Part B - Corporate / Business matters

5. Tax on dividend – Sections 10(33), 115-O

5.1 Changes

Dividends are now again taxable in the hands of shareholders.

About five years ago, Mr. P. Chidambaram had removed tax on dividend received by shareholders. In its place, a flat tax @ 10% was levied on the company which distributed the dividend. It was argued that this was a simple method of levying the tax. Instead of collecting tax from millions of shareholders, the tax was collected only at one point.

Now the budget has brought back the old system. Shareholders will have to pay the tax on dividends. This will increase the tax burden, as the tax on companies was 10%; whereas the shareholders will have to pay their normal tax on the dividend.

5.2 T.D.S. – Section 194

The company declaring dividend, will have to deduct tax at source. However, in case of an individual person, if he receives dividend of up to **Rs. 1,000** in a year, from the same company, then tax does not have to be deducted at source.

5.3 Section 80L

Further dividends will be eligible for deduction up to **Rs. 9,000** per annum. This deduction is to be considered together for bank interest, dividend and mutual fund dividend under Section 80-L.

5.4 Relief for dividends earned by Indian companies — Section 80-M

To reduce the cascading effect of multiple taxation, Indian companies have been given relief. If an Indian company receives dividend from another Indian company, a deduction is given from the income, if the company which receives dividend, in turn distributes dividend before the due date of filing the return. Thus, for example, if

company A receives Rs. 10 lakhs as dividend from company B in F.Y. 2002-03; then company A must distribute dividend by 31st October, 2003. If it distributes Rs. 10 lakhs or more, the entire amount will be tax-free. If it distributes less than Rs. 10 lakhs, the difference will be taxed.

5.5 Dividends from mutual funds – Sections 10(33), 115-R, 115-BBB

Dividends from mutual funds will be taxable in the hands of unitholders.

Dividends received from **mutual funds** and UTI were also not taxed in the hands of the shareholders. Instead the mutual fund had to pay a tax on dividends distributed @ 10%. Now, dividends will be taxed in the hands of the unit holders. The mutual fund and UTI will not have to pay tax on distribution of income.

A small concession has been given in case of units of **open ended equity oriented fund**. An open ended equity oriented fund means – 1964 scheme of UTI, and those funds where at least 50% of funds are invested in equity shares. Open ended equity funds did not have to pay tax on incomes distributed up to 31-3-2002. Now any dividend received from such an open ended fund would be **taxable @ 10%** instead of the regular rates. This lower rate of tax will continue for dividends received **up to 31-3-2003**. After that, regular tax will be payable.

There is however, a small anomaly here. A person who has income below Rs. 50,000 will also have to pay tax @ 10% on dividend from open ended equity fund. This perhaps is not the intention. However, the legal language states the above position.

It may be noted, however, that in most cases, Double Tax Avoidance Agreements would apply. Under the DTA, the rate may be reduced to 10% or 15%.

5.6 (P) The changed impact in the tax system can be explained in the following illustration.

Sr. No.	*Particulars*	*System for Financial Year ended 31-3-2002 Rs.*	*F.Y. ended 31-3-2003 Rs.*
1.	Assume, A company earned taxable income of	1,000	1,000
2.1	Corporate tax rate	35.7%	36.75%
2.2	Tax Rs.	357	368
3.	Net available funds Rs.	643	632
4.	Assume that full amount is utilised by company for payment of dividend and respective tax –		
4.1	Dividend tax @ 10%.	58	000
4.2	Dividend declared	585	632
5.	Tax in the hands of the shareholder. For individuals @ highest rate of 31.5%	000	199
6.	Net balance with shareholder	585	433
7.	Total taxes paid (2.2 + 4.1 + 5)	415	567

5.7 Double Tax Avoidance Treaties (P)

The dividend tax u/s. 115-O was paid by the company and not the shareholder. In the circumstances, there was a controversy. Would a shareholder who is non-resident of India, get the credit in his own country for the tax paid in India by the company! Some countries' tax departments were granting this credit. For other countries, it remained a doubtful issue.

Now, with deletion of S. 115-O, the controversy also disappears.

6. Non-residents and foreign companies (P)

6.1 Tax cost for foreign companies (P)

Foreign Companies' tax rate is reduced by 6%.

The tax rate on foreign companies has been reduced from 48% to 42%. Considering the reduction in the tax rate, and tax on dividends, the impact on foreign company can be as under.

