CASE STUDIES ON SET OFF AND CARRY FORWARD OF LOSSES AND SECTION 14A

by
Sanjay R. Parikh
Chartered Accountant

1) M/s. Zee Investments Ltd. had sold certain long term capital assets in the form of shares and had earned a profit of Rs. 3 crores. They had also sold certain short term capital assets in the form of shares and had suffered a loss of Rs. 5 crores. M/s. Zee Investments Ltd. had claimed exemption of long term capital gains on sale of shares of Rs. 3 crores u/s. 10(38). The AO assessing M/s. Zee Investments Ltd. is of the view that they would be entitled to set off and carry forward of short term capital loss only to the extent of Rs. 2 crores i.e. after setting off the long term capital gains of Rs. 3 crores. Would the AO be justified in adjusting the long term capital gains exempt u/s. 10(38) against the short term capital loss ? Can the AO consider the long term capital gains and short term capital loss as speculation loss as per Explanation to section 73 ?

2) M/s. CA & Co. had sold certain shares held for less than 12 months through the stock exchange and had suffered a loss of Rs. 15 lacs. They had also sold certain shares held for more than 12 months directly to M/s. Lawyers & Co. at prevailing market rate and had earned a profit of Rs. 10 lacs. M/s. CA & Co. had set off the short term capital loss against the long term capital gains. The AO assessing M/s. CA & Co. is of the view that such set off is not permissible as short term capital gains are liable to tax @ 10% as per section 111A and long term capital gains are liable to tax @ 20% as per section 112. Is the AO of M/s. CA & Co. right in his contention.

3) M/s. Nano Traders are engaged in the business of buying and selling shares and securities. In the course of their business, certain shares are bought and sold by them without delivery and certain shares are bought and sold by them with delivery. During the year ended 31st March, 2006, they suffered a loss in purchase and sale of shares without delivery of Rs. 18 lacs and had earned a profit of Rs. 25

Easy PDF Creator is professional software to create PDF. If you wish to remove this line, buy it now.

lacs in buying and selling shares with delivery. They had set off the loss in trading in shares without delivery against the profit from trading in shares with delivery. The AO assessing them have disallowed such set off and held that they would be liable to tax on the entire Rs. 25 lacs. Is the contention of M/s. Nano Trader's AO correct ?

4) M/s. ABC Share & Stock Brokers have during the year ended 31.3.2006 received dividend income of Rs. 12,50,000/- on shares. They had disallowed a sum of Rs. 15,000/- u/s. 14A, which was worked out on a scientific basis. During the course of assessment proceedings, the AO had sought an explanation as to why disallowance u/s. 14A should not be made as per Rule 8D. It was submitted that their main business is of share and stock brokers and their major income and expenses are also on account of share broking business. It is their contention that their investments are in only four listed securities, the dividend from which has been credited in their bank account directly and no purchase or sale of investments has taken place during the year under consideration. Accordingly, the sum of Rs. 15,000/- disallowed by them is quite adequate. The basis of making the disallowance has also been explained to the AO. The AO has principally agreed with M/s. ABC Share & Stock Brokers. He is however of the view that he is compulsorily required to make a disallowance u/s. 14A as per Rule 8D. Is the AO justified in invoking Rule 8D when he is satisfied that the disallowance made by M/s. ABC Share & Stock Brokers is in order.

5) Mr. Z is in the business of construction activities. He had made certain investments on which he has received dividend of Rs. 12,00,000/-. The income of Mr. Z from construction activities is being assessed as per the provisions of section 44AD. Mr. Z has not maintained any books of accounts. Whether it would be possible for the AO to disallow any expenses u/s. 14A ?

6) ABC Investments Limited has investments of Rs. 5,00,00,000/- which were acquired out of own funds in the year 2000. Sometime in the year 2002, they had taken certain unsecured loans for giving loans and advances. They have paid

Easy PDF Creator is professional software to create PDF. If you wish to remove this line, buy it now.

interest of Rs. 7,00,000/- on the said loans. The AO assessing them has disallowed part of interest on the ground that common funds are available and accordingly interest has to be disallowed on pro-rata basis. M/s. ABC Investments Limited seeks your advice.

7) M/s. ABC Securities Limited are in the business of buying and selling shares and securities. During the year under consideration, they have made a profit of Rs. 25,00,000/- in share trading and have also earned dividend income of Rs. 4,00,000/-. Assuming that they carry an average stock of about Rs. 5,00,00,000/- and have also paid interest of Rs. 7,00,000/-, what would be the disallowance u/s. 14A.

8) M/s. M Holdings Ltd. holds shares in various unlisted companies. The investments held by M/s. M. Holdings Ltd. as on 31/3/2006 and 31/3/2007 was of Rs. 5 crores. M/s. M. Holdings Ltd. had borrowed certain funds for the purpose of making investments in shares of unlisted companies. It paid interest of Rs. 7 lacs for the year ended 31/3/2007 on such borrowings. M/s. M. Holdings Ltd. is of the view that no disallowance can be made in their case u/s. 14A. Is the contention of M/s. M. Holdings Ltd. justified.

Easy PDF Creator is professional software to create PDF. If you wish to remove this line, buy it now.