IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 4329/MUM/2025 (AY: 2017-18)
(*Physical hearing*)

ACIT, 23(1), Mumbai 511, 5th Floor, Piramal Chambers, Lalbaug, Mumbai – 400012]	Vs	DNJ Creation LLP HW 8011-b, Bharat Diamond Bourse, BKC, Mumbai-400051. [PAN: AAMFD7457J]
Appellant / Revenue		Respondent / Assessee

C.O. No. 270/MUM/2025 (AY: 2017-18)
(Arising out of ITA No. 4329/Mum/2025)

DNJ Creation LLP HW 8011-b, Bharat Diamond Bourse, BKC, Mumbai-400051. [PAN: AAMFD7457J]	Vs	ACIT, 23(1), Mumbai 511, 5th Floor, Piramal Chambers, Lalbaug, Mumbai – 400012]
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Vijay Mehta CA / AR
Revenue by	Shri Bhagirath Ramawat, Sr-DR
Date of hearing	24.12.2025
Date of pronouncement	13.02.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue and cross-objection therein by assessee are directed against the order of ld. CIT(A)-56, Mumbai dated 11.04.2025for A.Y. 2017-18. The revenue has raised following grounds of appeal:

"1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) is erred in not appreciating the selection of functionally similar comparables as that of the assessee by the Ld.TPO based on the TNMM Method and considering jewellery division as tested party as the assessee failed to provide actual details of profit margin of Diamond division.

2 Whether on the fact and circumstances of the case and in law, the Ld.CIT(A) is erred by relying on the stand of the transfer pricing officer in assessee's own case in AY 2022-23, without appreciating the fact that each

year's transfer pricing proceeding is distinct and based on the facts and circumstances on that year only.

3. Whether on the fact and circumstances of the case and in law, the Ld.CITT(A) is erred by relying on the stand of the transfer pricing officer in assessee's own case in AY 2022-23, without appreciating the fact that transfer pricing officer had specifically mentioned in his order that findings and discussions made here applicable only for this assessment year being referred, i.e.. for AY 2017-18 and also the fact that documentation, benchmarking and profit margins earned by the assessee during AY 2022-23 differed from preceding years.

4. The appellant craves, leave to amend or alter any grounds or add a new ground which may be necessary."

2. On receipt of memorandum of appeal of Revenue, the assessee has filed its C.O. raising following grounds:

"1. The Hon'ble CIT(A) erred in not adjudicating on the issue of upward adjustment made in the assessment order u/s 143(3), where the alleged extraordinary profits have been attributed to the entire year, including the period from April 01, 2016 to September 28, 2016, when the Appellant was not in existence. The learned AO/TPO had no jurisdiction, territorial or otherwise, over the predecessor entity, which was a private limited company. Consequently, both the Transfer Pricing order u/s 92CA(3) and the consequential addition in the assessment order u/s 143(3) are untenable and unsustainable in law.

2. The Hon'ble CIT(A) erred in not adjudicating on the issue where the learned AO/TPO wrongly applied the differential OP/OR margin of 8.76% (11.70% minus 2.94%) on the entire operating revenue of INR 124,23,52,396/- instead of restricting the adjustment only to the specified domestic transactions of INR 26,53,96,346/-

3. *In the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not holding that the learned AO/TPO wrongly worked out the adjustment at INR 10,88,13,111/-, whereas on the correct computation it could not have exceeded INR 2.54,07.011/-.*

4. *In the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not holding that the learned AO/TPO erred in straightaway enhancing the total income of the Appellant by INR 10,88,13,111/- on account of TP adjustment u/s 92CA(3), instead of recomputing the*

deduction u/s 10AA of INR 7,97,59,044/-legitimately allowable to the LLP for the period September 28, 2016 to March 31, 2017.

5. In the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not appreciating that the learned TPO wrongly determined an upward adjustment u/s 92CA at INR 10,88,13,111/-, which exceeds the 10AA deduction claimed of INR 7,97,59,044/-as addition if any, in any case, should be restricted to the amount of 10AA deduction claimed.

The appellant craves leave to add, amend, alter and/or delete any of the grounds of cross objection before or during the course of appeal."

3. Perusal of record shows that there is delay of about 50 days in filing cross-objection by assessee. For seeking condonation of delay in filing C.O., the assessee has filed affidavit of Rajnikant Jhaveri. In the affidavit, it is stated that he is instructing counsel of assessee. The learned Authorised Representative (ld. AR) of the assessee submits that notice of Revenue's appeal was received to assessee on 15.07.2025 and the present C.O. was filed only on 03.10.2025, thus, there is delay of 50 days. The delay in filing C.O. is neither intentional nor deliberate but due to the reasons that instructing counsel was facing heart related ailment. In the month of September, the said person was hospitalised. In the meantime, his sister, Jyotsna Kothari was also hospitalised. Further, in last week of September, his sister in law was died. Thus, due to such circumstances, he could not take necessary step for preparation and filing the cross-objection. The ld. AR of the assessee prayed for condoning the delay in filing his CO.

4. On the other hand, the learned Senior Departmental Representative (ld. Sr. DR) for the Revenue after going through the contents of affidavit and various medical prescriptions attached thereto, would submit that bench may take appropriate decision on the plea of assessee.

5. Considering the submissions of both the parties and material placed before us, we find that delay in filing C.O. is not intentional or deliberate. Thus, delay in filing such C.O. is condoned. Now, adverting to merits of the case in accordance with various grounds of appeal raised by respective parties. Now adverting to the merits of the case.

6. We have heard the submissions of both the parties on merits and have gone through the orders of lower authorities carefully. With the consent of parties, the ld AR of the assessee begins with his submissions. The learned AR of the assessee while explaining brief background of the case submit that assessee is LLP engaged in the business of trading in cut and polished diamonds as well as manufacturing of diamond jewellery. The assessee has been converted from Private Limited Company to LLP with effect from 28th September 2016. Thus, during the relevant previous year that is from 1stApril 2016 to 27thSeptember 2016 business was carried out by the Private Limited Company and from 28thSeptember to 31stMarch 2016 the business was carried out by the assessee i.e. DNJ Creation LLP. The assessee has a manufacturing unit in special economic Zone (SEZ) being SEEPZ, Mumbai, wherefrom it carries out activities of manufacturing of diamond jewellery, which is exported out of India. This unit, being situated in SEZ is eligible for deduction under section 10AA of the Act the said jewellery manufacturing unit has entered into transaction of purchase of cut and polished diamond from its own diamond division i.e. its own associated enterprises (AE) and secondly from others which are non-associated enterprises. As the assessee is claiming deduction under section

10AA of the Act, its transaction of purchase of cut and polished diamond from its diamond division qualifies for Specified Domestic Transaction (SDT) and accordingly transfer pricing regulations are applicable to the transaction. The assessee has benchmarked its transaction of purchase and cut polished diamonds by manufacturing unit from Leima dividend for the purpose of transfer pricing evaluation under the act. The assessee adopted transaction that margin method. However there is difference of opinion in respect of such evaluation leading to transfer pricing adjustment of ₹ 10.38 crore, which is the subject matter of dispute in the present appeal. The dispute basically arising on account of three issues; No. 1 selection of tested party, which is subject matter of ground No. 1 to 3 revenue's appeal and No. 2 considering transaction of the DNJ creation Private Limited while benchmarking transaction of assessee, which is ground No. 1 of assessees cross objection and thoroughly calculation of TP adjustment, which is subject matter of ground No. 2 to 5 of assessee's cross objection.

7. Against the ground No. 1 to 3 of reminder grounds of appeal, the assessee submitted that jewellery manufacturing unit situated in special economic zone, which is eligible unit, has purchased cut and polished diamond from the diamond division of assessee. Dispute in respect of specified domestic transaction of purchase of cut and polished diamonds by you jewellery manufacturing division from diamond division. The Department seeks to treat the jewellery manufacturing division as a tested party is whereas assessee maintained that diamond division is the appropriate tested party.

The ld. A.R. of the assessee fairly submits that if assessee succeeded on this ground that is if domestic diamond trading unit is accepted as a tested party, there would not be any transfer pricing adjustment and all other grounds of appeal and the Department grounds of appeal would become academic. The working of arm's length price considering diamond division as a tested party is provided as per the detailed working on factual paper book at page No. 137-139, which shows that sales made by diamond division to jewellery manufacturing division is at arm's length price. Optionally, in TPS, the assessee has taken jewellery division as a tested party. Subsequently, during the course of TransferPricing proceedings, the assessee has rectified its error and considered the diamond division as the tested party because the same is the least complex in the transaction chain. The assessee also submits that margin of the diamond division with comparable the company is engaged in diamond business. The profit level indicator being OP/OC of the diamond division are above the profit level indicator of the range of comparable companies establishing that no profit had been transferred to the jewellery unit on the specified domestic transaction. The assessee made a prior to TPO to consider the diamond division as the tested party and allowing to specified domestic transaction which was indeed purely the purchase of cut and polish diamonds. The TPO rejected the plea and proceeded by comparing the jewellery division margin with the jewellery manufacturing companies for benchmarking diamond purchases. The ld. A.R. of the assessee retreated that taking of diamond division as a tested party, which is released complex entity for the

