

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

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.7004/MUM/2025
(Assessment Year:2022-2023)**

Income Tax Officer Ward 41(3)(1), Mumbai

Room No.847, 8th Floor, Kautilya Bhavan,
G-Block, BKC, Bandra (East), Mumbai – 400051.
Maharashtra.

..... **Appellant**
Vs

Dahyalal Gagjibhai Jiwani

5-6, Laxmi Nagar Society,
Behind Gajera School, Katargam,
Surat – 395004, Gaujarat, Surat.
[PAN: AAVPJ2096G]

..... **Respondent**

Appearance

For the Appellant/Department : Shri Annavarani Kosuri
For the Respondent/Assessee : Shri Rahul Sarda

Date

Conclusion of hearing : 07.01.2026
Pronouncement of order : 19.01.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 11/08/2025, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] whereby the Learned CIT(A) had allowed the appeal against the Assessment Order, dated 13/03/2024, passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2022-2023.
2. The Revenue has raised following grounds of appeal :
 - "1. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in holding that the AO wrongly compared the total capital in assessee's personal balance sheet*

(Rs.27,05,32,933/-) with assessee's capital in the firm M/s. Srusti Diam (Rs.16,42,29,296/-) in A.Y. 2022-23 and treated the difference as unexplained u/s 68 of the I.T. Act, 1961, without giving due consideration to assessee's own claim during the assessment proceedings that all his capital of Rs.27,05,32,933/- came to him from the firm M/s. Srusti Diam in the form of accumulated profit and partner's remuneration, particularly in the light of comparative analysis of assessee's own declaration in his ITRs for A.Y. 2021-22 and A.Y. 2022-23 leading to the fact that the entire capital of Rs. 27,05,32,933/-pertains to A.Y. 2022-23 only.

2. *Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) is justified in relying upon submission and unaudited books of accounts of the assessee that closing capital of A.Y. 2021-22 and opening capital of A.Y.2022-23 is Rs.25,10,07,964.35 and not Nil, who himself declared in his return of income for the preceding A.Y. 2021-22 capital of Rs. Nil, which he never revised, and declared capital of Rs.27,05,32,933/- in the return for A.Y. 2022-23, leading to the undisputable conclusion that the entire capital of Rs.27,05,32,933/- was added during A.Y. 2022-23.*
3. *Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) is erred in accepting assessee's claim of capital of Rs. 25,10,07,964.35 in place of capital of Rs. NIL declared by the assessee in his return for A.Y. 2021-22, which has been made by the assessee otherwise than by filing a revised return of income, and on this basis in holding that the actual increase in capital from A.Y. 2021-22 to A.Y. 2022-23 was only Rs.1,95,24,968.95 (Rs.270532933.30-s.251007964.35)."*

3. The facts relevant for adjudication of the grounds raised by the Revenue in the present appeal are that Assessee is an individual who was also partner in M/s. Srusti Diam a partnership firm assessed to tax separately. The return of income filed by the Assessee for the Assessment Year 2022-2023 was picked up for scrutiny for verification for substantial incense in the capital. During the assessment proceedings the Assessing Officer noted that the capital account balance as reported in the return of income for the Assessment Year 2022-2023 was INR.27,05,32,933/- whereas the same was reported at 'NIL' for the immediately preceding Assessment Year 2021-2022.

The Assessing Officer compared the aforesaid figure of INR.27,05,32,933/- being capital account balance of the Assessee as on 31/03/2022 with the capital account balance of the Assessee as a partner in the partnership firm M/s. Srusti Diam as on 31/03/2022 standing at INR.16,42,29,296/- and concluded that the difference of INR.10,63,03,637/- between the two figures was unexplained credit liable to tax under Section 68 of the Act. Accordingly, vide Assessment Order, dated 13/03/2024, passed under Section 143(3) read with Section 144B of the Act, the Assessing Officer made addition of INR.10,63,03,637/- in the hands of the Assessee.

4. In appeal preferred before the Learned CIT(A) challenging the above additions, the Assessee explained that for many year the Assessee had been maintaining capital account balance which has been disclosed in the return of income and in the balance sheet of the Assessee. In support, the Assessee filed computation of income, return of income and balance sheet with capital account balance for the Assessment Year 2018-2019 to 2011-2022. It was submitted that capital account balance for the Assessment Year was not 'Nil. On account of clerical error, the capital account balance figure could not be mentioned. The Assessing Officer had ignored the Income Tax Return for Assessment Year 2020-2021 wherein capital account balance of INR.24,45,45,460.25/- was disclosed by the Assessee. The increase in capital during the previous year relevant to the Assessment Year 2022-2023 was only INR.1,95,24,969/- and not INR.10,63,03,637/- as computed by the Assessing Officer. The Learned CIT(A) accepted the explanation offered by the Assessee and deleted the additions made by the Assessing Officer vide Order, dated 11/09/2025, concluding as under:

"5.1 Ground No 1 to 3 are all directed against the Assessing Officer (hereinafter referred to as 'the AO') assessing the income at Rs. 10,73,14,217 as against the returned income of Rs. 10,10,580, on account of addition of Rs 10,63,03,637 u/s 68 of the Act. The

brief facts of the case is that the appellant filed the original ITR for A.Y. 2022-23 u/s 139(1) of the Act on 28.10.2022 by declaring total income of Rs. 10,10,580. The case was selected for Complete Scrutiny assessment through CASS as there was Substantial increase in the capital during the financial year as compared to previous year. The AO found that during FY 2021-22, the appellant's capital increased by an amount of Rs. 27,05,32,933 in comparison to previous FY 2020-21. The AO found that the appellant's books of accounts was not audited during AY 2022- 23. The AO noted that the appellant's closing capital balance in the books of M/s Srusti Diam was of Rs. 16,42,29,296 and hence held that the appellant has failed to furnish any details or any documentary evidence in support of source of introduction of capital amount of Rs. 10,63,03,637 during FY 2021-22. The appellant furnished before the AO the reply as under vide letter dated 26.02.2024:

"5) As per audited balance sheet of M/s Srusti Diam for AY 2022-23, my closing balance of capital in the books of M/s Srusti Diam of Rs.16,42,29,297/- whereas my own capital in my ITR A.Y. 2022-23 as on 31.3.2022 of Rs.27,05,32,933/- with reference to your query sources of fund utilized to increase capital of Rs.10,63,03,363/- is not increase during the F.Y. 2021-22 but it is increase during the last many years from my difference sources of income capital gain and agriculture income. Out of this Rs..10,63,03,636/- I have paid capital gain tax on Rs.4,03,71,968/- from Long Term Capital Gain during F.Y. 2014-15 for the supporting evidence I attached herewith income tax paid challan, computation of income and acknowledgement.

As u requested to furnish the documentary evidence in the support of sources of fund utilized to increase capital of Rs.10,63,03,636/- from A.Y. 2021-22 to A.Y. 2022-23 has not correct. Since, this capital amount has not been increasing from A.Y.2021-22 to A.Y.2022-23 but which was increase during my life time, therefore ITR FORM of Assessment Year 2020-21 attached here with in which I have already shown Capital of Rs.24,45,45,460 on income tax side for the same screen shot attached herewith and as per submitted data from A.Y.2021-22 to A.Y.2022-23 my capital has been increase only Rs.1,95,24,968.95. And for this supporting evidence I attached for capital

account & balance sheet of both years F.Y. 2020-21 & F.Y.2021-22, with clearly show the increment during the F.Y.2021- 22.

The assessee's own capital as on 31st March 2020 was Rs.24,45,45,460/-, which is verifiable from the balance sheet filed with the Income Tax Department under the ITR form for A.Y. 2020-21. A snapshot of the said balance sheet is attached herewith for your reference."

5.2 *In support of his claim, the appellant furnished before the AO the scanned copy of Balance sheet portion of his ITR filed during AY 2020-21 wherein capital amount was mentioned of Rs. 24.50 crores but the AO held that books of accounts of the appellant was not audited and ITR for AY 2020-21 of the appellant was also not assessed, so the appellant's claim made in ITR was not acceptable specially. The AO found that vide para 7 of letter dated 09.09.2023, the appellant has submitted the following points:*

"8) Capital shown of Rs.27,05,32,933/- in my ITR of A.Y. 2022-23 is my own individual capital there has not been any share holders share in my capital.

All this capital has generated by accumulated profit from SRUSTI DIAM, and Remuneration from SRUSTI DIAM Since 2003, therefore the detail of share holders is not available. So that most off capital generated by this share of profit from firm and only last 3 years income from firm is Rs.3,73,45,493 which exempt in hands of partner and 30,00,000/- remuneration from firm."

