorted the order of assessment. The finding of the Principal Commissioner is to that extent perverse.

15. In our view, in the absence of any finding of the Assessing Officer with regard to concealment of income or with regard to furnishing of inaccurate particulars of income, the Commissioner clearly erred in holding that omission to record satisfaction to initiate penalty proceedings was erroneous or prejudicial to the interest of Revenue. The learned Tribunal rightly set aside the direction of the Principal Commissioner directing the Assessing Officer to initiate penalty proceedings although we may not agree with the reasoning in its entirety."

15. Further, we find that the Hon'ble Delhi High Court in the case of Addl.CIT *v*. J.K. D's Costa, [133 ITR 7 (Delhi)] observed as follows: -

"We have heard Mr. Wazir Singh, learned counsel for the department, but we are of opinion that the conclusion reached by the Tribunal is the only possible conclusion that can be arrived at in, the circumstances of the case. Section 263 enables the Commissioner to call for and examine the record of any proceedings under the Act and if he considers that any order passed therein by the ITO is erroneous, in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiries as he deemed necessary, pass such orders thereon as the circumstances of the case justify. In the present case, the Addl. Commissioner called for the record of the assessment proceedings and it is also clear from this order that in his view the assessment orders passed by the ITO on 28th March, 1969, were erroneous and prejudicial to the interest of the revenue. As the Tribunal has rightly pointed out, his jurisdiction was confined to the proceedings of assessment and the assessment orders, and he had full powers to revise the assessment order in regard to any error he may discover therein which is prejudicial to the interest of the revenue. In the present case, the complaint of the Addl. Commissioner is that while completing the assessment and passing the assessment orders, the ITO had failed to take steps to charge interest and that he had also failed to initiate penalty proceedings against the assessee. The question, therefore, is whether these two aspects of the matter formed part of the proceedings which were being examined by the Commissioner and also whether these

are two aspects which form an integral part of the assessment orders which the Commissioner is seeking to revise. The Tribunal has held, so far as the question of interest is concerned, that it is a part of the proceedings of assessment and that the direction to charge interest can also be said to be an integral part of the assessment order. So far as this part of the Commissioner's order is concerned, it has not been challenged by the assessee in the reference and we are not concerned with this part of the Commissioner's order. The only question before us is whether the Tribunal was right in revoking the order of the Addl. Commissioner in so far as it pertains to the question of penalties under sections 271(1)(a) and 273(b). Here, we find ourselves in complete agreement with the view taken by the Tribunal. It is well established that proceedings for the levy of a penalty whether under section 271(1)(a) or under section 273(b) are proceedings independent of and separate from the assessment proceedings. Though the expression "assessment" is used in the Act with different meanings in different contexts, so far as section 263 is concerned, it refers to a particular proceeding that is being considered by the Commissioner and it is not possible when the Commissioner is dealing with the assessment proceedings and the assessment order to expand the scope of these proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by the Commissioner. There is no identity between the assessment proceedings and the penalty proceedings; the latter are separate proceedings that may, in some cases, follow as a consequence of the assessment proceedings. As the Tribunal has pointed out, though it is usual for the ITO to record in the assessment order that penalty proceedings are being initiated, this is more a matter of convenience than of legal requirement. All that the law requires, so far as the penalty proceedings are concerned, is that they should be initiated in the course of the proceedings for assessment. It is sufficient if there is some record somewhere, even apart from the assessment order itself, that the ITO has recorded his satisfaction that the assessee is guilty of concealment or other default for which penalty action is called for. Indeed, in certain cases it is possible for the ITO to issue a penalty notice or initiate, penalty proceedings even long before the assessment is completed though the actual penalty order cannot be passed until the assessment is finalised. We, therefore, agree with the view taken by the Tribunal that the penalty proceedings do not form part of the assessment proceedings and that the failure of the ITO to record in the assessment order his satisfaction Or the lack of it in regard to the leviability of penalty cannot be said to be a factor vitiating the assessment order in any respect. An assessment cannot be said to be erroneous or prejudicial to the interest of the revenue because of the failure of the. ITO to record his opinion about the leviability of penalty in the case. We, therefore, answer the first question referred to us in the affirmative and in favour of the assessee."

16. Following the decision of the Hon'ble Madras High Court and Hon'ble Delhi High Court, the Co-ordinate Bench of the Mumbai in the case of M/s.G.M. Builders *v.* Pr.CIT in ITA No. 2192/MUM/2024 dated 12.03.2025 in Paragraph No. 18 observed as follows; _

> *"18. Therefore, in view of the facts and circumstances of the present case and the decisions of the Hon'ble Delhi High Court and the Hon'ble Madras High Court as noted above, we are of the considered view that the learned PCIT erred in invoking the provisions of section 263 of the Act, and directing the AO to initiate penalty proceedings under section 270A of the Act, as the AO has chosen not to initiate the penalty proceedings. Therefore, we are of the considered view that such being the facts, the learned PCIT cannot substitute his views and observe that the AO has passed erroneous order which is prejudicial to the interest of the Revenue. Thus, the impugned revision order passed by the learned PCIT under section 263 is quashed. As a result, the grounds raised by the assessee are allowed."*