Example 1

Normally a foreign company can do business in India through an Indian company. However for some activities, it is possible to do business directly, without having to set up an Indian company. This can be so in the case of infrastructure projects like roads, ports, etc. Under the current position, the tax for assessment year 2002-03 will be as under:

In the first column it is assumed that the foreign company invests in a wholly owned Indian subsidiary. In the next column it is assumed that the foreign company directly does business in India.

Business in India through a branch may have a lower tax cost than business through an Indian company.

Assessment Year – 2002-03

Sr. No	Particulars	Through Indian company Rs.	Business through branch Rs.
1.	Profit of Indian company/branch	1000	1000
2.	Less: Tax @ 35.7%/48%	357	480
3.	Profit after tax	643	520
4.	Dividend declared	583	520
5.	Tax on dividend @ 10.2% (Section 115-O)	60	NIL
6.	Total tax paid in India (2 + 5)	**417**	**480**

Tax cost for the assessment year 2002-03 is lower if investment is done through an Indian company.

Example 2

The impact of budget 2002 (for assessment year 2003-04) is given in the table below. Facts are assumed as in example 1.

Assessment Year – 2003-04

Sr. No	Particulars	Through Indian company Rs.	Business through branch Rs.
1.	Profit of Indian company/branch	1000	1000
2.	Less: Tax @ 36.75%/42%	368	420
3.	Profit after tax	632	580
4.	Dividend declared	632	580
5.	Tax on dividend @ 20% **(*)** (Section 115A)	126	NIL
6.	Total tax paid (2 + 5)	**494**	**420**

As can be seen, now the tax cost through a company can be higher. Of course if foreign companies decide to accumulate funds in India, and not declare dividend, then the tax cost would be lower.

The above table explains the tax impact in India. Apart from the tax in India, the foreign company may also have to pay tax on dividends in its own country. Credit for tax paid in India will normally be available in their home country.

(*) It may be noted, however, that in most cases, Double Tax Avoidance Agreements would apply. Under the DTA, the rate may be reduced to 10% or 15% etc.

It is obvious that whether a foreign company does business through a wholly owned subsidiary or a branch, will depend on several business and legal factors. Tax rate can be important, but secondary to business considerations.

6.2 Grossing up of tax in case of royalty etc. (P) – Sections 10(6A) and 10(6B)

Relief on grossing up of tax in case of royalty and fees for technical services has been removed.

In case of payments made by Indian residents to non-residents on account of payment of royalty, fees for technical services and technical fees, relief was given to payers. If the tax was borne by the payer, no grossing up was required to be done. This was subject to certain conditions. The budget has now done away with such reliefs. The reason is that any tax paid in India, is available as a credit to the non-resident in the foreign country. By allowing reliefs it was only the foreign Government which benefited. Hence the reliefs have been removed. This can be explained by an example.

Sr. No	Particulars	No Grossing up of tax is done	Grossing up of tax is done
1.	Royalty	1000	1000
2.	Tax in India @ 20%	200	200
3.	Grossed up tax	200	250
4.	Total cost (2 + 3) to Indian payer	1200	1250
5.	Tax in foreign country say @ 30%	360	375
6.	Less: Tax paid in India	200	250
7.	Balance tax paid in foreign country	160	125
8.	**Total taxes**		
	In India	200	250
	In foreign country	160	125
	Total tax	**360**	**375**

Thus the tax in India will now be higher. However total cost of taxes is not increased significantly.

In case of royalties and fees for technical services, the relief for grossing up continues to be available for agreements entered prior to 1-6-2002. However, in case of technician's fees, no such relief will be available for cases where services have commenced prior to this budget.

7. Sale of immovable property (S. 50-C)

7.1 Form 37-I – Acquisition

The 'acquisition chapter' under Income-tax Act is deleted. Value adopted by State Government valuation officer will be deemed to be the selling price.

Sale of immovable property exceeding the specified limits, requires an approval from income tax department. Application in form 37-I has to be filed under Chapter XXC. In Mumbai the limit was Rs. 75 lakhs. The budget has done away with the clearance. Sale effected, from 1st October, 2002 will not require this clearance. There will be NO Acquisition of immovable properties by the Government on the grounds of black money. Transfer of immovable properties has now become easier and simpler. This is welcome.

7.2 Value for Registration

In its place, new provisions are proposed which would apply to **all properties irrespective of the value.**

The new Section 50C provides that if the sale consideration of the property is less than the value adopted for stamp duty, then the stamp duty valuation by the State Government authorities will be considered as the sale price.

This can lead to several difficulties.

In Maharashtra, the stamp duty authority has a **ready reckoner** – giving value of the property which they will consider for stamp duty. It gives the value of the property according to the area and the street where property is located. Obviously this reckoner is only a guide.

One is aware that two flats in the same building can command different prices, and the difference can be substantial. The value of flats in two different buildings can definitely be different. The ready reckoner does not take these into account. Still the budget proposes to adopt the valuation as per stamp duty authorities.

7.3 If the tax-payer does not agree with the valuation by stamp duty authorities, and he has not appealed against such valuation, then the income tax officer can refer the valuation to a valuation officer.

If the income tax valuation officer values the property lower than the stamp duty valuation, then the tax

valuation officer's value will apply. If the value is higher, then the stamp duty valuation will apply. Thus the value to be considered will be:

Lower of	:	Stamp duty valuation and valuation by income tax valuation officer.
		and
Higher of	:	Sale price, and stamp duty valuation.

7.4 If the tax-payer has appealed to any authority or court in respect of stamp duty valuation, then one will have to wait for the judgment. This may create a difficulty as the assessment has to completed within two years of the end of the financial year, whereas the court decision may take years.

7.5 (P) There is also a fundamental legal issue. What is taxable is the income "actually earned". In the case of K. P. Varghese, (131 ITR 597) it was held by the Honourable Supreme Court that even if the sale price is below the market value, the Income-Tax officer has to prove that there was an actual receipt of sale price. If income was not actually earned, it cannot be considered to be taxable. Thus where the property has been genuinely sold for a price which is less than the market price, additional tax cannot be charged. This is a settled principle. Based on this Supreme Court decision, the Government had to delete section 52 of the Income-tax Act which had a similar deeming provision.

Adopting the value as per stamp duty authority as the sale price, can be struck down by a court as unconstitutional.

This principle can equally apply here. It is possible that in an appeal, this section can be struck down as unconstitutional. One will have to wait and see how things develop.

7.6 In this situation, one will have to find some safe way. Under stamp duty law, there are primarily two ways of valuing a property. One is where the purchaser applies for adjudication. The stamp duty is determined by the stamp duty authority and stamp duty is paid. Thus before finalising the transaction, one may go for adjudication.

The other method is that after signing the agreement, the buyer of property pays the duty, and then gives the agreement for registration. If there is an increase in valuation by stamp duty authorities, then additional stamp duty has to be paid. This will create difficulties in tax assessments.

With the new provision, it may be advisable to go in for adjudication in most of the cases.

8. Transfer Pricing (Chapter X of the Income-tax Act) (P)

Transfer pricing provisions will now apply only where both conditions are fulfilled–i) regarding control and management and ii) any one of the thirteen specific criteria.

Last year the Government had introduced elaborate anti-transfer pricing rules. There were certain anomalies and difficulties in the rules. These have been taken care of in this budget. The changes brought in the budget are discussed below.

8.1 Briefly – Section 92A provides for two sets of conditions in sub-sections (1) and (2). There was a controversy. Are both these sets independent or cumulative! In other words, two or more concerns would be treated as associated concerns if –

(i) any one of the sets of conditions were applicable;

OR

(ii) both the sets were applicable.

Finance Act, 2002 has now provided that the concerns will be treated as 'Associated Concerns' only if both the sub-sections 92A(1) and 92A(2) are applicable.

The same technical matter is stated below in a businessman's language.

8.2 Meaning of associated enterprise — Section 92A

Transfer Pricing rules apply only if the transactions take place between two or more associated enterprises. The definition of associated enterprise is very wide. It is stated [S. 92A(1)] that if one enterprise participates in another enterprise's capital, control or management, then the two enterprises are associated enterprises. This is alright. However S. 92A(2) further provides thirteen different criteria whereby two enterprises could become associated enterprises. Some criteria are so wide that even normal

business transactions between unrelated parties would make them associated enterprises. For example, if a foreign bank gives loan to an unrelated Indian borrower, and the loan exceeds 51% of the borrower's assets, then the foreign bank and the Indian borrower become associated enterprises. Transfer Pricing rules would apply to them.

Several representations were made by various organisations. Even OECD had suggested to make the changes.

Now the Finance Act provides that two or more enterprises will be treated as "associated enterprises" only if they fulfil both the conditions:

(i) One enterprise participates in the control management or capital of the other enterprise. This is the primary condition to be fulfilled.

(ii) Additionally, at least anyone of the thirteen conditions provided in S. 92A(2) is also fulfilled. (e.g. giving of loan exceeding 51% of assets etc.) Thus without the basic criteria of control, capital or management, participation; two enterprises cannot be associated enterprises. This is a **welcome amendment.**

T. P. rules can only increase income; cannot reduce the income.

8.3 The transfer pricing rules provided that income shall be computed according to the market prices of transactions between two associated enterprises. Legally, it meant that if the market prices were lower than the prices at which transactions had taken place, then for the purposes of income-tax, the market prices would have been considered. That is; the tax will have to be paid on lower amount of profit than what is recorded in the accounts. This may happen where for example a foreign company has invested in a subsidiary in India. To support the subsidiary in the initial years, it may purchase the goods from the subsidiary at prices which are higher than the market prices. Thus the profits of the Indian subsidiary, as per accounts will be higher than profits as per market prices. As per the old rules, the subsidiary would be entitled (in fact, required) to file Income-tax return on lower income at market prices.

The budget has now provided that the intention is not to lower the tax revenues. Therefore, transfer pricing rules will apply only if it results in increase of revenue to the Government. [Section 92(3).]

8.4.1 Two way impacts

Many financial transactions have two way effects. Taxable income of one assessee may become tax deductible expenditure of another person. If because of arm's length price, one person's income is modified, should the other affected person's income also be appropriately modified?

This issue becomes clear from the following illustration:

8.4.2 Illustration

U.K. Ltd., a British holding company has an Indian subsidiary – I Ltd. U. K. Ltd. charges royalty to I Ltd. Let us say, following are the amounts involved.

Royalty at arm's length price /		
Market Price	@ 5%	Rs. 5,00,000
Actual charged	@ 2%	Rs. 2,00,000
Difference		Rs. 3,00,000

I Ltd.'s income is increased by Rs. 3,00,000 because of undercharging. At the same time, U.K. Ltd.'s income is reduced by Rs. 3,00,000.

Section 92(3) restrains I Ltd. from reducing its income by applying the market price.

However, U.K. Ltd. will have to increase its income u/s. 92(1) at the market price.

This issue was drawn to the attention of the Government by representations. However, they have sought to ignore the same.

8.4.3 "Kings I win, Scales you lose"

Government of India has very well adopted this principle declared by the late actor Kishore Kumar in the humorous film "Chalti Ka Naam Gaadi". *(Chat Main Jeeta, Pat Too Haara.)*

Seriously speaking, T. P. Law is a new chapter in Indian Income-tax Law. It has to evolve and be refined. We hope that the Government will see logic and refine such anomalies.

8.5 Permissible variation from market price.

Transfer Pricing rules can result into computation of different market prices. This is because transfer pricing is a subjective exercise and not an exact science.

A 5% variation from market price is to be ignored.

The rules provided that if there were more than one prices computed under any method of the transfer pricing rules, the arithmetical mean would be considered as the market price. This was not considered to be proper. For example, assume that there are three prices – 100, 105 and 120. The average of the three prices is 108. In such a case, although the person may have transacted his business at a price of 100, still it would not be considered as the market price. To take care of such a situation the tax department had come out with a circular that a variation of 5% would be considered alright. Now this variation of 5% has been incorporated in the law itself. Although, the variation of 5% is perhaps inadequate, it is nevertheless welcome.

8.6 The issue of transfer pricing is very subjective and requires good knowledge of the industry. Currently each Income Tax Officer is authorised to assess the transfer pricing cases. This issue can cause difficulties. Just as professionals cannot be aware of all industries, assessing officers also cannot be aware of all industries. The budget has now provided that if the Income Tax Officer considers it appropriate, he may transfer the issue of determining the transfer price of international transactions to a Transfer Pricing Officer.

Overall this is a welcome step. With a special transfer pricing officer, it should be easier to sort out transfer pricing issues.

8.7 Due date for Audit

There was a difficulty regarding audit under transfer pricing rules. The due date for transfer pricing audit was as under:

For companies – 31st October
For others – 31st July

Normally, under the Income-tax Act, wherever an audit is required, the due date is 31st October (whether it is a company or a non-company). However, under the transfer

pricing rules the date was 31st July for non-companies even where a tax audit was be required. Therefore, such entities would have to file the transfer pricing audit report by 31st July and the tax audit report and income-tax return by 31st October. Now, the budget proposes to align the date to 31st October for all assessees undergoing audit.

8.8 Ignorance is Bliss

A very interesting situation has emerged due to T. P. provisions. Those who read and understand the provisions – mainly practising chartered accountants – are scared of the widespread and serious impact of the T. P. provisions.

However, some of the clients, to whom it directly applies are blissfully unaware of the applicability of T. P. provisions; and consequences of non-fulfilment of the provisions.

The provisions apply to all assessees — whether corporate or individuals; and whether having a collaboration etc. or not.

Hopefully, with this year's audit exercise; all clients will understand the provisions and maintain proper records from the current year.

9. Restrictive covenants — Section 28(vii)

Payments of the kind of restrictive covenants will now be taxable.

There are some fundamental concepts of "revenue" and "capital" receipts in the income tax law. "Revenue" receipts are taxable. "Capital" receipts are generally not taxable. "Capital" receipts mean those receipts which are not "earned" incomes. For example, inheritance or gifts received. They cannot be attributed to any particular activity or asset.

In case of restrictive covenants, some persons receive payments for not doing any particular business, or not using any rights, etc. It is believed that such receipts are capital receipts and hence not taxable.

Example — If an employee leaves his service, and the employer pays him a lump sum amount for not joining a competitor, it becomes a payment for restrictive covenant.

It is however always a debatable issue whether such a receipt is taxable or not.

The budget now provides that such receipts is be taxable.

This is a fair provision as the amount received under such agreements usually pertain to commercial transactions. Hence to treat the receipts as taxable is only logical.

10. Export Oriented Units etc. Sections 10A & 10B

Export Oriented Units and units in Free Trade Zones are exempt from tax for the specified period. For the financial year 2002-2003, the budget proposes that the exemption from tax will be available only for 90% of the income. For the balance 10%, they will have to pay regular tax. The reason given by the Finance Minister is that such units being totally exempt from tax, surcharge cannot be levied on such units. Therefore, some tax is being levied on them. The effective rate including surcharge in case of companies will be 3.675%.

Incomes of Export Oriented Units and units in Free Trade Zones will be exempt up to 90% for FY 2002-03.

This reduction in the relief applies only for financial year 2002-2003.

Units in Special Economic Zones have been granted exemption from this tax (Section 10A(1A)). Such units which commence manufacturing or development of software on or after 1st April, 2002, are exempt from tax completely. The tax exemption is available for first 5 years. Thereafter the exemption is available up to 50% of the profits for the next 2 years.

11. Tax on perquisites provided to employees — Section 10(10CC)

In August, 2001, the Government had come out with elaborate perquisite valuation rules. These rules have increased the tax liability of employees. Although, in principle there is nothing wrong in taxing the perquisites, several representations were made to reduce the tax impact on employees.

Employers can pay tax on non-monetary perquisites and there will be no grossing up of tax.

The budget has given some relief for the difficulties caused by increased perquisite taxation.

11.1 Normally, if tax liability of an employee is borne by the employer, the tax has to be grossed up. It is now provided that, if the “employer” pays the tax on “non-monetary perquisites” then grossing up will not have to be done.

Non-monetary perquisites mean benefits/facilities granted to employees like free housing, car, utility expenses, etc.

Example	*Without Grossing up of tax*	*Grossing up of tax*
Salary	2,00,000	2,00,000
Non-monetary perquisite value	50,000	50,000
Total	2,50,000	2,50,000
Tax on above (excluding surcharge)	49,000	49,000
Average rate of tax	19.6%	
Tax on non-monetary perquisite is at the average rate of 19.6%	9,800	9,800
If grossing up has to be done, tax will be – grossed @ 30%. (9,800 X 100/70)		14,000

The budget provides that the tax need not be grossed up. Thus, in this illustration, there is a saving of Rs. 5,200 for salary in 30% tax bracket.

11.2 If the employer bears the tax of the employee on the non-monetary perquisites, the tax on such perquisite has to paid to the government along with tax deducted at source from other salary. It has been provided that the tax on non-monetary perquisites will be at average rates of tax. Section 192(1B). Thus in the above example, the average rate of tax is 19.6%.

11.3 However, as the employee does not pay tax on the same, as a corollary, no deduction as an expense is allowed to the employer. Section 40(a)(v). This can have the following impact on the costs. Two situations are given:

A. Normal provisions, where the employee bears the tax on his salary.

B. Proposed provisions, where the employer bears the tax on non-monetary perquisite, and the tax is NOT grossed up.

Note: All taxes are for Assessment Year 2002-03. For the sake of simplicity in calculations, the surcharge is ignored.

A. Normal provision

		Rs.
1.	Salary	
1	Cash	2,00,000
1.2	Non-monetary perquisite	50,000
1.3	Total salary cost	2,50,000
2.	Tax deduction to employer @ 35%	87,500
3.	Net cost to employer	1,62,500
4.	Tax paid by employee	49,000
5.	Funds left with employee (1.1-4)	1,51,000
6.	Tax reduction for government (4-2)	(-) 38,500

Note:

Here, the Government is a loser. While the employer pays tax on his income at a lower rate; the employer gets a deduction and saves at a higher rate.

B. Tax on perquisite by employer, and grossing up is not done

1.	**Salary**	
1.1	Cash	2,00,000
1.2	Non-monetary perks	50,000
1.3	Total salary	2,50,000
2.	**Tax**	
2.1	Tax on Rs. 2,50,000	49,000
2.2	Average tax rate (49,000/2,50,000)	19.6%
2.3	Tax on perks at average rate (50,000 X 19.6%)	9,800
2.4	Balance tax deductible on salary income of Rs. 2,00,000. (49,000 – 9,800) Please see note below.	39,200
2.5	Tax deduction to employer on Rs. 2,50,000 @ 35%	87,500
2.6	Total cost to employer Rs. 2,50,000 + Rs. 9,800 – 87,500	1,72,300
2.7	Net funds available to the employee (2,00,000 – 39,800)	1,60,200
2.8	Tax reduction for Government (87,500 – 39,800 – 9,800)	37,900

Thus for the employer it is better to pay a gross salary.

12. Additional depreciation – Section 32

Additional depreciation has been allowed up to 15%. In effect, it is only a preponement of depreciation. It is not additional.

12.1 The budget has allowed a deduction on account of additional depreciation equal to 15% of the cost of plant and machinery. This additional depreciation is given only for new industrial undertaking which began to manufacture on or after 1st April, 2002. The additional depreciation will also be available in case there is any substantial expansion by an existing industrial undertaking. To satisfy the test of substantial expansion, the installed capacity should be increased by at least 25% over the existing installed capacity. Some conditions have to be fulfilled.

(i) The undertaking should not be formed by splitting up or reconstruction of a business already in existence.

(ii) It should not be formed by transfer of any old plant and machinery.

(iii) The plant or machinery should not have been used anywhere in India or outside India.

(iv) Plant and machinery installed in office premises or residential accommodation will not be eligible for additional depreciation.

(v) Office appliances, road transport vehicles, ships and aircrafts will not be eligible for additional depreciation.

These are measures to give incentives for making fresh investments in business.

12.2 However the additional depreciation is not exactly a correct description. An example is considered below.

Assume that machine costing Rs. 1,00,000 is purchased. The normal depreciation is 25%. The depreciation will be as under:

Year		*Existing*	*Proposed*
1.	Written Down Value	1,00,000	1,00,000
	Depreciation	25,000	25,000+15,000
			= 40,000
2.	Written Down Value	75,000	60,000
	Depreciation	18,750	15,000
3.	Written Down Value	56,250	45,000
	Depreciation	14,062	11,250
4.	Written Down Value	42,188	33,750
	Depreciation	10,547	8,437
5.	Written Down Value	31,641	25,313
	Depreciation	7,910	6,328

Thus what happens is that higher depreciation is available in the first year and lower depreciation is available in subsequent years. The depreciation is only pre-poned. It is not “additional”.

13. Capital losses — Section 70

So far short-term loss and long-term loss could be set off against each other. Now the budget has treated long-term gain/loss differently from short-term gain/loss.

Long-term capital loss can be only set off against long term capital gain.

Any **long-term capital loss** can be set off only against long-term gain. The loss which cannot be set off can be carried forward to subsequent years. The carried forward loss can be set off only against long-term capital gain.

The **short-term capital loss** can be set off against long-term gain or short-term gain.