

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCHES 'B' CHANDIGARH**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No.57/Chd/2017**  
Assessment Year: 2013-14

The DCIT  
Circle-I,  
Ludhiana

Vs. M/s Marshal Machines Pvt. Ltd.  
C-86, Phase-V, Focal Point  
Ludhiana

PAN No. AADCM1377N

**Cross Objection No. 11/Chd/2017**  
(In ITA No. 57/Chd/2017)  
Assessment Year: 2013-14

M/s Marshal Machines Pvt. Ltd. Vs. The DCIT  
C-86, Phase-V, Focal Point Circle-I,  
Ludhiana Ludhiana

(Appellant)

(Respondent)

Assessee By : Sh. Y.K. Sud  
Department By : Smt. Renu Amitabh

Date of hearing : 04/04/2018  
Date of Pronouncement : 22/05/2018

**ORDER**

**PER BENCH:**

The present appeal has been filed by the Revenue and Cross Objection filed by the Assessee against the order of the Ld. CIT(A)-1, Ludhiana dt. 27/10/2016.

2. The Revenue has raised only one effective ground of appeal which reads as under:

*" Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in reversing the action of AO for treated the surrendered income as deemed income u/s 69 & 69B of the I.T. Act, 1961 and treating the same as business income and allowed the same to be set off against business loss/depreciation loss or any other expenses?"*

3. The assessee has raised only one effective ground in his Cross Objection which reads as under:

*" That the CIT(A) was not justified in treating Rs. 0.17 Crores surrender as deemed income covered u/s 69, 69B & 69C of the Income Tax Act, 1961."*

4. The sum of the facts of the case and the arguments taken before the Ld. CIT(A) and the rationale relied upon by the Ld. CIT(A) while deleting the addition is as under:

*The issue relates to not allowing the business loss of Rs. 1,04,18,004/- to be set off against the surrendered income of Rs. 3,50,00,000/-. During the course of the assessment proceedings, the AO noticed that during the course of survey conducted u/s 133A of the IT Act on the business premises of the assessee, the assessee surrendered an amount of Rs. 3.50 crore over and above the normal business income. The additional income was surrendered on account of investment, money, expense which could not be explained or was not reflected in the books of accounts and also certain receivables were not shown in the books of accounts.*

*The AO also relied upon the decision of Hon'ble Punjab & Haryana High court in the case of Kim Pharma Ltd. vs. CIT in ITA no. 106 of 2011. The assessee was asked as to why surrendered income should not be treated as deemed income. In response, the AR submitted that the assessee surrendered Rs. 2 crore due to higher inventory as on date of survey was on account of difference in valuation of finished goods as such it constitutes income from business.*

*Similarly, surrender on account of balance of sundry creditors M/s Spinner EVMA Ltd. & M/s Ahmed Nagar Forging Ltd. was also account of business transaction and these amounts had been surrender during the survey and relates to business income. All these had been declared over & above normal business income of the company. Further, according to the assessee, even if it was contended that the assessee had incurred loss from profit of the business after deducting surrendered income considering it as deemed income.*

*The AR submitted that as per the decision in the case of Liberty Plywood (P) Ltd. vs. Asst. CIT 2013 Tax Pub (DT) 0831 (Chd-Trib) 0293, the unabsorbed depreciation can be set-off against the deemed income , as the company has current year depreciation of Rs. 1,23,61,513/- which can also be set off against the balance taxable income of Rs. 1,06,09,974/- after at after deducting surrendered amount of Rs. 3.50 crore from the returned business income of Rs. 2,43,90,026/-. The AO was not satisfied with the reply of the assessee and not allowing to set-off the business losses against deemed income which had been surrendered during the survey.*

*2.1 During the course of the appellate proceedings, the AR submitted his reply as under:*

*"The Appellant has challenged the surrendered Income of Rs-3,50,00,000 represents Business Income and claimed set off of current year business loss against the said Income. However the A.O considered the said Income as Income from other sources u/s 69 and 69A of the Income Tax Act, 1961 The brief facts are that a Survey u/s 133A of the Income tax Act, 1961 was carried out in the Business Premises of the assessee on 31- 08-2012 and the time of the survey the assessee made a surrender of Rs.3,50,00,000 as per the following details (in Rupees)*

<i>A) Discrepancy in stock</i>	<i>2.00 crores</i>
<i>B) Discrepancy in cost of Construction of Factory Plot No. D -116A Phase — V, Focal Point, Ludhiana</i>	<i>0.50 crores</i>

C) Discrepancy in Cost of construction of factory Building at C-86, Phase V, Focal Point, Ludhiana 0.53 crores

D) Discrepancy in Creditors	0.30crores E)Cash
	0.17 crores
Total	3.50 crores

The surrender letter of the assessee is available on page 4 of the Assessment Order. It is very clear that the surrender made by the assessee is clearly on its Business Income. There is not even a single item surrendered by the assessee which suggests that any item surrendered does not relate to the normal business carried out by the assessee. It is pertinent to mention here that the assessee is a Private limited company engaged in the business of manufacturing electronics including computer hardware and all the objects of the company are to carry on the business activities as stated in the memorandum of association.

The department during the course of survey was not able to find any source of Income except the business of manufacturing of electronics and hardware components. There has been no adverse findings or note given by the survey team. However during the assessment proceedings, the AO gave a show cause as to why the surrendered income of Rs. 3,50,00,000 should not be treated as Deemed Income to which the assessee filed a reply but the AO formed a view that once the assessee has surrendered the Income over and above the Normal business Income, the same is required to be taxed as "Income from other sources" under Section 69, 69A and 69B of the Income Tax Act, 1961 Further all the Purchases and Sales were fully vouched, the AO has not doubted this aspect. Without prejudice to above, even if the contention of the AO is to be considered that that in case the Income is added to the present Business Income there would have been a loss of Rs. 1 04,40,504 The AO could not point out even a single defect in the books of account nor he has rejected the books of accounts in support of his contention.

To support his view the A O relied on the judgment of Dulari Digital Photo Services Private Limited vs CIT in ITA No 189 of 2012 but the copy of judgment was not provided to the assessee. However, from the extracts of the judgment which the AO has reproduced in his order it is clearly distinguishable and cannot be applied to the assessee for the reasons that the Hon'ble High Court has held that while analyzing Income from other sources, it would be taxed under that Head only of the relatable source known otherwise if the Head is not known it would be taxed u/s 68.

This judgment cannot be applied to the assessee since the assessee has made the surrender by specifying the Heads which are all business heads and the surrender was duly accepted by the department and the Tax on the Income was also charged on the Income which is clear from the surrender letter reproduced on page 4 of the Assessment Order.

Further the A O relied upon the judgment of Hon'ble Punjab and Haryana High Court in the case of Kim Pharma Ltd vs CIT in ITA 106 of 2011 258 CTR 454 In fact this judgment supports the case of the assessee because in this case, the assessee had surrendered the amount without disclosing its source and therefore the Hon'ble High court held that where the Income is surrendered without disclosing the source the same would be assessable as Income from Other Sources. The assessee in that case had himself surrendered the Income as Income from other sources. In the same case for assessment year 2005- 2006, the assessee surrendered Rs10 Lakhs as sundry creditors, Repairs to Buildings and advance to staff which was relatable to business of the assessee. However it was treated as Business Income by the CIT (A) and IT AT.

In the present case the entire surrender has been made which relates to the business of the assessee and which was accepted by the Income Tax

department and tax realized on the same. Hence it could not have been treated as Income u/s 69 and 69A. The contention of the AO that the Income has not been reflected in the books of accounts is not correct as all the entries of the surrender amount have been recorded in the business heads of the assessee in its books of accounts. The copy of ledger account of the same are enclosed. (Pg 1-12) All the income surrendered are reflected in the books of accounts It is further stated that once a specific surrender made by the assessee has been accepted by the Income Tax department and Tax on the same has been realized, the department cannot take a U turn while framing the assessment of the assessee by taxing the same under the head Income from other sources under Section 69, 69A and 69B. It has to be assessed under the Head Income from Business.

Reference is invited to the judgment of ITAT Chandigarh in the case of Gaurish Steels Private Limited vs AC ITA 1080/Chd/2014 wherein ruling in the favor of the assessee the Tribunal held In the present case the Assessing Officer has no where disputed the business losses incurred by the assessee. The books of accounts have not been rejected.. It was stated at the Bar that even at the time of survey, in the trading account prepared by the survey team, there were losses incurred by the assessee. All these facts have not been disputed by the assessing officer. Further the surrender made by the assessee was on account of cash found during the survey, discrepancy in the cost of construction of building, discrepancy in stock and discrepancy in advances and receivables. By no stretch of imagination, any of these incomes apart from cash can be considered as income under any head other than business income. (Copy of Judgment enclosed Pg 13-18) Your kind attention is drawn to the judgment of ITAT Chandigarh in the case of Kumar Enterprises vs DCIT., Chandigarh IT A No.525/Chd/2014 wherein the Tribunal while quashing the orders of Commissioner of Income Tax held.

The Commissioner of Income Tax has also relied on the judgment in the case of M/s Kim Pharma (P) Ltd. (supra). We wish to state here that in that case, the only issue was with regard to the cash surrendered at the time of survey and no other incomes. Since other incomes were already treated by the Assessing Officer himself as business income, therefore, the proposition of that case is not applicable to the present case. Another point raised by the Commissioner of Income Tax in his order, while distinguishing the case of Karnataka High Court in the case of S.K. Srigiri & Bros. (supra), he has stated that in that case the finding was recorded that the additional income surrendered by the assessee was of business only, which is not there in the present case. In this regard, on perusal of the record, we find that ample queries regarding the nature and source of income were made by the Assessing Officer during the assessment proceedings, which were duly replied to by the assessee. We do not hesitate to hold that even if the Assessing Office has not mentioned the fact of the surrendered income being business income, specifically in his order, we understand that the Assessing Officer was satisfied to the effect that the income surrendered pertained to the business of the assessee. In view of this, we see that the Assessing Officer had made detailed enquiries and formed an opinion which was not illegal and his opinion is based on material and evidences on record. This is not the case of any error having crept in the order of the Assessing Officer, therefore, the Commissioner of Income Tax was not right in holding the order of the Assessing Officer to be erroneous. For assuming jurisdiction under section 263 of the Act, twin conditions of the order being erroneous as well prejudicial to the interest of the Revenue are to be applied simultaneously. Since we have already recorded that there is no error in the order of the Assessing Officer, the Commissioner of Income Tax cannot assume jurisdiction under section 263 of the Act. Accordingly, we quash the order of the Commissioner of Income Tax passed under section 263 of the Act. (Copy of judgment enclosed 19-32)

Similarly in the judgment of ITAT Ahmedabad in the case of DCIT vs Shah Khodidas & Co. ITA No.531/Ahd/2008. Where source of investment/expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable is

*not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business receipt then taxing it further as deemed income under section 69 would not be find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then it should be considered as deemed income under section 69,69A,69B, & 69C as the case may be. It is because when assessee fails to explain satisfactorily the source of such investment then it should be taxed under section 69,69A,69B, & 69C as the case may be. It should not be done at the first instance without giving opportunity to the assessee to establish nexus. Therefore, there is n conflict with the decision of Hon. Gujarat High Court in the case of Fakir Mohmed Haji Hasan(supra) where investment in an asset or expenditure is not identifiable and no ITA No.531/Ahd/2008 Asst. year 2004-05 nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, we hold that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared.*

5. The Ld. CIT(A) held that the assessee has surrendered Rs. 3,50,00,000/- as business income and claimed set-off of current year business loss against the same. The Assessing Officer considered the said income as income from other sources u/s 69 and 69A of the Act. The appellant made a surrender of the said amount during the course of survey u/s 133A of the Act under the following heads:

Discrepancy in Stock	Rs. 2 crores
Discrepancy in cost of construction of factory plot	Rs.0.50 crores
Discrepancy in cost of construction of factory building	Rs. 0.53 crore
Discrepancy in creditor	Rs. 0.30 crore
Cash	Rs. 0.17 crore
Total	Rs. 3.50 crore

6. It was held that not a single item surrendered suggests that the same does not relate to normal business carried out. Further, the department could not find any source of income during the survey except the business of the appellant. All purchases and sales, are fully vouched. All entries of the surrendered amount have been recorded in the business heads of the assessee in its books of accounts. Once the surrender had been accepted by the department, the Assessing Officer cannot tax it as income u/s 69, 69A and 69B during the assessment proceedings. Reliance was placed on the decision in the case of Gaurish Steels Pvt. Ltd. vs. ACIT ITA no. 1080/CHD/2014, wherein it was held that the surrender on account of discrepancy in cost of construction of building, discrepancy in stock, discrepancy in advances and receivables could not be considered under any other head other than business income. Further, reliance

was placed on the decision of Hon'ble ITAT, Chandigarh in the case of Kumar Enterprises vs. DCIT Chandigarh ITA no. 525/CHD/2014 wherein it was held that the only issue in the case of M/s Kim Pharma Pvt. Ltd. of the Hon'ble Punjab & Haryana High Court was relating to the cash surrendered as the other incomes were already treated by the Assessing Officer himself as business income. Reliance was also placed on the judgment of ITAT Ahmadabad in the case of DCIT vs. Shah Khodidas & Co. ITA no. 531/Ahd/2008 wherein it was held that it is only where no nexus is established with any head that it should be considered as deemed income u/s 69, 69A, 69B and 69C as the case may be.

7. Ld. CIT(A) deleted the addition by placing Reliance in the case of M/s Khurana Rolling Mills (P) Ltd. in Appeal No. 518/ IT/CIT(A)-I/Ldh./2014-15 dated 31.03.2016 for A.Y. 2012-13 as under:

*"I have carefully considered the facts of the case, the basis of the addition made and the argument of the AR. During the course of the survey operations conducted at its business premises, the appellant surrendered an amount of Rs. 1 crore. The said income has been shown in the P&L account by the appellant. The Assessing Officer assessed the surrendered income as deemed income u/s 69 and 69B by relying on the judgment of M/s Kim Pharma Pvt. Ltd. ITA no. 106 of 2011 (P&H) & Fakir Mohamad Haji Hasan in ITA no. 165 CTR 1011 (Guj). Thus, the business losses were not allowed to be set off against the surrendered income. The AR contended that the appellant is maintaining all the statutory records required under the provisions of the Central Excise Act, VAT Act and Companies Act and that there is no finding during the course of the survey operations or the assessment proceedings to the effect that the appellant is engaged in any activity outside the books of accounts. The AR further contended that all the books of accounts upto the date of the survey along with the relevant purchase bills, sales bills, expenditure vouchers, capital expenditure and other supporting documents and details were verified during the course of the survey but no discrepancy was found therein. Further, the stock was verified with the excise and stock records showing details of purchase of raw material, consumable stores, raw material used for production, sale of finished goods, wastage and closing stock of raw materials and no discrepancy was found during the course of the survey operations. No discrepancy was found in the cash in hand verified with the books of accounts. Therefore, there is force in the appellant's contention that it was maintaining complete books of accounts with proper records on the date of the survey and no incriminating evidence or record not in consonance with the books of accounts was found. There was no cash credit found during the survey which the appellant could not explain. No investment was found which was not recorded in the books of accounts. Further, no document, information, records showing ownership of any money, bullion Jewellery or other valuable article was found and neither any evidence showing that the appellant was the owner of any bullion jewellery or other valuable article where it was found that amount invested in the same exceeded the amount recorded in the books of accounts. No evidence was found showing that the appellant had incurred any expenditure for which no explanation could be offered regarding the source of the said expenditure. Thus, the AR contended that sec68, 69, 69A, 69B and 69C are not applicable in its case. The appellant surrendered Rs. 1 crore as business income in the form of sundry debtors during the survey operations. The AR has contended that the surrender offered by appellant on account of undisclosed sundry debtors is purely related to the business carried out by the appellant. No undisclosed business activity has been found during the survey. The AR pointed out that as per the statement of Sh. Baljinder Singh s/o Sh. Charan Singh recorded during the survey operations, the amount of Rs. 1 crore was surrendered as*

income of the company over and above the normal business income. The AR has rightly pointed out that in the case of Kim Pharma Ltd. vs. ITO, IT AT Chandigarh bench, the amount surrendered on account of cash was not allowed to be assessed as business income since the source has not been explained and the same was assessed u/s 69A of the Act whereas in the appellant's case mode and manner has been applied to the surrendered income as applied to the income earned during the regular course of the business. No evidence has been found during the survey operations and the discrepancies found were related to the assessee's business and not to any other source of income. The said submissions of the AR were not controverted in the remand report. Reliance has been placed by the AR on the decision of Sh. Kuldeep Kumar vs. CIT, Hon'ble ITAT Chandigarh bench in ITA 1015/CHD/2009 for A.Y. 2006-07 wherein it has been held, after considering the case of the Hon'ble Gujarat High Court in the case of Fakir Mohamad Haji Hasan, that income cannot fall beyond the five heads made under the act. Further, reliance has been placed on the decision of the Hon'ble Apex court reported in CIT vs. D.P. Sandhu & Bros. 273 ITR 1 wherein it has been held that section 56 provides for chargeability of income of every kind which has not been excluded from the total income under the act only if it is not chargeable to income tax under any heads specified in sec 14 and if the income is included under any one of the heads it cannot be taxed u/s 56. Further, reliance has been placed on the case of DCIT vs. Radhe Developers India Ltd. & Anr. (Guj) 329 ITR 1 wherein the judgment of Fakir Mohamad Haji Hasan has been considered and the judgment of the Hon'ble Apex Court in the case of D.P Sandhu & Bros. P. Ltd. Supra have been referred to and it has been held that the act does not envisage taxing income under any head not specified u/s 14 of the Act. The Department did not find any other source of income except the business of manufacture of steel items and, according to the AR, the same is clear as per the offer letter of surrender also wherein it is stated that the surrender amount is over and above the book version which shows that the income offered is a part and parcel of its existing business activities. Reliance has also been placed by the AR on the judgment of Hon'ble Gujarat High Court in the case of Shi I pa Dyeing and Printing Mills 39 taxmann 3 wherein, after considering its earlier judgment of Radhe Developers India Ltd. and of D.P Sandhu & Bros.(SC), the issue was decided in favour of the assessee and the judgment in the case of Kim Pharma Ltd. (P&H) was considered and distinguished. The surrender made by the appellant was on account of advances and receivables which are considered under the head 'business income'. The Assessing Officer has not been able to establish in the assessment order with supporting evidence that the income surrendered was not out of the business of the appellant. Further, there is force in the appellant's contention that the Assessing Officer has nowhere objected to the heads under which the appellant has surrendered these amounts. In the case of M/s Kim Pharma P. Ltd. (P&H) supra reliance has been placed on the ratio laid down in Fakir Mohamad Haji Hasan vs. CIT 247 ITR 290 (Guj) wherein it has been held that only where the nature and source of investment made or the nature and source of acquisition of money, bullion etc. owned by the assessee or the source of expenditure incurred by the assessee are not explained, then the value of such investments or money and the value of articles not recorded in the books or the unexplained expenditure may be deemed to be the income of such assessee and that the moment a satisfactory explanation is given about the nature and source by assessee, the income would be treated under the appropriate head of income. However, in the appellant's case, the Assessing Officer could not established that payments received as per the slips were from sources other than the business of the appellant. Therefore, apart from the cash, all other income surrendered is to be brought to tax under the head business income while the cash is to be taxed under the head deemed income u/s 69A of the Act. Moreover, the Assessing Officer has not disputed the business losses of the appellant. The Assessing Officer has not found any disallowable expenditure to show that the appellant has manipulated its books of accounts to bring down its total income. No such evidence has been brought on record to show that the assessee has booked any bogus expenditure and there is therefore no reason to doubt the veracity of the books of accounts and the expenditure therein. The heads under which the surrender has been made has not been challenged by the survey team or the Assessing Officer. In the case of Kim Pharma Vs. CIT in ITA no. 106 of 2011 (P&H) supra the Hon'ble High Court has upheld the treatment of

additional income on account of sundry credits, repairs to building, and advances to staff to be treated under the head 'income from business and profession' and only in respect of cash found where no clear source could be established by the appellant the same was treated under the head 'income from other sources'. The Assessing Officer has not appreciated the decision in the case of Kim Pharma (*supra*) properly and has misapplied it. The AR has placed reliance on the case of M/s Gaurish Steels Pvt. Ltd. reported in 43 ITR 414 dated 17.09.2015 of the Hon'ble ITAT Chandigarh Bench, wherein the Assessing Officer did not dispute the business losses incurred by the assessee and did not reject the books of accounts. Relying on the case of Kim Pharma P. Ltd. Vs. CIT (P&H) (*supra*) and referring to the case of Fakir Mohamad Haji Hasan vs. CIT (Guj) (*supra*), it was held in the said case that the income apart from cash, in the shape of discrepancies in the cost of construction of building, in stock and in advances and receivables was to be treated as 'business income' as the Assessing Officer and the survey team failed to find other source of income except for business income. Therefore, in the said case only the cash found was treated as income from other sources and it was held that all other income surrendered could be brought to tax under the head 'business income' and the business losses incurred by the assessee during the year were allowed to be set-off against the income surrendered during the survey except the amount of cash surrendered. The appellant's case is covered by the said decision of the Hon'ble Jurisdictional ITAT in the case of M/s Gaurish Steels Pvt. Ltd. (*supra*)."

8. During the hearing before us the Ld. DR Smt. Renu Amitabh vehemently argued that set off cannot be allowed against the income surrendered in the survey conducted under section 133A as the surrender amounts to undisclosed income assessable under section 69. She relied on the case of Kim Pharma Pvt. Ltd. (*supra*) and also Sant Steel & Alloys Pvt. Ltd. in ITA No. 2808 and 2809/Del/2013 dt. 02/06/2016 and also the case of Fakir Mohamman Hazi Hasan Vs. CIT 247 ITR 290.

9. We have gone through the entire facts of the cases relied upon by the Ld. DR in the case of Kim Phamra (*supra*) wherein the Hon'ble High Court held as under:

"The scheme of sections 69, 69A, 69B and 69C of the Income-tax Act, 1961, would show that in cases where the nature and source of investments made by the assessee or the nature and source of acquisition of money, bullion etc., owned by the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, then, the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of such assessee. It follows that the moment a satisfactory explanation is given about such nature and source by the assessee, then the source would stand disclosed and will, therefore, be known and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act. However, when these provisions apply because no sources is disclosed at all on the basis of which the income can be classified under one of the heads of income under section 14 of the Act, it would not be possible to classify such deemed income under any of these heads including income from "other sources" which have to be sources known or explained. When the income cannot be so classified under any one of the heads of income under section 14, it follows that the question of giving any deductions under the provisions which correspond to such heads of income will not arise. If it is possible to peg the income under any one of those heads by virtue of a satisfactory explanation being given, then these

*provisions of sections 69,69A, 69B and 69C will not apply, in which event, the provisions regarding deductions etc. applicable to the relevant head of income under which such income falls will automatically be attracted. "*

10. In the case of Sant Steel & Alloys (supra) the Hon'ble Tribunal found on factual basis that the amount received by the assessee is an accommodation entry and the sources have not been proved to be belonging to any of the heads mentioned under section 14, whereas in the instant case the surrender made by the assessee on account of stock, construction of factory, discrepancy in trade creditors can be said to be from the earnings of the business as the assessee, a company has been proved to be in no other activity except in the business of Electronics as declared before the Revenue Authorities. The Assessing Officer has also fairly treated the income as profits from business & profession and the assessee has also surrendered this income as profits over and above its regular business income. Hence keeping in view the entire gamut of facts and circumstances of the case and the case laws relied by the AR before the Ld. CIT(A) , the arguments taken before us by the Ld. DR, we hereby hold that the surrendered income under the heads pertaining to the profits of the business and profession are allowed to be set off against the business loss / depreciation loss and since the no satisfactory explanation has been given by the assessee for the cash portion, proving its sources the same is not to be allowed to be set off against business / deprecation losses.

11. As a result the appeal of the Revenue and the cross objection of the assessee stands dismissed.

Order pronounced in the Open Court.

**Sd/-**  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**  
 Dated : 22/05/2018  
 AG

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR