SET OFF OR CARRY FORWARD AND SET OFF OF LOSSES [SEC 70 TO 80]

Set off of loss – Inter Source adjustment or Intra head adjustment [Sec 70]

Loss from one source in any head of income can be set off against income from any other source falling under the same head.

Exceptions: (Following losses can be set off from the same income only)

- Long term capital loss
- Loss from speculative business
- Loss from maintaining and owning race horse
- Loss from specified business u/s 35AD

Set off of loss – Inter-head adjustments [Sec 71]

If the loss cannot be set-off within same head, assessee is allowed to set off such loss against income under *any other head*.

Exceptions:

- Loss u/h PGBP cannot be set off against income from salary
- Loss of specified business u/s 35AD can be set off only against income of specified business
- Loss u/h capital gains cannot be set off against income of any other head
- Loss from maintaining and owning horse races cannot be set off against any other type of income.
- No loss can be adjusted against Income of winning from lottery etc.

Carry forward and Set off of loss of House Property [Sec 71B]

Unadjusted loss of House Property shall be allowed to be carried forward to the subsequent assessment year for a *maximum period of 8 years* following the assessment year in which loss was computed.

Carry forward loss of House property can be adjusted *only against income of house property* in subsequent years.

Carry forward and Set off of Business Losses[Sec 72]

Unadjusted loss under the head 'Profits and Gains of Business or profession'(Except loss in speculation business) shall be allowed to be carried forward to the subsequent assessment year for a *maximum period of 8 years* following the assessment year in which loss was computed.

Carry forward loss of PGBP (other than speculation loss) can be adjusted *only against income of PGBP* in subsequent years.

Unabsorbed depreciation u/s 32(2) or scientific research expenditure u/s 35 can be carried forward for *unlimited period* and is allowed to be *adjusted against any other income* (except casual income like winning of lotteries etc.)

Expenditures, losses and depreciation shall be adjusted in the order given below:

a. Current year business expenditure
b. Current year depreciation, capital expenditure on family planning or scientific research
c. Brought forward loss of PGBP
d. Brought forward depreciation/ unabsorbed expenditure on scientific research/ family planning

Carry forward and Set off of loss in case of amalgamation/ demerger/ Conversion of proprietorship/ partnership firm into company etc. [Sec 72A]

In case of Amalgamation:

The unadjusted loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss of the amalgamated company *as if incurred in the year of amalgamation*, if :

- The amalgamated company *continues the business* of amalgamating company for a period of *at least 5 years*
- The amalgamated company continues to hold at least *75% of the book value of assets* for a period of *5 years.*
- Fulfill other conditions as prescribed

In case of Demerger:

Unadjusted losses and depreciation of the demerged company is allowed to be carried forward and set off by the resulting company for the *remaining period.*

In case of conversion of proprietorship or partnership firm into company:

Unadjusted losses and depreciation of the proprietorship/ partnership firm shall be deemed to be the losses of company *as if incurred in the year of conversion,* if conditions laid down u/s 47 are complied with.

In case of conversion of private or unlisted company into LLP:

Unadjusted losses and depreciation of the private or unlisted company shall be deemed to be the losses of LLP *as if incurred in the year of conversion,* if conditions laid down u/s 47 are complied with.

Losses in Speculation Business [Sec 73]

Loss from speculative business is allowed to be set off only *against profits of speculative business.*

Unadjusted loss of Speculative business shall be allowed to be carried forward to the subsequent assessment year for a *maximum period of 4 years* following the assessment year in which loss was computed and is allowed to be set-off *only against profits of speculative business* in subsequent years.

As per section 43(5), speculative business means such business transactions in which a contract for the purchase or sales of any commodity including stocks and shares is settled otherwise than by the actual delivery.

Carry Forward and Set off of Losses by specified business [Sec 73A]

Loss from specified business u/s 35AD is allowed to be set off *only against profits of any other specified business.*

Unadjusted loss of Specified business shall be allowed to be carried forward to the subsequent assessment year for *unlimited period* and is allowed to be set-off *only against profits of specified business in subsequent years.*

Losses under the head Capital Gains [Sec 74]

Short term capital loss can be set off *either from STCG or LTCG*, but *long term capital loss* can be adjusted *against LTCG only.*

Losses under the head capital gain are *not allowed to be set off against any other head* of income.

Unadjusted loss of Capital Gains shall be allowed to be carried forward to the subsequent assessment year for a *maximum period of 8 years* following the assessment year in which loss was computed.

Carry forward loss u/h Capital Gains can be adjusted only against income under the head Capital Gains in subsequent years. Short term capital loss can be adjusted from STCG or LTCG but long term capital loss can be adjusted against LTCG only.

Losses under the head Other Sources [Sec 74]

Losses from activities under the head other sources (except maintaining and owning race horses) is allowed to be set-off within same head or any other head except casual income.

Carry forward of loss u/h other source is not allowed.

Losses from owning and maintaining race horses is allowed to be set off *only against profit of owning and maintaining race horses* and unadjusted losses is allowed to be carried forward for a *maximum period of 4 years* and it can be set-off only against the profit of owning and maintaining race horses in subsequent years.

Carry forward of losses - Change in constitution of firm or on succession [Sec 78]

If there is change in the constitution of a firm, then the *loss proportionate to the share of retired or deceased partner shall not be allowed to be carried forward* by the firm. This provision does not apply to unabsorbed depreciation.

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 cannot carry forward and set off against his income, any loss incurred by the predecessor. However, in case of inheritance, *legal heirs are entitled to carry forward and set off the loss of predecessor.*

Carry forward and Setoff of losses in case of closely held companies.[Sec 79]

Losses of closely held companies shall be allowed to carried forward only if the shareholder holding *at least 51% of voting power* are the same as on the last day of the year in which the loss has been incurred and as on the last day of the year in which the loss is to be set off.

This provision does not apply in following cases:

- Unabsorbed depreciation
- Change in shareholding is due to death of shareholder
- Change in shareholding is due to gift of share by shareholder to his relative.

Submission of return for losses [Sec 80]

Losses (except losses under the head House Property) can be *carried forward only if loss has been determined as per a return of loss filed on or before the date u/s 139(1).*