

Reserves for shipping business

33AC. (1) In the case of an assessee, being a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount not exceeding fifty per cent of profits derived from the business of operation of ships (computed under the head “Profits and gains of business or profession” and before making any deduction under this section), as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account, to be utilised in the manner laid down in sub-section (2) :

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the aggregate of the amounts of the paid-up share capital, the general reserves and amount credited to the share premium account of the assessee, no allowance under this sub-section shall be made in respect of such excess:

Provided further that for five assessment years commencing on or after the 1st day of April, 2001 and ending before the 1st day of April, 2006, the provisions of this sub-section shall have effect as if for the words “an amount not exceeding fifty per cent of profits”, the words “an amount not exceeding the profits” had been substituted:

Provided also that no deduction shall be allowed under this section for any assessment year commencing on or after the 1st day of April, 2005.

(2) The amount credited to the reserve account under sub-section (1) shall be utilised by the assessee before the expiry of a period of eight years next following the previous year in which the amount was credited—

- (a) for acquiring a new ship for the purposes of the business of the assessee ; and
- (b) until the acquisition of a new ship, for the purposes of the business of the assessee other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(3) Where any amount credited to the reserve account under sub-section (1),—

- (a) has been utilised for any purpose other than that referred to in clause (a) or clause (b) of sub-section (2), the amount so utilised ; or
- (b) has not been utilised for the purpose specified in clause (a) of sub-section (2), the amount not so utilised ; or
- (c) has been utilised for the purpose of acquiring a new ship as specified in clause (a) of sub-section (2), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the assessee to any person at any time before the expiry of three years from the end of the previous year in which it was acquired, the amount so utilised in acquiring the ship,

shall be deemed to be the profits,—

- (i) in a case referred to in clause (a), in the year in which the amount was so utilised ; or
- (ii) in a case referred to in clause (b), in the year immediately following the period of eight years specified in sub-section (2) ; or
- (iii) in a case referred to in clause (c), in the year in which the sale or transfer took place,

and shall be charged to tax accordingly.

(4) Where the ship is sold or otherwise transferred (other than in any scheme of demerger) after the expiry of the period specified in clause (c) of sub-section (3) and the sale proceeds are not utilised for the purpose of acquiring a new ship within a period of one year from the end of the previous year in which such sale or transfer took place, so much of such sale proceeds which represent the amount credited to the reserve account and utilised for the purposes mentioned in clause (c) of sub-section (3) shall be deemed to be the profits of the assessment year immediately following the previous year in which the ship is sold or transferred.

Explanation.—For the purposes of this section,—

- (a) “public company” shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956) ;
- (aa) “Government company” shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956) ;
- (b) “new ship” shall have the same meaning as in clause (ii) of sub-section (2) of section 32AB.