regions that under transfer pricing jurisprudence a functional as analyses of the primary determinant for identifying the least complex entity. The tested party must be the participant whose asset, risk and functions are most easily identifiable and standard. The diamond division (DTA Unit) operates as a straightforward procurement and sorting hub. Its activities are simply buying, assortment and sales. It has a very modest asset base consisting of his small tools it has a modest workforce performing routine sorting and sales function. Thus the diamond division represents the least complex party in the inter-unit transaction. While explaining functional profile of jewellery manufacturing division (SEZ/eligible unit), is an eligible unit is an intricate manufacturing segment. It contains a narrow and complexity, driven by multi-disciplinary operations and high-technology assets. Unlike the trading unit, the manufacturing process is labour-inte, it involves creative and technical planning utilising both manual artistry and advanced software. This is followed by creation of manual design concepts. This design is converted into precise 3D digital model using auto CAD software. Thereafter, a resin piece is generated from the digital design. Finally, a master model usually in silver or copper is created from the design. After the design is created, complex process of mould making follows. Thereafter a complicated jewellery manufacturing process follows in the SEEPZ manufacturing unit of the assessee. The jewellery division utilises Auto CAD software, 3D resin printers (CAM) and metallurgical casting equipment. It also uses heavy machinery like Ledger machines casting machine and XRF testers and specialised labour. At the end the

jewellery is checked for quality and thereafter exported after packing.The whole process require experienced and technical persons. This division's profit is driven by intangible heavy design and precision metallurgy, making it inherently more complex and difficult to benchmark reliably. So far as legal justification for least complex entity rule is concerned, transfer pricing principal mandate that tested party be the entity with the simplest functional profile. Comparison between the two divisions is stock: the diamond division is a procurement and sorting hub whereas value is a standard, whereas the jewellery division is a precision manufacturer where value is driven by creative design and complex metallurgy. Further benchmarking the SEZ Unit of what requires identifying comparable with identical design capabilities and manufacturing technology, and exercise prone to extreme volatility and error. Conversely, the diamond division profit driven are easily verified against external market that. On the basis of aforesaid submission, the ld. A.R. of the some assessee submits that diamond division is a least complex which is suitable tested party. Most importantly assessment year 2022- 23, the assessee in its TP study report itself considered the diamond division as the tested party and compare the same with similar diamond business companies to benchmark the diamond purchases made by the jewellery division, such reporters available at page No. 155 of paper book. This was accepted by TPO while passing transfer pricing order for assessment year 2022- 23. The facts and the business model in both the year that is in the year under consideration and in subsequent year are identical with no change whatsoever in function

assets employed or risk assumed. The TPO has erred in completely ignoring the benchmarking done by the assessee taking diamond division as a tested party. TPO refuse to consider the analyses given by the assessee on the ground that assessee himself has taken the jewellery manufacturing unit as tested party, in para 5.6 of his order the TPO noted that assessee itself conducted a transfer pricing study and selected comparable based on functional similarity. The ld. A.R. of the assessee submits that ld. CIT(A) rightly observed in para 6.1 of his order that assessee has considered the least complex or simple entity which is diamond trading unit as tested party. The ld. A.R. of the assessee while supporting the order of ld. CIT(A) is would submit that selection of diamond division as the tested party may be upheld and Transfer Pricing addition may be declared to be uncalled for.

8. In support of his C.O., the ld. A.R. of the assessee submits that assessee is LLP and has been converted from a private limited company with effect from 28thSeptember 2016. Thus during the relevant previous year, from 1stApril 2016 to 27th September 2016 business was carried out by the DNJ Creation Private Limited that his predecessor. During the year under consideration, the predecessor prepared its own separate financial, and filed return of income for the period from 1stApril 2016 to 27th September 2016 and its own PAN declaring income of ₹53,14,440/-. In similar manner, assessee prepared separate financials and filed return of income for the period 28thSeptember 2016 to 31stMarch 2017 under its own PAN declaring income at ₹ 1,59,21,340/-. Both the entities filed their own

separate TP report and forms 3CEB. The respective assessing officer selected the cases for scrutiny by issuing notice under section 143(2) and subsequently also made their separate TP references. Thereafter, TPO also passed separate TP orders, copy both the TP orders is placed on record. However, the TPO of the assessee considered the transaction of private limited company also filed the computing TP adjustment in the hands of assessee. Thereafter, a separate assessment order under section 143(3) of the Act was passed for Private Limited Company on 31stMarch 2021 accepting the return income with Nil addition, assessment order is placed on record. Separate assessment order was passed for the assessee LLP on 14.06.2021 making addition on account of TP adjustment suggested by TPO. The TPO effectively merged references originated from two different circles/ wards by passing single order under section 92 CA(3) under PAN LLP, the TPO exercised jurisdiction over the predecessor (private limited company) without the authority to blend its financial into the successors assessment order. Such exercise is unknown to the law and needs to be quashed. The TPO received two distinct references from two separate assessing officers belonging to different circles, yet choose to ignore these statutory boundaries to pass a single order. The TPO/AO has assessed the income/margin of predecessor company (DNJ creation private limited) in the hands of successor (DNJ Creation LLP) for the period prior to the existence of the LLP. The TPO/AO has legally erred by aggregating the transaction of two distinct assessable entities to determine the arm's length price and tax liability in a single assessment order. The TPO

committed a fundamental error by confusing the succession provision of section 170 of the act with clubbing provision of chapter V (section 60 to 65). Chapter V provides for clubbing of income of one assessee with another (transfer of income without transfer office asset), which is not applicable in the present case. Further, Chapter-XV (section 159-170) provides the mechanism for assessment in case of succession. Section 170(1)(a) of the Act mandates that predecessor shall be assessed in respect of income up to the date of succession, in the name of successor in a representative capacity, it dictates that the predecessor is liable up to the date of succession and the successor thereafter. It does not permit a 'rolling assessment' where distinct income is blended to determined profit margins. The TPO has not only clubbed income but also considered the transaction of Private Limited Company to determine the profit margin and TP adjustment amount of LLP which is legally impermissible. The predecessor entity was separately assessed and the assessee was not in existence for the period from 1sr April 2016 to 27th September 2016, the addition related to the private limited company in the hands of assessee - LLP is *viod ab initio*. To support his submission, the ld A.R. of the assessee relied upon the following decisions;

- Motor Sales versus CIT (230 ITR 44) (All),
- City Gold Education Research Ltd Vs DCIT (ITA No. 1699/Mum/2023),
- Manish Tyagi Vs ITO,(ITA No. 5548/Del/2015),
- Kalptaru Project International Limited Vs DCIT (ITA No. 5961/Mum/2025.

9. In support of ground No. 2 to 5 of CO, the landed A.R. of the assessee submits that in case the assessee succeeds on the issue of domestic diamond trading unit to be taken as tested party, there would not be any transfer pricing adjustment and all other grounds of assessee's including other submission would become academic. The ld A.R. of the assessee further submitted that TPO/AO erred in applying the differential margin of 8.76% (difference between assessee is 11.70% and TPOs 2.94%) on the entire operating revenue of jewellery division. The transfer pricing provisions under Chapter X apply only to specified domestic transaction. The TPO has no jurisdiction to proposed as adjustment on transactions with unrelated third party. To support such submission, the ld A.R. of the assessee relied upon the following decisions;

   - ❖ CIT versus Alston Project India Ltd (394 ITR 141),
   - ❖ CIT versus Bhansali & CO. (94 taxmann.com552) (Bombay),
   - ❖ DCIT versus Spicer India Ltd (458 ITR 40)(Bombay)

10. The ld AR of the assessee further submits that SDT value (purchase of Diamond from DTA unit by the manufacturing unit of LLP) it only of ₹ 26.53 crore, not Rs. 124.23 crore. TPO calculation of 8.76% on Rs. 124.23 crore amounting to ₹ 10.88 crore is erroneous. The correct calculation, even if TPO's margin is applied should be limited to the variation in the purchase price of SDT. The landed A.R. of the assessee further submitted that AO is straightaway added the TP adjustment of ₹ 10.88 crore to the total income and full to recompute the eligible deduction under section 10AA of the act. It is well established that any adjustment to the consideration of a specified domestic transaction must lead to a

corresponding re-computation of profit linked deduction. The landed A.R. of the assessee after reading Section 10AA and section 80-IA(8) and 80IA(10) would submit that the plain reading of the provisions clearly suggests that where inter-unit or related party transactions resulted in inflated profit of an eligible undertaking, the statue mandates a fresh computation of profit solely for the purpose of deduction. The adjustment mechanism operates only for the purpose of eligible profit and, consequently to the quantum of deduction under section 10AA. It does not authorise and independent addition to the taxable income. An upward TP adjustment in purchase implies that the 'profit of the business' for the eligible SEZ unit have decreased. Consequently, the statutory deduction under section 10AA of the act must be calculated on this decreased profit base. The deduction of ₹ 7.97 crore claimed for the period from 28 September 2016 to 31 March 2017 must be recalculated based on these enhanced market value purchases. On rectifying the aforesaid errors, the correct transfer pricing adjustment and consequential correct adjustment to purchase from AE for recalculating deduction under section 10 AA would be left to Rs.2.54 crore.

