



RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF COMMERCE AND MANAGEMENT

COURSE: B.COM VI SEM.

SUBJECT: Corporate Tax Planning

SUBJECT CODE: BCH 403

LECTURE: 13

NAME OF FACULTY: DR. PALASH BAIRAGI

LECTURE-13



CARRY FORWARD AND SET OFF OF BUSINESS LOSSES (SECTION 72)

Where the loss under the head 'profits and gains of business or profession' other than loss from speculation business and loss from specified business, could not be set off in the same assessment year because either the assessee had no income under any other head or the income was less than the loss, such loss which could not be set off in the same assessment year, can be carried forward to the following assessment years and it shall be set off against the profit and gains of business or profession subject to the following conditions:

(I) Business Losses can be Adjusted only against Business Income:

The loss can be carry forward to the subsequent assessment year and set off only against business income of the subsequent year. It may be observed that in the same assessment year, loss from a business can be adjusted against income from any other head of income except salary. However, when the loss is to be carried forward to the subsequent year, it can be adjusted only against business income. Business income may be from the same business in which the loss was incurred, or may be any other business.

(II) Business in respect of which a Loss is incurred may or may not be continued:

The business loss can be carried forward and set off in the subsequent assessment year(s) even if the business in respect of which the loss was originally computed is not carried on by him in the previous year in which such loss is sought to be carried forward and set off.

(III) Losses can be Set Off only by the Assessee who has incurred Loss [Section 78(2)]:

Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter (relating to set off and carry forward of loss) shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

In other words, the brought forward business losses can be set off only by the same assessee. The assessee, who has suffered the loss and in whose hands the loss has been assessed, is the person who can carry forward the loss and set off the same against his business income of the subsequent year.

(IV) Period of Carry Forward:

Each year's loss is a separate loss and no loss shall be carried forward for more than eight

assessment years immediately succeeding the assessment year for which the loss was first computed. Therefore, a loss of previous year 2017-18 i.e. assessment year 2018-19 can be carried forward till assessment year 2026-27. Besides the above, the following can also be carried forward indefinitely although these are not business losses as per Income-tax law:

1. Unabsorbed depreciation;
2. unabsorbed capital expenditure on scientific research;
3. unabsorbed expenditure on family planning.

(V) Order of Set Off:

Unabsorbed depreciation, unabsorbed capital expenditure on scientific research and unabsorbed expenditure on family planning are not parts of business losses and they can also be carried forward. However, as per section 72(2), the business loss should be set off before setting off unabsorbed depreciation, etc. Such carried forward business loss will be set off against business head only after the current year's depreciation, current capital expenditure on scientific research and expenditure on family planning have been claimed. Therefore, the order of set off will be as under:

- i. current year depreciation [Section 32(1)];
- ii. current year capital expenditure on scientific research and current year expenditure on family planning to the extent allowed;
- iii. brought forward business or profession losses [Section 72(1)];
- iv. Unabsorbed depreciation [Section 32(2)];
- v. Unabsorbed capital expenditure on scientific research [Section 35(4)];
- vi. Unabsorbed expenditure on family planning [Section 36(1)(ix)].

(VI) Return of Loss:

The return of loss must have been furnished before due date prescribed u/s 139(1), otherwise the loss cannot be carried forward.

(VII) Carry Forward And Set-Off of Losses Of Certain Companies [Section 79]

Section 79 provides that where a change in shareholding has taken place in a previous year, -

1. in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b) (below), 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. in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—
 - i. continue to hold those shares on the last day of such previous year; and
 - ii. such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated:

This provision shall not apply in following cases:

- C. Where a change in the voting power and shareholding takes place in a previous year consequent upon:
 - i. the death of a shareholder or
 - ii. on account of transfer of shares by way of gift to any relative of the shareholder making such gift:
- D. Where any change takes place in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that 51% shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.