17. Further the Co-ordinate Bench of Raipur in the case of Savitri Verma *v.* Pr.CIT in ITA No. 223/RPR/2024 dated 27.09.2024 also relied on the decision of the Hon'ble Punjab and Haryana High court in the case of CIT *v.* Rakesh Nain Trivedi [2007] 80 taxmann.com 238 (Punjab & Haryana), wherein the various decisions of the Hon'ble High Courts have been considered, while observing as under: -

> *"5. After hearing learned counsel for the parties, we find the issue that arises for consideration of this Court in this appeal is could the CIT in exercise of power under Section 263 of the Act hold the order of the Assessing Officer to be erroneous and prejudicial to the interest of the revenue where the Assessing Officer had failed to initiate penalty proceedings while completing assessment under Section 153A of the Act.*

6. It may be noticed that the said issue is no longer res integra. This Court in Subhash Kumar Jain case(supra) agreeing with the view of High Courts of Delhi in Additional J.K.D.'s Costa case (supra), CIT v.Sudershan Talkies [1993] 201 ITR 289 (Delhi) and CIT v. Nihal Chand Rekyan [2000] 242 ITR 45/[2002] 123Taxman 353 (Delhi), Rajasthan in CIT v. Keshrimal Parasmal [1986] 157 ITR 484/27 Taxman 447 (Raj.),Calcutta in CIT v. Linotype & Machinery Ltd. [1991] 192 ITR 337 (Cal.) and Gauhati in Surendra PrasadSingh v. CIT [1988] 173 ITR 510/40 Taxman 346 (Gau.) whereas dissenting with the diametrically opposite approach of Madhya Pradesh High Court in Addl. CIT v. Indian Pharmaceuticals [1980] 123 ITR 874 (MP.),Addl. CIT v. Kantilal Jain [1980] 125 ITR 373/[1981] 5 Taxman 92 (MP.) and Addl. CWT v. NathoolalBalaram [1980] 125 ITR 596/3 Taxman 170 (MP.) had concluded that where the CIT finds that the Assessing Officer had not initiated penalty proceedings under Section 271(1)(c) of the Act in the assessment order, he cannot direct the Assessing Officer to initiate penalty proceedings under Section 271(1)(c) of the Act in exercise of revisional power under Section 263 of the Act. The relevant observations recorded therein read thus:-

> *"9. Now adverting to the second limb, it may be noticed that the Delhi High Court in judgment reported in Addl. CIT vs. J.K.D.'Costa (1981) 25 CTR (Del) 224 : (1982) 133 ITR 7 (Del) has held that the CIT cannot pass an order under s. 263 of the Act pertaining to imposition of penalty where the assessment order under s. 143(3) is silent in that respect. The relevant observations recorded are: "It is well established that proceedings for the levy of a penalty whether under s. 271(1)(a) or unders. 273(b) are proceedings independent of and separate from the assessment proceedings. Though the expression "assessment" is used in the Act with different meanings in different contexts, so far as s. 263 is concerned, it refers to a particular proceeding that is being considered by the Commissioner and it is not possible when the Commissioner is dealing with the assessment proceedings and the assessment order to expand the scope of these proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by the Commissioner. There is no identity between the assessment proceedings and the penalty proceedings; the latter are separate proceedings, that may, in some cases, follow as a consequence of the assessment proceedings. As the Tribunal has pointed out, though it is usual for the ITO to record in the assessment order that penalty proceedings are being initiated, this is more a matter of convenience than of legal requirement. All that the law requires, so far as the penalty*

proceedings are concerned, is that they should be initiated in the court of the proceedings for assessment. It is sufficient if there is some record somewhere, even apart from the assessment order itself, that the ITO has recorded his satisfaction that the assessed is guilty of concealment or other default for which penalty action is called for. Indeed, in certain cases it is possible for the ITO to issue a penalty notice or initiate penalty proceedings even long before the assessment is completed though the actual penalty order cannot be passed until the assessment finalised. We, therefore, agree with the view taken by the Tribunal that the penalty proceedings do not form part of the assessment proceedings and that the failure of the ITO to record in the assessment order his satisfaction or the lack of it in regard to the leviability of penalty cannot be said to be a factor vitiating the assessment order in any respect. An assessment cannot be said to be erroneous or prejudicial to the interest of the revenue because of the failure of the ITO to record his opinion about the leviability of penalty in the case.

10. Special leave petition against the said decision was dismissed by the Apex Court ((1984) 147 ITR(St) 1. The same view was reiterated by the Delhi High Court in CIT vs. Sudershan Talkies (1993)112 CTR (Del) 165 : (1993) 201 ITR 289 (Del) and followed in CIT vs. Nihal Chand Rekyan(1999) 156 CTR (Del) 59 : (2000) 242 ITR 45 (Del). The Rajasthan High Court in CIT vs.Keshrimal Parasmal [1985] 48 CTR (Raj) 61 : [1986] 157 ITR 484 (Raj), Gauhati High Court inSurendra Prasad Singh & Ors. vs. CIT (1988) 71 CTR (Gau) 125 : (1988) 173 ITR 510 (Gau) andCalcutta High Court in CIT vs. Linotype & Machinery Ltd. (1991) 192 ITR 337 (Cal) havefollowed the judgment of Delhi High Court in J.K.D's Costa's case (supra).

11. However, Madhya Pradesh High Court in Addl. CIT vs. Indian Pharmaceuticals (1980) 123 ITR874 (MP) which has been followed by the same High Court in Addl. CIT vs. Kantilal Jain (1980)125 ITR 373 (MP) and Addl. CWT vs. Nathoolal Balaram (1980) 125 ITR 596 (MP) has adopted diametrically opposite approach.

12. We are in agreement with the view taken by the High Courts of Delhi, Rajasthan, Calcutta and Gauhati, and express our inability to subscribe to the view of Madhya Pradesh High Court.

> *13. Accordingly, it is held that the initiation of proceedings under s. 263 was not justified. The Tribunal was right in holding that after examining the record of the assessment in exercise of powers under s.263, where the CIT finds that the AO had not initiated penalty proceedings, he cannot direct the AO to initiate penalty proceedings under s. 271(1)(c) of the Act."*

7. In view of the above, equally we are unable to subscribe to the view adopted by Allahabad High Court in Surendra Prasad Aggarwal's case (supra) where judgment of Madhya Pradesh High Court in Indian Pharmaceuticals' case (supra) noticed hereinbefore has been concurred with.

8. Accordingly, it is held that the initiation of proceedings under Section 263 of the Act was not justified, and we uphold the order of the Tribunal cancelling the revisional order passed by the CIT."

18. The Co-ordinate Bench of Raipur by relying on the above decision of the Hon'ble Punjab& Haryana High Court held as follow:

"9. Respectfully following the aforesaid decision in the case of Rakesh Nain Trivedi (supra), we find merits in the contentions raised under the ground of present appeal by the assessee that the Ld PCIT has erred in passing the order u/s 263 of the IT Act, as the reopening proceedings are initiated only for directing the Ld AO to initiate penalty proceedings u/s 271(1)(c) of the IT Act against settled principle of law."

19. Respectfully following the aforesaid judicial precedents, we are of the considered view that the Ld.Pr.CIT has exceeded his jurisdiction by substituting his view and observing that the Ld. AO has passed an erroneous order which is prejudicial to the interest of the revenue. Thus, the impugned revision order passed by the Ld.Pr.CIT under section 263 of the Act cannot be sustained and hence quashed. Grounds raised by the assessee are allowed.

20. In the result, appeal filed by the assessee is allowed.

ITA No. 291/VIZ/2025 (A.Y. 2019-20)

21. Coming to appeal relating to ITA No.291/VIZ/2025 for the A.Y.2019-20, the assessee has raised identical grounds, as raised in ITA No. 290/VIZ/2025 and our decision in the aforesaid paragraphs, shall mutatis mutandis apply to these grounds also. Accordingly, appeal filed by the assessee is allowed.

22. In the result, appeal filed by the assessee is allowed.

ITA No. 293 & 294/VIZ/2025
(A.Ys. 2018-19 &2019-20)

23. We observe that facts and Grounds raised by the assessee (Satya Venkata Krishna Ravi Prasad Koduri) in these appeals are identical to facts and grounds raised in the case of Veera Venkata Ramakrishna Mohana Rao Koduri in ITA No. 290/VIZ/2025 and our decision in the aforesaid paragraphs, shall mutatis mutandis apply to these grounds also. Accordingly, grounds raised by the assessee are allowed.

24. In the result, appeals filed by the assessee are allowed.

25. To sum-up, appeals filed by both the assessees are allowed.

Order pronounced in the open court on 22nd August, 2025.

Sd/-	Sd/-
(रवीश सूद)	(एस बालाकृष्णन)
(RAVISH SOOD)	**(S. BALAKRISHNAN)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated: 22.08.2025
Giridhar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1. निर्धारिती/ The Assessee : 1) **Veera Venkata Ramakrishna Mohana Rao Koduri**
Flat No. 201, Sri towers NH-16
Venkateswara Nagar
Syamalanagar
East Godavari District - 533103
Andhra Pradesh

2) **Satya Venkata Krishna Ravi Prasad Koduri**
81-10-3/6, Venkateswaranagar
Near IMA Halla, Danavaipeta
East Godavari District
Andhra Pradesh

2. राजस्व/ The Revenue : **ACIT – Circle – 1**
Ayakkar Bhawan
Veerabadhrapuram
Rajahmundry – 533105
Andhra Pradesh

3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam