

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

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

ITA No.124/Coch/2024 : Asst.Year 2010-2011

ITA No.125/Coch/2024 : Asst.Year 2012-2013

Shwas Homes Private Limited Ground Floor, Shwas Mystic Heights, Phase-1, Near Kaniyampuzha Road Eroor PO, Thripunithura Ernakulam – 682 306. PAN : AAJCS3622A.	v.	The Deputy Commissioner of Income-tax, Circle 4(1) Cochin.
(Appellant)		(Respondent)

Appellant by : Ms.Krishna K, Advocate

Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 14.08.2024	Date of Pronouncement : 14.08.2024
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ORDER

Per Bench :

These assessee's twin appeals ITA No.124/Coch/2024 and ITA No.125/Coch/2024, for the assessment years 2010-2011 & 2012-2013, arise against the CIT/NFAC, as many DIN & Order Nos.ITBA/NFAC/APL/S/250/2023-24/1057801645(1) dated 08.11.2023 & ITBA/NFAC/S/ 250/2023-24/1059105297(1), dated 27.12.2023, in proceedings u/s.143(3)of the Income-tax Act, 1961; in short "the Act" hereinafter, respectively.

Heard both the parties. Case files perused

2. We first come assessee's former appeal ITA No.124/Coch/2024 wherein both the lower authorities have disallowed the assessee's alleged commission payment of Rs.5,96,087 on account of non-deduction of TDS thereupon. It is noticed from pages 3 to 4 of the lower appellate discussion that the assessee had infact claimed the said sum as "discount on reference" than a commission payment inviting TDS deduction. That being the case, we are of the considered view that both the lower authorities have erred in law and on facts in making the impugned disallowance in very terms. This assessee's former appeal ITA No.124/Coch/2024 is allowed.

3. Delay of 47 days in filing the instant appeal before the Tribunal is condoned as per assessee's solemn averments in light of Collector, Land Acquisitions vs. MST.Katiji (1987) 167 ITR 471 (SC) having settled the law long back that all such technical aspects must make a way for the cause of substantial justice.

4. Coming to the assessee's latter appeal ITA No.125/Coch/2024, it emerges during the course of hearing that the NFAC has noted the assessee's continuous non-appearance in the lower appellate proceedings before rejecting its contentions vide ex-parte order under challenge. Learned Sr.DR could hardly dispute the clinching fact that the NFAC's order has nowhere decided the assessee's substantive grounds on merits as contemplated u/sec.250(6) of the Act requiring it to fame points for determination followed by a

detailed adjudication thereupon. Faced with the situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant appeal back to the NFAC for its afresh adjudication, preferably within three effective opportunities of hearing, subject to a rider that it shall be the taxpayer's onus and responsibility only to file and prove all the relevant facts in consequential proceedings. This assessee's latter appeal ITA No.125/Coch/2024 is allowed for statistical purposes in very terms. Ordered accordingly.

5. To sum up, assessee's former appeal ITA No.124/Coch/2024 is allowed and assessee's latter case ITA No.125/Coch/2024 is allowed for statistical purposes. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 25th day of September, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 25th September, 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