

## Set off OR Carry Forward AND Set Off of losses

➤ Sections 70 to 80 of Income Tax Act

<u>Step 1:</u>	<p><u>Inter source</u> adjustments under the SAME HEAD of income; also known as <u>Intra Head adjustment</u>.</p> <p><u>Exceptions:</u></p> <p><u>a. Loss from a speculation business: Section 73.</u> Any loss in respect of a speculation business, may be set off only against income of another speculation business. May not be set off from non-speculative business. <b>HOWEVER</b> a business loss can be set off against income from speculation business.</p> <p><u>b. Loss from activity of owning and maintaining race horses: Section 74A.</u> May be set off only against income of such activity. May not be set off against income from any other source.</p> <p><u>c. Loss on account of lottery, etc. cannot be set off against winnings from lotteries, crossword puzzles, card games etc.:</u> No expenditure or allowance or loss (on account of such activity) is allowed.</p> <p><u>d. Loss from a source which is exempt:</u> May not be set off against income of a taxable source.</p> <p><u>e. Capital Losses:</u> Short term capital loss may be set off against any capital gain. Long term loss may be set off only against long term capital gain.</p> <p><u>f. Loss arising from the sale and purchase of securities not allowed only in some cases (U/s 94(7)):</u> Losses to the extent of dividend are disregarded. See chapter on Income from other sources.</p> <p><u>g. Bonus stripping:</u> See the same chapter. However this arises when you get some shares as bonus and you sell only a part and retain the rest thereby resulting into loss. The loss is not allowed to be set off rather the same is deemed to be the cost of remaining bonus shares.</p>
<u>Step 2:</u>	<u>Inter Head adjustment</u> in the same adjustment year at the

	<p><b>time of aggregation of income of various heads</b></p> <ul style="list-style-type: none"> <li>➤ To be allowed if after INTRA HEAD ADJUSTMENT you still have losses.</li> <li>➤ You may set off those losses against income under any other head IN THE SAME YEAR ONLY (for subsequent years you'll have to look for income under the same head).</li> <li>➤ Capital losses may not be set off against any other head. However is allowed to be carried forward.</li> <li>➤ Losses under the head business or profession may not be set off from income under the head salaries.</li> <li>➤ Incomes not allowed to be set off as INTRA HEAD adjustments cannot be set off under INTER HEAD adjustment.</li> </ul>
<p><u>Step 3:</u></p>	<p><u>Carry forward of loss to the subsequent assessment years to claim it as set off if it could not be set off under Step 1 &amp; 2. (Note that in subsequent years losses under one head can be set off only against income of that particular head and of no others).</u></p> <ul style="list-style-type: none"> <li>➤ Only the following losses may be carried forward to subsequent years: A. House Property Loss B. Business Loss C. Speculation Loss, D. Capital Loss, E. Loss on account of owning and maintaining race horses.</li> </ul>

- Except for income under the head income from House Property and the Unabsorbed Depreciation - it is mandatory to file return before the due dates as prescribed in Section 139 AND to get the losses assessed. Otherwise the losses cannot be carried forward.
- Losses under the head income from House Property can be carried forward for 8 Assessment Years.
- Losses must be set off in the subsequent assessment years if there is income under that particular head. Otherwise such set off shall not be allowed in subsequent years.

**Losses under the head income from business**

- Business losses may be set off in subsequent years only against business incomes.
- The business may or may not be continued, but losses will be allowed to be set off as if the business is still continuing.
- LOSSES UNDER THE HEAD INCOME FROM BUSINESS CAN BE CLAIMED ONLY BY THE SAME ASSESSEE. However the following are the exceptions to the rule:

**EXCEPTIONS**

<ul style="list-style-type: none"> <li>➤ However the son is entitled to carry forward the losses for the balance number of years if he inherits the business (as could have been done by his father) from his (son's) income under the head income from business. Note that depreciation is not allowed to be carried forward by the successor son.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Amalgamation: Amalgamated company and co-operative banks can carry forward losses and unabsorbed depreciation if such amalgamation is within the scope of Section 72A/72AA.</li> <li>➤ Such accumulated losses and unabsorbed depreciation are deemed to be losses of the previous year in which the amalgamation takes place. Hence if only one more year is left and amalgamation takes place this year a new period of 8 years is available. However this is not applicable in case of merger between two Co-operative banks.</li> <li>➤ For banking COMPANIES if such amalgamation takes place with another banking INSTITUTION under a scheme of Central Government, then also the benefit is available.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Take over of Proprietary concern or firm BY A COMPANY: same as above. But necessary conditions under Sec. 47 (xiii) or (xiv) to be satisfied. Such accumulated losses and unabsorbed depreciation are deemed to be losses of the previous year in which the take over takes place. Hence if only one more year is left and take over takes place this year a new period of 8 years is available.</li> </ul>
<ul style="list-style-type: none"> <li>➤ Demerger: Losses can be carried forward IN ACCORDANCE WITH rules framed by Central Government. May be carried forward only for the balance period left. But unabsorbed depreciation may be carried forward for indefinite period. However this is not applicable in case of demerger of Co-operative banks.</li> </ul>
<ul style="list-style-type: none"> <li>➤ If in a company in which public is not substantially interested, and, there is a change in the share holding of the company, losses cannot be set off or carried forward. The only case to allow such carry forward is that the 51% shareholding of the company remains same : “as on the last day of the year whose loss is desired to be set off” and “of the last date of the year in which such change takes place”.</li> </ul>

- Business losses of EVERY year is a separate loss and the same of one year may be carried forward for ***EIGHT*** assessment years inclusive of the first assessment year. However for one exception see Sec.41(5).

- Order of Set Off:

1.	Current year depreciation
2.	Current Year capital expenditure on: <ul style="list-style-type: none"> <li>a. scientific research and</li> <li>b. family planning to the extent allowed.</li> </ul>
3.	Brought forward business or professional losses

4.	Unabsorbed depreciation
5.	Unabsorbed 2a
6.	Unabsorbed 2b

- Losses from speculation business prior to AY 2006 -07 carried forward for ***EIGHT*** assessment years and since AY 2006 -07 carried forward for ***FOUR*** assessment years.
- If some ***COMPANY as part of business*** purchases and sells shares, it will be deemed that to such extent it is carrying a speculation business (Explanation to Sec.73). However exceptions are a. investment companies, b. banking or lending companies.

#### **Losses under the head capital gain**

- Capital losses may not be set off against any other head. However is allowed to be carried forward.
- Long term and Short term capital losses shall be separately carried forward. For a maximum of ***EIGHT*** assessment years.
- In the present as well as subsequent years short term capital losses may be set off against long term capital gain. BUT long term capital losses may be set off only against long term capital gain.

#### **Loss from activity of owning and maintaining race horses**

- As indicated above may be set off only against identical activity either in present or subsequent years. Hence if you do not carry such activity in subsequent years you cannot set off losses as you will not have income under such head. May be carried forward for ***FOUR*** assessment years.