

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISH, AM  
&  
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 373/Mum/2023  
(Assessment Year: 2010-11)

&

I.T.A. Nos. 1227 & 1226/Mum/2023  
(Assessment Year: 2012-13)

**Neel Controls, Mumbai**  
403, Sapphire Arcade, 42,  
Mahatma Gandhi Road,  
Rajawadi Ghatkopar(E),  
Mumbai-400077  
PAN No. AAAFN0627J

**CIT(A), NFAC DELHI**  
Room No. 245-A  
**Versus** North Block,  
New Delhi - 110001

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri. Parag Modi, Ld. CA
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri. Ashok Kumar Ambastha, Sr. DR
<b>Date of Hearing</b>	:	13.07.2023
<b>Date of Pronouncement</b>	:	27.07.2023

आदेश / **ORDER**

**Per N K Choudhry, Judicial Member:**

These appeals have been preferred by the Assessee against the orders even dated 14-12-2022 & 14.02.2023 impugned herein passed by the Ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. Commissioner '] u/s 250 of the Income-tax Act, 1961 (in short 'the Act') against the assessment orders dated 18.11.2016 & 26.03.2015 u/s 143(3) r.w.s. 147 and 143(3) of the Act and penalty order dated 28.09.2015 u/s 271(1)(b) of the Act respectively for the AYs 2010-11 & 2012-13.

2. As the facts and issues involved in these appeal, appears to be common in nature, hence for the sake of brevity and convenience, these appeals were heard together and are disposed off by way of this composite order. For brevity, we will decide **ITA No. 373/Mum/2023** as a lead case.

**3. ITA No. 373/Mum/2023**

In this case, the Assessee while filing its return of income on dated 29.09.2010 declared a total income of Rs.103,67,873/- which was processed and completed u/s 143(3) of the Act on dated 05.02.2013, wherein the income of the Assessee was computed at Rs.136,25,850/- by making disallowance of interest u/s 36(1)(iii) of the Act.

4. Subsequently, the case of the Assessee was reopened by recording following reasons of re-opening of the case u/s 147 of the Act.

*" Ms. Neel Controls filed the return of income for A.Y. 2010-11 on 29.10.2010 declaring its income of Rs. 1. 03 Crores. During the year, the assessee has claimed commission expensesng its relative party Ms. Neel Industrial Systems Pvt. Ltd for Rs.2,27,53,827/-. During the course of assessment proceedings us 143(3), assessee in his submission regarding commission expenses, has not disclosed the facts that the relative party Ms Neel Industrial Systems P Lid. In only an intermediate commission agent and this company in turn has outsourced his brokerage work to various other parties for which it has paid brokerage of Rs. 1,03,92,7671-. Hence, the assessee has claimed excess expenses on account of commission of Rs.1,23,61,060/-, which was not incurred for the purpose of business. Hence, assessee in response to 142(1) has failed to disclose fully and truly all material facts related to commission expenses during the assessment proceedings.*

*Further, during the assessment proceedings, assessee has failed to furnish the true nature of purchase parties, which are identified/blacklisted as hawala traders, the details of which are given below:*

<i>Name of the Party</i>	<i>Hawala TIN No.</i>	<i>PAN</i>	<i>Amount (Rs.)</i>
<i>Nisha Enterprises</i>	<i>27940256774V</i>	<i>AWGP3492N</i>	<i>156</i>
<i>Mahavir Corporation</i>	<i>27540501626V</i>	<i>AIIPR7461K</i>	<i>133</i>

**4.1** On the basis of the aforesaid reasons for reopening, an notice u/s 148 of the Act was issued to the Assessee on 31.03.2015, in response to which the Assessee by filing a letter dated 10.02.2016 claimed that the original ITR filed by the Assessee u/s 139(1) of the Act on dated 29.09.2010 shall be treated as return filed in response to the notice u/s 148 of the Act. The Assessee also requested for copy of the reasons recorded, which was supplied to the Assessee. In response to which, the Assessee preferred to file its objections, which were also disposed of by the AO vide office letter dated 01.08.2016 by the AO.

**4.2** Subsequently, notices u/s 142(1) & 143(2) of the Act were issued on respectively on 16.05.2016 and 23.05.2016 to the Assessee. Thereafter, the case was proceeded with and ultimately the Assessing Officer made the addition of Rs.123,61,060/- on account of disallowance of commission expenses by holding as under:

*“6. In view of the above discussion, it is clear that the amount of commission paid of Rs.1,23,61,060/-, taking into consideration that the expenditure has been incurred by M/s Neel Industrial Systems Lt. in the case of the Assessee firm M/s. Neel Controls and the contention of the Assessee is not acceptable and also Assessee had not revealed all material facts fully and truly during the course of original assessment proceedings and it is also clear that the Assessee has intentionally claimed the said expensed just to evade taxes. Therefore, as agreed by the AR of the Assessee, the amount of said commission expenses of Rs. 1,23,61,060/- is disallowed and added to the income of the Assessee. Penalty proceedings w/s 271(1)(c) are initiated for furnishing inaccurate sign particulars by the Assessee firm.”*

**5.** The Assessee being aggrieved challenged the reopening of the assessment proceedings as well as addition on merit before the Ld.

CIT(A). The Ld. Commissioner afforded various opportunities to the Assessee, by issuing notices of hearings on dated 21.01.2021, 10.11.2021 and 25.11.2021, however, the Assessee neither appeared nor filed any written submission along with supporting documents to substantiate its case therefore the addition and reopening of the case u/s 147 of the Act was upheld by the Id. Commissioner by dismissing the appeal of the Assessee.

**6.** The Assessee being aggrieved is in appeal before us.

**7.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the Ld. CIT(A) decided the appeal of the Assessee in absence of written submission and supporting documents, which the Assessee has failed to file. Therefore the Assessee do not deserve any leniency however, considering the peculiar circumstances and facts of the case specific to the effects that the Id. Commissioner failed to adjudicate the issue with regard to addition of Rs.123,61,060/- in its right perspective due to failure of the Assessee in providing relevant documents and for proper adjudication and just decision of the case, the relevant submissions and material/documents are essentially requires, hence for the just decision of the case and for the ends of the substantial justice, we are inclined to give an opportunity to the Assessee to substantiate its case by filling relevant submissions and documents, but subject to deposit of Rs.25,000/- as voluntarily agreed by the Assessee, in the "National Relief Fund" within 30 days of receipt of this order.

Hence, accordingly, the case is remanded to file of the Ld. CIT(A) for decision afresh in the aforesaid terms, suffice to say by affording reasonable opportunity of being heard to the Assessee.

We also direct the Assessee to appear and file the relevant documents as would be required by the Ld. Commissioner for proper and just decision of the case and in case of further default, the Assessee shall not be entitled for any kind of leniency and in that eventuality, the Ld. Commissioner would be at liberty to decide the case on the basis of material available on record and in accordance with law. Resultantly the appeal filed by the Assessee is allowed in the aforesaid terms.

**8.** Coming to **ITA No. 1227/Mum/2023**, in view of our decision in ITA No. 373/Mum/2023, this appeal is also allowed for statistical purposes on the same terms as set out in ITA No. 373/Mum/2023.

**9.** Coming to **ITA No. 1226/Mum/2023**, in this case, the penalty of Rs.1,00,000/- was imposed by the Assessing Officer, which has been affirmed by the Ld. CIT(A) by deciding the appeal as ex-parte. Hence in view of our decision in ITA No. 373/Mum/2023, this appeal is also remanded to the file of Ld. CIT(A) for decision afresh but subject to deposit of Rs.5000/- as voluntarily agreed by the Assessee in 'National Relief Fund' within 30 days of the receipt of this order.

**10.** In the result, all the appeals under consideration are allowed for statistical purposes, in the aforesaid terms.

Order pronounced in the open court on 27.07.2023.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Sd/-  
(N. K. Choudhry)  
Judicial Member

Ms. Urmila

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT- concerned
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
5. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)