

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &  
Shri Amarjit Singh, Accountant Member**

ITA No.142/Coch/2021 : Asst.Year 2012-2013

ITA No.143/Coch/2021 : Asst.Year 2015-2016

M/s.KIMS Health Care Management Limited KIMS Hospital, Anayara Thiruvananthapuram-695 029. <b>PAN : AABCT2300C.</b>	v.	The Deputy Commissioner of Income-tax, Central Circle Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.Rajakannan, Advocate  
Respondent by : Sri.Sanjit Kumar Das, CIT-DR

<b>Date of Hearing : 13.08.2024</b>	<b>Date of Pronouncement : 13.08.2024</b>
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**ORDER**

**Per Bench :**

These assessee's twin appeals ITA No.142/Coch/2021 and ITA No.143/Coch/2021 for the assessment years 2012-2013 and 2015-2016 arise against the Pr.CIT (Central) Kochi, as many DIN & Order Nos.ITBA/REV/F/REV/2020-21/1031912835(1) & ITBA/REV/F/REV5/2020-21/103193337(1), both dated 30th March, 2021, respectively, in proceedings u/s. 263 of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case files perused.

2. We take the assessee's first and foremost appeal ITA No.142/Coch/2021 for assessment year 2012-2013, wherein learned PCIT (Central) has exercised his revisionary jurisdiction u/s.263 of the Act, thereby terming the Assessing

Officer's corresponding sec.153A r.w.s. 143(3) assessment dated 29.12.2017, as an erroneous one causing prejudice to interest of the Revenue. There is hardly any dispute between the parties that the department had carried sec.132 search action in assessee's case on 16.03.2016 which culminated in the above stated sec.153A r.w.s. 143(3) assessment framed on 29.12.2017. Learned PCIT's revision directions in para 2 admittedly touch upon various issues relating to assessee's fund raising expenditure, authorized capital and similar other aspects which are indeed not based upon any material found or seized in the course of search. The impugned assessment herein for AY 2012-13 admittedly an "unabated" one since no proceedings are pending on the date of the search. Case law PCIT v. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 (SC) has settled the issue that an addition in such a sec.153A "un-abated" assessment has to be based upon seized material only. Such a seized material regarding the above issue is nowhere found in the case file which could be examined in 263 revision proceedings. That being the clinching case, we hereby concluded that the sec.143(3) r.w.s. 153A assessment herein dated 29.12.2017 is neither erroneous nor prejudicial to interest of the Revenue attracting sec.263 revision jurisdiction as per Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC) and PCIT's impugned sec.263 revision directions are not sustainable in above terms. The assessee's appeal ITA No.142/Coch/2021 succeeds therefor.

3. Coming to the assessee's later appeal ITA No.143/Coch/2021 pertaining to "abated" assessment year 2015-2016, the

learned Counsel invited our attention to the PCIT's revision order, which was passed ex parte, wherein sec.263 notice was issued on 10.03.2021 followed by the impugned order getting passed on 30.03.2021, respectively. The assessee could not have been got three effective weeks to rebut the revision show cause. And that the revisionary proceedings took place during Covid-19 pandemic period, and therefore, there existed justifiable reasons for the assessee in not being able to file its explanation before the PCIT. We accordingly restore the assessee's instant later appeal to the file of the PCIT for a fresh examination as per law subject to rider that the taxpayer itself shall plead and prove its case within three effective opportunities only; at its own risk and responsibility in consequential proceedings. Ordered accordingly. This latter appeal ITA No.143/Coch/2021 is accepted for statistical purposes.

4. To sum up, the assessee's former appeal in ITA No.142/Coch/2021 is allowed and the later appeal in ITA No.143/Coch/2021 is allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on this 13<sup>th</sup> Day of August, 2024.

**Sd/-**  
**(Amarjit Singh)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Satbeer Singh Godara)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 13<sup>th</sup> August, 2024.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin