sARJU pANDEY
He can be reached at sarjuvpandey@gmail.com

Sec. 73 and Sec. 73A

Section 73
Losses in SPECULATION BUSINESS

- The meaning of the **'Speculative Transaction'** has been defined in **section 43(5).**
- The income from speculation business has to be taxed under the head "Profits and gains of business or profession".

- 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**.

- 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**.

- The ***Explanation* to this section** discourages companies (**other than banking and investment companies**) from indulging in speculation business or dealing in shares ***otherwise than* in the ordinary course of their business.**

    - It provides that where any part of the business of a company ***(other than investment company / banking / financing company)*** consists of 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.

    - Thus, companies engaged in the business of banking or the granting of loans and advances as their principal business would be exempted from the operation of this Explanation.

    - Accordingly, both investment companies and banking companies would not be treated as carrying on speculation business in cases where they purchase and sell shares of other companies.

    - For this purpose, an investment company **means** a company whose Gross Total Income **consists mainly of income** which **is chargeable under the heads** "Income from house property", "Capital gains" and "Income from the other sources".

Section 73A
Carry forward & set off of losses by specified businesses

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.
- **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.
- 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 at least 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.