"SET-OFF & CARRY FORWARD"

Set-Off means adjustment of certain losses against the income under other sources in the same assessment year. Carrying Forward of unadjusted losses to be set-off in subsequent years is called Carry Forward.

If there is a loss in the business, the same can be adjusted against profits made in any other business of the same tax payer. The Loss, if any, still remaining, can be adjusted against Income from any Other Source. From A/Y 2005-2006 loss from Business cannot be set off against Salary Income.

However, Loss sustained in speculative business can be adjusted only against profits earned in another speculative business. Business Loss can be carried forward for a maximum period of next 8 (Eight) Assessment Years and adjusted against Business Profit of the subsequent years. Unabsorbed Depreciation can be Set-Off even if Business/Profession is discontinued and can be carried forward for unlimited number of years. However, for claiming the benefit of carry forward of losses, the tax payer has to invariably file his returns within due date

Set off of loss under the same head of income.(section 70) (Intra-head set off)

The process of adjustment of loss from a source under a particular head of income against income from other source under the same head of income is called intra-head adjustment, e.g. Adjustment of loss from business A against profit from business B. Income of a person is computed under five heads. 'Sources' of income derived by an individual may be many but yet they could be classified under the same head. For instance, an individual may have a dual employment, yet the income would be classified under the head 'Salaries'. However, given the mechanism of computing taxable salary income, it would be safe to say that an individual cannot incur losses under this head of income.

exceptions to Intra-head set off:

1. Loss from speculation business cannot be set of against profit from an non speculation business

(Interpretation: Loss from non speculative business can be set-off against speculation income)

2. LTCL can only be set off against LTCG and cannot be set off against STCG

(Interpretation: STCL can be set off against LTCG)

3. No loss can be set-off against casual income i.e. Income from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature.

4. No expenses can be claimed against casual income

5. Loss from the business of owning and maintaining race horses cannot be set off against any income other than income from the business of owning and maintaining race horses.

6. Loss from an exempted source cannot be set off against taxable Income- If income from a particular source is exempt from tax, then loss from such source cannot be set off against any other income which is chargeable to tax. E.g., Agricultural income is exempt from tax, hence, if the taxpayer incurs loss from agricultural activity, then such loss cannot be adjusted against any other taxable income.

7. Loss from business specified under section 35AD cannot be set off against any other income except income from specified business (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building a housing projects, etc.).

Set off Loss from one head against Income from another Head (Inter head set off) –

After making intra-head adjustment (if any) the next step is to make inter-head adjustment. If in any year, the taxpayer has incurred loss under one head of income and is having income under other head of income, then he can adjust the loss from one head against income from other head, E.g., Loss under the head of house property to be adjusted against salary income –

exceptions to Inter-head set off:

1. Before making inter-head adjustment, the taxpayer has to first make intra-head

2. Loss from speculative business cannot be set off against any other income. However, non-speculative business loss can be set off against income from speculative business. For Example: House property loss can be set-off against Speculative Incomes but speculation loss cannot be set off against House property)

3. Business loss cannot be set-off against salary income. (It can be set-off against other incomes)

5. No loss can be set off against Casual income from winnings from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature.

6. No expenses can be claimed against casual income

7. Loss from the business of owning and maintaining race horses cannot be set off against any other income.

8. Loss from an exempted source cannot be set off (e.g. Share of loss of firm, agricultural income, cultivation expenses)

9. Loss from business specified under section 35AD cannot be set off against any other income (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building housing projects, etc.)

CARRIED FORWARD OF LOSS

Any un-utilized losses are allowed to be carried forward to subsequent years under the income tax laws subject to period of limitations. Carry forward of losses is tedious for taxpayers and mostly confusing but with the help of chart given below, it is very easy to understand.

Types of losses to be carried forward to next year(s)	Profit against which carried forward loss can be setoff in the next year(s)	for how many year(s) such loss cab be carried forward	is it necessary to continue the business	is it necessary to submit the return of income within due date
House property loss	income under the head house property	8 years	NA	No
Speculative business loss	Speculative business income	4 years	Not necessary	Yes
Non speculative business loss (loss on account of unabsorbed depreciation, capital expenditure on scientific research and family planning)	any head of income other than income from salaries	No time limit	Not necessary	No
loss from specified business	income from specified business	No time limit	Not necessary	Yes
Any other business loss	any business profit	8 years	Not necessary	Yes
Short term capital loss	any income under the head capital gains	8 years	Not necessary	Yes
Long term capital loss	long term capital gains	8 years	Not necessary	Yes
loss from activitiy of owning ang maintaining of race horses	income from activitiy of owning ang maintaining of race horses	4 years	Yes	Yes

Refer to case laws

The Commissioner Of Income Tax, ... vs Sri J.H. Gotla, Yadagiri on 29 August, 1985

Commissioner Of Income-Tax, ... vs Kulu Valley Transport Co. (P) Ltd on 30 April, 1970

Commissioner Of Income-Tax, ... vs Mother India Refrigeration ... on 14 August, 1985

The concept of double taxation:

In all nations of the world tax is levied on the basis of "Source" and "Residence". The source denotes that income should be taxed in the country where it originates no matter whether the income accrues to a resident or a non-resident. On the other hand residence stipulates that taxation should occur in the country where the taxpayer stays. If both rules apply at the same time, business entities will suffers tax from both sides which would deter the process of globalization. At this point of time "Double Taxation Avoidance Agreements" come into play.

The important aspects of Double Taxation Avoidance Agreements:

- Incomes generated from shipping and air based transportation are not taxable
- The minimum income generated from the managerial participation of the related companies are taxable
- Incomes generated from dividends are taxable in the place of earning as well as in the place of the origin of the individual or corporation who earned it
- Incomes generated from the interest earned in one country by an individual who is a resident of another country are taxable in both the places
- Incomes generated from royalties are sometimes taxable in the place of earning, sometimes taxable in the place of residence, and sometimes taxable in both the places
- Incomes generated from capital gains is taxable in the place where the concerned capital asset is located

Sections 90 and section 91 of the Income Tax Act deals with double taxation: There are two sections – section 90 and section 91 of the Income Tax Act, 1961 which gives relief from paying double tax.

The residential status determines whether a person is resident or a non-resident. The application of sections 90 and 91 can be illustrated with the help of the following –

1. Resident:(i)Bilateral agreement with a foreign nation – Section 90 & 90A apply ii)No such agreement with a foreign nation – Section 91 applies

2.Non-resident:Not taxable

Hence we can say that section 90 applies to cases where India has a bilateral agreement with the other country whereas section 91 applies to cases where India has no such bilateral agreement but unilateral agreement.

How to calculate relief under section 90?

First of all one has to include the income earned and taxed in a foreign country in the income earned in India. Then one should compute the income tax on the total income comprising the two. Thereafter one has to calculate the average rate of tax and multiply it with the income earned from the said foreign country. At last one should deduct the tax paid in the foreign country from the tax so calculated. The amount computed is the amount of relief under section 90.

Example – An example will make it clear. In case of a resident let us suppose the income earned in India amounts to Rs.5,00,000/- and the income earned from a foreign country amounts to Rs. 2,00,000/- The total income comes to Rs. 5,00,000 + 2,00,000 that is Rs. 7,00,000/- Tax calculated on 7,00,000/- is Rs. 1,18,450/- The average rate of tax is 16.92% The average tax on foreign income equals to Rs. 33840/- The income tax paid in the foreign country is Rs. 50,000/- As such relief under section 90 is Rs. 33.840/- Therefore tax payable is equal to Rs. 84,610/

Unilateral Relief from Double Taxation Under Section 91,

the Indian government can relieve an individual from double taxation irrespective of whether there is a DTAA between India and the other country concerned. Unilateral relief may be offered to a tax payer if: The person or company has been a resident of India in the previous year. The same income must be accrued to and received by the tax payer outside India in the previous year. The income should have been taxed in India and in another country with which there is no tax treaty. The person or company has paid tax under the laws of the foreign country in question.

Refer to case laws

Commissioner Of Income-Tax vs Davy Ashmore India Ltd. on 13 December, 1990

Director Of Income Tax vs Infrasoft Ltd. on 22 November, 2013

The Commissioner Of Income Tax vs Van Oord Acz Equipment Bv on 14 November, 2014

procedure for assessment of income tax

The process of examining the return of income by the Income- Tax department is called as “Assessment”.

Every taxpayer has to furnish the details of his income to the Income-tax Department. These details are to be furnished by filing up his return of income. Once the return of income is filed up by the taxpayer, the next step is the processing of the return of income by the Income Tax Department. The Income Tax Department examines the return of income for its correctness. The process of examining the return of income by the Income-Tax department is called as “Assessment”. Assessment also includes re-assessment and best judgment assessment under section 144. Under the Income-tax Law, there are four major assessments given below:

- Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
- Assessment under section 143(3), i.e., Scrutiny assessment.
- Assessment under section 144, i.e., Best judgment assessment.
- Assessment under section 147, i.e., Income escaping assessment.

Assessment under section 143(1) This is a preliminary assessment and is referred to as summary assessment without calling the assessee (i.e., taxpayer). Scope of assessment under section 143(1) Assessment under section 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. At this stage, the total income or loss is computed after making the following adjustments (if any), namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim (*), if such incorrect claim is apparent from any information in the return;

For the above purpose “an incorrect claim apparent from any information in the return” means a claim on the basis of an entry in the return :-

(i) of an item which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information is required to be furnished under the Act to substantiate such entry and has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction

Under the Income-tax Law, there are four major assessments given below:

• Assessment under section 143(1), i.e., Summary assessment without calling the assessee.
• Assessment under section 143(3), i.e., Scrutiny assessment.
• Assessment under section 144, i.e., Best judgment assessment.
• Assessment under section 147, i.e., Income escaping assessment.

Assessment under section 144

This is an assessment carried out as per the best judgment of the Assessing Officer on the basis of all relevant material he has gathered. This assessment is carried out in cases where the taxpayer fails to comply with the requirements specified in section 144. Scope of assessment under section 144 As per section 144, the Assessing Officer is under an obligation to make an assessment to the best of his judgment in the following cases:-
• If the taxpayer fails to file the return required within the due date prescribed under section 139(1) or a belated return under section 139(4) or a revised return under section 139(5).
• If the taxpayer fails to comply with all the terms of a notice issued under section 142(1).

Note: The Assessing Officer can issue notice under section 142(1) asking the taxpayer to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.
• If the taxpayer fails to comply with the directions issued under section 142(2A).
Note: Section 142(2A) deals with special audit. As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied, then the Assessing Officer will direct the taxpayer to get his accounts audited from a chartered accountant nominated by the principal chief commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form. [As amended by Finance Act, 2015]

• If after filing the return of income the taxpayer fails to comply with all the terms of a notice issued under section 143(2), i.e., notice of scrutiny assessment.
• If the assessing officer is not satisfied about the correctness or the completeness of the accounts of the taxpayer or if no method of accounting has been regularly employed by the taxpayer.

From the above criteria, it can be observed that best judgment assessment is resorted to in cases where the return of income is not filed by the taxpayer or if there is no cooperation by the taxpayer in terms of furnishing information / explanation related to his tax assessment or if books of accounts of taxpayer are not reliable or are incomplete.

Procedure of assessment under section 144

• If the conditions given above calling for best judgment are satisfied, then the Assessing Officer will serve a notice on the taxpayer to show cause why the assessment should not be completed to the best of his judgment.
• No notice as given above is required in a case where a notice under section 142(1) has been issued prior to the making of an assessment under section 144.
• If the Assessing Officer is not satisfied by the arguments of the taxpayer and he has reason to believe that the case demands a best judgment, then he will proceed to carry out the assessment to the best of his knowledge.
• If the criteria of the best judgment assessment are satisfied, then after taking into account all relevant materials which the Assessing Officer has gathered, and after giving the taxpayer an opportunity of being heard, the Assessing Officer shall make the assessment of the total income or loss to the best of his knowledge/judgment and determine the sum payable by the taxpayer on the basis of such assessment.

Time-Limit As per section 153, assessment under section 144 shall be made within a period of two years from the end of the relevant assessment year.

Refer to case laws:

Malik Packaging Through Its ... vs The Commissioner Of Income Tax on 29 April, 2005

Vishwa Niryat (P.) Ltd. vs Income-Tax Officer on 4 July, 1991

Income-Tax Officer vs Mahesh M. Chandan on 26 May, 1993

Assessment under section 143(3)

This is a detailed assessment and is referred to as scrutiny assessment. At this stage a detailed scrutiny of the return of income will be carried out. At this stage

a scrutiny is carried out to confirm the correctness and genuineness of various claims, deductions, etc., made by the taxpayer in the return of income.

Procedure of assessment under section 143(3)

• If the Assessing Officer considers it necessary or expedient to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, then he will serve on the taxpayer a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the taxpayer may rely, in support of the return.

• To carry out assessment under section 143(3), the Assessing Officer shall serve such notice in accordance with provisions of section 143(2).

[As amended by Finance Act, 2015]

• Notice under section 143(2) should be served within a period of six months from the end of the financial year in which the return is filed.
• The taxpayer or his representative (as the case may be) will appear before the Assessing Officer and will place his arguments, supporting evidences, etc., on various matters/issues as required by the Assessing Officer.
• After hearing/verifying such evidence and taking into account such particulars as the taxpayer may produce and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant materials which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the taxpayer and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Time-limit As per section 153, assessment under section 143(3) shall be made within a period of two years from the end of the relevant assessment year.

Refer to case laws:

Nitin P. Shah Alias Modi vs Dy. C.I.T. on 16 December, 2004

Pr. Commissioner Of Income Tax-09 vs Tupperware India Pvt. Ltd. on 10 August, 2015

Ntpc Ltd. vs Commissioner Of Income Tax-V on 16 April, 2014