IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 361 OF 2003

M/s. Tolani Ltd.

10A Bakhtawar Building,
Nariman Point,
Mumbai 400 021 ...Appellant

Versus

The DCIT Spl. Range-31 Mumbai
Aaikar Bhavan, Mumbai 400 020 ...Respondent

WITH

INCOME TAX APPEAL NO. 128 OF 2007

M/s. Tolani Ltd.

10A Bakhtawar Building,
Nariman Point,
Mumbai 400 021 ...Appellant

Versus

The DCIT Spl. Range-31, Mumbai

Aaikar Bhavan, Mumbai 400 020 ...Respondent

Mr. Nitesh Joshi, *i/b. Mr. Atul Jasani, Advocates for the Appellant.*

Mr. Akhileshwar Sharma, *Advocate for Respondent.*

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON: JUNE 28, 2024
PRONOUNCED ON: AUGUST 23, 2024

JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. The captioned appeals raise an identical and common question of law, namely, whether a deduction from computation of income allowed under Section 33AC of the Income-tax, 1961 ("***the Act***") should be reduced from the profits and gains of business, on which base, the allowance under Section 80-I of the Act is to be computed. Income Tax Appeal No. 361 of 2003 relates to the Assessment Year 1992-93 while Income Tax Appeal No. 128 of 2007 relates to Assessment Year 1993-94.

2. Income Tax Appeal No. 361 of 2003 was admitted vide order dated 21st December 2004 on the following questions of law:-

> (i) *Whether the Tribunal erred in law in rejecting the claim of the assessee u/s. 80I in respect of the ship Prabhu Das on the ground that there would be a notional deduction of the allowance granted u/s. 33AC from the profile of the ship Prabhu Das in view of the fiction contained in Section 80I (6)?*
>
> (ii) *Whether the Tribunal erred in law in confirming the order of DCIT & CIT(A) in denying the said claim on the interpretation of Sectio 80I(6) which is contrary to the Circular no.281 dated 22.9.1980 which restricts the fiction of notional deduction of losses.*

3. The Learned counsel for both sides agree that answering the aforesaid questions of law would be dispositive of Income Tax Appeal No. 128 of 2007 as well.

Background and Context:

4. In a nutshell, at all times relevant to these appeals, Section 33AC of the Act allowed a company engaged in the business of operating ships to deduct an amount not exceeding the total income, and credit the same to a reserve, which could be utilized within the next eight years to acquire a new ship for business purposes. Section 80-I of the Act allowed another deduction of 25% of the profits and gains "derived from a ship", that met the qualifying criteria for deduction under that provision.

5. According to the Appellant-Assessee, the base amount on which the percentage deduction is to be computed under Section 80-I should not be the amount arrived at after giving effect to the deduction under Section 33AC. According to the Appellant-Assessee, each of Section 80-I and Section 33AC operates in a distinct field, and one must not interpose the impact of the deduction under Section 33AC into the computation of the permissible deduction under Section 80-I.

6. In direct contrast, according to the Respondent-Revenue, the base amount on which the percentage deduction under Section 80-I is to be computed should be the net amount arrived at after giving effect to

deduction under Section 33AC.

7. At the threshold, it may be noted that each of these Sections forms part of a separate chapter of the Act. Section 33AC is part of Chapter IV, titled *Computation of Total Income* and part of sub-Chapter D, titled *Profits and gains of business or profession*. In the scheme of computation of income under the Act, Section 33AC has to be considered and applied when computing profits and gains of business. Section 80-I forms part of Chapter VI-A, titled *Deductions to be made in Computing Total Income* and is part of sub-Chapter C, titled *Deductions in respect of certain incomes*. The deduction under Section 80-I is effected when computing the total income after aggregating incomes from across various sources.

Section 33AC:

8. It would be instructive to extract the relevant provisions of Section 33AC of the Act, as applicable at all times relevant to these Appeals:-

> *(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 the total income (computed before making any deduction under this section and Chapter VI-A), 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):

(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) to (4) ******

[Emphasis Supplied]

9. From a plain reading of the foregoing, it would become clear that:-

a) Section 33AC applies to any public limited company with the main object of carrying on the business of operating ships;

b) Pursuant to Section 33AC(1), such a company is allowed a deduction by way of a debit to the profit and loss account, of an amount not exceeding the total income;

c) Such amount as is debited to the profit and loss account would be credited to a reserve account;

d) Pursuant to Section 33AC(2), the use to which such reserve may be put is primarily the acquisition of a new ship within the next eight years; and

e) The new ship acquired must be for purposes of the business of the company.

Section 80-I:

10. It would also be necessary to extract the relevant provisions of Section 80-I of the Act, as applicable at all times relevant to these Appeals:-

> *(1) **Where the gross total income of an assessee includes any profits and gains derived from** an industrial undertaking or **a ship** or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft, to which this section applies, **there shall**, in accordance with and subject to the provisions of this section, **be allowed, in computing the total income of the assessee, a deduction from such profits and gains** of an amount equal to twenty per cent thereof :*
>
> ***Provided** that in the case of an **assessee, being a company**, the provisions of this sub-section shall have effect in relation to **profits and gains derived from** an industrial undertaking or **a ship** or the business of a hotel as if **for the words "twenty per cent", the words "twenty-five per cent" had been substituted**.*
>
> *(1A) to (2) ******
>
> *3) This **section applies to any ship**, where **all the following conditions are fulfilled**, namely :-*
>
> *(i) it is **owned by an Indian company** and is **wholly used for the***

purposes of the business carried on by it;

(ii) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(iii) it is brought into use by the Indian company at any time within the period of ten years next following the 1st day of April, 1981.

*(4) to (5) ******

(6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the hotel or the business of repairs to ocean-going vessels or other powered craft were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made."

*(7) to (10) ******

[Emphasis Supplied]

11. From a plain reading of the foregoing, it would become clear that:-

a) Section 80-I(1) is available to companies whose gross total income includes profits and gains derived from a ship that qualifies under Section 80-I(3);

b) Under Section 80-I(3), the ship that would be covered by Section 80-I is one that is used wholly for business purposes; was not owned by a person resident in India and used in Indian territorial waters before its acquisition by the assessee; and was brought into use by the assessee at any time between 1st April, 1981 and 31st March, 1991;

c) While computing the total income of such company, a deduction of 25% of the profits and gains derived from the ship would be allowed;

d) For computing the profits and gains derived from the ship, pursuant to provisions of Section 80-I(6), the profits and gains must be computed as if the ship were the only source of income of the assessee during the relevant previous year.

Core Issue and the Computations:

12. In the instant case, at all times relevant to these Appeals, the Appellant-Assessee, a public limited company, was engaged in the shipping business and derived profits and gains from business carried on with two ships namely, *Prabhu Das* and *Prabhu Gopal*. Consequently, it was entitled to create a reserve under Section 33AC to

be utilised for buying a new ship. The Appellant-Assessee was also entitled to the allowance of a deduction from its total income under Section 80-I in respect of *Prabhu Das*, to which Section 80-I applied.

13. The Appellant-Assessee availed of Section 33AC and effected a debit to its profit and loss account to create a reserve. In computing the deduction under Section 80-I, the Appellant-Assessee computed the deduction of 25% on the profits and gains from *Prabhu Das*, without factoring in any element of deduction effected under Section 33Ac. In other words, the deduction effected under Section 33AC and the deduction under Section 80-I were treated as separate and distinct deductions, each of which, would independently reduce the size of income offered to tax.

14. Learned Counsel for the parties agree that the limited point in issue that lies at the heart of the questions of law raised in the Appeals is whether the deduction allowed under Section 80-I may be computed as a percentage of the profits and gains derived from a ship, after giving effect to the deduction for creation of a reserve allowed under Section 33AC.

15. To illustrate the computation, and for convenience, we have reproduced only the figures relevant for Assessment Year 1992-93, and referred to the dates of the orders in respect of that Assessment Year. Learned Counsel for the parties fairly stated that while the figures vary for Assessment Year 1993-94, the very same issue would alone be relevant. For the Assessment Year 1992-93, the Appellant-Assessee availed of a deduction under Section 33AC in the sum of Rs. 2.5 Crores and created a corresponding reserve. The Appellant-Assessee computed the deduction under Section 80-I as a deduction as 25% of the profits and gains from *Prabhu Das*, without factoring in the aforesaid deduction of Rs. 2.5 Crores in respect of the profits and gains from the ship. In other words, the base amount on which the 25% deduction under Section 80-I was computed was higher by Rs. 2.5 Crores.

16. In the assessment order dated 19th December, 1994, the Learned Assessing Officer ("***AO***"), approved of the eligibility of the Appellant-Assessee to effect a deduction under Section 33AC in the sum of Rs. 2.5 Crores. After such deduction, the AO arrived at a net business income amount of Rs. 65,28,776/-. To such amount, income from capital gains and income from other sources were added, aggregating to an amount of Rs. 2,15,64,382/-. Thereafter, the AO set out to compute

the deduction allowed under Section 80-I as a percentage of profits derived from *Prabhu Das.* The AO computed the excess of receipts over expenses from the operation of *Prabhu Das*, and arrived at a gross income amount of Rs. 1,38,06,689/-. From this amount, a sum of Rs. 4,79,904/- was removed on the premise that such amount was a receipt attributable to the earlier year. Thereby, the AO arrived at an income figure of Rs. 1,33,26,785/-, and after deductions, computed the net profits and gains from *Prabhu Das* as Rs. 75,20,175/-. The AO ruled that since Section 80-I(6) provides for computing the profits and gains from the ship as if the ship was the only source of income for the Appellant-Assessee, the deduction of Rs. 2.50 Crores availed of under Section 33AC must be reduced from the profits and gains from *Prabhu Das*. Since such allowance deducted under Section 33AC was substantially higher than the profits and gains from *Prabhu Das* of Rs. 75,20,175/-, the AO ruled that there were no profits and gains from the ship to be used as a base for allowing a deduction under Section 80-I.

17. On appeal, the Learned Commissioner of Income-tax, Appeals ("***CIT-A***"), *vide* order dated 25th August, 1995, agreed with the computation made by the AO. Noting that the Appellant-Assessee was entitled to deduction under Section 80-I out of the profits attributable

to *Prabhu Das*, the CIT-A agreed that for the computation of amount deductible under Section 80-I, the effect of the debit to the profit and loss account under Section 33AC would need to be factored in. The CIT-A ruled that since the deduction under Section 33AC is to be made before determining the profits and gains of business derived from a ship, the deduction allowed under Section 33AC must be factored into the computation of the profits and gains. The 25% deduction under Section 80-I may be computed only on the amount arrived at after the deduction under Section 33AC.

18. The Income-tax Appellate Tribunal ("***ITAT***"), *vide* order dated 4th December, 2002, endorsed the aforesaid interpretation of Section 80-I, which is now impugned in these appeals. The ITAT ruled that the allowance that may be claimed under Section 33AC would have to be factored in, in order to arrive at the profits and gains from the ship, for purposes of computing the deduction under Section 80-I. The ITAT held that under Section 80-I(6), if the fiction of the ship *Prabhu Das* being the only source of income is taken towards a logical conclusion, it would not be possible to ignore the deduction allowable under Section 33AC. It is only after allowing all the deductions available for computing the profits and gains under the Act, that the base amount

for Section 80-I can be arrived at. Since the deduction of Rs. 2.50 Crores has been allowed under Section 33AC and gross income from the ship is only Rs. 75,20,175/-, the ITAT ruled that no profits from the operation of *Prabhu Das* were left for computing the deduction under Section 80-I, which has to be regarded as NIL.

19. The ITAT ruled that under Section 29 of the Act, profits and gains of the business must be computed in accordance with provisions of Sections 30 to 43D. Since Section 33AC falls within these Sections, it must be factored into the computation of the profits, which is then the base for computation of the deduction under Section 80-I of the Act. Besides, the ITAT ruled that the reference to "total income" in Section 33AC is only for purposes of computing a cap on the quantum of the deduction.

20. Therefore, it will be seen that the legal position that the deduction made under Section 33AC would need to be reduced from the income of the qualifying ships to arrive at the profits derived from such ships for purposes of Section 80-I, constitutes the law declared in three concurrent iterations – by the AO, the CIT-A and the ITAT.

Submissions by Counsel for the Parties:

21. Mr. Nitesh Joshi and Mr. Atul Jasani advanced submissions on behalf of the Appellant-Assessee. Mr. Akhileshwar Sharma countered them on behalf of the Respondent-Revenue.

22. Mr. Joshi submitted that the deduction allowed under Section 80-I of the Act was to the extent of 25% of profits and gains derived from the ship *Prabhu Das*. The term "profits and gains" is the difference between the income and expenditure relating to *Prabhu Das*. Citing case law declared in the context of industrial undertakings seeking to avail of Section 80-I, he submitted that it is now settled law that there has to be a "first degree nexus" between the receipt (i.e. the income) and the business, for the income to be regarded as "derived from" the business. Since the credits to the profit and loss account i.e. the receipts from the business must necessarily have a direct nexus with the operation of the ship, he would submit, the debits i.e. expenditure and deductions must also have a direct nexus with the operation of *Prabhu Das*. The deduction under Section 33AC has nothing to do with the operation of *Prabhu Das*, he would submit, since it is only a notional deduction under Section 33AC to enable creation of a reserve, by which

a new ship could be acquired. Mr. Joshi would emphasise that the debit allowed to the profit and loss account under Section 33AC is not an expenditure that could have the "first degree nexus" with operating *Prabhu Das*, and therefore, such deduction cannot be relevant for purposes of the allowance under Section 80-I.

23. Mr. Joshi would also argue that the income on which the deduction under Section 33AC is to be computed, is the total income of the assessee without making any other deduction under Chapter VI-A. Therefore, even in a case where the shipping operations may have actually resulted in a loss, and income from other heads of income may have led to an overall profit, a deduction under Section 33AC would make it feasible to create a reserve. For example, if the loss from *Prabhus Das* had been Rs. 20 Lakhs and the loss from *Prabhu Gopal* had been Rs. 80 Lakhs, but income from capital gains and other sources had been an aggregate of Rs. 120 Lakhs, the total income would have been Rs. 20 Lakhs. Therefore, the deduction under Section 33AC could still have been Rs. 20 Lakhs, and therefore, such deduction is not linked to profits from *Prabhu Das.* Consequently, he would argue, it is apparent that Section 33AC had no relevance to the operation of the ship. Therefore, under Section 80-I(6), there can be no basis to reduce

the profits from the ship by the amount of the deduction under Section 33AC.

24. As an alternate argument, Mr. Joshi would submit, the entire deduction under Section 33AC(which relates to total income) cannot be factored in to compute the deduction under Section 80-I (which relates to profits and gains from a ship). Towards this end, he would submit, there has to be a proportionate attribution of the amount deducted under Section 33AC to *Prabhu Das*, and only such attributed amount must be reduced from the income derived from *Prabhu Das*, for computing the deduction of 25% allowed under Section 80-I. Mr. Joshi would also argue that Section 33AC was amended with effect from 1st April, 1996 to change the linkage from "total income" to "profits and gains derived from the operation of ships". This, he would submit, underlines the pre-amendment legal position being what has been canvassed by him.

25. Mr. Sharma, on behalf of the Respondent-Revenue would submit that the deduction allowed under Section 33AC is permitted only because the Appellant-Assessee is engaged in the shipping business. Therefore, it is only logical that the said amount must be reduced from

the profits and gains from the ship, before computing the deduction under Section 80-I. Section 80-I(6) would point to the need to compute the profits and gains of a ship as if the ship in question is the only source of income of the Appellant-Assessee during the relevant financial year. The deduction and the reserve under Section 33AC also relates only to acquiring a new ship. Consequently, there is no inconsistency in the seamless application of Section 33AC and Section 80-I to the facts of the Appellant-Assessee, Mr. Sharma would submit. Besides, he would also submit that the concurrent view endorsed thrice in the proceedings prior to these appeals is clearly a plausible view, and this Court, should be circumspect in disturbing a concurrent plausible view iterated thrice in prior proceedings.

Discussion and Analysis:

26. Having heard the Learned Counsel for the parties and having examined the record, we are not persuaded by the submissions made on behalf of the Appellant-Assessee, for the reasons articulated below.

27. *First*, it should be noted that in the process of computing the taxable income under the Act, the deduction under Section 33AC of the Act would be effected prior to the computation of the deduction under

Section 80-I. Section 33AC(1) enables creation of a reserve that can be used only for purposes of acquiring a new ship for business purposes within eight years. Pending such acquisition, the reserve may be used for other business purposes as permitted under Section 33AC(2), but in any event, not for distribution of dividend or profits. A ship acquired by a shipping company, but not for business purposes would not qualify under Section 33AC(2), merely on the ground that the main object of the assessee happens to be operating ships. In that view of the matter, what becomes clear is that the deduction under Section 33AC is clearly a deduction connected with and having nexus with the shipping business of the assessee. Therefore, it is the provision itself that brings out a direct nexus between the deduction allowed, and the shipping operations.

28. *Second*, Mr. Joshi's submission about Section 33AC having been disjointed from shipping profits appears attractive at the first blush, but indeed, only presents a red herring. Mr. Joshi submitted that even where there is a loss from the shipping operations, a deduction under Section 33AC was allowed, and that can only mean that such deduction had no relation to operating a ship. It must be remembered that the allowance under Section 33AC is towards creating a reserve in

order to acquire a new ship. Indeed, the provision is not linked to whether shipping operations have yielded a profit, but is indeed linked to enabling acquiring a new ship for business purposes i.e. purely for shipping business operations. Therefore, the deduction under Section 33AC is inextricably linked to the business of shipping, and is a debit with a direct nexus to shipping operations.

29. It is also noteworthy that the allowance under Section 33AC is a precursor to determining whether the income derived from shipping operations has led to a profit. Consequently, the amount for which an assessee seeks allowance under Section 33AC is reduced from the income earned in the shipping business. It is debited to the profit and loss account, just as any other expenditure would be debited to the profit and loss account. The deduction allowed under Section 33AC is not linked to whether there is a profit or a loss in the shipping business – much like any expenditure in a business being a precursor to determining if the business has generated a profit or a loss. The profit or loss is an outcome of the credits and debits, which includes the deduction under Section 33AC. Just as the amount by which the size of credits to the profit and loss account exceeds the size of debits, constitutes the profit, one of the debits to the profit and loss account is the allowance under Section 33AC. If after that debit, there is a profit,

there would be a base on which the deduction under Section 80-I may be computed. If there is no profit left after that deduction, there cannot be a base amount on which the deduction under Section 80-I may be computed. Either way, the nexus between the deduction under Section 33AC and the shipping business is legislatively supplied by that very provision. In the matter at hand, for the Assessment Year 1992-93, without factoring in the deduction under Section 33AC, the excess of income over expenditure derived from *Prabhu Das* was over Rs. 75 lakh, but the deduction claimed and allowed under Section 33AC was Rs. 2.5 Crores, leading to the absence of profits from *Prabhu Das* for purposes of Section 80-I.

30. *Third*, the usage of the phrase "total income" in Section 33AC enabled indicating the numerical cap applicable to the allowance amount. No allowance could have been claimed in excess of the total income. Therefore, the example provided by Mr. Joshi about there being an allowance under Section 33AC despite the shipping operations having a loss does not advance his case, since such a phenomenon would not break the linkage of the allowance with the profits and gains from the shipping business. The allowance under Section 33AC is clearly aimed at, and provided for, augmenting the shipping business.

Only the cap on its size was linked to the empirical metric of "total income". Therefore, income from capital gains and income from other sources would merely contribute to computing the scale of the cap on the deduction proposed towards the allowance (and that too only to acquire a new ship for business purposes). The core nature and character of the deduction, therefore, in our opinion, is evidently linked solely to the shipping business, and this provides the nexus to shipping operations, and thereby to Section 80-I, in respect of qualifying ships.

31. *Fourth,* – and this is a logical consequence of the aforesaid discussion – when computing the profits and gains of a ship for purposes of Section 80-I(1), one would have to effect the computation under the *non-obstante* provisions of Section 80-I(6). Under this provision, the profits and gains from a ship have to be computed as if such ship were the only source of income of the assessee. Therefore, when computing the deduction under Section 80-I(1), the base amount on which the 25% deduction is to be computed is the profits and gains from a ship. The jurisdiction of Section 80-I is attracted when "*the gross total income of an assessee includes any profits and gains derived from…a ship*". Once the provision is attracted, the deduction of 25% of such profits and gains (derived from a qualifying ship) is allowed. If,

after giving effect to the deduction under Section 33AC, there is no profit derived from a ship (the income having been denuded by the pre-profit debit under Section 33AC), there cannot be a base amount on which the deduction under Section 80-I can be allowed.

32. *Fifth*, Section 33AC(2) mandates that the reserve created out of the deduction may be used primarily for acquiring a new ship for purposes of the business of the assessee; and until such acquisition of a new ship, it may be used only for business purposes other than for distribution by way of dividend or profits. Therefore, the legislative intent is clear that the amount of deduction under Section 33AC cannot partake the character of a profit. Put differently, it is not an amount charged *from the profits*, but an amount charged *from the gross income*, after which profit is arrived at. Therefore, evidently, the amount deducted under Section 33AC would be an amount that aids acquiring a new ship, and after availing of such aid by making the deduction, one would know if there has been a profit or a loss. Should there arise a profit after such an exercise, then on such amount, a further amount of 25% may be deducted under Section 80-I.

33. *Finally*, Mr. Joshi's argument that the amendment effected to Section 33AC of the Act with effect from 1st June, 1996, would point to what the pre-amendment position of the law was, is to be stated only to be rejected. According to him, after the amendment, Section 33AC has changed reference from "total income" to "profits and gains derived from the business of operation of ships". Therefore, he would argue, it is only the amendment that brought in a link to the profits from operation of ships, and before the amendment, simply a deduction of an amount linked to total income was envisaged, without any linkage to operation of ships. In our opinion, such an argument would be destructive of the earlier argument that there is need for a nexus with the operation of ships, but that facet has already been dealt with by us by discerning a statutory nexus under the scheme of Section 33AC. Be that as it may, the amendment brought into effect from 1st April, 1996 only capped the deduction allowed to 50% of the profits from operating ships, as opposed to 100% of the total income of the assessee. Such a change in the *indicia* for computation of the cap is of no relevance to the core character of the allowance. Parliament, in its wisdom, thought it fit to disable loss-making shipping companies from seeking an allowance in the name of acquiring new ships, but in fact, effected no change to object of the deduction – creating a reserve to acquire a new ship.

34. In our opinion, the ITAT was right in noticing that the amendment of 1996 was only in connection with the computation of the cap on the amount of the allowance. We also agree that the amendment made subsequently (in 1996) does not throw any fresh light on interpretation of the provision that existed prior to the amendment (between 1991 and 1993).

Case Law Cited:

35. We agree with Mr. Joshi that the catena of case law cited by him points to the phrase "derived from" used in Section 80-I of the Act, necessarily requiring a direct nexus between the profits and gains in question, and the business from which such profits and gains are derived[1]. For example, if an assessee were to deploy profits made from operating a ship, into financial investments, it could lead to the assessee earning income from capital gains or income from other sources. Such income cannot be permitted inflate the base amount on which the 25% allowance under Section 80-I of the Act is to be computed. Likewise,

[1] *Zandu Pharmaceutical Works Ltd. V. CIT (2013) 350 ITR 366 (Bom)*
CIT V. Tarun Udyog (1991) 191 ITR 688 (Orissa)
CIT V. Sterling Foods (1999) 237 ITR 579 (SC)
Pandian Chemicals Ltd. V. CIT (2003) 262 ITR 278 (SC)
Liberty India V. CIT (2009) 317 ITR 218 (SC)

the case law cited, indeed declares that expenses and debits to the profit and loss account, which do not relate to the business in question cannot be taken into account. However, in our opinion, such case law is of no help to the Appellant-Assessee since, for the reasons articulated above, we have found that the deduction allowed under Section 33AC is indeed directly linked to shipping operations and aimed at sustaining earnings from shipping operations (by enabling a reserve in order to acquire a new ship). A deduction for such purpose, in our opinion, not only meets the nexus test, but is also reasonable, logical and commercially commonsensical.

36. To avoid prolix reproduction of the case law cited, we have not extracted from the same. In any case, the judgements cited, buttress the proposition of the need for a nexus between the income or expense and the business in question. We have held that by the very design of Section 33AC, there is a nexus between the deduction allowed under Section 33AC and the shipping business operations. In the absence of any explicit positive legislative stipulation requiring the deduction under Section 33AC to be disregarded when computing the deduction under Section 80-I, we have no hesitation in upholding the concurrent views expressed in the proceedings so far prior to the institution of these

appeals. Indeed, no case law has been cited at the bar to indicate that the deduction allowed under Section 33AC (which deals only with shipping companies) must have no impact on or holds no relevance for, the deduction allowed under Section 80-I.

37. Consequently, we find no reason to interfere with the impugned order. As indicated by Mr. Sharma on behalf of the Respondent-Revenue, the concurrent outcome in the proceedings so far result in an eminently plausible and reasonable view. For the reasons articulated above, we independently find that for computing the deduction under Section 80-I (25% of profits from a ship), it would be necessary to give effect to, and factor in, the deduction allowed under Section 33AC. If the result of such deduction under Section 33AC is that there is no profit from the ship, the necessary consequence would be that the deduction under Section 80-I (a percentage of profits) cannot be claimed.

Proportionate Allocation of Section 33AC Deduction:

38. Before parting with the matter, there is one final facet that deserves to be dealt with. Mr. Joshi has also canvassed an alternate argument – that since Section 80-I of the Act refers to profits and gains

from "a ship" and the ship in question is *Prabhu Das*, the amount of deduction under Section 33AC factored into the computation of deduction for purposes of Section 80-I must be proportionately reduced. In short, the deduction under Section 33AC charged to the profit and loss account should be reduced to only such amount as would be proportionately attributable to *Prabhu Das*. Put differently, the amount of Rs. 2.5 Crores claimed and allowed as a deduction under Section 33AC, must be split between *Prabhu Das* and *Prabhu Gopal*, and only an amount proportionate to *Prabhu Das* under Section 33AC must be factored in, when computing the deduction under Section 80-I.

39. We disagree. Section 80-I indeed refers to "a ship", but in our opinion, that does not mean it would relate to just one ship (in the singular). The phrase used in Section 80-I is "*profits and gains derived from an industrial undertaking, or a ship, or the business of a hotel*". In our opinion, the phrase "a ship" has to also be read in the context of the other words in the same phrase, namely "an industrial undertaking" and "the business of a hotel". These are not phrases meant to be used in respect of one undertaking or one hotel property, but to the business of a qualifying undertaking or a qualifying hotel.

40. The reference to "a ship" would need to be regarded as a reference to any ship that qualifies for the section. Section 80-I(1) uses the phrase "to which this section applies" and Section 80-I(3) provides that the section would apply to "any ship" that meets the three criteria stipulated in that sub-section. In a nutshell, the ship ought to be used wholly for business purposes; it should not have been owned by a person resident in India and used in Indian territorial waters before its acquisition by the assessee; and it should have been brought into use at any time between 1st April, 1981 and 31st March, 1991. If *Prabhu Das* alone qualified under Section 80-I, indeed only income from *Prabhu Das* would be considered at the gross level. However, it is not a necessary corollary that Section 33AC is not attributable to the profit and loss derived from *Prabhu Das*. To compute the net income i.e. profits and gains, without factoring in the full amount of the deduction under Section 33AC, one must be satisfied that the full amount can never be relatable to *Prabhu Das*. The reserve created under Section 33AC could help replace *Prabhu Das*, and therefore can be attributed to *Prabhu Das.*

41. Under Section 80-I(6), the profits and gains from all qualifying ships would have been the base for computing the deduction under Section 80-I(1). Therefore, applying Section 80-I(6), the

qualifying ships must be treated as the only source of income (in this case, income from *Prabhu Das*), but it cannot be stated that the reserve created under Section 33AC could never be attributed to *Prabhu Das*. It would not be possible to make adjustments at this stage by apportionment between qualifying and non-qualifying ships. It would not be open to us, as an appellate forum with a jurisdiction to hear appeals on substantial questions of law, to provide our own basis and proportions for such apportionment.

Conclusion:

42. In these circumstances, and for the reason articulated by us above, we hereby dismiss these captioned appeals, finding in favour of the Respondent-Revenue and holding against the Appellant-Assessee. These Appeals are ***finally disposed of*** accordingly. No costs.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**