

Business loss can be set off against dividend income from specified foreign companies: Mumbai ITAT

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Summary

Mumbai bench of Income Tax Appellate Tribunal (ITAT) allows set off of current year business loss against dividend received from specified foreign company. On perusal of the provisions, the ITAT observed that unlike other provisions¹, there is no restriction on setting off of any loss from dividend received from specified foreign company.

The ITAT further held that order of the tax officer, granting such set offs, could not be considered to be “prejudicial to the interest of revenue”. It accordingly rejected revisionary actions² taken by the Commissioner of Income Tax (CIT).

Facts of the case

- The taxpayer³ is engaged in the business of manufacturing of chassis and vehicles for transport of goods and passengers, including motor car and parts thereof. During the Assessment Year (AY) 2013-14, it set off⁴ its business losses against dividend received from specified foreign company¹.
- Scrutiny assessment for AY 2013-14 was completed by the tax officer. However, the CIT invoked his revisionary powers³ and held that dividend received from specified foreign company¹ is taxable at a flat rate of 15%. It accordingly directed the tax officer to tax the dividend income at 15%.

- The taxpayer, aggrieved by the order, preferred an appeal before the Mumbai bench of ITAT.

Taxpayer's contention

- **Enquiry already done by the tax officer:** The taxpayer submitted that the tax officer had enquired the facts and verified relevant documents and considered various judicial precedents at the time of passing his assessment order. It accordingly argued that that the conclusion reached by the CIT that the assessment was done without applying statutory provisions and judicial precedents was erroneous.
- **Order of the tax officer is neither erroneous nor prejudicial:** The taxpayer contended that

¹ like sections 115BBE or 115BBDA

² Under section 263 of the Act

³ M/s Tata Motors Ltd. (Order No. 3424/Mum/2019)

⁴ under section 71 of the Act

the action of the AO in allowing set off of business loss against dividend income is neither erroneous nor prejudicial to the interest of the revenue. In this regard, it argued that if such dividend is taxed in current year without allowing set off⁵, it would be entitled to carry forward and set off losses such income against business income of subsequent years⁶.

- **No restriction on set off in the taxing provisions:** The taxpayer argued that unlike other provisions of the Act, there is no express provisions for restriction for set off in the dividend taxing provisions.

The provisions expressly deal with non-allowability of deduction of any 'expenditure' or 'allowance' and makes no mention of any restriction on set-off. It is a settled legal position that the term 'expenditure or 'allowance' is different from loss' and it cannot be used interchangeably.

Further, the taxpayer also argued that there is no such restriction in the set off⁶ provisions of the Act as well.

Thus, the set off of loss against the dividend income should be allowable as per law.

- **Income should be determined chapter-wise:** The taxpayer argued that the income should be determined chapter wise i.e. from IV to VII and

only after determining the taxable income, rates of tax will be applied subsequently. Since the taxpayer has incurred huge loss, the provision of set off should be applied before application of special dividend taxing provisions.

ITAT's observation and order

- The ITAT observed that the tax officer sought information relating to receipt of dividend income and the taxpayer has provided all the relevant information. This fact was also submitted by the taxpayer⁷. The ITAT thus concluded that the taxpayer had submitted all information at the time of assessment.
- The ITAT also observed that the tax officer has already verified the information relating to dividend receipt and rational of applying set-off provisions.
- The ITAT agreed with the taxpayer's contention that income has to be determined chapter-wise.

⁵ under section 71 of the Act

⁶ which would have been otherwise taxable at maximum marginal rate of tax of 30%.

⁷ in its reply to the notice under section 263 of the Act

- The ITAT also observed that there is no specific provision imposing restriction on set off of any loss. It also observed that the provisions only restrict deduction of expenditure relating to earning of dividend income from specified foreign company.
- Thus, the ITAT concluded that it could not be said that order of the tax officer is erroneous or prejudicial to the interest of the revenue. It accordingly allowed the appeal filed by the taxpayer and set aside the revisionary order passed by the CIT.

Our comments

It is a welcome decision as it enables immediate utilisation of losses, particularly for companies not making profits from any other source of income against which losses could have been set off. Therefore, this judgment helps improve the present value of money by reduction in tax outlay on account of loss utilisation.

Further, this judgment would specifically be useful in case of Indian Multi Nationals receiving dividend income from their overseas subsidiaries. Taxpayer should consider this ruling while computing the tax costs of dividend received from their overseas investments.

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