

Following Changes in provisions under Income Tax Act, 1961 to bring in line with Insolvency and Bankruptcy Code, 2016 (IBC 2016) by Union Budget 2018:

I. Section 79 of the Income Tax Act, 1961 "Carry forward and set off of losses in case of certain companies"-

This section provides that in any previous year where there is a change of shareholding representing more than 49% of the voting power of a company in which the public is not substantially interested, the loss of any year prior to the said previous year shall not be allowed to be carried forward or set off.

Finance Act, 2018 inserted third Proviso to the Section 79 that provision will not be applicable to the companies where a change in shareholding takes places in a previous year pursuant to the approval of Resolution Plan under IBC 2016. The proviso reproduced here:

"Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner."

II. Section 115JB of the Income Tax Act, 1961 "Special provision for payment of tax by certain companies"-

In terms of clause (iii) of the explanation to Section 115JB, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account is permitted to be set off in computing book profit.

The Finance Act, 2018 inserted clause (iih) prior to clause (iii) that on admission of application to appoint Insolvency Resolution Professional and to initiate CIRP process under IBC Code under Section 7, 9, or 10, then the aggregate amount of unabsorbed depreciation and loss shall be allowed to reduce from book P&L, which shall not include depreciation. The clause (iih) read as under:

"(iih) the aggregate amount of unabsorbed depreciation and loss brought forward in case of a company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

Explanation.—For the purposes of this clause, the expression "Adjudicating Authority" shall have the meaning assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and the loss shall not include depreciation; or"

This amendment will mean that the eligible company will be entitled to set off the aggregate of loss and depreciation as per books of account.

III. Section 140 of the Income Tax Act, 1961 "Return by whom to be verified"-

This section prescribes the person who is to verify the return of income. In the case of a company, the return is to be verified by a managing director or where he is not able to verify the return, or there is no managing director, by any director. Section 17(1)(b) of the IBC 2016 provides that, on the appointment of an interim resolution professional the powers of the board will stand suspended.

The Finance Act, 2018 inserted clause (c) after the second proviso to Section 140(c), which reads as under:-

"(c) where in respect of a company, an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

Explanation.—For the purposes of this clause the expressions "insolvency professional" and "Adjudicating Authority" shall have the respective meanings assigned to them in clause (18) of section 3 and clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016);"

The above provisions come into effect from 01.04.2018.

Disclaimer: While every effort is made to avoid any mistake or omission, this document including case-summary/brief about the decision/ add. info/headnote/ judgment/order/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this document. The authenticity of this text must be verified from the original source.