

AGGREGATION OF INCOME, SET OFF OR CARRY FORWARD OF LOSSES

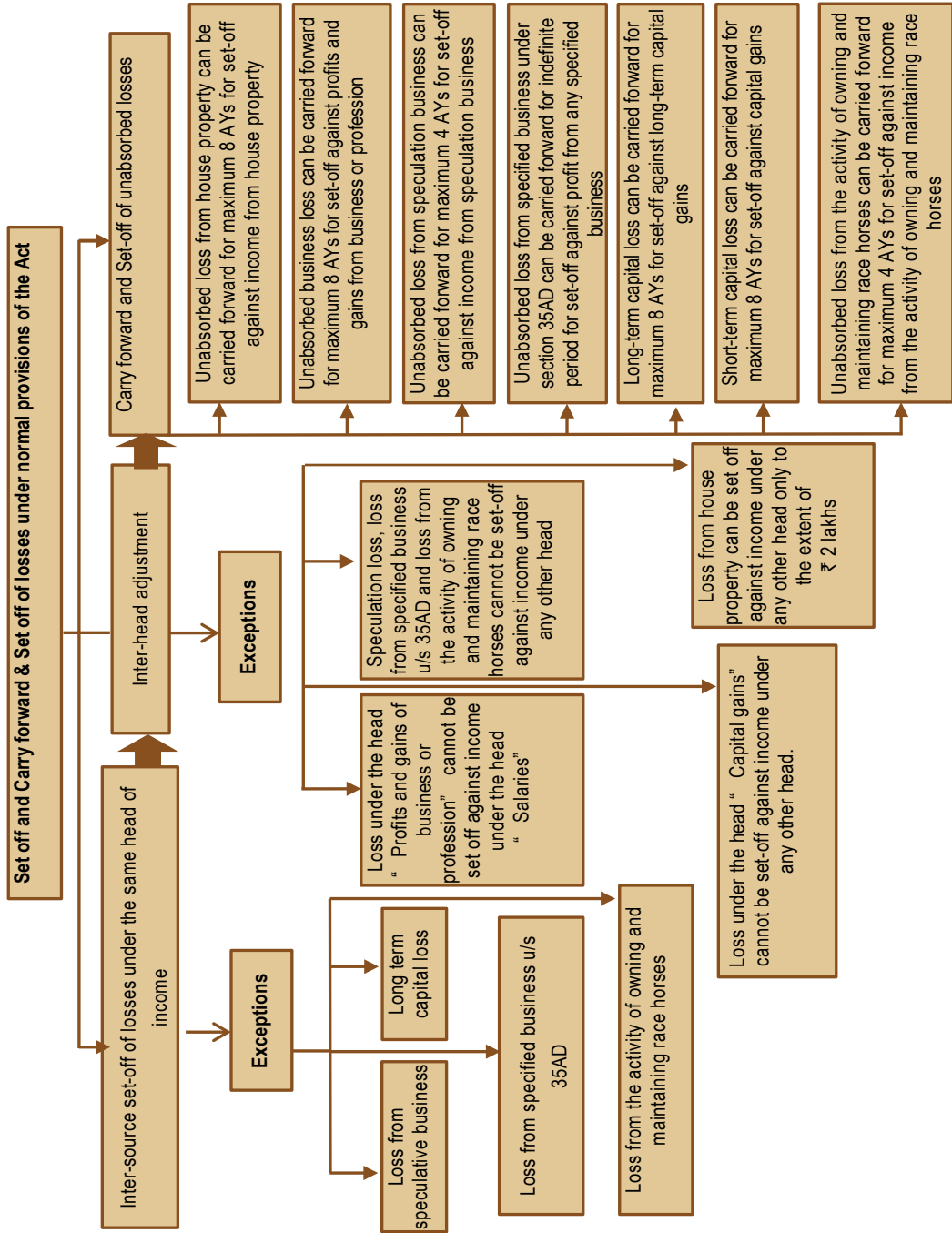


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the permissible inter-source and inter-head adjustments for set-off of losses and the restrictions in inter-source and inter-head set-off of losses;
- ❑ **determine** the unabsorbed losses which can be carried forward to the subsequent assessment year for set-off against income of that year and the maximum period of carry forward of such losses;
- ❑ **appreciate** the provisions regarding carry forward and set-off of losses in case of closely held companies and eligible start-ups as also in case of change in constitution of firms;
- ❑ **appreciate** the conditions which are required to be satisfied by the amalgamating company and the amalgamated company for carry forward and set-off of loss of the amalgamating company by the amalgamated company;
- ❑ **appreciate** the special provisions for carry forward and set-off of losses of a banking company against the profits of a banking institution under a scheme of amalgamation;
- ❑ **compute** the gross total income of an assessee after applying the provisions relating to set-off and carry forward and set-off of losses.

CHAPTER OVERVIEW

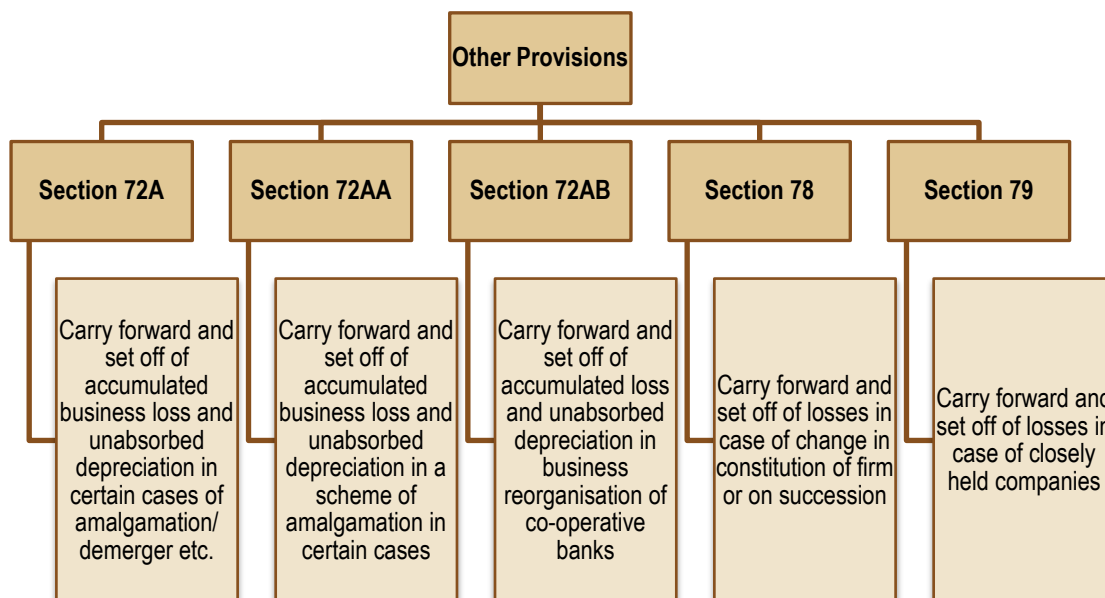


Notes - Following brought forward losses/ depreciation is not allowed to be set off while computing total income under the special concessional tax regimes under section 115BAA/115BAB/115BAC/115BAD/115BAE -

1. Brought forward business loss of specified business u/s 35AD
2. Brought forward business loss on account of deduction u/s 35(1)(ii)/(iii) or u/s 35(2AA) [or u/s 35(2AB), in case of computation of total income under sections 115BAA/115BAB, applicable to companies].
3. Unabsorbed depreciation attributable to additional depreciation u/s 32(1)(ia).

