

CBDT moves to limit carry forward of losses

In a move that will limit the carry forward of losses by businesses to reduce their tax liability in subsequent years, the revenue department has issued a 'departmental view' on how to set off losses while calculating the taxable income. The circular is in line with a Kerala HC judgment favouring the department, but not in line with the judgments of the HCs of Bombay, Delhi and Karnataka in the last three years that went in favour of taxpayers.

This will restrict the tax planning freedom of a business that enjoys profit-linked cuts. With these deductions already phased out in many areas, SEZ, export-oriented unit (EOU), STPI units that can claim these for defined periods of time are the ones to be most adversely impacted by the CBDT move.

The CBDT has clarified that only that much of losses from various sources of income that remain after setting them off against profits that are eligible as a deduction (say, from an SEZ unit) can be carried forward. Thus, if a business has a transaction leading to a capital loss, it has to first set it off against the profits from an SEZ unit, or from a 100% EOU and only the remaining losses can be carried forward to subsequent years.

Many taxpayers have been claiming the full deduction of SEZ and EOU profits and at the same time, carrying forward the entire losses from other sources to subsequent years, treating the benefit of deduction as an actual tax exemption. This has led to a lengthy litigation in many cases, some of which are still pending in the Supreme Court.

As per the CBDT's view, only those profits from SEZs, STPs and EOUs (eligible businesses) that remain after adjusting for losses from other sources (ineligible businesses) can be claimed as a deduction from the taxable income, explained Amit Maheshwari, partner, Ashok Maheshwari & Associates. CBDT said the departmental view on the provisions regarding set off and carry forward of losses was being issued in light of different interpretations of it by the officers as well as by different high courts. Deloitte in India said that clarity on this issue could be expected from the SC where the matter is pending. "However this circular will certainly help taxpayers who have taken a stand that above referred sections (10A and 10B of the Income Tax Act) provide for a deduction from the total income and not an exemption," it said.

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