

AO couldn't deny set off of unabsorbed dep. and brought forward business loss against income from other sources

Summary – The Delhi ITAT in a recent case of Nanak Ram Jaisinghani, (the Assessee) held that Unabsorbed depreciation and brought forward business loss can be set off against income from other sources

Where assessee made payments of legal and professional expenses without deducting tax at source, Assessing Officer was justified in disallowing said payments under section 40(a)(ia)

Where AO made addition to assessee's income under section 2(22)(e) in respect of certain amount received from 'N' Ltd., in view of fact that assessee had received back amount given to 'N' Ltd. in earlier years and it was not a case of loan received from said company, impugned addition was to be set aside

Where assessee received hire charges from 'J' for using some farmland for holding one day event which was brought to tax by AO as income from other sources, since activity carried out by assessee was in nature of business activity, assessee's claim that hire charges were to be assessed as business income, was to be allowed

Facts

- In the course of assessment proceedings, the assessee claimed that income assessed under the head 'income from other sources' should be set off against unabsorbed brought forward depreciation.
- The revenue authorities rejected assessee's claim.
- On second appeal:

Held

- Section 32(2) provides for treating the unabsorbed depreciation of earlier years as the depreciation of the current year and thus it becomes in the nature of current year's business loss. Section 71(1) read with section 71(2A) further provides that the current years business loss can be set off against any income except the income under the head salary. Thus on collective reading of these three sections, it is very clear that B/F depreciation can be set off against income from other sources of the current year.
- Section 72(2) provides that any allowance shall be first treated as provided in section 71(1) and only thereafter the balance shall be carry forward. Thus, section 72(2) nowhere restricts for setting off of income from other sources from B/F depreciation. It is also found that in the case of the assessee, in assessment year 2009-10, the Assessing Officer himself allowed similar set off under section 143(3).

It is also noteworthy that for not allowing this set off, in this year, the Assessing Officer has not assigned any reason whatsoever. Thus, in view of above legal position, it is held that whatever income stands assessed under the head income from other sources should be allowed to be set off against B/F depreciation and B/F losses. In result this ground of appeal is allowed.