

Recent Taxscan Case Laws on Set-Off and Carry Forward of Losses

A CA-ready reference covering loss carry-forward due dates, CPC disallowances, business loss restrictions, capital loss set-off, unabsorbed depreciation and DTVSV loss disputes.

Due Date and CPC Loss Carry-Forward Disputes

Loss carry forward depends on the correct statutory due date. CPC disallowances arise when the system applies the wrong due date or misses the extended due date linked to transfer pricing compliance.

Dhiren Ramanlal Shah v. Income Tax Officer	
Taxscan citation	2025 TAXSCAN (ITAT) 1304
Forum / date	ITAT Mumbai 14 July 2025
Issue	Whether a partner was entitled to carry forward long-term capital loss when the return was filed within the extended due date applicable to a firm covered by Section 92E.
Ruling	The Tribunal held that the assessee, being a partner of a firm required to file a Section 92E report, got the extended due date under Explanation 2(aa) to Section 139(1). The return filed on 26 November 2022 was within time. Carry forward of long-term capital loss of Rs. 3.59 crore was allowed and the late fee under Section 234F was deleted.

ACIT v. Kiri Industries Ltd.	
Taxscan citation	2025 TAXSCAN (ITAT) 430
Forum / date	ITAT Ahmedabad 26 December 2024
Issue	Whether CPC was right in denying carry forward of loss by treating the return as filed beyond due date, despite international transaction compliance.
Ruling	The Tribunal found that the company had filed Form 3CEB under Section 92E and was entitled to the extended due date of 30 November 2016. The return was filed on that date. CPC had applied the wrong due date and the carry forward loss of Rs. 65.39 crore was allowed.



Business Loss: Set-Off Limits and Audit Issues

Business loss does not travel to every receipt connected with business assets. At the same time, audit delay alone does not defeat carry forward when the return condition is satisfied and the Act has no specific bar.

Sabeena Silk Mills v. Income-tax Officer

Taxscan citation	2025 TAXSCAN (ITAT) 1540
Forum / date	ITAT Mumbai 13 August 2025
Issue	Whether brought forward business loss was eligible for set-off against short-term capital gains arising from sale of depreciable assets under Section 50.
Ruling	The Tribunal held that gains under Section 50 remain chargeable under the head 'Capital Gains'. Section 41(2) did not apply on the facts. Brought forward business loss under Section 72 was not available for set-off against such short-term capital gains.

DCIT v. Brahmos Aerospace

Taxscan citation	2022 TAXSCAN (ITAT) 228
Forum / date	ITAT Cochin 2022
Issue	Whether carry forward of business loss was denied only because statutory audit or tax audit was not completed within the prescribed time.
Ruling	The Tribunal held that delayed statutory audit or tax audit has separate consequences under the Act. In the absence of a specific provision denying loss carry forward for audit delay, the claim cannot be rejected if the return condition is met.



Capital Loss: Set-Off, New Regime and Consistency

Capital loss disputes turn on the type of loss, type of gain, correct ITR reporting and consistency in connected cases. These rulings assist in share and securities loss claims.

Pr. Commissioner of Income Tax-19 Mumbai v. Avinash B. Jaising

Taxscan citation	2025 TAXSCAN (HC) 2666
Forum / date	Bombay High Court 28 November 2025
Issue	Whether the Department could deny set-off of short-term capital loss against long-term capital gains after accepting the same claim in connected cases with identical facts.
Ruling	The High Court dismissed the Revenue's appeal. The same STCL set-off claim had been accepted in the cases of the assessee's father and brother on identical facts. The Court applied the principle of consistency and rejected the contradictory stand.

Jaynt Vasudeo Aradhye v. DCIT

Taxscan citation	2024 TAXSCAN (ITAT) 1278
Forum / date	ITAT Pune 2024
Issue	Whether Section 115BAC bars carry forward and set-off of short-term capital loss under the head 'Capital Gains'.
Ruling	The Tribunal held that Section 115BAC does not specifically bar carry forward and set-off of capital losses. CPC had denied brought forward STCL due to an incorrect ITR column entry. The matter was remanded for fresh consideration.



Treaty Claims and Unabsorbed Depreciation

Two frequent advisory issues are treaty-exempt capital gains for non-residents and the difference between business loss and unabsorbed depreciation. Classification changes the result.

Goldman Sachs (Singapore) Pte. v. ACIT	
Taxscan citation	2025 TAXSCAN (ITAT) 2013
Forum / date	ITAT Mumbai 10 October 2025
Issue	Whether short-term capital loss determined under domestic law lost carry-forward status because capital gains in later years were claimed as exempt under the India-Singapore DTAA.
Ruling	The Tribunal allowed carry forward of STCL of Rs. 37.55 crore. It held that eligibility to carry forward loss is determined in the year of loss under the Income-tax Act. A later treaty claim under Section 90(2) does not erase a domestic law loss already determined.

ACIT v. Elecon Engineering Company Ltd.	
Taxscan citation	2025 TAXSCAN (ITAT) 1631
Forum / date	ITAT Ahmedabad 28 August 2025
Issue	Whether a belated return bars carry forward of unabsorbed depreciation of Rs. 2.38 crore.
Ruling	The Tribunal held that the amount was unabsorbed depreciation under Section 32(2), not business loss. Schedule UD showed unabsorbed depreciation and Schedule CFL showed no business loss. Carry forward was allowed despite filing under Section 139(4).



Settlement Scheme and Loss Disputes

Loss disputes also arise under settlement schemes. The year of dispute and the scope of the scheme matter more than a later-year non-claim.

IE Venture Fund I v. Principal Commissioner of Income Tax Delhi-4	
Taxscan citation	2025 TAXSCAN (HC) 859
Forum / date	Delhi High Court 6 May 2025
Issue	Whether a DTVSV application involving reduced loss was rejected because the taxpayer did not claim carry forward loss in the next assessment year.
Ruling	The High Court held that non-claim of carry forward loss in the next year is not a valid ground to reject settlement under the Direct Tax Vivad Se Vishwas Scheme, 2024. Rule 9 deals with computation of disputed tax and does not restrict the scheme's scope.

CA Takeaways

- Check whether Section 92E gives the taxpayer an extended due date before accepting CPC denial of loss carry forward.
- Match business loss, capital loss and depreciation with the correct head of income before claiming set-off.
- Do not set off brought forward business loss against Section 50 capital gains unless the Act permits it on the facts.
- Audit delay has separate consequences; it does not by itself cancel business loss carry forward where the return condition is met.
- Section 115BAC does not by itself bar capital loss set-off, but wrong ITR columns create CPC mismatches.
- For non-resident investors, examine domestic law loss computation and treaty election under Section 90(2) year by year.
- Unabsorbed depreciation must be checked through Schedule UD; it is not subject to the same due-date bar as business loss.
- In connected cases, use the consistency principle where the Department accepted the same loss treatment on identical facts.
- For DTVSV reduced-loss disputes, separate entitlement to carry forward from actual claim in a later year.

