

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
GIRISH AGRAWAL (ACCOUNTANT MEMBER)**

**I.T.A. No. 6239/Mum/2025
Assessment Year: 2016-17**

Gammon Neelkanth Realty Corporation Ground Floor Neelkanth Kingdom Nathani Mill Compound Next to Vidyavihar East Mumbai - 400086 [PAN: AAFFG0913P]	Vs.	Dy. Commissioner of Income Tax, Circle – 27(1), Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Pratik Mehta, A/R
Revenue by	Shri Arun Kanti Datta, CIT D/R

Date of Hearing	02.12.2025
Date of Pronouncement	11.12.2025

ORDER

Per Smt. Beena Pillai, JM:

Present appeal filed by assessee arises out of order dated 04/08/2025 passed by NFAC, Delhi [hereinafter “the Ld. CIT(A)”] for assessment year 2016-17 on the following grounds:-

“1. In the circumstances and facts of the Assessee's case, the learned Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts in confirming the addition of Ld. Assessing Officer by upholding the Order u/s 143(3) on conjectures and surmises which is unwarranted and unlawful.

Without prejudice to the above, in the circumstances and facts of the Assessee's case, the learned Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts in confirming the action of Ld. Assessing Officer despite the fact that the Assessee had requested to the learned Commissioner of Income Tax (Appeals), NFAC to keep the appeal for the Asst. Year 2016-17 in abeyance until the disposal of appeal for the Asst.

Year 2010-11, Asst. Year 2011-12 and Asst. Year 2012-13 based on which the brought forward loss would be eligible for set off against the income for Asst. Year 2016-17. In view of the appeals of previous years pending disposal, which was inter-related with the year under appeal, the Assessee requested the the learned Commissioner of Income Tax (Appeals), NFAC to keep the appeal under abeyance. Based on these facts, the Assessee did not file its written submission pending the finality of the other years under appeal.

The learned Commissioner of Income Tax (Appeals), NFAC without considering the Assessee's request and written submission of the Assessee, framed the appellate order.

In the interest of natural justice, the Assessee requests Your Honour to remand the matter back to the learned Commissioner of Income Tax (Appeals), NFAC so that the Assessee can file its written submission.

In the circumstances and facts of the Assessee's case, the learned Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts in upholding the action of Ld. Assessing Officer in adding the interest on corpus fund of society of Rs 60,21,474/- to the total income on conjectures and surmises which is unwarranted and unlawful despite the fact that the said interest is pertaining to society and duly accounted and credited in the name of society account. The Assessee relies on the direct applicable decision of the Hon'ble Mumbai ITAT in the case of the Assessee's sister concerns M/s. Neelkanth Palm Realty vs. The Dy. Commissioner of Income Tax, Circle 15(3) Mumbai, ITA No. 3505/Mum/2014 dated 12/06/2019 Asst. Year 2010-11 and in case of DCIT v. M/s. Neelkanth Mansions and Infrastructure Pvt. Ltd., ITA No. 8764/Mum/2010 dated 19/12/2014 Asst. Year 2007-08 in which the said identical addition made by the Assessing Officer has been deleted and allowed the appeal by the Hon'ble Mumbai ITAT.

4. In the circumstances and facts of the Assessee's case, the learned Commissioner of Income Tax (Appeals), NFAC has erred in law and on facts in upholding the action of Ld. Assessing Officer in disallowing Rs 1,79,930 as penalty u/s 37(1) to the total income on conjectures and surmises which is unwarranted and unlawful despite that fact that the said amount is paid not for any violation of law and is paid on account of delay in payment of NA tax and therefore the same is compensatory in nature and allowable expenditure u/s 37(1) of the Income Tax Act, 1961.

5. Without prejudice to the above, in the circumstances and facts of the Assessee's case, the learned Commissioner of Income Tax (Appeals), NFAC has erred in not directing the Assessing Officer to provide the set off of brought forward losses claimed by the Assessee in its return of income upon successful disposal of appeals of previous years.

Upon successful disposal of previous year appeals, the losses would be determinate and the claim of losses made by Assessee in its return of income ought to be allowed

6. The Appellant crave leave to add, delete or substantiate any grounds of appeal at the time of hearing.”

2. At the outset, Ld.AR submitted that assessee was not granted sufficient opportunity of being heard. He submitted that assessee was unaware about notice being issued and, therefore, prayed for the appeal to be remitted back to Ld.CIT(A).

3. We have considered the submissions of assessee having regard to the records placed before us. From para 1 of Ld.CIT(A), it is noted that notice were issued to assessee and also handed over to assessee in-person. It is noted that, assessee had filed response before Ld.AO which is reproduced in the impugned order. The issue is raised by assessee regarding brought forward loss and unabsorbed depreciation from assessment year 2008-09 to 2012-13 which was not granted to assessee during those years. It is noted that, assessee filed 154 application before Ld.AO which was dismissed for those years, against which assessee is in appeal before Ld.CIT(A).

3.1. The Ld.AR submitted that said appeals where issue regarding carry forward and set-off of unabsorbed depreciation and brought forward business loss is raised are pending before Ld.CIT(A) for AY 2008-09 to 2012-13. In the meantime, the present appeal for AY 2016-17 stood disposed of by Ld.CIT(A). It is submitted that, decision of Ld.CIT(A) on the issue of C/F. and set off of brought

forward loss and unabsorbed depreciation will have a bearing for the year under consideration.

3.2. In our opinion, under these circumstances, the said appeal has to be decided after deciding the appeals for previous assessment years which are pending with Ld.CIT(A). In the interest of justice, we remit this appeal back to Ld.CIT(A) to consider the claims after disposing of the appeals for AY 2008-09 to 2012-13. The details of appeal numbers that are pending for these assessment years have been tabulated in the submissions filed by assessee which forms part of impugned order. The Ld.CIT(A) is directed to take cognizance of the same and first dispose of these appeals and subsequently to pass a detailed order on merits in the present appeal.

Accordingly, grounds raised by assessee stands partly allowed for statistical purposes.

In the result, appeal filed by assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 11/12/2025

Sd/-

**(GIRISH AGRAWAL)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 11/12/2025
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai