

IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA

Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri A.T. Varkey, Judicial Member

I.T.A. No. 2127/KOL/2017  
Assessment Year: 2015-2016

Assistant Commissioner of Income Tax,.....Appellant  
Central Circle-3(3), Kolkata,  
Aayakar Bhawan Poorva, E.M. Bye-Pass,  
110, Shanti Pally, 4<sup>th</sup> Floor,  
Kolkata-700 107

-Vs.-

M/s. New Horizons Limited,.....Respondent  
31/2, Topsia Road (South),  
Kolkata-700 046  
[PAN: AAACN8505C]

**Appearances by:**

*Shri Radhey Shyam, CIT, D.R, for the Department*  
*Shri D.S. Damle, A.R., for the Assessee*

Date of concluding the hearing : July 11, 2019  
Date of pronouncing the order : August 28, 2019

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 04.07.2017 on the following grounds:-

*"1. In the facts and circumstances of the case, the Ld. CIT(A) erred in holding the excess stock of Rs.4,70,54,450/- found from seized documents during search as regular income of the assessee that has already been incorporated in its books of account maintained in the normal course of business without even going through the statement recorded u/s 132(4) on concluding date of search i.e. 05/05/2015 in which the director of the assessee company clearly accepted that the excess stock of Rs.4,70,54,450/- detected by the search party from the seized documents on the date of search were not recorded in the books of account and to buy peace*

*and to co-operate with the department, he offered though stating to be voluntarily but after detection by the search party and after being confronted, the sum as the undisclosed income of the assessee company.*

*2. In the facts and circumstances of the case, the Ld. CIT(A) erred in law in not considering the undisclosed income declared during search in a statement recorded u/s 132(4) as deemed income assessable u/s 68, 69 etc. of Chapter VI of Income Tax Act by not following a settled position of law that what is brought to tax under Chapter IV of the Act is an income from known source i.e. a particular source from which income flows but if source of an income for an undisclosed income declared during search or survey is not disclosed, it cannot be assessed under any particular head of income of Chapter IV, particularly as business income or income from other sources and such income would necessarily fall u/s 69 if a particular amount disclosed in search or survey is not found recorded in books of account on the date of search or survey.*

*3. In the facts and circumstances of the case, the Ld. CIT(A) has failed to perform his statutory coterminous and coextensive power with that of the Assessing Officer as held in by the Hon'ble Supreme Court in the case of Kanpur Coal Syndicate (Se) 53 ITR 225.*

*4. In the facts and circumstances of the case, the Ld. CIT(A) erred in law in allowing set off of business loss against the undisclosed income assessable u/s 69”.*

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of leather goods. A search under section 132 was conducted in the case of the assessee on 20.03.2015. Thereafter the return of income for the year under consideration was filed by the assessee-company on 30.09.2015 declaring total income of Rs.3,52,98,520/-. During the course of search, certain documents were found showing surplus stock of leather amounting to Rs.4,70,54,450/- and in the statement recorded during the course of search, the Director of the assessee-company had agreed to account for the same in the books of account of the assessee-company. During the course of assessment proceedings, it was submitted on behalf of the assessee-company that the surplus stock of Rs.4,70,54,450/- had duly been accounted for in its books of account for the year under consideration. The Assessing Officer,

however, found that the income declared by the assessee on the basis of books of account was only Rs.3,52,98,520/-, which was lower than the value of surplus stock as found during the course of search. According to him, the assessee-company thus had incurred a business loss of Rs.1,17,55,657/- and after adjusting the same against the value of surplus stock of Rs.4,70,54,450/- as found during the course of search, the net income of Rs.3,52,98,520/- was declared by the assessee-company in its return of income. He held that the surplus stock of leather of Rs.4,70,54,450/- was chargeable to tax in the hands of the assessee-company under section 69 of the Act being unexplained investment and the assessee-company was not entitled to set off the business loss incurred during the year under consideration against the income assessable under a separate chapter. He accordingly determined the total income of the assessee at Rs.4,70,54,450/- in the assessment completed under section 143(3) vide an order dated 31.03.2016 and allowed the business loss of Rs.1,17,55,657/- to be carried forward.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee and the material available on record, the Id. CIT(Appeals) decided the issue after recording his findings and observations in his impugned order as under:-

*"I have carefully considered the submissions of the A/R and perused the assessment order. I have also given consideration to various judicial decisions relied upon by the A/R in his submissions. In the present appeal principally two issues are required to be adjudicated. Viz:(a) whether the AO was justified in assessing sum of Rs.4,70,54,450/- by way of unexplained investment" in stocks u/s 69 of the Act and (b) whether the AO was justified in not allowing benefit of set off of current year's business loss against income assessed u/s 69 of the Act. In the impugned order the AO noted that in the course of search u/s 132 conducted against the appellant on 20/03/2015 documents were found which indicated undervaluation of stock to the extent of Rs.10.75 crores by two operating companies of the Group namely, Industrial Safety Products Pvt. Ltd and New Horizon Ltd i.e. the assessee herein.*

*In reply to the show cause issued, the assessee stated that the excess stock found on physical verification on 01/03/2015 relating to the assessee was Rs.4,70,54,450/- and the same was properly accounted in the books for the financial year 2014-15. The excess stock found during physical verification was reflected in the books of accounts and hence there was no question of suppression of any profit made by the company. In this regard attention of the AO was drawn by the assessee to Note No. 34 of the financial statement wherein it was clarified that surplus stock of leather measuring 10,32,002 sq.ft. of Rs.4,70,54,450/- was found during the course of physical verification of inventory during the month of January & February 2015 was subsequently disclosed in the statement recorded in the course of proceedings u/s 132 of the Act and has been duly accounted for in books of accounts. After taking note of the assessee's explanations and the disclosure made in Note No. 34 by the auditors, the AO observed that net profit of the assessee for assessment year 2015-16 was Rs.3,25,96,827/- .Excluding value of excess stock he noted that loss of Rs.1,17,55,657/ was incurred by the assessee for the year. According to AO the income so disclosed was taxable under separate Chapter being Chapter VI of the Income-tax Act, 1961. The AO opined that undisclosed stock was taxable under Section 69 of the Act since it was not recorded prior to the search. In his opinion the incorporation of the stock in the books, post search did not change the nature of computation of income. According to AO the set-off of loss was permissible only against income assessable under normal heads of income and the set off was not provided for against income assessable under the provisions of Section 68 to 69D of the Act. The AO therefore assessed Rs.4,70,54,450/- as total income of the assessee. The AO separately assessed loss under head 'Profits & Gains of Business' at Rs.1,17,55,657/- and without allowing its set off against the income assessed u/ s 69, allowed its carry forward u/s 72 of the Act.*

*From the material documents, I find that search u/s 132 of the Act was conducted on 20/03/2015 at the office and factory premises of Naredi Group. On careful perusal of panchnama prepared on 20/03/2015, I find that it not contain Annexure giving particulars of the inventory found and valued by the search party on the date of search. There is also nothing in the assessment order from which one can infer that in the course of search inventory inspection was conducted to determine excess stock, held by the assessee on the date of search. On the contrary I find that on Page-2 of the assessment order, the AO extracted from the Notes on Accounts given by the auditor which certified that the surplus stock of leather measuring 10,32,002 sq.ft. of Rs.4,70,54,450/- was found during the course of physical verification of inventory during the months of January/February 2015 and this was subsequently disclosed in the statement recorded in the proceedings u/s 132 of the Act*

*and has been duly accounted for in books of accounts. It is further noted from the submissions of the A/R and also from the documents on record that in the month of January/February 2015, the Units-in-charge of the appellant company were instructed to conduct comprehensive physical verification of the inventory held at different manufacturing locations and report the differences, if any and also to identify & report quantities of unusable & obsolete items. Accordingly stock taking exercise was conducted at different manufacturing locations in February/March 2015 and detailed inventory inspection reports prepared at these locations were forwarded to the Head Office in Kolkata in first week of March 2015. On completing stock taking exercise the instructions were issued to the respective unit heads for incorporating correction entries in the stock records by suitably increasing the physical quantities of the respective inventory items. Accordingly necessary entries in the stock records were passed in the month of March 2015 itself. It is further noted that the search started on 20/03/2015 was temporarily concluded on that date and a prohibitory order u/s 132(3) was placed and thereafter the search was resumed at the office premises at Geeta Bhawan, P-33, CIT Road, Scheme VIM(S), Kolkata- -700 054 on 05/05/2015. Documents marked as NHL/PO/l containing Pages 1 to 20 which were seized on 05/05/2015 which comprised of inventory inspection reports prepared by the respective unit heads wherein they had reported finding of excess quantities of inventory on physical inspection and also the inventory valuation statement prepared at the Head Office and the instructions issued for incorporating entries for correction of stock records. These documents read in conjunction with Auditor's Notes on Accounts lead to conclusion that the excess inventory was not found at the time of search conducted on 20/03/2015 as allegedly observed by the AO in the impugned order so as to constitute assessee's unexplained investment in stock. On the contrary the material information available in the records showed that the inventory inspection was conducted by the assessee prior to the date of search and even the instructions for incorporating the necessary adjustment entries were issued prior to the search and the adjustment entries in stock records were also made prior to 31/03/2015 as reported by the auditor in his Notes on Accounts. In the light of these documentary evidences therefore I find that much prior to detection of inventory inspection reports by the Investigating Officer on 05/05/2015, the assessee had already incorporated the excess stock in its books in the normal course of business and therefore the sum of Rs.4,70,54,450/- cannot be considered as 'unexplained investment' u/s. 69 or 'undisclosed income' of the assessee for assessment year 2015-16.*

*In fact I note that AO's such finding is also contrary to the stand taken in the assessment order passed in the case of associate concern, namely, Industrial Safety Products Pvt. Ltd.*

*As observed by the AO in the impugned order, in the course of search, documents were found and seized which reported excess inventory of Rs.10.75 crores belonging to Industrial Safety Products Pvt. Ltd. and the appellant herein. Out of the same, inventory valued at Rs.6,04,95,015/- belonged to Industrial Safety Products Pvt. Ltd and the remaining inventory of Rs.4,70,54,450/- belonged to assessee which was accounted in the assessee's books. In the order u/s 143(3) dated 31.03.2016 in the case of Industrial Safety Products Pvt. Ltd, the same AO assessed the sum of Rs.6,04,95,015/- in relation to excess stock found as part of assessee's regular business income and did not assess it separately u/s 69 of the Act. I therefore find that even though the factual matrix of both the cases was identical, only in the appellant's case such income was assessed u/s 69 of the Act whereas in other case it was considered part of regular income. On these facts therefore I hold that the sum of Rs.4,70,54,450/- being value of excess inventory found on physical inspection did not represent assessee's unexplained investment u/s 69 but it was part of regular income which was offered to tax by incorporating in the regular books of the assessee.*

*Even otherwise I find that the AO's action of not allowing the set-off of current year's business loss was not in accordance with the provisions of law as were in force in the relevant assessment year 2015-16. A bare perusal of the assessment order shows that the AO per se did not question or dispute the book results of the assessee. Excluding the value of excess stock which he separately assessed u/ s 69, the AO assessed loss of Rs.1,17,55,657/ - for the AY 2015-16 but refused to allow its set off on the plea that set off was not permissible where income was assessed u/s 68 to 69D of the Act. As held earlier the entire income was assessable under the normal provisions of the Act. However even otherwise, as held by the Madras & Gujarat High Court in the cases of CIT Vs Chensing Ventures (291 ITR 258) and CIT Vs Shilpa Dyeing & Printing Mills (P) Ltd (219 Taxman 279) respectively, the current year's business loss or unabsorbed depreciation was eligible for set off against income assessable u/s 68 or 69 of the Act. In CIT Vs Chensing Ventures (supra), the Madras High Court held as follows:*

*"Section 71 deals with set off of loss against income under any other head. After setting off losses against the income under the same head, if the net result is still a loss, the assessee can set off the said loss under section 71 of the Act against income of the same year under any other head, except for losses which arise under the head "Capital gains". The income-tax is only one tax and levied on the sum total of the income classified and chargeable under the various heads. Section 14 has classified the different heads of income and income under*

*each head is separately computed. Income which is computed in accordance with law is one income and it is not a collection of distinct tax levied separately on each head of income and it is not an aggregate of various taxes computed with reference to each of the different sources separately. There is only one assessment and the same is made after the total income has been ascertained. The assessee is subject to income-tax on his total income though his income under each head may be well below the taxable limit. Hence the loss sustained in any year under any heads of income will have to be set off against income under any other head. In this case, the Assessing Officer made addition of Rs.28,50,000/- as undisclosed income under section 69 of the Act. Once the loss is determined, the same should be set off against the income determined under any other head of income. In the assessment, no reasons were given by the Assessing Officer to deny the benefit of section 71 of the Act. The benefit provided under section 71 of the Act cannot be denied and the learned standing counsel appearing for the revenue is also unable to explain or give reasons why the assessee is not entitled to the benefit of section 71 of the Act. The reasons given by the Tribunal are based on valid materials and evidence and the same is in accordance with the provisions of section 71 of the Act. We find no error or legal infirmity in the impugned order”.*

*The Gujarat High Court in the case of CIT Vs Shilpa Dyeing & Printing Mills (P) Ltd (supra), it was held as follows:*

*“Section. 71 permits an assessee to set off loss other than that of capital gains against income from other head. This very issue came up for consideration before the Madras High Court in case of CIT v. Chensing Ventures [2007] 291 ITR 258/163 Taxman 175, wherein it was held that income tax is only one tax and levied on the sum total of the income classified and chargeable under the various heads. Section 14 has classified the different heads of income and income under each head is separately computed. Income which is computed in accordance with law is one income and it is not a collection of distinct tax levied separately on each head of income and it is not an aggregate of various taxes computed with reference to each of the different sources separately.*

- Once the loss is determined, the same should be set off against the income determined under any*

*other head of income including undisclosed income.  
[Para 8]*

- The statutory provisions contained in section 71 was applicable in the present case.*
- In the result, no question of law arises. Tax appeal is, therefore, dismissed.*

*I further note that the prohibition against allowing the set off for current year's loss against the income assessable u/s 68 or 69 was statutorily provided for the first time by the Finance Act, 2016 with effect from 01.04.2017 and therefore as per the law in force for assessment year 2015 16, there was no restriction on granting set off. Viewed from any angle therefore, I find that the AO was not justified either in assessing Rs.4,70,54,450/- u/s 69 of the Act or refusing to allow set-off of current year's business loss of Rs.1,17,55,657/-. Ground Nos. 1 to 4 are therefore allowed”.*

The Id. CIT(Appeals) thus allowed the claim of the assessee for set off of business loss of Rs.1,17,55,657/- by holding that the Assessing Officer was not justified either in assessing the income of Rs.4,70,54,450/- under section 69 of the Act or refusing to allow set off of current year's business loss of Rs.1,17,55,657/-. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. The Id. D.R. submitted that excess stock of about Rs.4.70 crores was found during the course of search, which was concluded on 05.05.2015 and in the statement recorded during the course of search, the Director of the assessee-company had agreed to surrender such excess stock as the additional income of the assessee-company. He contended that the assessee-company, however, declared total income of Rs.3.52 crores only in the return of income filed for the year under consideration and the additional income surrendered during the course of search on account of excess stock was not declared by the assessee-company in its return of income. He contended that this vital aspect was ignored by the Id. CIT(Appeals) while allowing relief to the assessee on the issue under

consideration. He also contended that the value of excess stock found during the course of search was assessable to tax in the hands of the assessee under section 69, which falls under the separate chapter and the assessee-company, therefore, was not entitled to set off the business loss of the current year against the said income as rightly held by the Assessing Officer.

5. The Id. Counsel for the assessee, on the other hand, submitted that the search action was commenced on 20.03.2015 and after revoking the Prohibitory Order, the said action was resumed and concluded on 05.05.2015. He submitted that the assessee-company had done the physical verification of stock in the month of January and February, 2015 itself and the surplus stock found on such verification was duly incorporated in the books of account for the year ended 31<sup>st</sup> March, 2015. He contended that it was thus not a case of unexplained investment found to be made by the assessee in stock during the course of search and what was found during the course of search was only the statement prepared during the month of January and February, 2015 on physical verification showing surplus stock. He contended that even in the statement recorded during the course of search, the Director of the assessee-company had never agreed to surrender any additional income on account of surplus stock and it was clearly stated by him that the surplus stock found on physical verification in the month of January and February, 2015 had duly been accounted for in the books of account of the assessee-company. He contended that there was thus no income chargeable to tax in the hands of the assessee-company under section 69 and the assessee-company even otherwise was entitled to set off the business loss of the current year against the income assessable under section 69, if any, as rightly held by the Id. CIT(Appeals). He, therefore, strongly supported the impugned order passed by the Id. CIT(Appeals) and urged that the order of Id. CIT(Appeals) may be upheld.

6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that physical verification of stock was carried out by the assessee-company in the month of January and February, 2015 as a matter of internal control and surplus stock of Rs.4,70,54,450/- found on such physical verification was duly incorporated by the assessee-company in its books of account in the month of March, 2015 itself. A search under section 132 of the Act was conducted in the case of the assessee and the same commenced on 20.03.2015 was temporarily concluded when Prohibitory Order was issued. The said Prohibitory Order then was revoked and the search was commenced on 05.05.2015 when the statements prepared in the month of January and February, 2015 showing excess stock on physical verification was found by the Searched Team. It is thus not a case where this surplus stock can be said to have been found as a result of search representing any undisclosed income of the assessee. On the other hand, the physical verification of stock was carried out by the assessee-company on its own as a matter of internal control in the month of January and February, 2015 well before the search and the surplus stock found on such physical verification having been accounted for by the assessee-company in its books of account in the month of March, 2015 itself, the same, in our opinion, cannot be treated as unexplained investment of the assessee, which is chargeable to tax under section 69. Keeping in view all these facts of the case, we are of the view that the amount in question representing excess stock found on physical verification carried out by the assessee-company on its own well before the search action and duly accounted for in the books of account of the assessee-company constituted its business income. As noted by the Id. CIT(Appeals) in his impugned order, the Assessing Officer himself in the case of M/s. Industrial Safety Products Pvt. Limited, a sister concern of the assessee had brought to tax the value of similar excess stock in identical facts and circumstances as regular business income of the assessee. We, therefore, find ourselves in agreement with the Id. CIT(Appeals) that the value of

surplus stock in the facts and circumstances of the assessee's case did not represent assessee's unexplained investment under section 69 and it constituted its regular business income for the year under consideration. We also agree with the alternative basis given by the Id. CIT(Appeals) for giving relief to the assessee by holding that the assessee was entitled to set off current year's business loss of Rs.1,17,55,657/- against the income on account of surplus value of stock of Rs.4,70,54,450/- even if it is presumed for the sake of argument that the same was assessable under section 69 of the Act as the same is duly supported by the decision of the Hon'ble Madras High Court in the case of CIT -vs.-Chensing Ventures (291 ITR 258) (supra) and the Hon'ble Gujarat High Court in the case of CIT -vs.- Shilpa Dyeing & Printing Mills (P) Limited (219 Taxman 279) (supra) as rightly noted by the Id. CIT(Appeals) in his impugned order. The prohibition against allowing such set off was statutorily provided by the Finance Act, 2016 w.e.f. 1<sup>st</sup> April, 2017 and there was thus no such prohibition or restriction in allowing the claim of the assessee for the set off for the year under consideration, i.e. A.Y. 2015-16. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue and upholding the same, we dismiss this appeal filed by the Revenue.

**7. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on August 28, 2019.

**Sd/-  
(A.T. Varkey)  
Judicial Member**

**Sd/-  
(P.M. Jagtap)  
Vice-President (KZ)**

***Kolkata, the 28<sup>th</sup> day of August, 2019***

- Copies to :* (1) **Assistant Commissioner of Income Tax,  
Central Circle-3(3), Kolkata,  
Aayakar Bhawan Poorva, E.M. Bye-Pass,  
110, Shanti Pally, 4<sup>th</sup> Floor, Kolkata-700 107**
- (2) **M/s. New Horizons Limited,  
31/2, Topsia Road (South),  
Kolkata-700 046**

**I.T.A. No. 2127/KOL/2017**  
**Assessment Year: 2015-2016**  
**M/s. New Horizons Limited**

- (3) *Commissioner of Income Tax (Appeals)-21, Kolkata,*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***