This is because deductions u/s 35AD, u/s 35(i)(ii)/(iii), u/s 35(2AA), u/s 35(2AB) and additional depreciation u/s 32(1)(ia) are not allowable under the special concessional tax regimes.

In addition, in case of persons covered under section 115BAC, loss from house property cannot be set off against income under other head and the same cannot be carried forward. Also, brought forward loss from self-occupied house property is not allowed to be set-off while computing total income for A.Y.2025-26 under the default tax regime thereunder.



7.1 AGGREGATION OF INCOME

In certain cases, some amounts are deemed as income in the hands of the assessee though they are actually not in the nature of income. These cases are contained in sections 68, 69, 69A, 69B, 69C and 69D. These are discussed in detail in Chapter 1. The Assessing Officer may require the assessee to furnish explanation in such cases. If the assessee does not offer any explanation or the explanation offered by the assessee is not satisfactory, the amounts referred to in these sections would be deemed to be the income of the assessee. Such amounts have to be aggregated with the assessee's income.



7.2 CONCEPT OF SET OFF AND CARRY FORWARD OF LOSSES

Specific provisions have been made in the Income-tax Act, 1961 for the set-off and carry forward of losses. In simple words, “Set-off” means adjustment of losses against the profits from another source/head of income in the same assessment year. If losses cannot be set-off in the same year due to inadequacy of eligible profits, then such losses are carried forward to the next assessment year for adjustment against the eligible profits of that year. The maximum period for which different losses can be carried forward for set-off has been provided in the Act.



7.3 INTER SOURCE ADJUSTMENTS [SECTION 70]

(1) Inter-source set-off of losses

Under this section, the losses incurred by the assessee in respect of one source shall be set-off against income from any other source under the same head of income, since the income under each head is to be computed by grouping together the net result of the activities of all the sources covered by that head. In simpler terms, loss from one source of income can be adjusted against income from another source, both the sources being under the same head.

Example: Loss from one house property can be set off against the income from another house property.

Example: Loss from one business, say textiles, can be set off against income from any other business, say printing, in the same year as both these sources of income fall under one head of income. Therefore, the loss in one business may be set-off against the profits from another business in the same year.

(2) Impermissible inter-source set-off

Inter-source set-off, however, is not permissible in the following cases -

(i) Long-term capital loss [Section 70(3)]

Short-term capital loss is allowed to be set off against both short-term capital gain and long-term capital gain. However, long-term capital loss can be set-off only against long-term capital gain and not against short-term capital gain.

(ii) **Speculation loss [Section 73(1)]**

A loss in speculation business can be set-off only against the profits of any other speculation business and not against any other business or professional income.

However, losses from other business can be adjusted against profits from speculation business.

(iii) **Loss from the activity of owning and maintaining race horses [Section 74A(3)]**

Such loss can be set-off only against income from the activity of owning and maintaining race horses.

(iv) **Losses from specified business [Section 73A(1)]**

A loss in any specified business referred in section 35AD can be set-off only against any other specified business, whether eligible for deduction under 35AD or not.

However, losses from other business can be set-off against profits from specified business

It must be noted that **loss from an exempt source** cannot be set-off against profits from a taxable source of income. For example, share of loss from a partnership firm cannot be set-off against business income, since share of income of the firm is exempt under section 10(2A).



7.4 INTER HEAD ADJUSTMENTS [SECTION 71]

Loss under one head of income can be adjusted or set off against income under another head. However, the following points should be considered:

- (1) **Loss under any head other than capital gains:** Where the net result of the computation under any head of income (other than 'Capital Gains') is a loss, the assessee can set-off such loss against his income assessable for that assessment year under any other head, including 'Capital Gains'.
- (2) **Loss under the head "Profits and gains from business or profession:** Where the net result of the computation under the head "Profits and gains of business or profession" is a loss, such loss cannot be set off against income under the head "Salaries". It shall be allowed to set off from income under any other head except "Salaries".
- (3) **Loss under the head "Capital Gains":** Where the net result of computation under the head 'Capital Gains' is a loss, whether short term or long term, such capital loss cannot be set-off against income under any other head.
- (4) **Loss under the head "Income from house property":** Where the net result of the computation under the head "Income from house property" is a loss and the assessee has

income assessable under any other head of income, the amount of such loss exceeding ₹ 2 lakhs would not be allowable to be set-off against income under the other head. In other words, the maximum loss from house property which can be set-off against income from any other head is ₹ 2 lakhs.

Note - The loss under the head “Income from house property” would not be allowable to be set-off against income under the other head if an assessee (Individual/HUF/AOP (other than Co-operative Society)/BOI/Artificial Juridical Person) pays tax at concessional rate u/s 115BAC. However, if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A) and there is a loss under the head “Income from house property” and the assessee has income assessable under any other head of income, the maximum loss from house property which can be set-off against income from any other head is ₹ 2 lakhs. In other words, in such case, the amount of such loss exceeding ₹ 2 lakhs would not be allowable to be set-off against income under the other head.

- (5) **Speculation loss and loss from the activity of owning and maintaining race horses** cannot be set off against income under any other head.
- (6) **Losses from Specified business u/s 35AD:** In case of an assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A), loss from specified business referred to in section 35AD can be set off only against income from any other specified business. Such loss cannot be set off against income under any other head.

However, losses from other business can be set-off against profits from specified business.

If the income from a source is exempt from tax, loss from that exempt source cannot be set off against taxable income from a different source or taxable income under a different head.



7.5 CARRY FORWARD AND SET OFF OF LOSS FROM HOUSE PROPERTY [SECTION 71B]

- (1) **Set-off and Carry Forward & Set-off of losses:**
- (a) **If the assessee, being an individual, HUF, AoP (other than Co-operative Society), BoI or Artificial Juridical Person, exercises the option of shifting out of the default tax regime provided under section 115BAC(1A):** In any assessment year, if there is a loss under the head “Income from house property”, such loss will first be set-off against income from any other head to the extent of

₹ 2,00,000 during the same year. The unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head “Income from house property”.

- (b) **If such assessee referred to in (a) above pays tax at concessional rate u/s 115BAC:** The loss under the head “Income from house property” would not be allowable to be set-off against income under any other head. The unabsorbed loss cannot be carried forward to the following assessment year..
- (c) **In case of other assessees (Companies/Firms/Co-operative Societies):** In any assessment year, if there is a loss under the head “Income from house property”, such loss will first be set-off against income from any other head to the extent of ₹ 2,00,000 during the same year. The unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head “Income from house property”.

This is irrespective of whether or not the company opts for section 115BAA/115BAB and whether or not the co-operative society opts for section 115BAD/115BAE.

- (2) **Maximum period for carry forward & set-off of losses:** The loss under this head is allowed to be carried forward upto 8 assessment years immediately succeeding the assessment year in which the loss was first computed.

Note - It is to be remembered that once a particular loss is carried forward, it can be set off only against the income from the same head in the forthcoming assessment years.

ILLUSTRATION 1

Mr. Kamal (aged 35 years) submits the following particulars pertaining to the A.Y.2025-26:

| <i>Particulars</i> | <i>₹</i> |
|--------------------------------------|--------------|
| <i>Income from salary (computed)</i> | 4,20,000 |
| <i>Loss from let-out property</i> | (-) 2,30,000 |
| <i>Business loss</i> | (-)1,20,000 |
| <i>Bank interest (FD) received</i> | 85,000 |

Compute the total income of Mr. Kamal for the A.Y.2025-26, assuming that

- (i) He has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).
- (ii) He pays tax under the default tax regime.

