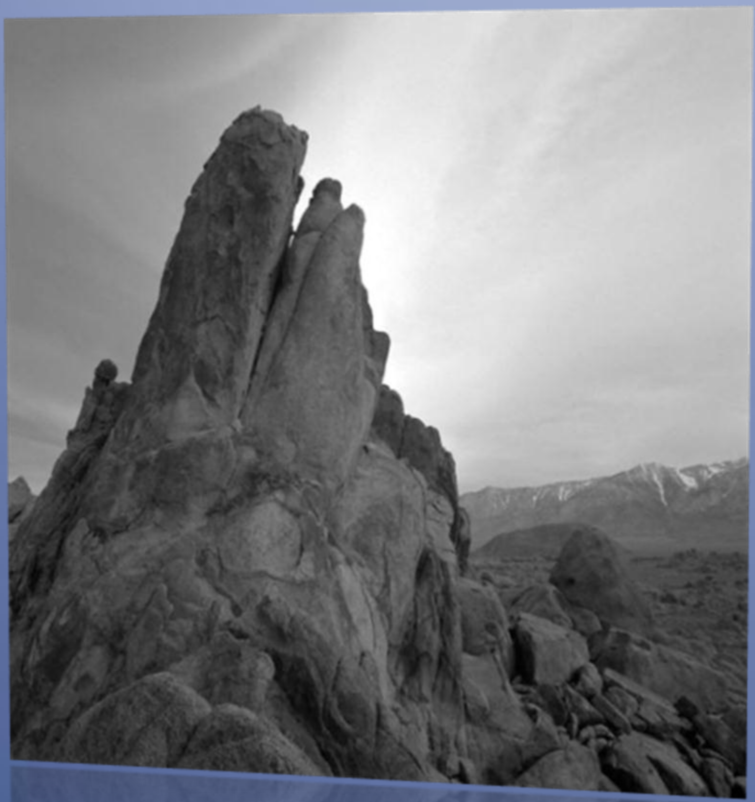

Filing your Income-Tax Return? Don't forget to file the losses as well.

Pebble Silk Fortnightly Advisory Communique *July '12 - 1/2*

This communique consists of following 3 brief parts:

- The concept – For set-off of capital loss
- A case study – based on real life situation
- The relevant provisions of the Income Tax Act, 1961

The Concept

Under the Income tax Act, you are allowed to set-off your Long Term (more than 1 year) Capital Losses (LTCL) against your Long Term Capital Gains (LTCG).

Due to high indexation factors in the last 2 years, invariably most of the portfolios, which had FMPs or other debt instruments, would have incurred LTCL.

Similarly, you are also allowed to set-off your Short Term (1 year or less) Capital Losses (STCL) against your Short Term Capital Gains (STCG) as well as Long Term Capital Gains (LTCG).

If there aren't enough gains to set off the losses, you can carry forward these losses and set off against future income for up to 8 years.

However, these losses have to be compulsorily filed in your income tax return before the due date applicable for you otherwise you cannot carry forward these losses. In cases of most of the individuals it is 31st July.

If you have already filed the return without claiming these losses, you can still file a revised return before the due date.

Case-study

K sold his stake (unlisted equity shares) and made a LTCG of Rs.8 crores. This gain was chargeable @ 20.6%.

He is allowed to set-off LTCL, if any, against these gains.

However, he had not filed any losses in his income tax return assuming that no tax liability/benefit arises on losses - so why file it.

On an investigation done for the last 8 years it was figured out that such losses totaled to Rs.1.2 crs approx!

He clearly could have saved 20.6% on this Rs.1.2 crs if he had filed the losses in time.

Relevant Provisions of the Income tax act

As per section 139 (4) of the Income Tax Act if the return is not furnished within the time allowed under section 139 (1), following consequences will be applicable

1…..

2…..

3. if return of loss is submitted after the due date then a few losses cannot be carried forward (see para 98)

As per para 98 of Sec.74 where the net result of computation under the head capital gains is a loss then such loss shall be carried forward to the following assessment year and it can be set-off against any income under the capital gain as follows

1…..

2….

3….

4 Such loss cannot be carried forward unless the return is filed within the time limit of section 139

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