

Short-term capital gain computed on long-term depreciable assets can be set off against long-term capital loss

Summary – The High Court of Bombay in a recent case of Manali Investment, (the Assessee) held that Short-term capital gain computed on long-term depreciable assets can be set off against long-term capital loss.

The following re-framed question of law was proposed for consideration.

- "Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the assessee is entitled to set-off under Section 74 in respect of capital gain arising on transfer of capital assets on which depreciation has been allowed in the first year itself and which is deemed as short term capital gain under Section 50 of the Income Tax Act relying upon the judgment of this Court in the case of CIT V/s. Ace Builders (P.) Limited ([281 ITR 210](#)) even though the said decision was rendered in the context of eligibility of deduction under Section 54E ?"

The assessee had during the subject assessment year sold its meters and transformers on which it had claimed depreciation. On sale, the respondent - assessee claimed long term capital gains and sought to set-off the same against its carried forward long term capital loss in terms of Section 74 of the Income Tax Act, 1961 ('Act' for short). The assessing officer disallowed the claim and held that in view of Section 50 of the Act, the gain is in the nature of short-term capital gain. The Commissioner of Income Tax (A) upheld the order of the assessing officer.

On further appeal, the Tribunal by the impugned order has allowed the claim of the respondent - assessee to set-off its long term losses in terms of Section 74 of the Act against the long term capital gains on sale of transformers and meters. This was by following the decision of this Court in the matter of *CIT v. Ace Builders (P.) Ltd* [[2006](#)] [281 ITR 210](#)/[[2005](#)] [144 Taxman 855 \(Bom\)](#). In the case of *Ace Builders (P) Ltd* (supra), this Court held that by virtue of Section 50 of the Act only the capital gains is to be computed in terms thereof and be deemed to be short-term capital gains. However, this deeming fiction is restricted only for the purposes of Section 50 of the Act and the benefit under Section 54E of the Act which is available only to long term capital gains was extended. In this case, the Tribunal held that the position is similar and the benefit of set-off against long term capital loss under Section 74 of the Act is to be allowed.

In view of the above, the HC saw no reason to entertain the proposed re-framed question of law and accordingly dismissed the appeal.