SOLUTION

- (i) **Computation of total income of Mr. Kamal for the A.Y.2025-26 under the normal provisions of the Act**

| Particulars | Amount (₹) | Amount (₹) |
|---|--------------|-----------------|
| Income from salary | 4,20,000 | |
| Less: Loss from house property of ₹ 2,30,000 to be restricted to ₹ 2 lakhs by virtue of section 71(3A) | (-) 2,00,000 | 2,20,000 |
| Balance loss of ₹ 30,000 from house property to be carried forward to next assessment year | | |
| Income from other sources (interest on fixed deposit with bank) | 85,000 | |
| Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000 | (-) 85,000 | - |
| (Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year) | | |
| Gross total income [See Note below] | | 2,20,000 |
| Less: Deduction under Chapter VI-A | | Nil |
| Total income | | 2,20,000 |

Notes: (i) Gross Total Income includes salary income of ₹ 2,20,000 after adjusting loss of ₹ 2,00,000 from house property. The balance loss of ₹ 30,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.

(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.

- (ii) **Computation of total income of Mr. Kamal for the A.Y.2025-26 under default tax regime**

| Particulars | Amount (₹) | Amount (₹) |
|---|------------|-----------------|
| Income from salary | | 4,20,000 |
| Income from other sources (interest on fixed deposit with bank) | 85,000 | |
| Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000 | (-) 85,000 | - |
| (Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year) | | |
| Gross total income/ Total Income | | 4,20,000 |

Notes: (i) Under the default tax regime, loss from house property cannot be set off against income under any other head and cannot be carried forward to next assessment year.

(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.



7.6 CARRY FORWARD AND SET OFF OF BUSINESS LOSSES [SECTION 72]

Under the Act, the assessee has the right to carry forward the losses under the head of business and profession in cases where such loss cannot be set-off due to the absence or inadequacy of income under any other head in the same year. The loss so carried forward can be set-off against the profits of subsequent previous years.

Section 72 covers the carry forward and set-off of losses arising from a business or profession.

Conditions

The assessee's right to carry forward business losses under this section is, however, subject to the following conditions:-

- (1) The loss should have been incurred in business, profession or vocation.
- (2) The loss should not be in the nature of a loss in the business of speculation.
- (3) **Loss from one business can be carried forward & set-off against the income from any other business:** The loss may be carried forward and set-off against the income from business or profession though not necessarily against the profits and gains of the same business or profession in which the loss was incurred.

However, a loss carried forward cannot, under any circumstances, be set-off against the income from any head other than "Profits and gains of business or profession".

- (4) **Person who incurred the loss alone is entitled to carry forward & set-off the loss:** The loss can be carried forward and set off only against the profits of the assessee who incurred the loss. That is, only the person who has incurred the loss is entitled to carry forward or set off the same. Consequently, the successor of a business cannot carry forward or set off the losses of his predecessor except in the case of succession by inheritance.

(5) **Maximum period for carry forward & set-off of losses:** A business loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

(6) **Rehabilitation of business [Proviso to section 72(1)]**

If there is a loss sustained in a business which is discontinued in the circumstances mentioned under section 33B and such business is re-established, reconstructed or revived by the assessee within 3 years from the end of previous year of discontinuation, the loss attributable to such business

- (i) shall be allowed to be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year, and
- (ii) if the loss cannot be wholly so set off, the amount of balance loss to be carried to the following assessment year and so on for 7 assessment years immediately succeeding provided such re-established business is continued to be carried by the assessee.

Note: Circumstances referred to in section 33B

The business is formed as re-establishment, reconstruction or revival by the assessee of the business of such industrial undertaking which is discontinued by reason of extensive damage to or destruction of any building, machinery, plant or furniture owned by the assessee and used for the purpose of such business.

Such damage or destruction should be affected as a direct result of flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature or riot or civil disturbance or accidental fire or explosion or action by an enemy or action taken in combating an enemy.

ILLUSTRATION 2

Mr. Vikas, a resident individual, furnishes the following particulars for the P.Y.2024-25:

| Particulars | ₹ |
|--|----------|
| <i>Income from salary (computed)</i> | 50,000 |
| <i>Income from house property</i> | (24,000) |
| <i>Income from non-speculative business</i> | (24,000) |
| <i>Income from speculative business</i> | (6,000) |
| <i>Short-term capital losses</i> | 25,000 |
| <i>Long-term capital gains taxable u/s 112</i> | 21,000 |

What is the total income chargeable to tax for the A.Y.2025-26, assuming that he pays tax under section 115BAC?

SOLUTION

Total income of Mr. Vikas for the A.Y. 2025-26

| Particulars | Amount (₹) | Amount (₹) |
|---|---------------|---------------|
| Income from salaries | | 50,000 |
| Income from house property | | |
| Loss from house property can neither be set-off nor can be carried forward, since Mr. Vikas is paying tax under the default tax regime u/s 115BAC | Nil | |
| Profits and gains of business and profession | | |
| Business loss to be carried forward [Note (i)] | (24,000) | |
| Speculative loss to be carried forward [Note (ii)] | (6,000) | |
| Capital Gains | | |
| Long term capital gain taxable u/s 112 | 21,000 | |
| Short term capital loss of ₹ 25,000 set-off against long-term capital gains to the extent of ₹ 21,000 [Note (iii)] | (21,000) | |
| | Nil | |
| Balance short term capital loss of ₹ 4,000 to be carried forward [Note (iii)] | | |
| Taxable income | | 50,000 |

Notes:

- (i) Business loss cannot be set-off against salary income. Therefore, loss of ₹ 24,000 from the non-speculative business cannot be set off against the income from salaries. Hence, such loss has to be carried forward to the next year for set-off against business profits, if any.
- (ii) Loss of ₹ 6,000 from the speculative business can be set off only against the income from the speculative business. Hence, such loss has to be carried forward.
- (iii) Short term capital loss can be set off against both short term capital gain and long term capital gain. Therefore, short term capital loss of ₹ 25,000 can be set-off against long-term capital gains to the extent of ₹ 21,000. The balance short term capital loss of ₹ 4,000 cannot be set-off against any other income and has to be carried forward to the next year for set-off against capital gains, if any.



7.7 CARRY FORWARD AND SET OFF OF ACCUMULATED BUSINESS LOSSES AND UNABSORBED DEPRECIATION IN CERTAIN CASES OF AMALGAMATION/ DEMERGER, ETC. [SECTION 72A]

(1) Amalgamation

Applicability: This section applies where there has been an amalgamation of –

- (i) a company owning an industrial undertaking or a ship or a hotel with another company; or
- (ii) a banking company with a specified bank; or
- (iii) one or more public sector company or companies with one or more public sector company or companies; or
- (iv) erstwhile public sector company (i.e., a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government) with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

Strategic disinvestment means sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in reduction of its shareholding to below 51% and transfer of control to the buyer.

However, the condition of reduction of shareholding below 51% would apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding.

Further, the requirement of transfer of control to the buyer may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them.

As per section 2(27) of the Companies; Act, 2013, control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue

of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by amalgamated company in case of amalgamation: It provides that the accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation, as the case may be, of the amalgamated company for the previous year in which the amalgamation took place. Other provisions of the Act relating to set off and carry forward shall also apply accordingly.

However, in case of an amalgamation of erstwhile public sector company, with one or more company or companies, the accumulated loss and the unabsorbed depreciation of the amalgamating company, which is deemed to be the loss or, as the case may be, the allowance for unabsorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment.

Conditions for availing benefit under this section

(i) Conditions to be fulfilled by the amalgamating company

- (a) The amalgamating company should have been **engaged in the business**, in which the accumulated loss occurred or depreciation remains unabsorbed, **for 3 or more years**.
- (b) The amalgamating company has held continuously as on the date of amalgamation, **at least 3/4th of the book value of the fixed assets held by it, 2 years prior** to the date of amalgamation.

(ii) Conditions to be fulfilled by the amalgamated company

- (a) The amalgamated company should **hold at least 3/4th of the book value of fixed assets** of the amalgamating company acquired as a result of amalgamation **for a minimum period of 5 years** from the effective date of amalgamation.
- (b) The amalgamated company **continues the business** of the amalgamating company for **at least 5 years**.
- (c) The amalgamated company must also fulfill such other conditions prescribed under Rule 9C for the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose -

- (1) The amalgamated company shall achieve the level of production of at least 50% of the installed capacity (capacity of production as on the date of amalgamation) of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. Central Government has the power to modify this requirement on an application made by the amalgamated company.
- (2) The amalgamated company shall furnish to the Assessing Officer a certificate in the prescribed form verified by a Chartered Accountant in this regard.

Consequences of non-fulfillment of specified conditions: In case the above specified conditions are not fulfilled, that part of carry forward of loss and unabsorbed depreciation remaining to be utilized by the amalgamated company shall lapse and such loss or depreciation as has been set-off shall be treated as the income in the year in which there is a failure to fulfill the conditions.

(2) Demerger

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by resulting company in case of demerger: Where there has been a demerger of an undertaking,

- the accumulated loss and the unabsorbed depreciation directly relatable to the undertaking transferred by the demerged company to the resulting company shall be allowed to be carried forward and set off in the hands of the resulting company.
- if the accumulated loss or unabsorbed depreciation is not directly relatable to the undertaking, the same will be apportioned between the demerged company and the resulting company in the same proportion in which the value of the assets retained by the demerged company and have been transferred to the resulting company.

Conditions for availing benefit under this section: The Central Government is empowered to notify such conditions as it considers necessary to ensure that the demerger is for genuine business purpose.

(3) Re-organisation of business

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by company in case of succession: In case of re-organisation of business, whereby a firm is succeeded by a company as per the provisions of section 47(xiii), or a sole proprietary concern is succeeded by a company as per the provisions of section 47(xiv), then the accumulated business loss and the unabsorbed depreciation of the firm/proprietary concern, as the case may be, shall be

deemed to be the loss or depreciation allowance of the successor company for the previous year in which the business re-organisation took place. Other provisions of the Act relating to set-off and carry forward will apply accordingly.

Consequences of non-fulfillment of specified conditions: If it is found that any of the conditions laid down in the corresponding sub-sections (xiii) or (xiv) of section 47 have not been complied with, the set-off of loss or allowance of depreciation made in any previous year in the hands of the successor company shall be deemed to be the income of the company chargeable to tax in the year in which the conditions have been violated.

(4) Conversion of a company into LLP [Section 72A(6A)]

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by LLP in case of conversion: In case of re-organisation of business, whereby a private company or unlisted company is succeeded by a LLP as per the provisions of section 47(xiii b), then the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company.

Consequences of non-fulfillment of specified conditions: If the entity fails to fulfill the conditions specified in section 47(xiii b), the benefit of set-off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill any of the conditions.

(5) Meanings of certain terms

| Term | Particulars |
|-------------------------------|---|
| Accumulated loss | It means so much of the loss of <ul style="list-style-type: none"> - the predecessor firm or - the proprietary concern or - the private company or unlisted public company or - the amalgamating company or - the demerged company, as the case may be, under the head "Profit and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72, if the re-organisation of business or amalgamation or demerger had not taken place. |
| Industrial undertaking | It means any undertaking which is engaged in - <ul style="list-style-type: none"> (i) the manufacture or processing of goods; |

| | |
|--------------------------------|---|
| | <ul style="list-style-type: none"> (ii) the manufacture of computer software; (iii) the business of generation or distribution of electricity or any other form of power; (iv) providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broad band network and internet services. (v) mining; (vi) the construction of ships, aircraft or rail systems. |
| Unabsorbed depreciation | <p>Unabsorbed depreciation means so much of the allowance for depreciation of</p> <ul style="list-style-type: none"> - the predecessor firm or - the proprietary concern or - the private company or unlisted public company or - the amalgamating company or - the demerged company, as the case may be, <p>which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the re-organisation of business or amalgamation or demerger had not taken place</p> |
| Specified bank | <p>It means the State Bank of India (SBI) constituted under the SBI Act, 1955 or a subsidiary bank as defined in the SBI (Subsidiary Banks) Act, 1959 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.</p> |



7.8 CARRY FORWARD AND SET OFF OF ACCUMULATED BUSINESS LOSSES AND UNABSORBED DEPRECIATION IN A SCHEME OF AMALGAMATION IN CERTAIN CASES [SECTION 72AA]

- (1) **Applicability:** This section provides for carry forward and set off of accumulated loss and unabsorbed depreciation allowance where there has been an amalgamation of -
- (i) one or more banking company

- with any other banking institution under a scheme sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949; or
 - with any other banking institution or a company subsequent to a strategic disinvestment, wherein the amalgamation is carried out within 5 years from the end of the previous year during which such strategic disinvestment is carried out; or
- (ii) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or
- (ii) one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972.
- (2) **Allowability of carry forward and set-off of accumulated loss and unabsorbed depreciation in case of amalgamation:** The accumulated loss and unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies shall be deemed to be the loss or the allowance for depreciation of such banking institution or company or amalgamated corresponding new bank or amalgamated Government company for the previous year in which the scheme of amalgamation is brought into force. Accordingly, all the provisions contained in the Income-tax Act, 1961, relating to set off and carry forward of loss and unabsorbed depreciation would be applicable.

(3) **Meaning of certain terms:**

| Term | Meaning |
|-------------------------|--|
| Accumulated loss | So much of the loss of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, |

| | |
|--------------------------------|--|
| | would have been entitled to carry forward and set off under the provisions of section 72, if the amalgamation had not taken place |
| Government company | It means a Government company as defined in section 2(45) of the Companies Act, 2013, which is engaged in the general insurance business and which has come into existence by operation of section 4 or section 5 or section 16 of the General Insurance Business (Nationalisation) Act, 1972 |
| Unabsorbed depreciation | It means so much of the allowance for depreciation of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies which remains to be allowed and which would have been allowed to such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, if the amalgamation had not taken place. |



7.9 CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION IN BUSINESS REORGANISATION OF CO-OPERATIVE BANKS [SECTION 72AB]

- (1) **Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by a co-operative bank in case of reorganisation:** Under this section, in a case where the amalgamation has taken place during the previous year, set-off of accumulated loss and the unabsorbed depreciation of the predecessor co-operative bank will be allowed in the hands of the successor co-operative bank as if the amalgamation had not taken place. All the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation would apply accordingly.
- (2) **Conditions for availing benefit under this section**
 - (i) **Conditions to be fulfilled by the predecessor co-operative bank**
 - (a) It should have been engaged in the business of banking for three or more years; and
 - (b) It has held at least 3/4th of the book value of fixed assets as on the date of the business reorganisation, continuously for 2 years prior to the date of business reorganisation;

(ii) **Conditions to be fulfilled by the successor co-operative bank**

- (a) It should hold at least 3/4th of the book value of fixed assets of the predecessor co-operative bank acquired through business reorganisation, continuously for a minimum period of 5 years immediately succeeding the date of business reorganisation;
- (b) It continues the business of the predecessor co-operative bank for a minimum period of 5 years from the date of business reorganisation; and
- (c) It fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business reorganisation is for genuine business purpose.

(3) **Quantum allowed of accumulated loss and unabsorbed depreciation:** The amount of set-off of the accumulated loss and unabsorbed depreciation allowable to the resulting co-operative bank has to be calculated in the following manner -

- (i) **In a case where the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank** - the entire accumulated loss or unabsorbed depreciation of the demerged co-operative bank is allowed to be set-off.
- (ii) **In a case where the accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank** - the amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged co-operative bank as the assets of the undertaking transferred to the resulting co-operative bank bears to the assets of the demerged co-operative bank.

Example:

If A Co-op Bank is the demerged co-operative bank and B Co-op Bank is the resulting co-operative bank, the amount of set-off of the accumulated loss and unabsorbed depreciation allowable to B Co-op. bank would be –

$$\text{Unabsorbed business loss/depreciation of A Co-op bank} \times \frac{\text{Assets of the undertaking transferred to B Co-op bank}}{\text{Assets of A Co-op bank}}$$

- (4) **Additional conditions for availing benefit under this section:** The Central Government may specify other conditions by notification in the Official Gazette as it considers necessary, to ensure that the business reorganisation is for genuine business purposes.
- (5) **Period before and after business reorganization to constitute two different previous years:** The period commencing from the beginning of the previous year and ending on the date immediately preceding the date of business reorganisation, and the period commencing from the date of such business reorganisation and ending with the previous year shall be deemed to be two different previous years for the purposes of set off and carry forward of loss and allowance for depreciation.

Example:

If the date on which business re-organisation took place is 1.11.2024, then the period between 1.4.2024 and 31.10.2024 and the period between 1.11.2024 and 31.3.2025 would be deemed to be two different previous years for the purposes of set-off and carry forward of unabsorbed business losses and depreciation.

- (6) **Consequences of non-fulfillment of specified conditions:** In a case where the conditions specified in (2) above or notified under (4) above are not complied with, the set-off of accumulated loss or unabsorbed depreciation allowed in any previous year to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.
- (7) **Meaning of certain terms**

| Term | Particulars |
|--------------------------------|--|
| Accumulated loss | It means so much of loss of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating co-operative bank or the demerged co-operative bank, would have been entitled to carry forward and set-off under the provisions of section 72 as if the business reorganisation had not taken place. |
| Unabsorbed depreciation | It means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, which remains to be allowed and which would have been allowed to such bank as if the business reorganisation had not taken place. |



7.10 LOSSES IN SPECULATION BUSINESS [SECTION 73]

The meaning of the expression 'speculative transaction' as defined in section 43(5) and the treatment of income from speculation business has already been discussed under the head "Profits and gains of business or profession".

- (1) **Set-off and Carry forward & set-off of loss from speculation business:** Since speculation is deemed to be a business distinct and separate from any other business carried on by the assessee, the losses incurred in speculation can be neither set off in the same year against any other non-speculation income nor be carried forward and set off against other income in the subsequent years.

Therefore, if the losses sustained by an assessee in a speculation business cannot be set-off in the same year against any other speculation profit, they can be carried forward to subsequent years and set-off only against income from any speculation business carried on by the assessee. Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.

- (2) **Maximum period for carry forward & set-off of losses:** The loss in speculation business can be carried forward only for a **maximum period of 4 years** from the end of the relevant assessment year in respect of which the loss was computed. Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.

- (3) **When a business of a company deemed to be carrying on a speculation business:** The *Explanation* to this section provides that where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this deeming provision does not apply to the following companies –

- (i) A company whose gross total income consists of mainly income chargeable under the heads "Income from house property", "Capital gains" and "Income from other sources";
- (ii) A company, the principal business of which is –
 - (a) the business of trading in shares; or
 - (b) the business of banking; or
 - (c) the granting of loans and advances.

Thus, these companies would be exempted from the operation of this *Explanation*. Accordingly, if these companies carry on the business of purchase and sale of shares of other companies, they would not be deemed to be carrying on speculation business.



7.11 CARRY FORWARD & SET OFF OF LOSSES BY SPECIFIED BUSINESSES [SECTION 73A]

- (1) **Set-off and Carry forward & set-off of losses of specified business:** Any loss computed in respect of the specified business referred to in section 35AD shall be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on

Note - The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD. An assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.

- (2) **Loss can be set-off indefinitely:** There is no time limit specified for carry forward and set-off and therefore, such loss can be carried forward indefinitely for set-off against income from specified business.

Notes:

- (i) Companies opting for section 115BAA/115BAB and Co-operative societies opting for section 115BAD/115BAE are **not** eligible for deduction under section 35AD.
- (ii) An assessee, being an Individual/HUF/AOP/BOI, paying tax under the default tax regime under section 115BAC(1A) would **not** be entitled to deduction under section 35AD. However, such person exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and carrying on specified business, can claim deduction u/s 35AD in respect of capital expenditure (other than land, goodwill and financial instruments) incurred in respect of such business, subject to fulfillment of specified conditions. Any loss computed in respect of the specified business referred to in section 35AD can, however, be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on.



7.12 LOSSES UNDER THE HEAD 'CAPITAL GAINS' [SECTION 74]

Carry forward & set-off of losses: Section 74 provides that where for any assessment year, the net result under the head 'Capital gains' is short term capital loss or long term capital loss, the loss shall be carried forward to the following assessment year to be set off in the following manner:

- (1) **Short-term capital loss:** Where the loss so carried forward is a short-term capital loss, it shall be set off against any capital gains, short term or long term, arising in that year.
- (2) **Long-term capital loss:** Where the loss so carried forward is a long-term capital loss, it shall be set off only against long term capital gain arising in that year.
- (3) **Loss under head capital gains:** Net loss under the head capital gains cannot be set off against income under any other head.
- (4) **Maximum period for carry forward & set-off of loss:** Any unabsorbed loss shall be carried forward to the following assessment year up to a maximum of 8 assessment years immediately succeeding the assessment year for which the loss was first computed.

Note - Long-term capital gain exceeding ₹ 1,25,000 arising on sale of equity shares or units of equity oriented fund or unit of business trust on which STT is paid

- in respect of equity shares, both at the time of acquisition and sale and
- in respect of units of equity oriented fund or unit of business trust, at the time of sale

is taxable under section 112A @10% or 12.5%, as the case may be. Long-term capital loss on sale of such shares/units can, therefore, be set-off and carried forward for set-off against long-term capital gains by virtue of section 70(3) and section 74.

ILLUSTRATION 3

During the P.Y. 2024-25, Mr. Chetan has the following income and the brought forward losses:

| <i>Particulars</i> | <i>₹</i> |
|---|----------|
| Short term capital gains on sale of shares | 1,75,000 |
| Brought forward Long-term capital loss of A.Y.2023-24 | (96,000) |
| Short term capital loss of A.Y.2024-25 | (42,000) |
| Long term capital gain u/s 112 | 85,000 |

What is the capital gain taxable in the hands of Mr. Chetan for the A.Y.2025-26?

SOLUTION

Taxable capital gains of Mr. Chetan for the A.Y. 2025-26

| Particulars | ₹ | ₹ |
|---|----------|-----------------|
| Short term capital gains on sale of shares | 1,75,000 | |
| Less: Brought forward short-term capital loss of the A.Y.2024-25 | (42,000) | 1,33,000 |
| Long term capital gain | 85,000 | |
| Less: Brought forward long-term capital loss of A.Y.2023-24 of ₹ 96,000 set-off to the extent of ₹ 85,000 [See Note below] | (85,000) | Nil |
| Taxable short-term capital gains | | 1,33,000 |

Note: Long-term capital loss cannot be set off against short-term capital gain. Hence, the unadjusted long term capital loss of A.Y.2023-24 of ₹ 11,000 (i.e., ₹ 96,000 – ₹ 85,000) has to be carried forward to the next year to be set-off against long-term capital gains of that year.



7.13 LOSSES FROM THE ACTIVITY OF OWNING AND MAINTAINING RACE HORSES [SECTION 74A(3)]

- (1) **Set-off and Carry forward & set-off of loss:** According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses.
- (2) **Maximum period for carry forward & set-off of losses:** Such loss can be carried forward for a maximum period of 4 assessment years immediately succeeding the assessment year for which the loss was first computed, for being set-off against the income from the activity of owning and maintaining race horses.
- (3) **Meaning of certain terms**

| Term | Meaning |
|--|--|
| Amount of loss incurred by the assessee in the activity of owning and | <p>(i) In case assessee has no income by way of stake money – amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses.</p> <p>(ii) In case assessee has income by way of stake money - The amount by which such income by way of stake money falls short of the</p> |

| | |
|-------------------------------------|---|
| maintaining race horses | amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses. i.e. Loss = Stake money – revenue expenditure for the purpose of maintaining race horses. |
| Horse race | A horse race upon which wagering or betting may be lawfully made. |
| Income by way of stake money | The gross amount of prize money received on a race horse or race horses by the owner thereof on account of the horse or horses or any one or more of the horses winning or being placed second or in any lower position in horse races. |

ILLUSTRATION 4

Mr. Dinesh has the following income for the P.Y.2024-25-

| <i>Particulars</i> | <i>₹</i> |
|---|---------------|
| <i>Income from the activity of owning and maintaining the race horses</i> | <i>75,000</i> |
| <i>Income from textile business</i> | <i>95,000</i> |
| <i>Brought forward textile business loss (relating to A.Y. 2024-25)</i> | <i>50,000</i> |
| <i>Brought forward loss from the activity of owning and maintaining the race horses (relating to A.Y.2022-23)</i> | <i>96,000</i> |

What is the total income in the hands of Mr. Dinesh for the A.Y. 2025-26?

SOLUTION

Total income of Mr. Dinesh for the A.Y. 2025-26

| <i>Particulars</i> | <i>₹</i> | <i>₹</i> |
|--|---------------|---------------|
| <i>Income from the activity of owning and maintaining race horses</i> | <i>75,000</i> | |
| <i>Less: Brought forward loss of ₹ 96,000 from the activity of owning and maintaining race horses set-off to the extent of ₹ 75,000</i> | <i>75,000</i> | |
| | <i>Nil</i> | |
| <i>Balance loss of ₹ 21,000 (₹ 96,000 – ₹ 75,000) from the activity of owning and maintaining race horses to be carried forward to A.Y.2026-27</i> | | |
| <i>Income from textile business</i> | <i>95,000</i> | |
| <i>Less: Brought forward business loss from textile business</i> | <i>50,000</i> | <i>45,000</i> |
| Total income | | 45,000 |

Note: Loss from the activity of owning and maintaining race horses cannot be set-off against any other source/head of income.



7.14 CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM OR SUCCESSION [SECTION 78]

- (1) **Change in constitution of firm:** Where there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed (i.e. 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), shall not be allowed to be carried forward by the firm. However, unabsorbed depreciation can be carried forward without such restriction.
- (2) **Succession otherwise by inheritance:** Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.
- (3) **Succession by inheritance:** Where there is a succession by inheritance, the legal heirs are entitled to set-off the business loss of the predecessor. Such carry forward and set-off is possible even if the legal heirs constitute themselves as a partnership firm. In such a case, the firm can carry forward and set-off the business loss of the predecessor.



7.15 CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CLOSELY HELD COMPANIES [SECTION 79]

- (1) **Carry forward and set-off of losses in case of closely held company not being an eligible start-up referred to in section 80-IAC**

In the case of a company in which the public are not substantially interested and not being an eligible start-up referred to in section 80-IAC, 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 51% of the voting power were beneficially held by persons
- who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred.

(2) Carry forward and set-off of losses in case of closely held company being an eligible start-up referred to in section 80-IAC

In case of a company in which the public are not substantially interested but being an eligible start-up as referred to in section 80-IAC, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the previous year if either of the conditions are satisfied –

- (a) on the last day of the previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred; or
- (b) all the shareholders of such company who held shares carrying voting power on the last day of the previous year or years in which the loss was incurred continue to hold those shares on the last day of such previous year in which the loss is to be set-off and such loss has been incurred during the period of **10 years** beginning from the year of incorporation of such company.

(3) Non-applicability of restriction

This restriction shall, however, not apply:

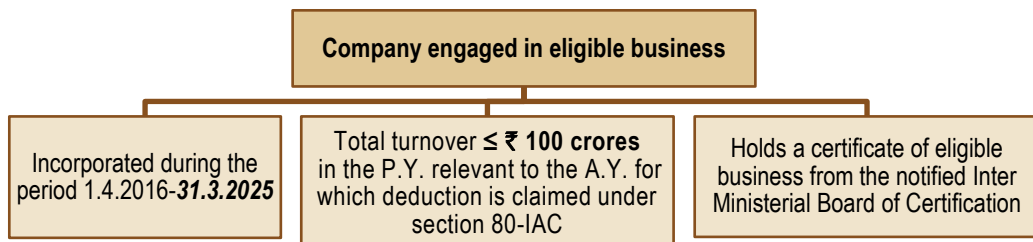
- (i) where a change in the voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift;
- (ii) where any change in shareholding takes place in an Indian company, being a subsidiary of a foreign company, as a result of amalgamation or demerger of the foreign company. However, this is subject to the condition that 51% of the shareholders of the amalgamating/ demerged company continue to be shareholders of the amalgamated/ resulting foreign company.
- (iii) where a change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- (iv) to a company, and its subsidiary and the subsidiary of such subsidiary, where
 - (a) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of

Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and

- (b) a change in shareholding of a company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- (v) to a company to the extent that a change in the shareholding has taken place during the previous year on account of
 - (a) relocation of a capital asset by the original fund to the resulting fund; and
 - (b) consequent transfer of a capital asset, being a share or unit or interest held by a shareholder or unitholder or interest holder in the original fund, in consideration for the share or unit or interest in the resultant fund [For the meaning of the terms “relocation”, “original fund” and “resultant fund”, please refer Chapter 4: Capital Gains]
- (vi) to an erstwhile public sector company which has become so as a result of strategic disinvestment by the Government (discussed in detail at 7.7) subject to the condition that the ultimate holding company of such erstwhile public sector company immediately after completion of the strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, 51% of the voting power of the erstwhile public sector company in aggregate.

However, if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the restriction mentioned in (1) or (2) above shall apply for such previous year and subsequent previous year.

(4) Meaning of eligible start-up:



(5) **Meaning of eligible business:**

A business carried out by an eligible start-up engaged in –

- Innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation

(6) A company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.



7.16 NO SET OFF OF LOSSES AGAINST UNDISCLOSED INCOME BROUGHT TO TAX CONSEQUENT TO SEARCH, REQUISITION AND SURVEY [SECTION 79A]

(1) **No set-off of losses or unabsorbed depreciation against undisclosed income:** No loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income included in the total income of any previous year of an assessee [consequent to a search under section 132 or a requisition under section 132A or a survey under section 133A (other than a survey conducted for TDS verification under section 133A(2A))] while computing his total income for such previous year.

(2) **Meaning of undisclosed income:** Undisclosed income means -

(i) **Income represented by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account:** Any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition under section 132A or a survey under section 133A [other than under section 133A(2A)], which has -

- (A) **not been recorded on or before the date of search or requisition or survey**, as the case may be, in the books of account or other documents maintained in the normal course relating to such previous year; or
- (B) **not been disclosed** to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, as the case may be; or

- (ii) **Income represented by any entry in respect of an expense:** Any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year **which is found to be false** and which would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.



7.17 ORDER OF SET OFF OF LOSSES

As per the provisions of section 72(2), brought forward business loss is to be set-off before setting off unabsorbed depreciation. Therefore, the order in which set-off will be effected is as follows -

- (1) Current year depreciation under section 32(1)
- (2) Current year capital expenditure on scientific research and current year expenditure on family planning, to the extent allowed.
- (3) Brought forward loss from business/profession [Section 72(1)]
- (4) Unabsorbed depreciation [Section 32(2)]
- (5) Unabsorbed capital expenditure on scientific research [Section 35(4)]
- (6) Unabsorbed expenditure on family planning [Section 36(1)(ix)].

ILLUSTRATION 5

Mr. Varun has furnished his details for the A.Y.2025-26 as under:

| <i>Particulars</i> | <i>₹</i> |
|--|-----------------|
| <i>Income from salaries (computed)</i> | <i>1,70,000</i> |
| <i>Income from speculation business</i> | <i>60,000</i> |
| <i>Loss from non-speculation business</i> | <i>(40,000)</i> |
| <i>Short term capital gain</i> | <i>90,000</i> |
| <i>Long term capital loss of A.Y.2023-24</i> | <i>(30,000)</i> |
| <i>Winning from lotteries (gross)</i> | <i>20,000</i> |

What is the taxable income of Mr. Varun for the A.Y.2025-26?

SOLUTION

Computation of taxable income of Mr. Varun for the A.Y.2025-26

| Particulars | ₹ | ₹ |
|--|----------|-----------------|
| Income from salaries | | 1,70,000 |
| Income from speculation business | 60,000 | |
| Less: Loss from non-speculation business | (40,000) | 20,000 |
| Short-term capital gain | | 90,000 |
| Winnings from lotteries | | 20,000 |
| Taxable income | | 3,00,000 |

Note: Long term capital loss can be set off only against long term capital gain. Therefore, long term capital loss of ₹ 30,000 has to be carried forward to the next assessment year.

ILLUSTRATION 6

Compute the gross total income of Mr. Fadnis for the A.Y.2025-26 from the information given below –

| Particulars | ₹ |
|---|----------|
| Income from house property (computed) | 1,25,000 |
| Income from business (before providing for depreciation) | 1,35,000 |
| Short-term capital gains on sale of shares | 56,000 |
| Long-term capital loss from sale of property (brought forward from A.Y.2022-23) | (90,000) |
| Income from tea business | 1,20,000 |
| Dividend from Indian companies carrying on agricultural operations (Gross) | 1,20,000 |
| Current year depreciation | 26,000 |
| Brought forward business loss (loss incurred six years ago) | (45,000) |

SOLUTION

Gross Total Income of Mr. Fadnis for the A.Y. 2025-26

| Particulars | ₹ | ₹ |
|-----------------------------|----------|----------|
| Income from house property | | 1,25,000 |
| Income from business | | |
| Profits before depreciation | 1,35,000 | |

| | | |
|--|----------|-----------------|
| Less: Current year depreciation | 26,000 | |
| | 1,09,000 | |
| Income from tea business (40% is business income) | 48,000 | |
| | 1,57,000 | |
| Less: Brought forward business loss | 45,000 | 1,12,000 |
| Income from the capital gains | | |
| Short-term capital gains | | 56,000 |
| Income from Other Sources | | |
| Dividend from Indian companies is chargeable to tax in the hands of shareholders | | 1,20,000 |
| Gross Total Income | | 4,13,000 |

Notes:

- (1) Dividend from Indian companies of ₹ 1,20,000 is taxable in the hands of shareholders at normal rate of tax.
- (2) 60% of the income from tea business is treated as agricultural income and therefore, exempt from tax.
- (3) Long-term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss of ₹ 90,000 brought forward from A.Y.2022-23 cannot be set-off in the A.Y.2025-26. It has to be carried forward for set-off against long-term capital gains, if any, during A.Y.2026-27.



7.18 SUBMISSION OF RETURN OF LOSSES [SECTION 80]

As per section 80,

- business loss to be carried forward under section 72(1)
- speculation business loss to be carried forward under section 73(2)
- loss from specified business to carried forward under section 73A(2)
- loss under the head "Capital Gains" to be carried forward under section 74(1) and
- loss incurred in the activity of owning and maintaining race horses to be carried forward under section 74A(3).

which has not been determined in pursuance of a return filed under section 139(3) cannot be carried forward and set-off. Thus, the assessee must have filed a return of loss under section 139(3) in order to carry forward and set off of such losses. Such a return of loss should be filed within the time allowed under section 139(1).

In other words, the non-filing of a return of loss disentitles the assessee from carrying forward the above specified losses sustained by him. Such a return should be filed within the time allowed under section 139(1).

This condition does not apply to a loss from house property carried forward under section 71B and unabsorbed depreciation carried forward under section 32(2).

SIGNIFICANT SELECT CASES

| 1. <i>CIT v. KBD Sugars and Distilleries Ltd. [2023] 454 ITR 800 (SC)</i> | | |
|---|---|---|
| | Issue | Relevant provision of Law, analysis & decision |
| | Can a resulting entity set off and carry forward the losses of the dysfunctional unit of demerged entity? | <p>Relevant Provision of Law: Clause (vi) of Section 2(19AA) lays down a condition that demerger in relation to companies means the transfer, pursuant to a scheme of arrangement under section 230 to 232 of the Companies Act, 2013 by a demerged company of its one or more undertakings to any resulting company in such a manner that the transfer of the undertaking is on a going concern basis.</p> <p>Assessing Officer's Contentions: The Assessing Officer contented that the assessee was ineligible to the benefit of brought forward loss under section 72A(4) for the reason that the demerged company was dysfunctional since 1999 and, therefore, does not qualify to be a 'going concern'. Since the undertaking not being a 'going concern', the condition laid down in subclause (vi) of section 2(19AA) for demerger stands violated.</p> <p>Analysis and Decision: The Tribunal opined that the words used 'on a going concern basis' in subclause (vi) of section 2 (19AA) only means that the transfer should be based on a 'going concern', and it does not mean that the undertaking being transferred should be a 'going concern' as on the date of transfer.</p> <p>The 'scheme of demerger', which stands approved by the High Courts and the jurisdictional Court, clearly establishes the fact that the transfer of the undertaking is indeed on a 'going concern basis'. The assets, liabilities, employees, debts, obligations, rights, etc., of the undertaking, immediately prior to the demerger, stand entirely vested with the assessee upon 'demerger'. This amounts to 'transfer of the undertaking on a going concern basis'.</p> <p>A simple reading of the same makes it very clear that the assessee is eligible for the benefits under section 72A(4). The Act does not state that the undertaking being demerged ought to be a going concern at the time of demerger. It only states that the undertaking being demerged should stand transferred in a manner similar to the manner in which a 'going concern' is transferred.</p> |

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| | | <p>Accordingly, the High Court held that if a unit were running and profitable, the same would not be available for demerger. It would be incongruous to construe sub-clause (vi) of section 2(19AA) to mean a running unit. The scheme of demerger had been approved by the High Courts. Therefore, the assessee was entitled to set off the brought forward losses under section 72A(4).</p> <p>The Apex Court affirmed the decision of the High Court.</p> |
| 2. | <i>Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)</i> | |
| | Issue | Analysis & Decision |
| | <p>Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?</p> | <p>The partnership firm was dissolved and the take over of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, the carry forward of losses of the firm by the sole proprietor for set-off against his income is not allowed.</p> <p>Note - <i>In CIT v. Madhukant M. Mehta (2001) 247 ITR 805 (SC), the sole proprietor had expired and after his death, the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned u/s 78(2), i.e., a case of succession by inheritance.</i></p> <p><i>Also, in Saroj Aggarwal v. CIT (1985) 156 ITR 497 (SC), upon death of a partner, his legal heirs were inducted as partners in the partnership firm. The partnership firm was not dissolved on the death of the partner. The partnership firm which suffered the losses continued with induction of the legal heirs of the deceased partner. This, being a case of succession by inheritance, the benefit of carry forward of losses was given to the re-constituted partnership firm.</i></p> <p><i>In the present case, however, the partnership firm was dissolved and the take over of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, the carry forward of losses of the firm by the sole proprietor was not allowed in this case.</i></p> |

TEST YOUR KNOWLEDGE

Questions

1. X carrying on a business as sole proprietor, died on 31st March, 2025. On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March 2025, a determined business loss of ₹ 5 lakhs is to be carried forward under the Income-tax Act, 1961.

Does the firm consisting of all legal heirs of Mr. X, get a right to have this loss adjusted against its current income?

2. ABC Limited owning an industrial undertaking was amalgamated with XYZ Limited on 01.04.2024. All the conditions of section 2(1B) were satisfied.

ABC Limited has the following brought forward losses as assessed till the Assessment Year 2024-25:

| | Particulars | ₹ (in lakhs) |
|-------|---|---------------------|
| (i) | Speculative Loss | 4 |
| (ii) | Unabsorbed Depreciation | 18 |
| (iii) | Unabsorbed expenditure of capital nature on scientific research | 2 |
| (iv) | Business Loss | 120 |

XYZ Limited has computed a profit of ₹ 140 lacs for the financial year 2024-25 before setting off the eligible losses of ABC Limited but after providing depreciation at 15% per annum on ₹ 150 lakhs, being the consideration at which plant and machinery were transferred to XYZ Limited. The written down value as per Income-tax record of ABC Limited as on 1st April, 2024 was ₹ 100 lakhs.

The above profit of XYZ Limited includes speculative profit of ₹ 10 lacs.

Compute the total income of XYZ Limited for Assessment Year 2025-26 and indicate the losses/ other allowances to be carried forward by it.

3. *Examine in brief about the treatment to be given in the following case under the Income-tax Act, 1961, for A.Y.2025-26:*

A loss of ₹ 85,000 was sustained by Simran in the activity of owning and maintaining camels for races.

4. *M/s. JKLM, a firm, consists of four partners namely, J, K, L and M. They shared profits and losses equally during the year ended 31.3.2024. The assessed business loss of the firm for the assessment year 2024-25 which it is entitled to carry forward amounts to ₹ 3,60,000. A new deed of partnership was executed among J, K, L and M on 1.4.2024 in terms of which they agreed to share profits and losses in the ratio of 15:15:20:50 respectively.*

Compute the amount of business loss relating to the assessment year 2024-25, which the firm is entitled to set off against its business income for the assessment year 2025-26. The business income of the firm for the assessment year 2025-26 is ₹ 3,30,000. Your answer should be supported by reasons.

5. *An assessee sustained an unabsorbed depreciation in the previous year relevant to the assessment year 2024-25, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed under section 139(1) in respect of the relevant assessment year. However, the assessee filed the return within the time allowed under section 139(4). Can the assessee carry forward such unabsorbed depreciation for set off against income of the assessment year 2025-26?*

Answers

1. Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case *CIT v. Madhukant M. Mehta (2001) 247 ITR 805*, where the Supreme Court has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In this case, the business of X was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of ₹ 5 lakhs of X.

2. Computation of total income of XYZ Limited for the A.Y. 2025-26

| Particulars | (₹ in lakhs) | |
|--|--------------|-------------|
| Business income before setting-off brought forward losses of ABC Ltd. | | 140.00 |
| <i>Add:</i> Excess depreciation claimed in the scheme of amalgamation of ABC Limited with XYZ Limited. | | |
| Value at which assets are transferred by ABC Ltd. | 150 | |
| WDV in the books of ABC Ltd. | 100 | |
| Excess accounted | 50 | |
| Excess depreciation claimed in computing taxable income of XYZ Ltd. [₹ 50 lacs × 15 %] [<i>Explanation 2 to section 43(6)</i>] | | 7.50 |
| | | 147.50 |
| Set-off of brought forward business loss of ABC Ltd. (See Notes 2 & 4) | | (120.00) |
| Set-off of unabsorbed depreciation under section 32(2) read with section 72A (See Notes 2 & 4) | | (18.00) |
| Set-off of unabsorbed capital expenditure under section 35(1)(iv) read with section 35(4) (See Note 5) | | (2.00) |
| Business income | | 7.50 |

Notes:

1. It is presumed that the amalgamation is within the meaning of section 72A of the Income-tax Act, 1961.
2. In the case of amalgamation of companies, the unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.
3. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 4 lacs of ABC Ltd. cannot be carried forward by XYZ Ltd.
4. Section 72(2) provides that where any allowance or part thereof unabsorbed under section 32(2) (i.e., unabsorbed depreciation) or section 35(4) (i.e., unabsorbed

scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under section 72.

5. Section 35(4) provides that the provisions of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)(iv) in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.
6. The restriction contained in section 73 is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, there is no restriction under the Income-tax Act, 1961 regarding set-off of normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business.

Consequently, there is no loss or allowance to be carried forward by XYZ Ltd. to the F.Y. 2025-26.

3. Section 74A(3) lays down the provisions for set-off and carry forward of loss from the activity of owning and maintaining race horses. According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses. Since the scope of this section is confined to the activity of owning and maintaining race horses only, therefore, set-off and carry forward of loss from the activity of owning and maintaining camels is not covered under section 74A(3).

It is possible to take a view that the loss from the activity of owning and maintaining camels for races may be governed by section 72 provided such activity amounts to business. Accordingly, the loss from the activity of owning and maintaining of camels for races can be set-off against any income (other than income from salary) of current year and unadjusted amount shall be carried forward for set off against any business income for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

4. The firm is entitled to set off its brought forward business loss amounting to ₹ 3,60,000 relating to the assessment year 2024-25 to the extent of ₹ 3,30,000 against its business

income of ₹ 3,30,000 for the assessment year 2025-26, as per the provisions of section 72(1).

The balance unabsorbed business loss of ₹ 30,000 relating to the assessment year 2024-25 will be carried forward to assessment year 2026-27.

Section 78(1) which deals with carry forward and set-off of losses in the case of change in constitution of firm is applicable only where there is retirement or death of a partner. **It is not applicable to a case where there is a change in the ratio of sharing profits and losses amongst the existing partners.** Therefore, section 78(1) is not applicable to the case of M/s. JKLM.

5. Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads “Profits and gains of business or profession” or “Capital gains” should furnish the return of loss within the time stipulated under section 139(1). There is no reference to “unabsorbed depreciation” in section 139(3). The assessee, in the instant case, has filed the return showing unabsorbed depreciation within the time prescribed under section 139(4). The assessee is, therefore, entitled to carry forward such unabsorbed depreciation for set off against the income of the subsequent assessment year.