11. On the other hand, the ld Sr -DR for the revenue supported the order of TPO/AO. In support of various grounds of appeal raised by revenue the ld Sr-DR for revenue submit that CIT(A) failed to appreciate that the assessee in its TPSR itself considered jewellery division as tested party. The assessee failed to provide actual details of profit margin of Diamond division. Further, the CIT(A) erred in relying on the stand of TPO in

assesses own case for AY 2022-23, without appreciating the fact each year transfer pricing proceeding is distinct and based on the facts and circumstances of that year only. On various grounds of appeal raised by assessee in its CO, the ld Sr-DR for the revenue supported the order of TPO /AO. The ld CIT-DR for the revenue also relied on the decision of Mumbai Tribunal in DCIT Vs Dharmanandan Diamonds Pvt Ltd (in ITA No. 4232/Mum/2019 dated 19.05.2022.

12. We have considered the rival submissions of the parties and have gone through the order of lower authorities. We find that before us, the landed A.R. of the assessee, though vehemently argued various points on different issues, however he fairly submits that in case Diamond division that is DTA unit is considered/ accepted as a tested party,all other issues will become academic. We find that in subsequent assessment year, the TPO himself accepted the DTA unit as tested party in his order dated 27.01.2025, copy of which is already placed on record at page no. 229-230 of paper book. Otherwise, such facts are not in dispute. We further find that, during TP proceedings, the assessee rectified its error and made a prayer to treat Diamond division as tested party as the same is least complex in the transaction chain. We also find merit in the submission of ld A.R. of the assessee that it is a settled position in transfer pricing regulations that a functional analysis is the primary determination for identifying the least complex entity. The tested party must be participant whose assets employed, risk assumed and the functions performed are the most easily identifiable and standard.

13. We find that Hon'ble Calcutta High Court in PCIT Vs Almatis Alumina (P) Ltd (2022) 137 taxmann.com 202(Cal) held that Indian transfer pricing guidelines issued by the Institute of Chartered Accountant of India wide guidance note on report under section 92E by ICAI and transfer pricing guidelines issued by OECD do not prohibited foreign AE to be a tested party, therefore, where assessee company was a more complex entity when compared to its foreign AE, said foreign AE could be selected as a tested party. The Mumbai Tribunal in DCIT versus Inventors Knowledge Solution (P) limited (2022) 145 taxmann.com 514(Mumbai-Trib) also held that companies whose functions are less complex in nature, does not own any intangible generally and whose results can be verified by using reliable database should be taken as a tested party. Further, Mumbai Tribunal in ISS Facility Services India(P) Ltd (2022) 141 taxmann.com 185(Mumbai tribunal) also held that there is no bar in treating foreign AE as a tested party, only condition is that tested party should be least complex entity. Now coming to the case in hand. We find that the diamond division unit of assessee is least complex entity as its activities are mainly buying, assortment and sales, it has a very modest assessed base consisting of modest workforce and performing routine sorting and sales functions. Such party has been accepted by TPO himself in subsequent assessment year for AY 2022-23.

14. We find that the ld CIT(A) while allowing relief to the assessee clearly held that DTA unit is accepted by TPO as tested party in AY 2022-23, thus, we have no hesitation to confirm the order of CIT(A).The decision relied by ld

Sr DR for the revenue in The ld Sr -DR for the revenue also relied on the decision of Mumbai Tribunal in DCIT Vs Dharmanandan Diamonds Pvt Ltd (supra) has no application on the facts of present case. In the said case the issued was related to deleting the penalty levied under section 271G. In the result, grounds of appeal raised by revenue are dismissed.

15. Considering the fact that we have dismissed all the grounds of appeal raised by revenue thus the various grounds of appeal raised by assessee in its CO has become academic and are dismissed as such.

16. In the result, appeal of revenue is dismissed and cross-objection of assessee is also dismissed as infructuous.

Order was pronounced in the open Court on 13/02/2026.

Sd/-	**Sd/-**
GIRISH AGRAWAL **ACCOUNTANT MEMBER**	**PAWAN SINGH** **JUDICIAL MEMBER**

MUMBAI, Dated: 13/02/2026
Dragon/Biswajit

Copy of the order forwarded to:
(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai