Short-term capital loss taxable at concessional rate can be set off against other short-term capital gains regardless of tax rate differential

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In brief

The Bangalore Income-tax Appellate Tribunal (Tribunal), in the case of Mac Charles India Limited (the taxpayer), has allowed short-term capital loss (STCL) on a sale of capital assets taxable at a concessional tax rate to be set off against short-term capital gains (STCG) arising from the transfer of other capital assets taxable at the normal rate, notwithstanding the fact that the taxpayer also had STCG on sale of capital assets taxable at concessional tax rate.

In detail

Facts

- During the year under consideration, the taxpayer[1] had both STCG as well as STCL in respect of sale of equity shares which were taxable at a concessional rate[2] of 10% under section 111A of the Income-tax Act, 1961 (the Act).
- In the same year, the taxpayer also had STCG from the transfer of other capital assets taxable at the normal rate of 30%.
- For computing the tax liability, the taxpayer first set off the STCL against the STCG taxable at the normal rate.
- The tax officer (TO) disallowed the taxpayer's computation mechanism. According to the TO;
  - STCL from assets which were taxable at a concessional rate must first be set off against STCG taxable at concessional rate; and
  - Remaining STCL, if any, could be set off with STCG on the transfer of other capital assets chargeable at the normal rate.
- The TO's disallowance resulted in an additional tax liability for the taxpayer. Aggrieved by the order of the TO, the taxpayer filed an appeal.
- The First Appellate Authority ruled in favour of the taxpayer, holding that the law did not restrict the set off of STCL first against the STCG that was taxable at concessional tax rate before other gains.

Issue before Tribunal

Whether STCL taxable at a concessional rate could be set off against STCG taxable at the normal tax rate when the taxpayer also had STCG taxable at a concessional rate?

Taxpayer's contentions

- Section 70(2) of the Act provides that STCL could be set off against STCG from any other capital assets. Hence the taxpayer had the option of setting off any

[1] ACIT *v.* MAC Charles India Limited [TS-105-ITAT-2015(Bangalore-Tribunal)]

[2] As per current law STCG on sale of shares is taxable at concessional rate of 15%

short-term capital loss with any other short term gain.

- Reliance was placed on a judicial precedent[3] wherein long-term capital loss (LTCL) with indexation benefit was allowed to be set off against long-term capital gains (LTCG) without indexation benefit, because both fell under the same head of income.

Revenue's contentions

- Loss on transfer of capital assets for which a concessional rate of tax was specified under section 111A of the Act should be first set off against gains from transfer of capital assets chargeable at concessional rate.

- Reliance was placed on the other provisions of the Act which allowed LTCL to be set off only against LTCG, and not against STCG, since LTCG was subject to lower rate of tax as compared to STCG.

Tribunal's ruling

- Under section 70(2) of the Act, STCL could be set off against STCG from any other capital asset without any restrictions.

- This right given to the taxpayer to set off STCL against any other STCG was unqualified, and therefore the taxpayer was free to determine the manner of set-off of STCL.

- It was inappropriate to deny the taxpayer a legitimate right simply because it resulted in a lower tax burden for the taxpayer.

The takeaways

The Tribunal allowed the set off of STCL arising on the sale of shares taxable at the concessional rate against STCG arising on other assets taxable at the normal rate, notwithstanding the fact that taxpayer had STCG on sale of shares taxable at a concessional rate.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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[3] Keshav S. Phansalkar *v.* ITO [ITA No.3261/Mum/2007, ITAT Mumbai dated 3 June 2009]

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