**SET OFF AND CARRY FORWARD OF LOSSES**

**SET OFF OF LOSSES**

|  |  |  |
| --- | --- | --- |
| 1 | Loss from House Property | 1. Income from any other house property. 2. Any other head of income However w.e.f AY 2018-19, set off of loss against any other head is restricted to two lakh Rupees for any Assessment Year. |
| 2 | Loss from Business or Profession | 1. Income from any other business or profession 2. Any other head except Income under the head salary. |
| 3 | Loss from Speculation | 1. Income from Speculation |
| 4 | Loss of specified business | 1. Income from any other specified business |
| 5 | Short Term Capital Loss | 1. Short Term Capital Gain 2. Long Term Capital Gain |
| 6 | Long Term Capital Loss | 1. Long Term Capital Gain |
| 7 | Loss from activity of owning and maintaining horse races | 1. Income from activity of owning and maintenance of horse race. |

**CARRY FORWARD AND SET OFF OF LOSSES:**

|  |  |  |
| --- | --- | --- |
| 1 | Loss from House Property | In the following 8 years, in Income from House Property |
| 2 | Loss from Business or Profession | In following 8 years, income from business or profession |
| 3 | Loss from Speculation | In following 4 years, Income from Speculation |
| 4 | Loss from Specified Business | In following 4 years, Income from any other specified business |
| 5 | Short term Capital Loss | In the following eight years.   1. Short Term capital Gain 2. Long Term Capital Gain |
| 6 | Long Term Capital Loss | In the following 8 years, Long Term Capital Gain |
| 7 | Loss from activity of owning and maintaining horse race | In the following 4 years income from owning and maintaining horse race. |

**CARRY FORWARD OF LOSSES OF CERTAIN COMPANIES (Section79):**

New Provisions of Section 79 as effective from 1st April 2020

Provisions of Section 79 apply to a company, not being a company in which the public are substantially interest.

**Condition:**

To carry forward losses and set off against the income of the previous year, the following condition needs to be fulfilled:

51% of the voting power of the company are beneficially held, as on the last day of the previous year in which the loss is sought to be set off, by the same person who holds at least 51% of the shares on the last day of the financial year in which the loss was incurred.

**Situation of carry forward and set off of losses in case of eligible start-ups**

Even if the above-referred condition is not satisfied by the 'eligible start-ups', the loss incurred in any year (prior to the previous year) shall be allowed to be carried forward and set off against the income of the previous year, if the following condition is satisfied:

All the shareholders having voting power on the last day of the previous year in which loss was incurred continue to be holding shares on the last of day of the previous year in which income is to be set off.

The above relief is available in case the loss is incurred during the period of 7 years beginning from the year of incorporation.

**Section 79(1) not apply in certain cases:**

1. When the change in voting power and shareholding takes place in a previous year on account of the death of the shareholder.
2. When the change in voting power and shareholding takes place in a previous year on account of share transfer resulted due to gift to any relative of the shareholder making such gift.
3. In case of a change in shareholding of an Indian company (being a subsidiary of a foreign company) due to demerger or amalgamation of a foreign company. The demerger or amalgamation is undertaken with the condition that 51% shareholding of amalgamating or demerged foreign company would continue to be the shareholders of the amalgamated or the resulting foreign company.
4. When the change in shareholding takes place based on a resolution plan which is approved under the Insolvency and Bankruptcy Code.
5. When the company and it is subsidiary (including a subsidiary of such subsidiary) in case:
6. The Tribunal (on application under Section 241) has suspended the Board of Directors of the company and has appointed new directors; and
7. Change in shareholding of the company and its subsidiary (including a subsidiary of such subsidiary) based on resolution plan approved by the tribunal under Section 242 of the companies act.

**No set-off of loss against undisclosed income discovered during search (Section 79 A)**

The Finance Act, 2022 has inserted a new section 79A to the Income-tax Act to restrict set off of losses consequent to search, requisition and survey. It has been provided that in case the total income of any previous year of an assessee includes any undisclosed income detected because of:

(a) Search initiated under section 132; or

(b) A requisition made under section 132A; or

(c) A survey conducted under section 133A other than under section 133A(2A).

Then, no set-off of any loss, whether brought forward or otherwise, or unabsorbed depreciation, shall be allowed against such undisclosed income while computing the total income of the assessee for such previous year.

For this provision, the ‘undisclosed income’ means:

1. 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 during 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:
2. not been recorded on or before the date of search or requisition or survey in the books of account or other documents maintained in the normal course relating to such previous year; or
3. not been disclosed to the Commissioner before the date of search or requisition or survey, as the case may be.
4. 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 ordinary 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.

**Change in shareholding due to strategic disinvestment (Section 79 (2)**

With effect from Assessment Year 2022-23, The Finance Act, 2022 has introduced one more situation wherein the provisions of section 79 shall not apply. It has been provided that the section 79 shall not apply to an erstwhile Public Sector Company (PSU), subject to condition that the ultimate holding company of such erstwhile PSU, immediately after completion of the strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% of the voting power of such PSU in aggregate.

However, this relaxation shall cease to apply from the previous year in which the ultimate holding company ceases to hold, directly or through its subsidiary or subsidiaries, 51% of the voting power of the erstwhile public sector company. If the relaxation ceases to apply in any previous year, the provisions of section 79 shall apply for such previous year and subsequent previous years.

The erstwhile public sector company shall have the same meaning as assigned to it in clause (ii) of the Explanation to clause (d) of section 72A(1).

Order of Set Off

If an assessee is entitled to claim depreciation, capital expenditure etc. as well as carried forward business losses, the sequence of allowing deduction will be as under;

1. Current Depreciation
2. Capital expenditure on scientific research and family planning
3. Carried forward business losses
4. Unabsorbed Depreciation
5. Unabsorbed Capital expenses on scientific research and family planning