

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. Nos.1005&1006/COCH/2024

Assessment Years: 2010-11 & 2011-12

Trio Shopping Mall Spaces Private LimitedAppellant
C6 1st Floor Nirmal Arcade,
Bpassroad Eranhipalam,
Kerala - 673573.
[PAN:AABCH8766N]

vs.

JCIT, TDS, Kochi.....Respondent

Appearances by:

None appeared on behalf of the assessee.

Smt. Leena Lal, SNR AR, appeared on behalf of the Revenue.

Date of concluding the hearing : June 04, 2025

Date of pronouncing the order : July 31, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

These two appeals filed by the assessee are directed against the separate orders of the Commissioner of Income-tax (Appeals), both dated 03.10.2024, passed for the assessment years 2010-11 (ITA No, 1005/Coch/ 2024) and 2011-12 (ITA No.1006/Coch/2024). Since the appeals pertain to the same assessee and involve common issues concerning levy of penalty under Section 271C (read with Section274) of the Income-tax Act, 1961, they were heard together and are being disposed of by this common order. First we take up ITA No. 1005/Coch/2024.

2. ITA No. 1005/Coch/2024 - Brief Facts of the Case are that the assessee, M/s. Hill Food Court Entertainment Pvt. Ltd., was engaged in the business of operating food courts and planning malls, and was originally assessed by the ACIT, Circle-1, Calicut. In respect of the assessment years under consideration, there was a belated deposit of

TDS by the assessee for Financial Year 2009-10 relevant to Assessment year 2010-11. In this connection, penalty proceedings under Section 271C, read with Section 274, were initiated. During the proceedings, the assessee submitted its explanation along with supporting documents before the Assessing Officer/ TDS Officer citing reasonable cause for delay. However, the Joint Commissioner of Income Tax (TDS) passed penalty orders imposing a penalty of Rs.12,04,735/-, alleging default in timely deposit of tax deducted at source.

3. Aggrieved by the order of JCIT (TDS) the assessee filed appeal before the CIT(A). In the intervening time, the business of Hill Food Court Entertainment Pvt. Ltd. was succeeded by Trio Shopping Mall Space Ltd. In the appellate proceedings, the CIT(A) dismissed appeal *ex parte*, observing that the assessee did not file any response to the notices under Section 250 issued in the appellate proceeding, the assessee or its representatives failed to appear on the scheduled dates of hearing. Accordingly, the CIT(A) proceeded to dismiss the appeal without going into the merits of the penalty order.

4. Dissatisfied with order of the Id. CIT(A) assessee is in appeal before this tribunal raising various ground. However, no one turned up before this bench at the time of hearing of the matter, we therefore heard the matter with the assistance of Id. DR, from the record we find that the penalty proceedings were originally initiated in the name of Hill Food Court Entertainment Pvt Ltd. but the business had since been succeeded by Trio Shopping Mall Space Ltd. The assessee had submitted its explanation and evidence during the penalty proceedings before the TDS officer. But the Id.CIT(A) dismissed the appeals without adjudicating on merits, solely on the ground that there was no compliance with the hearing notices.

5. The learned Departmental Representative (DR), however, supported the orders of the CIT(A), but did not oppose the remand if the assessee is given a fair opportunity.

6. We have heard the submissions of Id. DR. and carefully perused the record. It is an undisputed fact that the CIT(A) has dismissed the appeals ex-parte, without examining the grounds of appeal or merits of the explanation furnished for the delay in deposit of TDS. In our considered opinion, the interest of justice requires that the assessee be granted a reasonable opportunity to present its case. The natural justice demand that no party should be condemned unheard. particularly in penalty proceedings where the right to be heard is fundamental. In light of the above, we hereby set aside the impugned orders of the CIT(A)in for fresh adjudication; The CIT(A) shall provide the assessee a reasonable opportunity of being heard, including permitting the assessee to file any documents or explanations as necessary. The assessee is directed to comply with the notices and cooperate with the appellate proceedings without fail.

7. ITA No.1006/Coch/2024- Since the facts and issues involved in ITA No.1006/Coch/2024 for the assessment year 2011-12 are identical to those discussed in ITA No. 1005/Coch/2024the findings and directions rendered in ITA No. 1005/Coch/ 2024 shall apply mutatis mutandis to ITA No. 1006/Coch/2024 as well.

8. In terms of the above, both the appeals are i.e., ITA No. 1005/Coch/2024 and ITA No. 1006/Coch/2024, are allowed for statistical purposes.

31st July, 2025.

Sd/-

[Inturi Rama Rao]

लेखा सदस्य/**Accountant Member**

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/**Judicial Member**

Dated: 31.07.2025.

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar/Sr. PS, Cochin Benches