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M/S. GEM GRANITES

v.

COMMISSIONER OF INCOME TAX, TAMIL NADU

NOVEMBER 23, 2004

B

[RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Income Tax Act, 1961 : Section 80-HHC.

Income Tax—AY 1987-88—Deduction—In respect of profits retained
C *for export business—Cut and polished granite—Export of—Entitlement to deduction under S. 80-HHC—Held : Cut and polished granite is covered by the word "minerals" occurring in the exclusionary provision of S. 80-HHC (prior to 1991 amendment)—The 1991 amendment to S. 80-HHC demonstrates that the words "minerals and ores" must be construed*
D *widely—Further, subsequent legislation can be looked into to fix the proper interpretation to be put on the statutory provision as it stood earlier—The 1991 amendment does not suggest that it would operate retrospectively—CBDT Circulars of 1984. 1994 and 1995 extend the benefit of S. 80-HHC to cut and polished granite only w.e.f. 1-4-1991 by virtue of insertion of Item (X) in Schedule XII to the Act—The distinction between minerals and*
E *processed minerals drawn by Custom Tariff Act and Central Excise Tariff Act cannot be imported into the Income Tax Act—Hence, benefit of S. 80-HHC cannot be granted to the assessee—CBDT Circular No. 178/206/83 dt. 27-5-1984.*

Words & Phrases :

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"Minerals and ores"—Meaning of—In the context of S. 80-HHC(2)(b) of the Income Tax Act, 1961 (prior to 1991 amendment).

The appellant-assessee exported granite, which was cut and polished
G **before export and claimed deduction under Section 80-HHC of the Income Tax Act, 1961 for the AY 1987-88. The High Court disallowed the deduction. Hence the appeals.**

On behalf of the appellant-assessee, it was contended that although granite was a mineral but when it was cut and polished it ceased to be
H **so; that history of Section 80-HHC of the Act would indicate that its**

object was to develop foreign markets and to earn foreign exchange; that with this object a distinction had been made between raw mineral and processed mineral at all material times; that the CBDT Circular 178/206/83 dated 22-5-1984 stated that the export of cut and polished diamonds and gems would not amount to export of minerals and ores and hence would qualify for relief under Section 80-HHC; that the position was further clarified by the CBDT Circular in 1995; that the subsequent legislation could be looked into for the purpose of interpreting an earlier statutory provision; that the amendment made in 1991 was declaratory and, therefore, would take effect retrospectively; that Section 80-HHC was introduced to give an indirect incentive for the export of processed products and would, therefore, have to be construed keeping in view the context in which the benefit was granted; that the Customs Tariff Act as well as the Central Excise Tariff Act had drawn a distinction between minerals *per se* and articles manufactured out of minerals; and that processed granites should not be included within the exclusionary provision of Section 80-HHC(2)(b).

On behalf of the respondent-Revenue, it was contended that the 1984, 1994 and 1995 CBDT Circulars were not applicable to the assessment years prior to the 1991 amendment of Section 80-HHC; that the 1984 Circular dealt only with diamonds and not with granite; that had the intention of the Parliament been to give retrospective effect to the 1991 amendment, this would have expressly been provided for; and that there was no reason for giving a restrictive interpretation to the word 'mineral' occurring in Section 80-HHC(2)(b).

Dismissing the appeals of the assessee and allowing the appeal of the Revenue, the Court

HELD : 1. It is not the appellant's case that the Central Government had in fact specified granite or articles of granite for the purpose of granting benefit under the omitted Section 89-A of the Income Tax Act, which was subsequently reenacted as Section 80-HHC of the Act. [340-D-E]

2. There are no words of restriction, which qualify the word 'minerals', occurring in Section 80-HHC and, therefore the word must be read to include all kinds of minerals in all its *forms i.e. whether* subjected to any process or not as long as it continued to retain the

A characteristics of the mineral. To hold that the word 'minerals' never included processed minerals would require reading words of limitation into an otherwise clear and unambiguous statutory provision. There is no dispute that granite is covered by the word 'minerals' in the exclusionary provision of Section 80-HHC(2)(b), it would follow that for B the unamended Section 80-HHC cut and polished granite would also be a mineral. [341-B-C]

Stone Craft Enterprises v. *CIT,* [1999] 3 SCC 343, relied on.

3. The introduction of the phrase "other than" in Section 80- C HHC(2)(b) in 1991 indicates the carving out of a specific class from the generic class of "minerals and ores". This means that were it not for the exception, the specified processed minerals and ores, would have been covered by the words 'minerals and ores'. It also indicates that only the minerals and ores subjected to the process of cutting and polishing D would be entitled to the benefit of Section 80-HHC meaning thereby that all other species of processed minerals and ores would continue to be covered by, the general exclusion applicable to the generic class. The 1991 Amendment to Section 80-HHC thus conclusively demonstrates that the words "minerals and ores" must be construed widely and in an unrestricted manner. [341-D-E-F]

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4.1. Subsequent legislation may be looked into to fix the proper interpretation to be put on the statutory provisions as it stood earlier. The benefit of Section 80-HHC has been extended by the amendment to a specific kind of mineral and was introduced for the first time in F 1991. If one were to hold that the word "minerals" in Section 80-HHC(2)(b) never included processed minerals then the 1991 amendment excepting processed minerals from the exclusionary effect of Section 80-HHC(2)(b) would be rendered meaningless. [341-F-G]

G *Municipal Committee* v. *Manilal,* [1967] 2 SCR 100 and *Pappu Sweets and Biscuits* v. *Commissioner of Trade Tax, U.P.,* [1998] 7 SCC 228, relied on.

4.2. There is nothing in the wording of the 1991 amendment to suggest that it was to operate retrospectively. Apart from the lack of H any express words indicating such an intention, there is nothing in the

statute from which one can infer on any principle of interpretation that the intention of the Parliament was to give the amendment retrospective effect. [342-A-B] A

Keshavan v. *State of Bombay,* AIR (1951) SC 128, relied on.

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5. What one may believe or think to be the intention of the Parliament cannot prevail if the language of the Statute does not support that view. It may be that the object of the introduction of Section 80-HHC was to encourage export and as an incentive to exporters to increase exports for the purpose of earning foreign exchange to bolster up the country's exports. But the object can be given effect to only if the statutory expression is ambiguous. There was no ambiguity in Sec. 80-HHC(2)(b) prior to its amendment. It does not in any event appear that the Government had sought to grant blanket incentive to all exports. There is in the circumstances no warrant for reading the word 'minerals' as occurring in Section 80-HHC in any other manner or in any restricted sense on the basis of any policy of the Government at the relevant point of time. On the contrary the history of Section 80-HHC would show that there has been a cautious and gradual extension of the field of operation of Section 80-HHC. The 1994 Circular also speaks of the Finance Act, 1991 extending the benefit of Section 80-HHC to export of processed minerals and ores mentioned in Schedule XII to the Act. [342-C-D-E-F] C D E

6.1. No support to the appellant's contention can be drawn from the 1984 CBDT Circular.

It is clear from the language used in the 1984 CBDT Circular that the CBDT gave its understanding of Section 80-HHC(2)(b) as it stood prior to the 1991 amendment with regard to diamonds and gemstones alone having regard to the peculiar facts and features relating to the export and import of diamonds. Apart from the fact that the circular contains no reference to granite at all, it is not possible to extend the understanding of the CBDT with regard to exclusion of cut and polished gems from the word "minerals" to granite in the absence of the special features mentioned in the 1984 Circular, more so when the statute itself has not drawn any such distinction. [342-F; 344-A-B] F G

6.2. The 1994 and 1995 notifications both relate to the interpretation H

of item No. (x) in the Twelfth Schedule read with Section 80-HHC as amended in 1991. They are confined to an exposition of the phrase of "cut and polished" used in Item No. (x) of Schedule XII of the Act. Both the Circulars clearly state that the benefit of Section 80-HHC was available to cut and polished granite only with effect form 1-4-1991 by virtue of insertion of item (x) in Schedule XII to the Act. [344-C-D-E]

CIT **v.** *Strawboard Manufacturing Co.,* **(1989) 177 ITR 431;** *Bajaj Tempo Ltd.* **v.** *CIT,* **(1992) 196 ITR 188 and** *CIT* **v.** *M/s. Pooshya Exports (Pvt.) Ltd.,* **(2003) 262 ITR 417 Mad. referred to.**

7. Doubtless, the Customs Tariff Act and the Central Excise Tariff Act both draw a distinction between minerals and processed minerals. However, a classification, which is relevant for the purpose of determination of rate of duty, cannot be imported into the Income Tax Act, which makes no such distinction. Consequently, the benefit of Section 80-HHC cannot be granted to the appellant for the Assessment year 1987-88. [344-E-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 319 of 2004.

From the Judgment and Order dated 19.12.2002 of the Madras High Court in T.C. (R) No. 333 of 1999.

WITH

C.A. Nos. 3962/2003, 7574 and 7573 of 2004.

Harish Chandra, Joseph Vellappally, K. Parasaran and G. Sarangan, B.V. Balaram Das, K.K. Mani, K.B. Sandeep, A.A. Kulkarni, Mohit Chaudhary, Dhruv Mehta, Mrs. Prabha Swami, Arijit Prasad, Sanjay Kumar, Ramesh Keswani and N.N. Keshwani for the appearing parties.

The Judgment of the Court was delivered by

RUMA PAL, J. : The appellant exports granite. According to the appellant the granite is cut and polished before export. The appellant claims deduction under Sec. 80-HHC of the Income tax Act 1961 (hereinafter referred as 'the Act') in respect of profits from its export business.

The assessment year in question is 1987-1988. Sec. 80-HHC as it then stood read as follows:

> *80HHC. Deduction in respect of profits retained for export business.*– (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which the 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 of the profits derived by the assessee from the export of such goods or merchandise.
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> Xxx xxxx xxxx
>
> 2(a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.
>
> (b) This section does not apply to the following goods or merchandise, namely:–
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> (i) mineral-oil; and
>
> (ii) minerals and ores".

Thus an exporter of minerals could not avail of the benefit of S. 80 HHC. According to the appellant although granite is a mineral, there was a distinction between granite in its raw form and granite in its finished form or granite which has been subjected to the process of cutting and polishing. It is the appellant's case that when granite is so processed it ceases to be a mineral. It is also argued that the history of Sec. 80 HHC would indicate that the object of the introduction of Sec. 80-HHC was to develop foreign markets and to earn foreign exchange. With this object a distinction had been made between raw mineral and processed mineral at all material times. Reference has been made to Circular issued by the Central Board of Direct Taxes (CBDT) being Circular No. 178/206/83 dated 22.5.1984 which *inter alia* stated that the export of cut and polished diamonds and gems would not amount to export of minerals and ores and hence would qualify for relief

A under Sec. 80-HHC of Income tax Act 1961. It is further submitted that in 1991 the position was clarified by an amendment to Sec. 80-HHC. The amended Section in so far as it is relevant reads:

> "(b) This section does not apply to the following goods or
> B merchandise, namely:-
>
> (i) mineral oil; and
>
> (ii) minerals and ores [(other than processed minerals and ores specified in the Twelfth Schedule.....x) Cut and polished
> C minerals and rocks including cut and polished granite)]".

Item No. (x) in the 12th Schedule specifies "cut and polished minerals and rocks including cut and polished granite". The position was further clarified, according to the appellant, by a Circular issued by the CBDT in
D 1995 which while clarifying an earlier Circular dated 7.11.1984 stated that any process applied to granite would take it out of the category of mineral and accordingly the profits derived from the export of such processed granite would be eligible for deduction under Sec. 80-HHC of the Act. Reference has been made to decisions of this Court in support of the proposition that subsequent legislation could be looked into for the purpose
E of interpreting an earlier statutory provision. It is also the contention of the appellant that the amendment was declaratory and therefore would take effect from the date on which the Section 80-HHC was introduced into the statute. According to the appellant Sec. 80-HHC was introduced to give an indirect incentive for the export of processed products and would have
F therefore to be construed keeping in view the context in which the benefit was granted. That a liberal interpretation is to be given to such statutory provision has been held by this Court in *Commissioner of Income-tax, Amritsar* v. *Strawboard Manufacturing Co.,* [1989] 177 ITR 431 at 433 and in *Bajaj Tempo Ltd.* v. *Commissioner of Income- tax,* (1992) 196 ITR 188 at 193. Reliance has also been placed on Chapters in the Customs Tariff Act
G as well as Central Excise Tariff Act in which a distinction has been drawn between minerals *per se* and articles manufactured out of minerals. Finally, it is submitted that this interpretation sought for by the appellant was a possible one which did no violence to the language of the statute. Therefore, in keeping with the object of the Section, processed granite should not be
H included within the exclusion of sub-sec. (2)(b) of Sec. 80-HHC (as it stood

prior to 1991) by holding it to be a 'mineral'. It is also agued that this Court in *Stone Craft Enterprises* v. *Commissioner of Income Tax,* [1999] 3 SCC 343 had recognized the possibility of such an interpretation but had, on the facts, found against the assessee inasmuch as the assessee in that case had been unable to prove that the granite exported had been cut and polished.

Learned counsel appearing on behalf of the Department has submitted that the 1994 and 1995 Circulars did not apply to the assessment years prior to the 1991 amendment of Sec.80-HHC. As far as the 1984 circular is concerned, it is submitted that the same only dealt with diamonds and not with granite. It is argued that had the intention of Parliament been to give retrospective effect to the 1991 amendment, this would have expressly been provided for. It is submitted that there is no reason for giving a restrictive interpretation to the word 'mineral' as occurring in Sec. 80-HHC (2)(b). Certain authorities had been cited to contend that the granite was in fact a mineral.

The High Court in this particular case proceeded on a concession of counsel appearing on behalf of the assessee that the issue, namely, whether the appellant was entitled to relief under Sec.80-HHC in respect of the assessment year in question was concluded against the assessee by the decision of this Court in *Stone Craft Enterprises* v. *Commissioner of Income Tax* (Supra) as well as by the decision of the Division Bench of the Madras High Court in *Commissioner of Income Tax, Tamil Nadu IV* v. *M/s. Pooshya Exports (Pvt) Ltd.* reported in (2003) 262 ITR 417.

The issue raised in this appeal is common to the other appeals which are being disposed of by this judgment. One of the petitions, *M/s. Mithy Granite (P) Ltd.* v. *Income Tax Officer, Bangalore* (SLP(C) No. 8382/2004) has impugned the decision of the Full Bench of the Karnataka High Court which has taken the same view as the Madras High Court but with a reasoned judgment.

Tax relief in respect of export turnover was granted for the first time by the Finance Act 1982 by the introduction of Sec. 89A in the Act. Section 89A provided for relief at a particular percentage in respect of the export turnover for a period of five years commencing from 1st April, 1983 on goods and merchandise exported as specified by the Central Government by Notification in the Official Gazette. In specifying such goods or

A merchandise for the benefit under Sec. 89A, sub-sec. (4) of Sec. 89A provided that Central Government shall have record to the following factors:

> "(a) the cost of manufacture or production of such goods or merchandise and prices of similar goods or merchandise in the
B foreign markets;
>
> (b) the need to develop foreign markets for such goods or merchandise;
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> (c) the need to earn foreign exchange;
C
>
> (d) any other relevant factor".

It is not the appellant's case that the Central Government had in fact specified granite or articles of granite for the purpose of granting benefit
D under that Section.

Sec. 89A was subsequently re-enacted by the Finance Act 1983 as Sec. 80-HHC of the Act. Except for a change of percentage of the rates of deduction permissible on the export turnover, the substantive provision as quoted earlier continued up to 1991. In 1991 the general exclusion relating
E to export of minerals and ores from the benefit of Sec.80-HHC was itself subjected to an exception as quoted earlier. The primary question therefore is whether this 1991 amendment was merely clarificatory of the law as it always stood or whether it introduced a benefit in respect of cut and polished granite for the first time in 1991.

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The answer to this question would lie in the interpretation of sub section 2(b) of Sec. 80-HHB as it stood prior to its amendment and as it stands after 1991. That the word 'mineral' as used in sub section 2(b) to Sec.80-HHC is to be widely construed has been decided by this Court in *Stone Craft Enterprises* (supra) where it was held:

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> "The word "minerals" in sub-section (2)(b) of section 80-HHC must be read in the context of "mineral oil" and "ores" with which it is associated. It seems to us that these words taken together are intended to encompass all that may be extracted from the earth. All
H minerals extracted from the earth, granite included must, therefore,

be held to be covered by the provisions of sub-section (2)(b) of section 80-HHC, and the exporter thereof, is therefore, disentitled to the benefit of that section". A

There are no words of restriction which qualify the word "minerals" and it would be reasonable to assume that in the absence of any such limitation, the word must be read to include all kinds of minerals in all its forms i.e. whether subjected to any process or not as long as it continued to retain the characteristics of the mineral. To hold that the word 'minerals' never included processed minerals would require our reading words of limitation into an otherwise clear and unambiguous statutory provision. There is no dispute that granite is covered by the word 'minerals' in the exclusionary clause (b) of sub sec. (2) of Sec.80-HHC. It would follow that for the unamended Sec. 80-HHC(2)(b) cut and polished granite would also be a mineral. B C

The introduction of the phrase "other than" in clause (b) of sub-section 2 of Section 80-HHC in 1991 in our opinion, indicates the carving out of a specific class from the generic class of "minerals and ores". This means that were it not for the exception, the specified processed minerals and ores would have been covered by the words 'minerals and ores'. It also indicates that only the minerals and ores subjected to the process of cutting and polishing would be entitled to the benefit of Section 80 HHC meaning thereby that all other species of processed minerals and ores would continue to be covered by the general exclusion applicable to the generic class. The 1991 Amendment to Sec.80-HHC thus conclusively demonstrates that the words "minerals and ores" must be construed widely and in an unrestricted manner. As has been held in *Municipal Committee* v. *Manilal*, [1967] 2 SCR 100 and *Pappu Sweets and Biscuits* v. *Commissioner of Trade Tax, U.P.*, [1998] 7 SCC 228 subsequent legislation may be looked into to fix the proper interpretation to be put on the statutory provisions as it stood earlier. The benefit of Section 80-HHC has been extended by the amendment to a specific kind of mineral and was introduced for the first time in 1991. If we were to hold that the word "minerals" in sub section 2(b) never included processed minerals then the 1991 Amendment excepting processed minerals from the exclusionary effect of the sub section would be rendered meaningless and an exercise in futility. D E F G

Every statute is *prima facie* prospective unless it is expressly or by H

A necessary implication made to have retrospective operation. [See: *Keshavan* v. *State of Bombay* AIR 1951 SC 128, 130]. There is nothing in the wording of the 1991 amendment to suggest that it was to operate retrospectively. Apart from the lack of any express words indicating such intention, there is nothing in the statute from which we can infer on any principle of B interpretation that the intention of Parliament was to give the amendment retrospective effect.

An argument founded on what is claimed to be the intention of Parliament may have appeal but a Court of law has to gather the object of the Statute from the language used. What one may believe or think to be C the intention of Parliament cannot prevail if the language of the Statute does not support that view. It may be that the object of the introduction of Section 80-HHC was to encourage export and as an incentive to exporters to increase exports for the purpose of earning foreign exchange to bolster up the country's exports. But the object can be given effect to only if the statutory D expression is ambiguous. There was no ambiguity in Sec. 80-HHC(2)(b) prior to its amendment. It does not in any event appear that the Government had sought to grant blanket incentive to all exports. There is in the circumstances no warrant for reading the word 'minerals' as occurring in Section 80-HHC in any other manner or in any restricted sense on the basis of any policy of the Government at the relevant point of time. On the E contrary the history of Section 80-HHC as narrated by us would show that there has been a cautious and gradual extension of the field of operation of Section 80-HHC. The 1994 circular also speaks of the Finance Act 1991 *extending* the benefit of Section 80-HHC to export of processed minerals and ores mentioned in the 12th Schedule to the Act.

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No support to the appellant's contention can also be drawn from the 1984 circular which reads thus:

> *"Export of cut and polished diamonds and gem stones — Whether eligible for deduction under section 80 HHC*
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> 'Section 80HHC has been inserted in the Income-tax Act, 1961, by the Finance Act, 1983, and the deduction under this provision is admissible in relation to assessment year 1983-84 and subsequent years. The tax concession is, however, not admissible in relation H to export of, *inter alia*, minerals and ores.

2. The Board has received a large number of references on whether the export of cut and polished diamonds and gem stones will qualify for deduction under section 80HHC. The Board are advised of the following features in the export of cut and polished diamonds and gem stones:

(i) No export of raw diamonds is permitted under the import and export regulations.

(ii) Export from India takes place of cut and polished diamonds.

(iii) Raw diamonds imported from abroad after being cut and polished are exported in the processed form and this will be supported by documents scrutinized and certified by the Customs Department.

(iv) Import of rough diamonds is allowed as replenishment against the actual exports of cut and polished diamonds, after the actual exports take place, not necessarily in the previous year.

(v) Import of rough diamonds is allowed as replenishment on the basis of licences issued by the Joint Chief Controller of Imports and Exports, on the basis of the requisite documents produced by the exporters.

Rough diamonds are also allowed to be imported on the basis of import licence issued by the licensing authorities for which the importer has to execute a bond with the Government of India for re-export after cutting and polishing within a prescribed time for a value worked out on a given formula. Detailed procedure in this regard is explained in the Import-Export Policy.

3. In view of the position brought by the above features, the export of cut and polished diamonds and gem stones will not amount to export of "minerals and ores" and hence will qualify for relief under section 80HHC of the Income-tax Act, 1961".

[*Source:* Circular letter F.No. 178/206/83-IT (A-I) dated 22nd May, 1984.]

A It is clear from the language used that the CBDT gave its understanding of sub-section 2(b) of Section 80HHC as it stood prior to the 1991 amendment with regard to diamonds and gem stones alone having regard to the peculiar facts and features relating to the export and import of diamonds. Apart from the fact that the circular contains no reference to granite at all, we are not B prepared to extend the understanding of the Board with regard to exclusion of cut and polished gems from the word "minerals" to granite in the absence of the special features mentioned in the 1984 Circular, more so when the statute itself has not drawn any such distinction.

The 1994 and 1995 notifications both relate to the interpretation of C item No. (x) in the Twelfth Schedule read with Section 80-HHC as amended in 1991. They are confined to an exposition of the phrase of "cut and polished" used in Item No. (x) and do not seek to interpret the word 'minerals' in general. The 1994 circular clarified that the phrase 'cut and polished' minerals meant exactly that and could not be extended to any other D process. The 1995 circular modified the rigour of the 1994 circular to the extent that it recognized some other processes as falling within the phrase 'cut and polished'. Both circulars clearly state that benefit of Section 80-HHC was available to cut and polished granite only with effect from 1.4.91 by virtue of insertion of item (x) in the Twelfth Schedule to the Act.

E Doubtless, the Customs Tariff Act and the Central Excise Tariff Act both draw a distinction between minerals and processed minerals. For example in Chapter 27 of the Customs Tariff, a distinction has been drawn between mineral fuels, mineral oils and mineral products. However a classification which is relevant for the purpose of determination of rate of F duty cannot be imported into the Income tax Act which makes no such distinction.

Consequently, even if the concession of the appellant before the High Court is ignored, the benefit of Section 80-HHC cannot be granted to the appellant for the Assessment Year in question. The appeal is accordingly G dismissed without any order as to costs.

Civil Appeal No. 3962 of 2003

In this case, the High Court has clearly proceeded on a mis-reading of H the 1984 circular by holding that the circular expressly provided that polished

and processed granite did not fall within the meaning of the word "minerals" occurring in sub-clause (b) of sub-section (2) of Section 80-HHC as it stood before 1991. It did nothing of the sort. The judgment cannot, therefore, be sustained. In view of our conclusion in Civil Apeal No. 319 of 2004 - *M/s. Gem Granites* v. *Commnr. of Income Tax, Tamil Nadu,* we set aside the decision of the High Court and allow the Department's appeal.)

CIVIL APPEAL NO. 7574 & 7573 OF 2004 (Arising out of SLPs. 11251/03 & 8382 of 2004.

Leave granted.

For the reasons stated in Civil Appeal No. 319 of 2004, these appeals are dismissed.

V.S.S. Appeals dismissed.