

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.7390/Mum/2025
(Assessment Year: 2016)

| | | |
|--|-----|---|
| ACIT, Circle 3(2)(1) Room No. 608, 6 th Floor, Aaykar Bhavan, M. K. Road, Churchgate, Mumbai-400 020 | Vs. | Sunjewels Private Limited 605/606, 6 th Floor, Multistoried Building, Seepz S.O., Andheri (E), Mumbai-400 096 |
| PAN/GIR No. AABCE 3519 L | | |
| (Appellant) | : | (Respondent) |

| | | |
|----------------------|---|-------------------------------|
| Appellant by | : | Shri Ravikant Pathak, CA |
| Respondent by | : | Shri Swapnil Choudhary-Sr. AR |

| | | |
|------------------------------|---|------------|
| Date of Hearing | : | 27.01.2026 |
| Date of Pronouncement | : | 29.01.2026 |

ORDER

Per Saktijit Dey, Vice President:

This is an appeal by the department against order dated 08.09.2025 passed by National Faceless Appeal Centre ('NFAC' for short), Delhi for the assessment year (A.Y. for short) 2016-17.

2. The effective grounds raised by the department are as under:

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in setting aside the assessment order passed u/s.143(3) and remitting the matter back to the Assessing Officer for fresh adjudication, despite the clear restriction contained in the proviso to Section 251(1)(a) of the Income Tax Act, 1961, which permits such power only in cases where the assessment is made u/s.144 (best judgment assessment)?"*

2. *"Whether the Ld.CIT(A) having no jurisdiction to set aside or remand an assessment order passed u/s.143(3), acted beyond his statutory authority in law, thereby rendering the impugned appellate order dated 08.09.2025 bad in law and liable to be quashed?"*

3. *"Whether the Ld.CIT(A), instead of exercising the powers vested in him under Section 251(1)(a) to confirm, reduce, enhance or annual the assessment, wrongly assumed a power to restore the matter to the Assessing Officer, which is ultra vires the provisions of the Income Tax Act, 1961."*

3. As could be seen from the grounds raised, the basic grievance of the department is concerning the jurisdiction of the first appellate authority in the matter of restoration of issues to the Assessing Officer (A.O. for short).

4. Briefly the facts are, the assessee is a resident corporate entity, stated to be engaged in the business of manufacturing of gold and diamond studded jewellery, exclusively meant for export. For the assessment year under dispute, the assessee filed its return of income on 30.11.2016, declaring total income at Rs.32,86,71,400/- under the normal provisions of the Income Tax Act, 1961 ('Act' for short) and book profit of Rs.20,71,08,479/- u/s. 115JB of the Act. The return of income so filed by the assessee was selected for scrutiny.

5. In course of assessment proceeding, the A.O. enquired into various issues and called upon the assessee to furnish party-wise details of purchases exceeding Rs.1 crore with complete address and TIN along with ledger account copies, etc. In response to the query raised, the assessee furnished the details. After verifying the details, the A.O. observed that in the year under consideration, the assessee had made purchases from five parties. However, except in case of Srushti Diam, the assessee had furnished the details in respect of rest of the parties. Thus, alleging lack of verifiable evidence, the A.O. disallowed the purchases of Rs.2,21,80,000/- made from Srushti Diam and added it to the income of the assessee by treating it as unexplained expenditure u/s. 69C of the Act. Proceeding further, the A.O. observed that in the year under consideration, the assessee had claimed expenditure to the tune of Rs.28,92,631/- on account of legal and professional charges paid to following two parties:

(a) Pheilippe De Haer - Legal Charges Rs. 12,05,645/-

(b) Udwardia & Udeshi - Legal Charges Rs. 16,869/-

6. To verify the correctness of assessee's claim, the A.O. issued notices u/s. 133(6) of the Act to the concerned parties. As alleged by the A.O., such notices returned back unserved. Being of the view that the genuineness of the expenditure claimed could not be established by assessee, the A.O. disallowed the amount of Rs.28,92,631/-.

7. Contesting the additions/disallowances made by the A.O., the assessee preferred an appeal before the first appellate authority.

8. In course of proceedings before the first appellate authority, the assessee furnished various documentary evidences as additional evidence to prove the genuineness of purchases made from Srushti Diam, as also the legal and professional charges paid to the parties. The additional evidences furnished by the assessee were forwarded to the A.O. for enquiry, verification and furnishing a report. Though, the A.O. after verifying the evidences furnished a report, however, the first appellate authority set aside the assessment order with a direction to the A.O. to examine the issues concerning the additions *de novo* after providing reasonable opportunity of being heard to the assessee and verifying the additional evidences furnished by the assessee.

9. Drawing our attention to section 251(1)(a) of the Act, ld. DR submitted that the first appellate authority has the power of restoration only in a case where the assessment has been completed u/s. 144 of the Act to the best of the judgment of the A.O. He submitted, since the assessment order in the instant case has been passed u/s. 143(3) of the Act, the first appellate authority had no jurisdiction to set aside the assessment order. The ld. Counsel appearing for the assessee though agreed that as per the provisions of section 251(1)(a) of the Act, the first appellate authority could not have set aside the assessment

order for *de novo* assessment, however, at the same time, he submitted that since in the remand report furnished by the A.O. after verification of the evidences, no adverse observations have been made, the first appellate authority should have deleted the additions. He submitted, since the first appellate authority failed to do so, his order may be set aside with a direction to decide the appeal on merits by deleting the additions.

10. We have considered rival submissions and perused the materials on record. A reading of the assessment order reveals that the disputed additions were made by the A.O. purely for lack of verifiable evidence. However, before the first appellate authority, the assessee did furnish supporting documentary evidences to prove the genuineness of the purchases made from Srushti Diam as also the legal and professional charges paid to two parties. The observations of the A.O. in the remand report are as under:

Sub:- Remand Report in the case of SUNJEWELS PRIVATE LIMITED (AABCE3619L) for AY 2016-17 with reference to Appeal Number CIT (A), Mumbai- 18/10386/2018-19-reg.

In this case, the return of income was E-filed on 30.11.2016 declaring total income of Rs. 32,86,71,400/- under normal provision of Income tax Act and book profit of Rs. 20,71,08,479/- under section 115JB of the Act. The case was selected for the scrutiny and order under section 143(3) was passed on 27.12.2018 wherein the following addition were made:

- 1. Non Genuine purchase under section 68 from M/s. Srushti-Diam totaling of Rs. 2,21,80,000/-.*
- 2. Legal and Professional Charges paid to Phellippe Dehaer and Udwardia and Udeshi totaling of Rs. 28,92,631/- under section 690 unexplained expenditure.*
- 3. Difference in return and 26AS totaling of Rs. 5,59,027/*

The above addition in the case of l'and I was made as the assessee could not submit the copy of bills raised by the above mentioned assessee during the course of assessment proceedings. Being aggrieved by the sald order, the assessee filed appeal before Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted the additional evidence in respect of the both the addition as discussed above which as present being the matter of remand proceedings before the undersigned.

1. Addition in respect of M/s. Srushti-Diam: During the course of remand proceeding, the assessee submitted the copy of the bill of Mis. Srushti-Diam having invoice no. SD73/15-16 dated 22.07.2015 of totaling of Rs. 34,92,814/-, then invoice no. SD74/15-16 dated 23.07.2015 totaling of Rs. 67,48,812/-, invoice no. SD81/15-16 dated 25.07.2015 totaling of Rs. 84,53,377/- and invoice no. SD132/15-16 dated 15.09.2015 totaling of Rs. 37,07,573/-. Furthermore, the assessee submitted the confirmation of the account from M/s. Srushti-Diam totaling of Rs. 2,24,01,800/-.

Furthermore, the assessee also submitted the registration certificate of M/s, Srushi-Diam which is having a principal place of business at Bharat Diamond Bourse Bandra Kurla Complex Bandra East Mumbai. And also the assessee submitted the copy of the bank statement highlighting the transfer of money to M/s. Srushi-Diam.

2. *Addition In respect of Legal and Professional Charges paid to Udwadia and Udeshi: During the course of remand proceeding, the assessee filed the copy of Invoice raised by Udwadia and Udeshi having invoice no. 069, 086, 087, 103, 117, 130, 141, 143, 146, 157, 001 and 009. In this connection, the assessee also submitted the ledger account of Udwadia and Udeshi in the books of the assessee along with the bank statement highlighting the payment made to the Udwadia and Udeshi.*

3. *Addition in respect of Legal and Professional Charges paid to Phellippe Dehaer: During the course of assessment proceedings, the assessee submitted the copy of the invoice raised by Pheilippe Dehser along with the ledger account of the same person in the books of the assessee. Furthermore, the bank statement of the assessee highlighting the payment made to the person is also submitted. Besides that the assessee submitted the copy of the passport of the person along with the consultant agreement.*

Due to the above discussion on the three issue as discussed above the additional evidence may be accepted on its merit.

11. From the aforesaid observations of the A.O. in the remand report, it is evident that the A.O. was more or less satisfied with the authenticity of the evidences, hence, did not make any adverse observations with record to the acceptability of such evidences. Rather, the A.O. has commented that the additional evidences may be accepted on merits. Thus, once the A.O. has verified the evidences and given a clean report, the first appellate authority should have decided the appeal on merits instead of restoring the issues again to the A.O. for *de novo* assessment. Once the A.O. has completed the whole exercise of factual verification in course of remand proceedings, no useful purpose is going to be served by again resorting the issue back to him. In view of the aforesaid, we are inclined to set aside the impugned order of learned first appellate authority and restore the issues back to him for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. While deciding the issues, the first appellate authority must take due cognizance of the observations made by the A.O. in the remand report, referred to by us in this order, and decide the appeal on merits. Grounds are allowed for statistical purpose.

12. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 29.01.2026

Sd/-

(Arun Khodpia)
Accountant Member

Mumbai; Dated : 29.01.2026

Roshani, Sr. PS

Sd/-

(Saktijit Dey)
Vice President

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai