

INTERPRETATION OF THE PHRASE “BENEFICIALLY HELD” BY MUMBAI IT TRIBUNAL- WADHWA & ASSOCIATES REALTORS PVT. LTD. CASE

The Mumbai Income Tax Appellate Tribunal in the case of Wadhwa & Associates Realtors Pvt. Ltd. Passed a ruling on the issue of set-off of losses of earlier years against taxable income when 51% of the voting power of the taxpayer was beneficially held by the same persons during the year of loss as well as the financial year under consideration.

Relevant provision: In this regard, note that Section 79 of the Indian Tax Laws provides a limitation on set-off of losses of earlier years from the current year’s income when there is a change in the shareholding of taxpayers such that 51% of the voting power is not beneficially held by the same set of shareholders which held such voting power at the end of the year in which the losses were incurred.

Ruling: The Tribunal allowed the set-off of losses from the current year’s income by stating that Section 79 refers to beneficial holding with voting power and not to direct ownership of shares. It covers indirect control of voting rights through a chain of holding in the same group. It was held that in the present case, there was no change in the beneficial voting power in the Taxpayer, which continued to remain with the promoters in the years of both, incurrence of loss as well as the claim of set-off. Hence, the limitation under Section 79 is not attracted.

Precedent Applied: The Tribunal placed reliance on the Karnataka High Court (HC) decision in the case of Amco Power Systems Ltd. for coming to its conclusion.

Take away: Hence, the Tribunal gave a narrower interpretation and confined the meaning of “beneficial ownership” to any indirect ownership only.