5.3 *xx xx*

5.4 *Therefore, the AO held that as per Note No 2 of audited balance sheet of M/s SRUSTI DIAM wherein closing balance of capital amount of the appellant was Rs.16,42,29,297, the same is explained capital and deducted from total capital amount of Rs. 27,05,32,933 and the remaining capital of Rs. 10,63,03,637 was treated as unexplained and unaccounted capital of the appellant during AY 2022-23 and treated as unexplained and unaccounted capital introduced by the appellant in his books of accounts during FY 2021- 22 and added as income of the appellant during AY 2022-23 u/s 68 of the Act.*

- 5.5 *I have carefully considered the facts and evidences on record and the submission of the appellant. The appellant during the course of appeal proceedings has submitted that he is partner in the partnership firm M/s. Srusti Diam and that he has earned over the years income in the nature of: o Remuneration and share of profits from the partnership firm M/s. Srusti Diam, Interest income from bank and fixed deposits, o Agricultural income.*
- 5.6 *I find that the AO has AO wrongly compared the total capital in the personal balance sheet (Rs.27,05,32,933.30) with the capital in the firm (Rs. 16,42,29,296) and treated the difference as unexplained. The appellant submitted that the omission of capital details in AY 2021-22 ITR was a clerical error and that the AO's reliance on this alone, without considering AY 2020-21 and earlier years, is unjust. I find that no fresh capital of Rs.10,63,03,637 was introduced in one year. The AO in various parts of the assessment order, has repeatedly stated that the books of accounts of the appellant were unaudited during AY 2022-23 as well as in prior years, and based on this observation, proceeded to make an addition of Rs 10,63,03,636 under Section 68.*
- 5.7 *It is seen that the appellant is an individual who is not engaged in any business or profession in his personal capacity, or whose turnover does not exceed the threshold requiring mandatory audit under Section 44AB. Therefore, non-audit of books is not a default or deficiency under the law. It is seen that the appellant has maintained all books of accounts and the same were produced during assessment proceedings and the AO has not pointed out any specific defect or falsification in the books. In the case of CIT v. Suresh Kumar Kothari (2008) 303 ITR 130 (MP), the Hon'ble Madhya Pradesh High Court has held that capital accumulated over earlier years cannot be added under Section 68 merely because it appears in a capital account in a later year.*
- 5.8 *I find that in response to the Show Cause Notice, the appellant had explained to the AO vide reply dated 29.02.2024 that in the Income Tax Return (ITR) for A.Y. 2021-22, the balance sheet figures were inadvertently not entered. However, to establish the continuity and genuineness of capital, the appellant submitted the ITR for A.Y. 2020-21, which reflected a capital balance of Rs 24,45,45,460.25 as on 31.03.2020. Additionally, the appellant submitted financial statements for A.Y. 2020-21, A.Y. 2021-22, and A.Y. 2022-23. Therefore, it is seen that the*

capital increase across the said years was primarily on account of profit share and remuneration received from the partnership firm M/s. Srusti Diam, in which the appellant is a partner. The appellant submits the below mentioned working for the purpose of ease wherein the change in Capital during A.Y.2022-23 can be easily understood.

S. No.	PARTICULARS	AMOUNT (Rs.)
1.	Opening Balance of Capital as on 31/03/2021 (Balance Sheet filed with ITR)	25,10,07,964.35
2.	Add: Profit from Srusti Diam for F.Y.21-22	1,86,38,062.65
3.	Add: Remuneration from Srusti Diam	10,00,000/-
4.	Add: Receipt from Krishi Rahat Package	13,600/-
5.	Add: Bank Saving & FD Interest	10,580/-
6.	Add: Agriculture Income	1,40,210/-
7.	Less: Drawings & Other Exp.	2,77,483.70
8.	Opening Balance of Capital as on 31/03/2021 (Balance Sheet filed with ITR)	27,05,32,933.30

5.9 *In view of the above facts and discussion, I am of the considered view that the actual increase in capital from F.Y. 2020-21 to F.Y. 2021-22 was only Rs.1,95,24,968.95. The AO has wrongly compared the Closing Capital Balance of the appellant with M/s.Srusti Diam as on 31.03.2022 which was amounting to Rs. 16,42,29,297.41 with its own capital balance as on 31.03.2022 of Rs.27,05,32,933 and stated that the balance difference of Rs.10,63,03,637 is unexplained and unaccounted. The capital standing the books of the appellant is a created by generating income year-on-year and the appellant has duly filed his return of income for all the previous assessment years by disclosing all the income earned during all the relevant years. Thus, the addition of Rs 10,63,03,637 u/s 68 of the Act is not sustainable and is directed to be deleted. The appeal on Ground Nos 1 to 3 are thus treated as allowed.*

6. *Ground No 4 is directed against the AO initiating penalty proceeding u/s 271AAC of the Act. An appeal lies against on order levying penalty and not against initiation of penalty. In any case as the addition made is directed to be deleted, the appeal in this ground has become infructuous and requires no further adjudication.*

7. *Ground No 5 is general in nature and needs no adjudication."*

5. Being aggrieved by the above relief granted by the Learned CIT(A), the Revenue has carried the issue before the Tribunal.

