

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA Nos.230 and 231/Hyd/2023		
Assessment Years: 2016-17 and 2017-18		
Sri Adithya Homes Private Limited, Hyderabad. PAN : AAFCS7209B.	Vs.	Asst. Commissioner of Income Tax, Central Circle – 2(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Sri Jeevan Lal Lavidiya, CIT-DR	
Date of hearing:	12/07/2023	
Date of pronouncement:	21/07/2023	

ORDER

PER BENCH :

These appeals of the assessee for A.Ys. 2016-17 and 2017-18 arise from the separate orders of Principal Commissioner of Income Tax (Central), Hyderabad dt.22.02.2023 invoking proceedings under section 263 of the Income Tax Act, 1961 (in short, "the Act").

2. The grounds raised by the assessee in ITA No.230/Hyd/2023 read as under :

“1. The *id. Pr. CIT (Central), Hyderabad*, has erred in law as well as on-facts of the case by passing an order u/s 263 of the Income Tax Act, 1961, setting aside the assessment order passed u/s 153A r.w.s 143(3) to the file of the AO and the Addi. CIT for the limited purpose of initiating penalty proceedings u/s 271(1) (c) of the Income Tax Act, and therefore the impugned order is liable to be quashed.

2. The *ld. Pr. CIT* has erred in holding the assessment order as erroneous and prejudicial to the interests of Revenue merely because the AO has not initiated penalty proceedings and because penalty proceedings though connected are distinct, independent, and separate proceedings.

3. The *ld. Pr. CIT* could not assume jurisdiction u/s 263 of the Income Tax Act for the sole reason that the AO did not initiate penalty proceedings u/s 271(1) (c) as the prejudice to the interest of the Revenue, if any, has to be proved by reference to the assessment order only.

4. Recording of satisfaction of the Specified Authority u/s 271(1)(c), during the pendency of the assessment proceedings, is a condition precedent for initiation of penalty proceedings and any satisfaction (which is borrowed or supplied, by way of direction or otherwise) coming on record after the assessment would not be valid in law.

5. The *id Pr. CIT* has failed to appreciate the law that if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted and preference needs to be given to the reasoning of the majority of the Hon'ble High Courts.”

2.1. Subsequently, assessee had filed the following additional grounds which read as under :

“1. On the facts and in the circumstances of the case, the order passed by the Id. Pr. Commissioner of Income Tax directing the Assessing Officer to initiate penalty proceedings under section 271 (1)(c) of the Income Tax Act, 1961 is illegal and unsustainable in law as the time limit for initiating penalty prescribed under section 271 (1)(c) of the Act expired much before the id. Pr. Commissioner of Income Tax assumed jurisdiction on 10. 01.2023 under section 263 of the Act.

2. The id. Pr. Commissioner of Income Tax failed to appreciate that what was not done by the Assessing Officer within the time limits provided under section 275(l) of the Income Tax Act, 1961 cannot be directed to be done by exercising the revision power under section 263 of the Act as held by various courts. The id. Pr. Commissioner of Income Tax ought to have appreciated that he cannot bring back to life the penalty proceedings under section 271 (1)(c) of the Act which got barred by limitation under section 275(1) of the Act.”

3. Similar grounds were raised by the assessee in other appeal also i.e., ITA 231/Hyd/2023 for A.Y. 2017-18 except the amounts involved.

4. Before us, both the parties submitted that the issues raised in both the appeals are identical. In view of the aforesaid submission, we, for the sake of convenience proceed to dispose of both the appeals by a consolidated order but however refer to the facts in ITA No.230/Hyd/2023.

5. The brief facts of the case are that assessee is a company and filed its original return of income for A.Y. 2016-17 on 07.10.2016 admitting income of Rs.3,86,91,380/- under the normal provisions and income of Rs.3,84,47,420/- as per the provisions of Section 115JB of the Act. The case was processed under section 143(1) of the Act on 15.11.2016. Subsequently, the case was selected for scrutiny and assessment was completed u/s 143(3) of the Act on 21.04.2017 wherein the income returned was accepted. A search

and seizure operation was conducted in the Red Rose Group of cases on 12/07/2018. As part of the search operations, a warrant was issued in the case of assessee and search was conducted. Thereafter, notice u/s.153A dated 23.01.2019 was issued to the assessee. In response to the notice, the assessee filed the return of income on 31.03.2019, admitting total income of Rs.3,86,91,380/-. Accordingly, notice u/s.143(2) dated 23.07.2019 was issued to the assessee. Subsequently, notices were issued u/s 142(1) calling for information. In response to the notice and subsequent statutory notices, the assessee furnished information. After verification of the information furnished by the assessee and the material available on record, Assessing Officer had completed the assessment interalia making an addition of Rs.50,21,000/- being the difference that had not been accounted for by the assessee as turnover in its books of accounts. Finally, the Assessing Officer had completed the assessment u/s 153A of the Act on 12.07.2021 assessing the total income at Rs.4,37,12,380/-.

6. The ld.AR submitted that the ld.PCIT had issued the show cause notice dt.10.01.2023 u/s 263 of the Act revising the assessment order as the Assessing Officer has not initiated the penalty u/s 271(1) of the Income Tax Act.

7. In the show cause notice dt.10.01.2023, it was mentioned as under :

“2. On examination of records, it is observed that the order passed by the Assessing Officer on 12.07.2021 for A.Y. 2017-18 is erroneous in so far as it is prejudicial to the interest of revenue as penalty proceedings under relevant provisions of the Act have not been initiated by the Assessing Officer though unaccounted income of Rs.64,61,600/- was added in the assessment order. The invoking of penalty proceedings is a statutory requirement in such cases of assessment when undisclosed income is brought to tax. For the same reasons, the order u/s 153D of the Act dated 09.07.2021 passed by the Addl.CIT, Central Range – 2, Hyderabad according approval to the above mentioned assessment order is also erroneous in so far as it is prejudicial to the interest of revenue.

3. Hence, it is proposed to revise the assessment order dated 12.07.2021 for the A.Y. 2016-17 by virtue of the powers vested u/s 263 of the Act. Similarly, it is also proposed to revise the order u/s 153D of the Addl.CIT, Central Range – 2, Hyderabad, dated 09.07.2021 by virtue of the powers vested u/s 263 of the Act and accordingly, you are requested to submit your objections, if any, against the proposed revision under section 263 of the I.T. Act, 1961. Your submissions should reach this office on or before 18.01.2023. You may submit your objections / replies to the email [id.hyderabad.pcit.cen@incometax.gov.in](mailto:hd.hyderabad.pcit.cen@incometax.gov.in).”

8. The assessee had filed reply to the show cause notice to the ld.PCIT. Thereafter, the ld.PCIT had revised the show cause notice to set aside the approval granted by the ACIT, Range - 2, Hyderabad u/s 153D of the Act.

9. The assessee had filed a reply before the ld.PCIT and it was the submission of the assessee that the ld.PCIT has no jurisdiction to issue the show cause notice for non-issuance of penalty notice to the assessee. Further, the assessee relied upon the judgments to substantiate his case. However, the ld.PCIT was not convinced with the submissions of the assessee and therefore, the ld.PCIT set aside the orders of Assessing Officer for the limited purpose of initiating the penalty proceedings by the Assessing Officer.

10. The assessee had submitted reply to the ld.PCIT, however, the ld.PCIT was not convinced by the submissions made by the assessee and has passed the following directions :

“18. In view of all the above, it is held that the objections raised by the assessee vide it's letter dated 17.01.2023 in response to notice u/s. 263 dated 10.01 .2023, are not tenable in law as well as in facts. Considering the facts of the case as discussed in preceding paragraphs, it is hereby held that the Assessment Order passed by the A.O. u/s. 143(3), r.w.s. 153A on 12.07.2021 for A.Y. 2016-17 and the Order of approval u/s. 153D of the Act dated 09.07.2021 issued by the Addl. CIT, Central Range-2, Hyderabad are erroneous and prejudicial to the interest of revenue. Accordingly the same are set-aside to the file of the A.O. and the Addl. CIT respectively for the limited purpose of initiating penalty proceedings u/s. 271(1)(c) of the I.T. Act after following due procedure laid down and to take consequential action. Needless to say that the assessee should be afforded proper opportunity of being heard during the assessment proceedings taken up in consequence of this order. The assessee is at liberty to furnish necessary evidence, if any to the Assessing Officer during the proceedings being taken up in consequence to this order.”

11. Feeling aggrieved with the order of ld.PCIT, the assessee is now in appeal before us.

12. Before us, ld. AR submitted that the Ld.PCIT cannot direct the initiation of proceedings after the lapse of the statutory period of 6 months from the end of the assessment year, as the penalty proceedings are required to be concluded within the period of 6 months. It was secondly submitted that the Ld.PCIT cannot substitute or record his satisfaction for the initiation of the penalty. Ld. AR contended that the satisfaction must be recorded by the AO and not by the Ld.PCIT. If the Ld.PCIT intended to initiate the penalty, he should have done so independently by recording own satisfaction and initiate the penalty accordingly. The ld.AR had also

filed the written submissions in support of the case of the assessee which are to the following effect :

“The common issues involved in the above appeals is with respect to the Revision power exercised by the id. PCIT (Central), Hyderabad, only for the limited purpose of directing the AO to initiate penalty proceedings under section 271(1)(c) and 270A of the Income Tax Act, 1961 (henceforth "the Act") for the assessment years 2016-17 and 2017-18, respectively. For both the above asst. years, the AO has not initiated penalty proceedings while concluding the assessment orders under section 153A of the Act, thereby implying that 'he had chosen not to invoke penalty proceedings.

2. *The id. PCIT (Central) issued show cause notice finding the assessment orders for the above asst. years to be erroneous & prejudicial to the interest of the Revenue within the meaning of section 263 of the Act. The Id. PCIT also issued supplementary show cause notice finding fault with the approval accorded by the id. Addl. CIT to the assessment orders passed under section 153A of the Act.*

3. *The Appellant contended before the id. PCIT that jurisdiction under section 263 of the Act cannot be exercised only for the purpose of directing the AO to initiate penalty proceedings as the same are within the domain of the AO. The Appellant also cited various precedents in support of its contention. However, the ld.PCIT did not agree with the submissions of the Appellant nor the precedents cited before him. The ld. PCIT has set aside the assessment orders only for the limited purpose of initiating penalty proceedings by the Assessing Officer.*

4. *The Appellant has filed the present appeals aggrieved by the order of id. PCIT setting aside the assessment orders only for the limited purpose of initiating penalty by the AO.*

5. *The Appellant also filed two additional grounds on 10.07.2023 in the above appeals with respect to directions given by the ld.PCIT for initiating penalty proceedings which are barred by limitation. The following are the additional grounds:*

ADDITIONAL GROUNDS

1. *On the facts and in the circumstances of the case, the order passed by the ld. Pr.Commissioner of Income Tax directing the Assessing Officer to initiate penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 is illegal and unsustainable in law as the time limit for initiating penalty prescribed*

under section 271(1)(c) of the Act expired much before the ld. Pr. Commissioner of Income Tax assumed jurisdiction on 10.01.2023 under section 263 of the Act.

2. *The ld. Pr. Commissioner of Income Tax failed to appreciate that what was not done by the Assessing Officer within the time limits provided under section 275(l) of the Income Tax Act, 1961 cannot be directed to be done by exercising the revision power under section 263 of the Act as held by various courts. The id. Pr. Commissioner of Income Tax ought to have appreciated that he cannot bring back to life the penalty proceedings under section 271(1)(c) of the Act which got barred by limitation under section 275(l) of the Act.*

SUBMISSION ON ADDITIONAL GROUNDS

6. *The assessment order is passed on 12.07.2022. As per section 275(1)(c) of the Act the limitation for levy of penalty under section 271(1) (c) or section 270A of the Act ends on 30.09.2022. In the present case, the id. PCIT assumed jurisdiction under section 263 of the Act on 10.01.2023, which is after the date of time limits available for the AO to levy penalty. Therefore, the direction given by the ld.PCIT in the impugned orders under challenge, only for the limited purpose of initiating penalty proceedings cannot be sustained in law because the penalty proceedings have become barred by limitation.*

7. *It is submitted that the ld.PCIT is a creature of statute and can only implement the provisions of law. The ld.PCIT does not have power to confer jurisdiction on the ld.AO to initiate penalty proceedings which have become barred by limitation as per the provisions of section 275(1) of the Act. While the limitation could have been saved by setting aside the assessment orders in entirety, but since the impugned orders of the ld.PCIT have set aside the assessment orders only for the limited purpose of initiating the penalty proceedings, the limitation to levy penalties under section 271(1)(c) and section 270A or section 271AAA of the Act are not saved. They have become barred by time under section 275(1)(c) of the Act.*

8. *It is submitted that the ld.PCIT cannot give a direction which is barred by limitation given the facts of the present case. It is a settled position of law that what cannot be done by the AO directly cannot be done by the ld.PCIT under section 263 of the Act. It is therefore prayed that the Hon'ble Tribunal may quash the impugned orders passed under section 263 of the Act on these grounds.*

SUBMISSION ON GROUNDS RAISED IN APPEAL MEMORANDUM

9. Without prejudice to the additional grounds, It is submitted that the ld. PCIT could not have invoked revisional jurisdiction only on the ground that the id. AO has not initiated penalty proceedings. It is submitted that the judicial opinion on the above issue is divided. The following is the legal position:

<i>Judgments in favour of assessee</i>	<i>Judgments which are against assessee</i>
<i>Judgment of Delhi High Court in ACI Vs. JKD Costa reported in (1982) 133 ITR 7 (Del)</i>	<i>Judgment of Allahabad High Court in CIT Vs. Surenda Prasad Agarwal (2005) 275 ITR 113 (All)</i>
<i>Judgment of Delhi High Court in ACIT Vs. Achal Kumar Jain reported in (1983) 142 ITR 606 (Del)</i>	<i>Judgment of MP High Court in ACIT Vs. Indian Pharmaceuticals (1980) 123 ITR 874 (MP)</i>
<i>Judgment of Rajasthan High Court in CIT Vs. Keshrimal Parasmal reported in (1986) 157 ITR 484 (Raj)</i>	<i>Judgment of MP High Court in ACIT Vs. Kantilal Jain (1980) 125 ITR 373 (MP)</i>
<i>Judgment of Madras High Court in CIT Vs. CRK Swamy reported in (2002) 254 ITR 158 (Mad.)</i>	<i>Judgment of MP High Court in ACWT Vs. Nathoolal Balaram (1980) 125 ITR 596 (MP)</i>
<i>Judgment of P&H High Court in CIT Vs. Rakesh Nain Trivedi reported in (2016) 282 CTR 205 (P&H)</i>	<i>Judgment of MP High Court in CIT Vs. Narpal Singh Malkhan Singh (1980) 128 ITR 77 (MP)</i>
<i>Order of ITAT Jaipur Bench in Harish Jain Vs. PCIT reported in (2023) 221 TTJ 276 (JP)</i>	<i>Judgment of Allahabad High Court in Associated Contractors Corp Vs. CIT (2005) 275 ITR 123 (All)</i>

13. On the other hand, ld. DR submitted that the issue of whether the ld.PCIT can invoke jurisdiction or not, is supported by various High Courts. He relied upon the decisions in the case of CIT Vs. Surendra Prasad Agarwal reported in 142 taxman 653 (Allahabad) and Indian Pharmaceuticals reported in (1980) 123 ITR 874 (Madhya Pradesh High Court). Further, he had submitted in his written submissions as under :

“9. In the above judicial fora, the HCs have held that assessment does not mean only computation of income but consideration of all facts including the liability for penalty. Accordingly, the Assessing Officer has held that non-initiation of penalty proceedings is erroneous and prejudicial to the interest of the revenue.”

14. Furthermore, the ld. DR had submitted that the contentions of the assessee are not maintainable. He drew strength from the provision of Section 263 read with Section 270A and 271 of the Act. It was submitted by the ld.DR that the penalty proceedings can be initiated by the ld.PCIT and there is no illegality in setting aside the order passed by the Assessing Officer for the limited purposes of initiating the penalty under section 271(1)(c) of the Act.

15. We have heard the rival submissions and perused the material and record. For the initiation of the proceedings under section 263 of the Act, it is essential that the order passed by the AO should be erroneous and prejudicial to the interest of the revenue. In the present case, we are concerned with the non-imposition of penalty by the Assessing Officer. Admittedly, in the present case, the Assessing Officer passed an assessment order on 12.07.2021, making the addition of Rs.50,21,000/- to the turnover of the assessee and thereby computing the total income for Rs.4,37,12,380/-, as against the income declared by the assessee in the original return of income for an amount of Rs.3,86,91,380/-. In the said order, the AO did not record any satisfaction for initiation of penalty against the assessee, as required under law. Further, the Assessing Officer has not initiated any penalty proceedings against the assessee. The assessment order dt.12.07.2021 was passed by the Assessing Officer

after taking the approval of the Addl.CIT as per section 153D of the Act.

16. In the light of the above said facts, the Id.PCIT had issued a show cause notice dt.09.01.2023, the said notice was duly replied to by the assessee on 18.01.2023. Thereafter, the Ld.PCIT has revised the show cause notice dated 09.01.2023 and issued a fresh notice vide communication dt.10.01.2023.

17. Admittedly, the Assessing Officer did not record any satisfaction in the assessment order for the initiation of penalty. As no satisfaction was recorded by the assessee, therefore no penalty proceedings were initiated against the assessee. The first contention of the Id. AR is that the time period for initiation and completion of penalty proceedings had lapsed after 6 months from the end of the month of passing of the order, therefore, the Id.PCIT is precluded from revising the order u/s 263 of the Act. It was submitted that the Id.PCIT cannot do indirectly what he cannot do directly. To substantiate his contention, Id. AR has relied upon the provisions of section 275, which is to the following effect:

“[Bar of limitation for imposing penalties.

275. 15[(1)] No order imposing a penalty under this Chapter shall be passed—

*16[(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the 17[***] Commissioner (Appeals) under section 246 18[or section 246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed¹⁹, or **six months from the end of the month in which the order of the 20[***] Commissioner (Appeals) or, as the case may be,***

the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :

21[Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later;]

(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 21[or section 264], after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or **six months from the end of the month in which action for imposition of penalty is initiated**, whichever period expires later.]

22[(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry **of six months from the end of** the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the

Commissioner or **the order of revision under section 263 or section 264 is passed:**

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.]

23[(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989.]

24[Explanation.—In computing the period of limitation for the purposes of this section,—

(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(ii) any period during which the immunity granted under section 245H remained in force; and

(iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court.”

18. The above-said contention of Id.AR was rebutted by the Id.DR and it was submitted that section 275 only provides the limitation for passing the penalty order and not for initiation of penalty proceedings.

19. From the reading of the head note of section 275 of the Act, it is abundantly clear that section only provides a bar of limitation for imposing the penalty. In case the order of the Assessing Officer is the subject matter of revision under section 263, then the limitation for imposition of penalty as provided by section 275(1)(b) is six months from the end of the month in which such order is received. The provision of the Act, is clear and unambiguous, it does not either restrict the power of the Id.PCIT or to the Assessing Officer to pass an order for imposition of penalty in any way. In the present

case, the assessment order was passed on 12.07.2021 and the ld.PCIT had passed the order u/s 263 of the Act on 22.02.2023 and therefore, the order passed by the Assessing Officer, pursuant to the direction of ld.PCIT would not be barred by limitation.

20. The second argument raised by the ld.AR for the assessee during the course of oral and written submissions that the ld.PCIT cannot direct for the initiation of penalty to the Assessing Officer. It was the submission of the ld.AR that the satisfaction should be of the officer who is contemplating to initiate the penalty proceedings. The above said contention of the assessee was resisted by the ld.DR and he has drawn our attention to section 271 of the Act.

“Failure to furnish returns, comply with notices, concealment of income, etc.

*271. (1) If the Assessing Officer or the Commissioner (Appeals) or the **Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied** that any person—*

*(a) [***]*

(b) has failed to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,

he may direct that such person shall pay by way of penalty,—

xxxxxxxxx”

21. From the reading of section 271 of the Act, it is abundantly clear that the penalty can be initiated by the AO or Commissioner (Appeals) or the Ld.PCIT on being satisfied that there is a failure on the part of the assessee that he has concealed the particulars of his income or furnished inaccurate particulars of such income. Undoubtedly, the power has been given to the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner on being satisfied during any proceedings under the Act to initiate penalty proceedings.

22. However, the above said proceedings are required to be initiated by such officers themselves after due recording of the satisfaction. In our considered opinion, once the Ld.PCIT has recorded satisfaction, then the penalty proceedings or penalty notice should have been issued by the office of Ld.PCIT only. Ultimately, the penalty could be imposed by such officer only and hence, the Ld.PCIT, in our view, cannot record his satisfaction for initiation of penalty and direct the Assessing Officer to issue notice for levying the penalty.

23. The Ld.PCIT in Para 12 of his order, had relied upon the provisions of section 271(1) of the Act and held that *“after 01.06.2002 the PCIT/CIT is empowered by section 271(1) of the Act to record satisfaction and impose penalty and hence, the PCIT/CIT has power to direct the Assessing Officer to record satisfaction while exercising revisionary powers u/s 263 of the Act”*. In our view, the above said finding is self-contradictory, as the Ld.PCIT himself records that PCIT has the power to record the satisfaction and impose the penalty. In

the present case, the ld.PCIT has not recorded satisfaction in the impugned order nor he had initiated and imposed the penalty himself. Quite contrary to the above, the ld.PCIT directed the Assessing Officer to impose penalty, in para 18 which was reproduced herein above.

24. We do not agree with the above said direction issued by the ld.PCIT to the Assessing Officer to initiate the penalty proceedings under section 271(1)(c) of the Act. The law does not permit the delegation of authority by the ld.PCIT to Assessing Officer for the purpose of imposition of penalty. Firstly, it is for the ld.PCIT to record satisfaction and then initiate penalty proceedings. Since no satisfaction has been recorded by the ld.PCIT, therefore, it would not be appropriate for him to direct the Assessing Officer to record his satisfaction and initiate the penalty proceedings against the assessee.

25. In our view, if the ld.PCIT records his satisfaction then penalty proceedings should also be completed by him alone and he cannot direct the Assessing Officer after recording his satisfaction to complete the proceedings. Our above said view is fortified by the judgements relied upon by the assessee which are as under :

1. ACIT Vs. JKD Costa reported in (1982) 133 ITR 7 (Delhi High Court).
2. ACIT Vs. Achal Kumar Jain reported in (1983) 142 ITR 606 (Delhi High Court.)

3. CIT Vs. Keshrimal Parasmal reported in (1986) 157 ITR 484 (Rajasthan High Court)
4. CIT Vs. CRK Swamy reported in (2002) 254 ITR 158 (Mad.)
5. CIT Vs. Rakesh Nain Trivedi reported in (2016) 282 CTR 205 (Punjab & Haryana High Court.)
6. Harish Jain Vs. PCIT reported in (2023) 221 TTJ 276 (Jaipur).
7. CIT Vs. Vegetable Products Limited reported in (1973) 88 ITR 192 (SC).

26. For the time being we are reproducing below the decision in the case of CIT Vs. Rakesh Nain Trivedi (supra) wherein at Paragraphs 5 and 6, it was held 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 Commissioner of Income Tax v. Subhash Kumar Jain (2011) 335 ITR 364 agreeing with the view of High Courts of Delhi in Additional CIT v. J.K.D.'Costa (1982) 133 ITR 7 (Del), Commissioner of Income Tax v. Sudershan Talkies (1993) 201 ITR 289 (Del) and Commissioner of Income Tax v. Nihal Chand Rekyan (2000) 242 ITR 45 (Del), Rajasthan in Commissioner of Income Tax v. Keshrimal Parasmal (1986) 157 ITR 484 (Raj), Calcutta in Commissioner of Income Tax v. Linotype & Machinery Ltd. (1991) 192 ITR 337 (Cal) and Gauhati in Surendra Prasad Singh and others v. Commissioner of Income Tax (1988) 173 ITR 510 (Gau.) whereas dissenting with the diametrically opposite approach of Madhya Pradesh High Court in Additional Commissioner of Income Tax v. Indian Pharmaceuticals (1980) 123 ITR 874 (MP), Additional Commissioner of Income Tax v. Kantilal Jain (1980) 125 ITR 373 (MP) and Addl. CWT v. Nathoolal Balaram (1980) 125 ITR 596 (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 under s. 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 levability 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 levability of penalty in the case.

27. Further, the judgements which are in favour of the Revenue are based on the judgement of Madhya Pradesh High Court in the case of Indian Pharmaceuticals (supra) which in our view are not applicable to the facts of the present case. We may mention that all the judgments are considered by the Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Rakesh Nain Trivedi (supra). Moreover, we fruitfully rely upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Limited (supra) wherein in Paragraph 4, it was held that *"in case more than one interpretation of a taxing statute is possible then we have to adopt the interpretation which favours the assessee, more particularly when it pertains to penalty."* In view of the above foregoing reasoning, we cancel the order of Id.PCIT passed u/s 263 of the Act and thereby confirm the order of Assessing Officer. Thus, the appeal of the assessee is allowed.

28. In the result, the appeal of the assessee in ITA No.230/Hyd/2023 for A.Y. 2016-17 is allowed.

29. As far as the other appeal i.e., ITA No.231/Hyd/2023 is concerned, in view of the submission of both the parties that the issues raised in both the appeals are identical, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.231/Hyd/2023 and for similar reasons, allow the other appeal.

30. In the result, the appeal of assessee in ITA No.231/Hyd/2023 is allowed.

31. To sum up, both the appeals of assessee are allowed. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 21st July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st July, 2023.

TYNM/SPS

Copy to:

S.No	Addresses
1	Sri Adithya Homes Private Limited, 8-2-332/8A, Aditya House, Road No.3, Banjara Hills, Hyderabad – 500 034.
2	The Asst. Commissioner of Income Tax, Central – 2(2)
3	Prl.CIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order