Karnataka High Court God Granites vs Central Board Of Direct Taxes And ... on 11 September, 1995 Equivalent citations: ILR 1996 KAR 283 Author: R Raveendran Bench: R Raveendran ORDER R.V. Raveendran, J. 1. The petitioner is an exporter of cut and dressed granite (unpolished). According to petitioner, it selects and marks the quarrying area/rock, cuts the rock by burner/bore cutting, drills holes and after blasting, removes the blocks and exports the granite in an unpolished condition. In regard to the asst. yr. 1993-94, petitioner filed a return claiming deduction of the profit derived by the export of such unpolished granite from the total income under s. 80HHC of the IT Act, 1961 ('Act' for short). Petitioner contended that the material so exported is 'rock' falling under Item (x) of the Twelfth Schedule to the Act and thus the benefit of deduction under s. 80HHC was available. In response to the said return, the Assessing Officer (AO) (fourth respondent) sent an intimation dt. 31st March, 1995 (Annexure C) under s. 143(1)(a) of the Act regarding the total income, tax and interest payable by the petitioner, disallowing the deduction claimed under s. 80HHC. In the Adjustment Explanatory Sheet, attached to the said intimation, the following reason is given for the disallowance of the deduction claimed under s. 80HHC : "80HHC is not allowed, as assessee is exporting cut granites (rough granites) as per s. 80HHC report. As per Schedule 12 of IT Act, 80HHC deduction is allowed only to cut and polished granites exporting." 2. According to petitioner, deduction claimed under s. 80HHC was disallowed by the AO on account of the instructions contained in Circular No. 693, dt. 17th Nov., 1994 (Annexure-A) issued by the CBDT and the said circular is contrary to the provisions of the Act. Hence, the petitioner has filed this petition : (a) seeking a declaration that Circular No. 693, dt. 17th Nov., 1994 issued by the first respondent is illegal; and (b) for quashing the intimation dt. 31st March, 1995 (Annexure C) issued under s. 143(1)(a) of the Act. 3. Before referring to the contentions, it is necessary to refer to the relevant provisions of the Act and the impugned circular. 3.1 Sub-s. (1) of s. 80HHC provides that an assessee engaged in the business of export of any goods or merchandise to which the said section applies, shall be allowed a deduction of the profits derived from the export of such goods or merchandise, in computing his total income, in accordance with and subject to the provisions of the said section. Clause (a) of sub-s. (2) provides that the section applies to all goods other than those specified in cl. (b). Clause (b) of sub-s. (2) provides that section does not apply to the following goods : (1) Mineral oil; and (ii) Minerals and ores (other than processed minerals and ores specified in the Twelfth Schedule). The Twelfth Schedule is extracted below : THE TWELFTH SCHEDULE Processed minerals and ores (i) to (ix) - (omitted as not relevant). (x) Cut and polished minerals and rocks including cut and polished granite : Explanation. - For the purpose of this Schedule "Processed" in relation to mineral or ore, means : (a) dressing through mechanical means to obtain concentrates after removal of gangue and unwanted deleterious substances or through other means without altering the mineralogical identity; (b) pulverisation, calcination or micronisation; (c) agglomeration from fines; (d) cutting and polishing; (e) washing and levigation; (f) benefication by mechanical crushing and screening through dry process; (g)

sizing by crushing, screening, washing and classification through wet process; (h) other upgrading techniques such as removal of impurities through chemical treatment, refining by gravity separation, bleaching, floatation or filtration. 3.2 The words "(other than processed minerals and ores specified in the Twelfth Schedule)" after the words "minerals and ores" in sub-s. 2(b)(ii) of s. 80HHC and the Twelfth Schedule to the Act were added w.e.f. 1st April, 1991 by Finance (No. 2) Act, 1991. Before the said amendment, all minerals and ore, without exception, whether processed or not, were excluded from s. 80HHC. From 1st April, 1991, an exception to the exclusion clause was introduced, by providing that specified minerals and ores which were processed, listed in the Twelfth Schedule, will be exceptions to the total exclusion of minerals and ores from s. 80HHC. Thus from 1st April, 1991, profits from export of processed minerals and ores specified in the Twelfth Schedule could be deducted from the computation of total income. 4. Circular No. 693, dt. 17th Nov., 1994 issued by CBDT is extracted below : "Subject : Benefit of s. 80HHC for export of processed minerals - Clarification regarding export of cut and polished dimensional blocks, granite or other rocks. Sec. 80HHC of the IT Act allows a deduction from the gross total income of the entire profits derived from export of goods other than minerals. Finance (No. 2) Act, 1991 extended the benefit to export of processed minerals and ores mentioned in the Twelfth Schedule to the IT Act. Item (x) of the Schedule mention"Cut and polished minerals and rocks including cut and polished granite". 2. Some organisations and individual taxpayers have raised doubts whether the deduction under s. 80HHC is available in respect of export of granite or other rocks that are cut and exported as raw blocks after being washed and cleaned. 3. The entry in the Twelfth Schedule is very clear and unambiguous and uses the term"cut and polished". Therefore, for availing of the benefit under s. 80HHC, it is necessary that the rock is not only cut into blocks but also polished before it is exported. This is in line with Government's policy to encourage export of polished granite and other rocks where value addition before export is high and discourage export of raw blocks where value addition is low". 5. Sri Soli J. Sorabjee, learned senior counsel appearing for the petitioner, put forth the following contentions : (i) Unpolished granite is a 'rock' and all rocks, whether polished or unpolished, fell under Item (x) of the Twelfth Schedule and thus export thereof attracted the benefit of s. 80HHC. (ii) The AO could not disallow the deduction claimed under s. 80HHC by making an adjustment under s. 143(1)(a), as the deduction claimed was not something that was, prima facie, impermissible. 6. R : Point (i) 6.1 Petitioner's contentions are as follows : The petitioner exported cut granite which is nothing but a 'rock'. The benefit of s. 80HHC was available in respect of all minerals and ores enumerated in the Twelfth Schedule, which included 'Rocks'. Item (x) of Twelfth Schedule, that is "cut and polished minerals and rocks including cut and polished granite" should be read as referring to three items, namely, (i) cut and polished minerals; (ii) rocks; and (iii) cut and polished granite. The restricting words 'cut and polished' applied only to 'minerals' and not to 'rocks'. Secondly, the use of the words 'including' normally enlarges the meaning of the word interpreted and does not exclude the normal and ordinary meaning of the

word interpreted; and therefore, the words 'including cut and polished granite' occurring after 'rocks' have to be read as words of extension and not words of limitation and, therefore, neither unpolished rocks nor unpolished granite get excluded from item (x) of the Twelfth Schedule. Thirdly, if the legislative intent was to apply the limitation of 'cut and polished' to 'rocks' also, the item (x) would have been differently worded as "Cut and polished minerals, cut and polished rocks including cut and polished granite". Fourthly, when the words used in a statute are clear, it is not permissible to rely on any external aid to interpretation and, therefore, reliance could not be placed on the policy of Govt. to interpret item (x) of the Twelfth Schedule. Therefore, the benefit of s. 80HHC was available in respect of export of - (a) all cut and polished minerals; and (b) all rocks, whether polished or unpolished, including cut and polished granite. 6.2 Alternatively, it is contended that even if the interpretation put forth by the assessee is found to be not the only reasonable interpretation and the interpretation put forth by the Revenue is also found to be a reasonable interpretation, then the interpretation that is favourable to the assessee should be preferred. Thus, if one possible interpretation of item (x) was that it included unpolished rocks/granite and another possible interpretation is that item (x) referred to only cut and polished rocks/granite, the interpretation favourable to the assessee should be followed. 6.3 Reliance is placed by the learned counsel for the petitioner on the decision of the Supreme Court in CIT vs. Taj Mahal Hotel and the decision of the House Lords in Carter vs. Bradbeer 1975(3) All ER 158 wherein it is held that the word 'includes' is used in order to enlarge the meaning of a word occurring in the statute and when it is used, the word or phrase must be construed as comprehending not only such things as they signify according to their ordinary and natural meaning, but also those things which are specifically included. He next relied on the decision in Hansraj Gordhandas vs. H. H. Dave wherein it is held that in taxing statutes, there is no room for any intendment, and the matter has to be judged by the plain wards employed and not by the object or policy in the mind of the State; and if the taxpayer is within the plain terms of the exemption, the benefit of it cannot be denied by calling in aid, the supposed intention of the exempting authority. Reliance was next placed on the decisions of the Supreme Court in CIT vs. J. K. Hosiery Factory (1985) 159 ITR 85 (SC) and CIT vs. Naga Hills Tea Co. Ltd. which hold that where two interpretations are possible, in regard to a taxing statute, the interpretation favourable to the assessee should be accepted. Sri H. L. Dattu, learned counsel for the respondents, did not dispute any of these three propositions. He, on the other hand, contended that the wording of s. 80HHC and Twelfth Schedule were clear and the only interpretation possible was that unpolished rock or granite did not fall under item (x) or any other item of Twelfth Schedule and consequently the benefit of s. 80HHC was not available in respect of profit from the export of unpolished granite. 6.4 Let me now examine whether the word 'rocks' in item (x) of Twelfth Schedule refers to only 'cut and polished rocks' and whether it is possible to reasonably interpret the word 'rocks' as referring to 'rocks which are not cut and polished' as contended by the petitioner. On a plain and careful reading of s. 80HHC and the

Twelfth Schedule, I find that there is only one possible interpretation and the word 'rocks' in item (x) can refer to only 'cut and polished rocks' and nothing else. The entire argument of the petitioner with reference to the description of 'rocks' in item (x) completely ignores the words 'processed minerals and ores' occurring in sub-s. 2(b)(ii) of s. 80HHC. 'Rock' and 'granite' are treated as part of 'minerals' is evident from Twelfth Schedule as both rocks and granite are listed in the items enumerated as minerals and ores. In fact this Court in the case of Muddeereswara Mining Industries vs. CIT has held that granite is a mineral, even before rock and granite were specifically shown as minerals in the Twelfth Schedule. 6.5 Sub-s. (2) of s. 80HHC provides that s. 80HHC is inapplicable to minerals and ores. But while so excluding, the said sub-section, however, makes an exception in the case of 'processed minerals and ores specified in the Twelfth Schedule'. In other words in respect of minerals and ores which are processed and listed in the Twelfth Schedule, the benefit of s. 80HHC will be available. Therefore, when we read item (x) of Twelfth Schedule, it should always be with reference to sub-s. 2(b)(ii) of s. 80HHC which requires that the goods/merchandise specified in Twelfth Schedule should be processed. Thus, if an assessee claims deduction in regard to export of 'rock' under s. 80HHC, then the 'rock' exported should be 'processed rock'. Petitioner would contend that marking, cutting, drilling, blasting and removal of varying shapes of rock is processing. But 'processed' is defined in the Expln. to the Twelfth Schedule (extracted above). The Explanation makes it clear that for the purposes of the Twelfth Schedule, "processed" in relation to any mineral or ore means the eight processes enumerated therein. When a defining provision of a statute, uses the word 'means', the definition is prima facie exhaustive and restrictive to the description given therein. Thus, unless the 'rocks' or 'granite' undergoes any of the processes specified in the Expln. to the Twelfth Schedule, it cannot be said the same is processed. 6.6 It is, however, not necessary that the mineral or ore, should undergo all the processes, specified in the definition of 'processed'. Some of them will be applicable only to particular minerals or ores, and inapplicable only to particular minerals or ores, and inapplicable to rocks or granite. Out of the eight processes enumerated in the Expln. to the Twelfth Schedule, it is seen that seven processes listed as (a), (b), (c)(e), (f), (g) and (h) are inapplicable to rocks and granite. The only process that is applicable to rocks and granite is process No. (d), that is 'cutting and polishing'. Thus a 'rock' which is one of the items listed in the Twelfth Schedule, to attract the benefit of s. 80HHC, should have undergone the process of 'cutting and polishing'. In this case admittedly the 'rock' or 'granite' exported by the petitioner has not undergone any of the processes including cutting and polishing, listed in the Expln. to the Twelfth Schedule. Hence, petitioner is not entitled to claim deduction under s. 80HHC in regard to the profits derived by exporting such unpolished granite, while computing its total income. 6.7 Even otherwise, the description of the mineral/ore in item (x) in the Twelfth Schedule, by itself is clear. The prefix 'cut and polished' occurring before the words 'minerals and rocks' has to be read as being applicable to 'minerals and rocks' and not to 'mineral' only. It should be remembered that the term 'mineral' includes 'rocks'

and the term 'rock' includes 'granite'. In fact the purpose of item (x) could as well have been achieved by merely using the words 'cut and polished minerals', as 'minerals' include 'rocks' and 'granite'. But to make the description clearer and emphasise, the inclusion of rocks and its sub-species 'granite', the words "and rocks including cut and polished granite" has been included. The addition of the word 'rocks', as stated above, is to emphasise, the inclusion of 'rocks' in 'minerals' and not to exclude 'rocks' from minerals. There is no basis to read item (x) as required by the petitioner, that is "cut and polished minerals; and rocks (including cut and polished granite)". The words do not permit it. The context does not permit it. 6.8 The impugned Circular No. 693, dt. 17th Nov., 1994 (supra) clarifying that rock should not only be cut into blocks, but also be polished, before it is exported to avail the benefit of s. 80HHC, is valid as it is in accordance with s. 80HHC and the Twelfth Schedule to the Act. The Govt.'s policy to encourage export of polished granite and other rocks where value addition before export is high and to discourage export of raw blocks where value addition is low, is evident from s. 80HHC, as it extends its benefit not to all minerals, but only to "processed minerals specified in the Twelfth Schedule" and the word "processed" with reference to rocks/granite, means "cut and polished". It may be of some relevance to refer to the following observations of this Court in Muddeereswara's case (supra) with reference to sub-s. (2) of s. 80HHC before its amendment by Finance (No. 2) Act, 1991 : "It is true that s. 80HHC(1) is a beneficial provision; it may be compared to the provisions enacted to give incentives to traders and industrialists under certain circumstances. But, the question arises whether the provisions of sub-s. (2) should be read narrowly to limit its operation. If sub-s. (2) of s. 80HHC also indicates a public purpose, the Court cannot ignore it. The purpose behind excluding"mineral oil","mineral and ores" from the beneficial provision of s. 80HHC(1) seems not to extend its benefits to the export of goods which are part of the natural wealth of the country, obtained directly from the earth. Discouraging export of such goods cannot be considered with a negative approach; such a provision also, in a large sense, is a beneficial provision or, at any rate, advance a public purpose." 7. R : Contention (ii) : 7.1 It is not in dispute that petitioner had sought deduction of the profits derived from export of dressed granite, in computing the total income, in the return submitted by it for the asst. yr. 1993-94. Petitioner had returned a total income of Rs. 44,135. The AO disallowed the deduction of Rs. 37,13,849 claimed by the petitioner under s. 80HHC and added the same to the total income, by way of adjustment under s. 143(1)(a) of the Act. Petitioner was not heard in the matter. Under the first proviso to s. 143(1)(a), the AO could make an adjustment in the income, by disallowing the deduction claimed in the return, only if it is prima facie inadmissible, on the basis of the information available in such return or accounts or documents accompanying the return. It cannot be said that inadmissibility of the claim of petitioner in regard to deduction under s. 80HHC, is so clear and self evident from the return and the annexed documents, that the AO could have recourse to adjustment by disallowance, under s. 143(1)(a). The fact that on ultimate analysis, the petitioner may not be entitled for the deduction claimed from the total income does

not mean that recourse can be had to disallowance under s. 143(1)(a), dispensing with hearing and denying the opportunity to the petitioner to challenge the assessment. Under the guise of effecting an adjustment under s. 143(1)(a), the AO cannot decide debatable issues. Reference may be made in this behalf to the decision of the Bombay High Court in Khatau Junkar Ltd. vs. K. S. Pathania (1992) 196 ITR 55 (Bom) wherein it is held that unless the inadmissibility of a deduction is evident and obvious (as in the case of s. 154), from the return and its annexures, the AO who wants to disallow a deduction or a claim, is bound to follow the procedure under s. 143(2) of giving a notice to the assessee; and that no substantial adjustments which require examination of evidence or which would require a hearing, is contemplated under s. 143(1)(a). Hence, the intimation dt. 31st March, 1995 (Annexure C) is liable to be set aside. Petitioner is entitled to a notice under s. 143(2) even though the result of the hearing and consequential disposal may lead to the same result, as a consequence of this decision. 8. In view of the above, this petition is disposed of in the following manner : (i) Prayer (i) for declaring the Circular dt. 17th Nov., 1994 is illegal, is rejected. (ii) The intimation dt. 31st March, 1995 (Annexure C) is set aside and the fourth respondent is directed to reconsider the return of petitioner relating to asst. yr. 1993-94 under s. 143(2) of the Act, in accordance with law. (iii) The sum of Rs. 15 lakhs said to have been deposited by the petitioner with the fourth respondent in pursuance of the interim order dt. 26th June, 1995 shall be held on account, by the AO till completion of assessment and shall be dealt with in the light of the order of assessment to be passed regarding asst. yr. 1993-94. (iv) Parties to bear their respective costs.