

SET OFF AND CARRY FORWARD OF LOSSES

Covered under section 70 to 80
of
the Incometax Act 1961

- When income earned under different heads of income, such incomes are aggregated and called as total income for which tax is levied.
- However, when losses incurred under different heads of income, this can be set off under the same heads of income or under other heads of income during the previous year with certain exceptions, which is called set off of losses.
- If it is not possible to be set off such losses during the previous year, then such losses can be carry forward to the next year with certain exceptions, which is called as carry forward AND SET of losses.

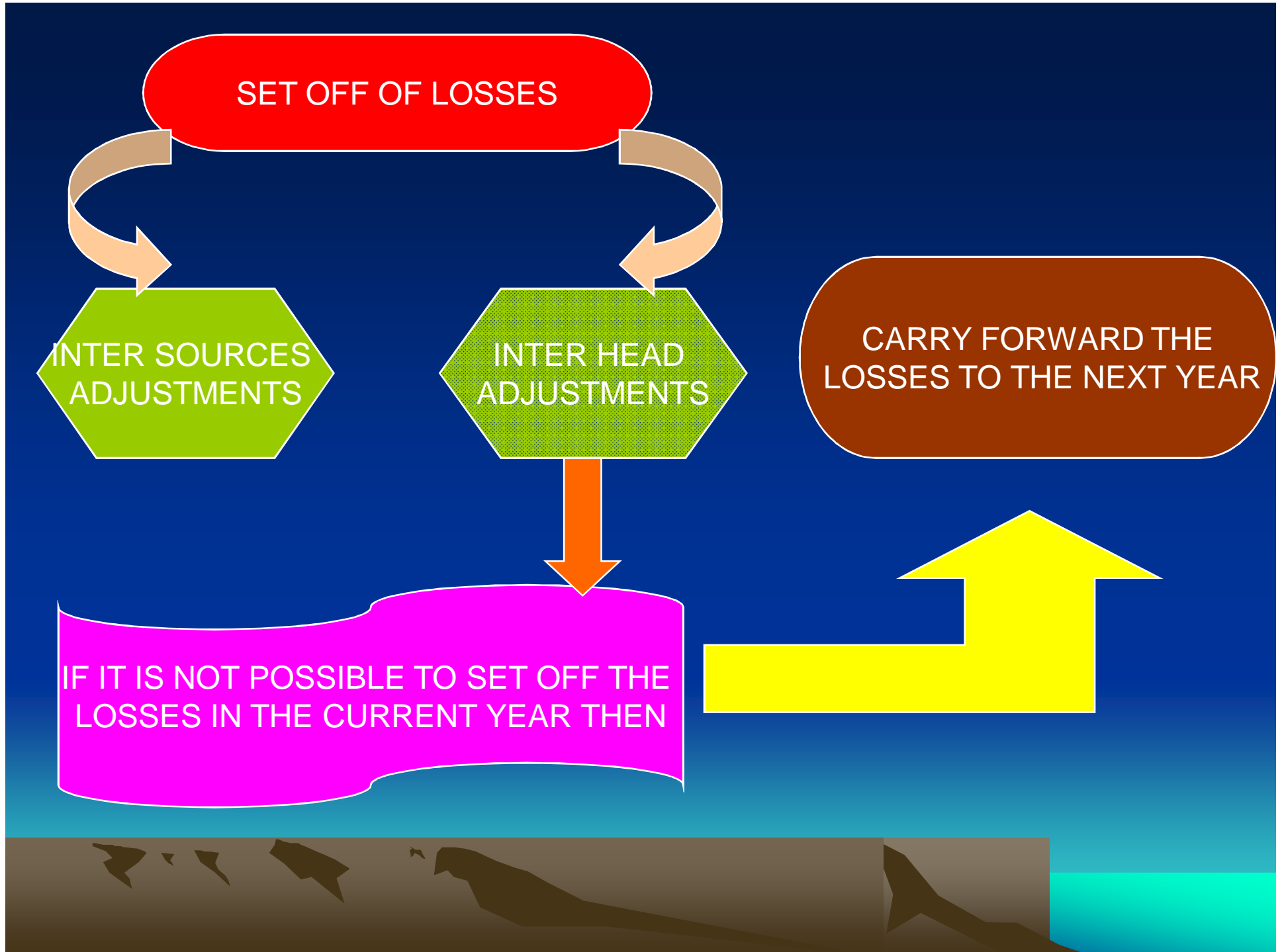
SET OFF OF LOSSES

INTER SOURCES
ADJUSTMENTS

INTER HEAD
ADJUSTMENTS

CARRY FORWARD THE
LOSSES TO THE NEXT YEAR

IF IT IS NOT POSSIBLE TO SET OFF THE
LOSSES IN THE CURRENT YEAR THEN



PROCEDURE FOR SET OFF OF LOSSES

Losses can be first set off against the income under the same head during the year which is called Inter source adjustments and covered under section 70.

EXCEPTIONS:

- ❖ Speculation loss
- ❖ Loss from specified business (Covered u/s.35AD)(from AY10-11)
- ❖ Long term capital loss
- ❖ Loss from the activity of owning and maintaining race horses.

Loss cannot be set-off against winning from lotteries, crossword puzzles, card games, gambling or betting of any form.[Sec.58(4)]

INTER HEAD ADJUSTMENTS (section 71)

When loss from one particular source cannot be set-off against the income under the same heads, then such losses can be set off against income under other heads in the same previous year.

EXCEPTIONS:

- Business losses cannot be set off against salary income.
- ❖ Loss from specified business (Covered u/s.35AD)(from AY10-11)
- Loss under the head capital gains cannot be set off against any other heads of income.
- Loss cannot be set-off against winning from lotteries, crossword puzzles, card games, gambling or betting of any form.
- Loss in a speculation business.
- Loss from the activity of owning and maintaining race horses.

When a particular income is exempted from tax as per section 10 of the Incometax, loss from such sources cannot be set off against any other heads of income which are chargeable to tax.

CARRY FORWARD OF LOSSES

- Losses which cannot be adjusted during the previous year either under the same head or other heads, will be carried forward to the next year. The procedure for carry forward and set off of losses are as follows:
 - ☺ Loss from house property – Sec.71B
 - ☺ Business loss other than speculation loss – Sec.72
 - ☺ Losses in case of amalgamation or demerger – Sec.72A
 - ☺ Unabsorbed depreciation – Sec.72AA
 - ☺ Speculation loss – Sec.73
 - ☺ Loss under the head Capital gains – Sec. 74
 - ☺ Loss from the activity of owning and maintaining race horse – Sec.74A
 - ☺ Losses of firms – Sect.75
 - ☺ Losses in case of change in constitution of firm – Sec 78
 - ☺ Losses in case of certain companies – Sec.79
 - ☺ Submission of return of losses – Sec. 80
 - ☺ Section 76 and 77 omitted w.e.f. 01.04.1993

1] LOSS FROM HOUSE PROPERTY – Sec.71B

Applicable from the Asst. Year 1999-2000

Can be Carry forward for 8 assessment years.

Can be set off only against Income from house property

2] BUSINESS LOSS (other than speculation loss) – Sec.72

- a] Can be set off only against Business Income
- b] Can be Carry forward for 8 assessment years
- c] Can be carried forward by the person who incurred the loss

EXCEPTIONS:

- 1] Loss of amalgamating company
- 2] Loss of a demerged company
- 3] Loss of business acquired by inheritance
- 4] Loss of sole proprietary concern or firm taken over by a company
- d] Return of loss should be submitted in time.
- e] Continuation of the same business not necessary
- f] Does not include unabsorbed depreciation, capital expenditure on Scientific research and family planning expenditure.(sec.32[2])

3] Loss in case of amalgamation Sec.72A

Set off in the hands of amalgamated company
Can be carried forward for eight assessment years

CONDITIONS TO BE SATISFIED:

3/4TH of the assets of the amalgamating company should be retained atleast for five years by the Amalgamated Company.

Business of the amalgamating company should be continued atleast for five years by the Amalgamated Company.

The amalgamating company has been engaged in the business in which loss occurred or depreciation remains unabsorbed for three years or more.

Amalgamated company alongwith return file certificate in Form 62 from a chartered accountant

3] Loss in case of amalgamation Sec.72A

If the above conditions are satisfied, business loss and unabsorbed depreciation of the amalgamating company shall be deemed to be loss and depreciation of the amalgamated company for the previous year in which amalgamation is effected.

If the above conditions are not satisfied, until the conditions are satisfied, the losses which was already adjusted by the amalgamated company will be treated as the income of the amalgamated company

3A] Loss in case of Demerger Sec. 72A(4)

a] Can be carried forward for eight assessment years by the resulting company

b] Can be set off by the resulting company
When the business is directly relatable to resulting co.

c] Can be set off by the resulting company and Demerged company when the business is not directly relatable to the resulting company in proportion to the assets retained.

4] UNABSORBED DEPRECIATION – Sec.72AA

Can be set off against any income

Can be carried forward and set off for any number of years until it is fully set off.

5] SPECULATION LOSS – Sec.73

Can be set off only against speculation income

Can be Carried forward for four assessment years.

Return of loss should be submitted in time.

Continuity of business not necessary.

Loss from banned speculative business cannot be carried forward.

6] CAPITAL LOSS – Sec. 74

Long term capital loss can be set off only against long term gain

Short term capital loss can be set off against both the long term and short term capital gain.

Can be carried forward for eight assessment years.

Return of loss should be submitted in time

7] LOSS FROM THE ACTIVITY OF
OWNING AND MAINTAINING RACE
HORSES Sec. 74A

Can be carried forward for four
assessment years.

Activity should be continued by the
assessee during the year

Return of loss should be submitted in
time.

8] Carry forward and set off of loss in case of change in the constitution of firm – Sec.78

When there is change in the constitution of firm due to death or retirement, then the firm shall not be entitled to carry forward the loss of the retiring or deceased partner.

However, this provision is not applicable in case of change in the profit sharing ratio or admission of new partner.

This provision is also not applicable in respect of unabsorbed depreciation, capital expenditure on scientific research

9. Loss in case of closely held companies – Section 79

Company in which public are not
substantially interested

Persons holding more than 51% of shares
are different from the date on which loss
incurred and on the date on which loss is
set off.

If the above two conditions are satisfied,
the loss cannot be set off.

10. Return of loss should be filled as per section 139(3) – section 80

If the return is not filled within the time limit given under section 139(3), the following losses cannot be carried forward by virtue of section 80

- 1] Business loss (both speculative and non – speculative)
- 2] Short term or long term loss
- 3] loss from the activity of owning and maintaining race horses.

However, set off of current year loss with current year's income is allowed even if return filled belatedly.

ORDER OF ADJUSTMENT IN CASE OF BUSINESS LOSS

- 1] Current scientific research expenditure
- 2] Current depreciation
- 3] Brought forward business loss
- 4] unabsorbed family planning promotion expenditure
- 5] unabsorbed depreciation
- 6] unabsorbed scientific research capital expenditure
- 7] unabsorbed development allowance
- 8] unabsorbed investment allowance

In case the losses sustained are not set off against the profit of the immediately succeeding year or years the same cannot be set off against profit at later years.