

# CARRY FORWARD OF LOSSES IN CASE OF DELAY



## Can current year losses be carried forward if return of income is filed after the due date?

Each taxpayer is under an obligation to file their income tax return within the timeframe specified in section 139 of the Income Tax Act, 1961 ('the Act'). The provision contained within section 139 of the Act imposes a mandatory requirement on the taxpayers to adhere to the specified timelines for filing of income tax returns. Failure to adhere to the prescribed deadlines entails significant ramifications, notably the inability to carry forward losses pertaining to the current assessment year.

Section 139(3) of the Act stipulates that in the event of incurring a loss under the head 'Capital Gains' or 'Profits and Gains of Business and Profession', it is obligatory to file the income return within the timeframe specified in section 139(1) if the intention is to carry forward such loss to subsequent years for offsetting against future income. Thus, the provision imposes a restriction on the carry forward and set-off of losses sustained in the current year if the original income return for the relevant assessment year is not filed before the due date prescribed under section 139(1) of the Act.

While one's endeavor is to file return of income before the due date, however, in certain cases, owing to unavoidable circumstances well beyond the control of the taxpayer, the return cannot be filed before the prescribed due date which results in denial of carry forward of losses pertaining to the relevant assessment year.

In order to address such circumstances, section 119 of the Act grants wide powers to the Central Board of Direct Taxes ('CBDT') to condone the delay if it deems it appropriate or necessary to do so in order to alleviate genuine hardship experienced by a taxpayer in situations where the delay in filing the income tax return may be attributable to unavoidable circumstances beyond the taxpayer's control.

### ► **Power of CBDT to condone under section 119(2)(b) of the Act**

Section 119(2)(b) of the Act empowers CBDT to issue general or special order, authorizing any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act, after the expiry of the period specified under the Act and decide the same on merits in accordance with law.

Vide Circular No. 9/2015 dated 09.06.2015, CBDT has set out the monetary thresholds (further revised vide circular no. 07/2023 dated 31.05.2023) to determine which income tax authorities are empowered to handle application for condonation of delay. The prescribed limits are as follows:

Amount of claim	Income Tax Authority
Not exceeding Rs. 50 lakhs	Principal Commissioner of Income Tax or the Commissioner of Income Tax
Exceeding Rs. 50 lakhs but less than Rs. 2 crores	Chief Commissioner of Income Tax
Exceeding Rs. 2 crores but less than Rs. 3 crores	Principal Chief Commissioner of Income Tax
Exceeding Rs. 3 crores	CBDT

CBDT has further clarified that no condonation application for claim of refund/loss would be entertained beyond six years from the end of the assessment year for which such application/claim is made. This time limit of six years would be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including CBDT. However, in case where refund claim has arisen consequent to an order of the Court, the period for which any such proceedings were pending before the Court of Law would be ignored while calculating the period of six years, provided such condonation application is filed within six months from the end of the month in which the order was issued or the end of the financial year, whichever is later.

In order to ensure prompt resolution to the taxpayers, the aforementioned circular emphasises that a condonation application should be disposed of within a period of six months from the end of the month in which the application is received by the competent authority, as far as possible.

CBDT has further issued comprehensive guidelines to be followed by the income tax authorities while deciding claims made in the condonation application, viz., (i) ensuring that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits; and (ii) empowering to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

Reading of the aforesaid circular also would indicate that CBDT and the income tax authorities have powers to condone the delay in cases where the return of income is filed at a loss.

The legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by deciding the application on merits. Delay in filing of income tax return can be condoned where it is shown that there is a case of genuine hardship on merits. The expression “genuine hardship” should be interpreted liberally. Refusal by the tax authorities to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Thus, approach of the authorities should be justice oriented so as to advance cause of justice.

It is trite law that rendering substantial justice shall be paramount consideration of the Courts as well as the authorities rather than deciding on hyper-technicalities. Mere lapse on part of the taxpayer should not be a factor in rejecting a legitimate claim due to late filing of return of income, when the explanation offered is acceptable and genuine hardship is established. In cases where delay in furnishing of income tax return is attributable to circumstances beyond the control of the taxpayer, denial of a legitimate claim of carry forward of losses pertaining to the current year would cause grave hardship to the taxpayer. It is obvious that a bonafide taxpayer applying for condonation would not stand to benefit by lodging its claim belatedly.

The expression "genuine" has received a liberal meaning in view of the law laid down by the Hon'ble Apex Court in the case of **B.M. Malani vs. CIT: 306 ITR 196**, wherein, the Court observed that *"a genuine hardship would, inter alia, mean a genuine difficulty. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind."*

Hon'ble Madhya Pradesh High Court in the case of **K.L. Jaiswal vs. WTO : 221 ITR 426**, observed that the words 'genuine hardship' cannot be construed only as financial hardship but would include other forms of hardships arising out of the facts and circumstances.

Hon'ble Madras High Court in the case of **R. Seshammal vs. ITO: 237 ITR 185** and Hon'ble Bombay High Court in the case of **Bombay Mercantile Cooperative Bank Limited v. CBDT: 332 ITR 87**, held that the government is not entitled to plead hyper-technical plea of limitation to avoid return of the amounts to the taxpayer and the taxpayer should not be made to suffer on account of technicalities.

Hon'ble Courts have held that CBDT has wide powers to condone the delay in filing of return of income and such powers ought to be exercised judiciously so as to render substantial justice. Courts have accepted belated return of income in cases where such return could not be filed for reasons beyond the control of the taxpayer (Sitaldas Motwani vs. DGIT: 323 ITR 223; Artist Tree Pvt Ltd vs CBDT: 369 ITR 691 (Bom); PDS Logistics International P. Ltd. v. CCIT: 414 ITR 527 (Kar); REGEN Powertech (P.) Ltd. Vs. CBDT: 410 ITR 483 (Mad)).



Moreover, the Hon'ble Courts in various cases have accepted return of income filed belatedly at a loss, where on the facts and circumstances, it was established that the same could not be filed within the prescribed time limit for unavoidable circumstances and denial of carry forward of losses would cause genuine hardship to the taxpayer (Bombay Mercantile Co-op. Bank Ltd. Vs. CBDT (332 ITR 87) (Bom); Chintan Navnitlal Parikh (HUF) vs. CBDT (154 taxmann.com 544) (Guj); ADCC Infocom (P.) Ltd. vs. PCIT (293 Taxman 379) (Bom); Madhya Pradesh State Electricity Board vs. UOI (197 Taxman 238) (MP)).

In adherence to the prudent practice, taxpayers are advised to file their income tax returns before the specified due date. However, should circumstances beyond their control cause delays, taxpayers have a recourse available to them through Circular No. 9/2015 and established judicial precedents. These provisions afford taxpayers the opportunity to seek relief from the CBDT or the appropriate income tax authority. This avenue serves as a mechanism by which taxpayers can address such delays in a manner consistent with legal guidelines and established practices, ensuring fairness and equity in the administration of tax laws.

In the event that the CBDT or the relevant income tax authority arbitrarily dismisses the taxpayer's application for condonation regarding the belated filing of the income tax return, disregarding pertinent facts and unavoidable circumstances leading to genuine hardship, the taxpayer is entitled to seek redressal by recourse to the Jurisdictional High Court.