

## It isn't mandatory for assessee to set off business loss against capital gains as per sec. 71

**Summary – The Chandigarh ITAT in a recent case of Ajay Kumar Singhania, (the Assessee) held that As per provisions of section 71, there is an option to assessee to set off business loss against capital gains, however, it is not mandatory to do so**

### Facts

- During the year under consideration, the assessee had business loss of Rs. 3.04 crores, whereas, the assessee had earned short-term capital gains of Rs. 8.80 lakh. The assessee in the return of income did not set off the business loss against the short-term capital gain. However, after adjusting the capital gains of the year against the brought forward short-term capital loss and claiming deduction under section 80 returned the taxable income at 'nil' with carry forward business loss of Rs. 2.91 crores.
- The lower authorities, however adjusted the current year capital gains against the current year business loss and accordingly computed the income of the assessee.
- The issue thus came up for consideration was whether under the provisions of section 71 there was an option to the assessee to set off the business losses against the capital gains or was it mandatory to do so.

### Held

- A perusal of the Legislative history reveals that the assessee has always been given an option to set off his losses against the income from capital gains. However, as per the provisions of sub-section (3) of section 71, the assessee is not allowed to set off capital loss against income under any other head.
- In view of this, there is no justification on the part of the lower authorities in making the impugned adjustment and, therefore, the same is set aside. The Assessing Officer is directed to accept the returned income/computation of the assessee, as such.
- In the result, the appeal of the assessee stands allowed.