6. The Learned Departmental Representative took us through the Assessment Order and submitted that the Assessee had himself disclosed capital account balance for the immediately preceding assessment year (i.e., Assessment Year 2021-2022) as 'Nil'. Therefore, no infirmity could be found in the order passed by the Assessing Officer. It was further submitted that the Assessee had failed to furnish the relevant financial statements before the Assessing Officer and the Learned CIT(A) erred in considering the same without calling for a remand report from the Assessing Officer.
7. Per contra, the Learned Authorized Representative for the Assessee supported the order passed by the Learned CIT(A) and submitted that the Learned CIT(A) had correctly appreciated the relevant facts after taking into consideration the documents and details furnished by the Assessee deleted the incorrect addition made by the Assessing Officer. It was submitted that the capital account balance was being carried forward from the preceding assessment years and therefore, no addition could be made in the hands of the Assessee. He also place reliance upon the written note submitted during the course of hearing. Reiterating the stand taken before the authorities below, the Learned Authorized Representative submitted the Assessing Officer had incorrectly compared the total capital balance of INR.27,05,32,933/- reflected in the individual/personal balance sheet of the Assessee for the relevant previous year with the capital account balance of INR.16,42,29,296/- of the Assessee in the partnership firm - M/s. Srusti Diam.
8. In rejoinder, the Learned Departmental Representative reiterated that the Learned CIT(A) had considered additional evidence submitted by the Assessee without calling for remand report from the Assessing Officer.
9. We have given thoughtful considerations to the rival submissions and

have perused the material on record.

10. We find that the Revenue has failed to bring on record any material to controvert the finding returned by the Learned CIT(A). On perusal of the Income Tax Returns for the Assessment Year 2018-2019, 2019-2020 and 2020-2021, we find that the Assessee had disclosed Proprietor's Capital of (a) INR.17,90,81,136/- for the Assessment Year 2018-2019, (b) INR.24,49,59,606/- for the Assessment Year 2019-2020 and (c) INR.24,45,45,460/- for the Assessment Year 2020-2021. From the aforesaid information it becomes clear that the capital account balance at the beginning of the Assessment Year 2021-2022 was not 'Nil'. The veracity of the income tax returns for the preceding assessment years, filed much prior in time, has not been doubted by the Revenue. While the Revenue has contended that the Learned CIT(A) should have called for a remand report, no infirmity has been pointed out in the conclusion drawn by the Learned CIT(A) which flow from bare perusal of income tax returns. On perusal of income tax return and capital account for the Assessment Year 2022-2023 it becomes clear that the Assessee had disclosed opening capital account balance of INR.25,10,07,964/- as on 01/04/2021. There was an increase of about INR.1.95 Crores during the relevant previous year which included increase of around INR.1.86 Crores on account of share in partnership firm. As on 31/03/2022, the capital account balance stood at INR.27,08,10,417/-. Taking note of the aforesaid, the Learned CIT(A) had concluded in paragraph 5.9 of the order (*reproduced in Paragraph 4 above*) that the actual increase in capital from Financial Year 2020-2021 to Financial Year 2021-2022 was only INR.1,95,24,968.95. The Assessing Officer had incorrectly compared the Closing Capital Balance of the Assessee with M/s. Srusti Diam as on 31.03/2022 which was amounting to INR16,42,29,297/- with capital balance of the Assessee as on 31/03/2022 of INR.27,05,32,933/-. The Assessee was able to establish that capital

standing in the books of the Assessee was created on year-on-year basis in the preceding financial years and the Assessee had duly filed return of income making relevant disclosures. The material on record supports that aforesaid findings returned by the Learned CIT(A). Accordingly, we decline to interfere with the order passed by the Learned CIT(A) deleting addition of INR.10,63,03,637/- made by the Assessing Officer under Section 68 of the Act for the Assessment Year 2022-2023. Ground No.1 to 3 raised by the Revenue are dismissed.

11. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 19.01.2026.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.01.2026
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai