

Chapter 10 : Set off or Carry forward and Set off Losses (Section 70 to 80)

Advance Direct Tax and Service Tax
[Sub code : 441]

Learning Objectives

- ❖ How can losses from one source under a particular head of income are set off against income from another source under same head
- ❖ How can losses under a particular head of income are set off against income from another head of income
- ❖ Carry forward and Set off of Business Loss
- ❖ Losses under the Head Capital Gains
- ❖ Losses in Speculation Business
- ❖ Losses of Firm
- ❖ Carry forward and Set off of Losses in the Case of Certain Companies

Introduction

- When an Assessee has positive income under each head, it is aggregated and after applying the deductions in each case, the tax rate is applied.
- It may so happen that an assessee has more than one source of income in each head of Income.
- He may have positive income under one source and negative income under other source.

For example –

- ✓ Assessee owns three houses, one of which is his self occupied house and other two are rented
- ✓ Assessee may be having income from say one businesses and loss from another business
- ✓ He may have Income from Capital Gains and Loss both from sale of assets

SET OFF OF LOSS FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCE UNDER THE SAME HEAD OF INCOME

- Where the **net result** for any assessment year in respect of any source falling under any head of income, (other than "Capital gains") is a **loss**, - the **assessee shall be entitled** to have the amount of such loss **set off against** his **income** from any other source **under the same head**.
- In case of Capital Gain / Loss –
 - Short Term Capital Loss – can be set off against Short Term Capital Gain or Long Term Capital Gain in the same year
 - Long Term Capital Loss – can be set off only against Long Term Capital Gain in the same year, if available

SET OFF OF LOSS FROM ONE HEAD AGAINST INCOME FROM ANOTHER HEAD [Section 71]

- This can be explain in very simple way as under –

LOSS	CAN BE SET-OFF AGAINST -
Loss under any Head of Income (other than “Capital Gain”) AND There is NO Income under the head “Capital Gain”	Such Loss can be Set-off against Income from any other head
Loss under any Head of Income (other than “Capital Gain”) AND There is Income under the head “Capital Gain”	Such Loss can be Set-off against Income from any other head including Income under the “Capital Gain”

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- Section 71(2A):

where in respect of any assessment year, the net result of computation under the 'Income from Business and Profession' is a Loss, and the assessee has income under the head 'Salaries', the assessee shall not be entitled to have such loss set off against such income.

- Section 71(3):

Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.

Carry forward and set off of Loss under Income from House Property [Section 71B]

- In respect to any assessment year, if there is a Loss from any house property, it can be set-off against any other house property having Income.
- If there is any “unabsorbed loss” is there, it can be set-off against Income of any other head in that particular assessment year.
- If still “unabsorbed loss” is there, it can be carried forward to next assessment year
- The unabsorbed Loss from house property can be set off only against Income from House Property in next years.
- It shall be so Carried forward to next 8 years.

CARRY FORWARD AND SET OFF OF BUSINESS LOSS

[Section 72]

- If –
- ✓ The net result of computation under the head 'Profits and Gains of Business or Profession' is Loss
- ✓ This loss is not the loss in speculation business
- ✓ Such loss cannot be set off against income from any other heads as permissible in the same year. This loss is called 'unabsorbed business loss'.

Then –

- Such Unabsorbed business Loss can be carried forward to next 8 assessment years.
- In the matter of set off, priority is given to past unabsorbed losses u/s 72 over:
 - Unabsorbed Depreciation u/s 32(2) and
 - Capital Expenditure on Scientific Research u/s 35(4)

Carry Forward and Set-off in Case of Amalgamation

- The accumulated losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

Conditions to be fulfilled by Amalgamating Company –

- ✓ has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
- ✓ has held continuously as on the date of the amalgamation at least 75% of the book value of fixed assets held by it two years prior to the date of amalgamation;

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- Conditions to be fulfilled by Amalgamated (New) Company –
 - ✓ holds continuously for a minimum period of five years from the date of amalgamation at least 75% of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;
 - ✓ Continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;
 - ✓ fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

LOSSES IN SPECULATION BUSINESS [Section 73]

- “Speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts.
- Speculation Loss incurred during the year => can be set off only against speculation Profit
- Unabsorbed Speculation Loss => can be Carried Forward to next year
- Carried forwarded Speculation Loss => Can be set off only against Speculation Profit of next years
- Carry forward allowed up to next 4 years

Carry forward and set off of losses by specified business [Section 73A]

- Any loss of specified business referred to in section 35AD shall not be set off except against profit and gain of specified business.
- Where for any assessment year any loss of specified business has not been wholly set off, so much of the loss as is not set off or the whole loss where the assessee has no income from any other specified business, shall be carried forward to the following assessment year, and –
 - It shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and
- If the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

Losses under the head “Capital Gain” (Section 74)

- Losses from the head under capital gain can be set off again only against income from capital gain.
- The Unabsorbed Capital Loss Can be carried forward to next 8 years.
- Treatment of set-off is like –

Loss	Can be set-off against -
Unabsorbed Short Term Capital Loss	Short Term Capital Gain OR Long Term Capital Gain (of subsequent eight years)
Unabsorbed Long Term Capital Loss	Long Term Capital Gain (of subsequent eight years)

Loss from owning and maintaining Race Horses

[Section 74A]

- For the purposes of allowing and set off of losses, the activity of owning and maintaining Race Horses are given separate treatment.
- Such Loss can be set off in the same year in which it is incurred only against income, if any, from the same source i.e. from owning and maintaining Race Horses.
- The unabsorbed Loss from this activity can be carried forward to subsequent years and be set off in next 4 years only against income from the same activity i.e. that of owning and maintaining Race Horses.
- In doing so, the activity/business of owning and maintaining Race Horses must be carried on when the loss is set off.

LOSSES OF FIRM [Section 78]

- Carry forward and set off of losses in case of change in constitution of firm or on succession –
 - Where a change has occurred in the constitution of a firm, nothing in this Chapter of carry forward and set off of losses shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.
 - Where any, person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss, to have it carried forward and set off against his income.

CARRY FORWARD AND SET OFF OF LOSSES IN THE CASE OF CERTAIN COMPANIES

- Where a change in shareholding has taken place in a previous year in the case of a company not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless –
 - ✓ on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred,
 - ✓ nothing contained in the foregoing shall apply to a case where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift.
 - ✓ Nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

SUBMISSION OF RETURN FOR LOSSES

[Section 80]

- Notwithstanding anything contained in the Chapter of losses, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139, shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) of section 74 or Sub-section (3) of section 74A.
- In short, the Return of Income having Losses shall not enable an Assessee to claim such losses if the same is not filed in time permitted under Section 139(3).