
(1993) 03 KAR CK 0007

In the Karnataka High Court

Case No : Income Tax R.C. No. 51 of 1992 and I.T.R. Cs. No's. 134, 135 and 136 of 1992

Muddeereswara Mining Industries

APPELLANT

Vs

Commissioner of Income Tax
 Stonecraft Enterprises
Vs Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-03-1993

Acts Referred:

Income Tax Act, 1961 — Section 32 A, 80 HHCC (b (ii))

Citation : (1993) 114 CTR 361 : (1993) 204 ITR 550 : (1994) 72 TAXMAN 186

Hon'ble Judges : R.V. Vasanthakumar, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Sarangan, K.S. Ramanbhadran and K. Gajendar Rao, for the Appellant; H.L. Dattu, for the Respondent

Judgement

K. Shivashankar Bhat, J.—In these references, we are required to answer the following two questions referred u/s 256(1) of the Income Tax Act, 1961 ("the Act" for short) :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was not correct in holding that "granite" is a "mineral" within the meaning of the term found in section 80HHC(b)(ii) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is not entitled to the allowance claimed u/s 80HHC in respect of the granite exported from India ?"

2. Though one more question has been referred in I.T.R.Cs. Nos. 135 and 136 of 1992, pertaining to a claim towards business expenditure, no argument was addressed on the said question. Hence, we proceed on the basis that we are required to consider only the above two questions which are in substance the same question worded differently. A detailed reference to the facts is unnecessary. Admittedly, the assessee has been exporting granites. The question

is whether the income earned from the export of granites is covered by section 80HHC of the Act. There is also no dispute that granite is covered by the terms "goods or merchandise" and, therefore, the business of the assessee in exporting granite would normally be covered by the beneficial provisions of section 80HHC of the Act. The Revenue has relied on sub-section (2)(B) of section 80HHC to contend that granite is a mineral and, therefore, the main provision of the said section is not attracted. As per clause (b) of sub-section (2), the main section is not applicable to "minerals and ores". We are concerned here with the assessment years 1985-86, 1987-88 and 1988-89.

3. The Appellate Tribunal relied upon its order made in I.T. A. Nos. 326 and 327 of 1990, wherein the Tribunal had held that "granite" is a mineral and, therefore, the main provisions of section 80HHC are not attracted. The opinion of geological experts, wherein they had opined that granite and other allied stones are not minerals or ores, but granite comes under the category of rocks, was not accepted for the purposes of the Act. The Tribunal, noticed that a narrow meaning of the word "granite" would take it out of the term "mineral", and in its broad sense, mineral would include a granite.

4. Mr. Sarangan, learned counsel for the assessee, contended that section 80HHC is a beneficial provision in a fiscal statute and should be broadly construed so as to advance its purpose. The said provision was earlier found as section 89A. Its object is to encourage exports and to an foreign exchange. The term "mineral" has its own meaning depending upon the context of the legislation and, in the context of the Act, it should be attributed with a narrow meaning; further, the phrase "mineral and ores" in the relevant provision itself indicates that the term "mineral" would derive colour from the term "ore" and, therefore, the popular concept of "mineral" cannot be injected into this word. The rule of *noscitur a sociis* was relied upon to contend that the term "mineral" should be construed as to convey a meaning which is similar to the meaning conveyed by the term "ore". The broad meaning of the term "mineral" is cut down by the companion word "ore". The term "mineral" has no definite, permanent and exhaustive meaning. Learned counsel also pointed out that section 35E of the Act refers to an assessee engaged in any operation relating to prospecting for an extraction or production of any mineral. Section 35E(2) read with the Seventh Schedule enumerates "mineral or group of associated mineral" to which the provision is attracted. No distinction is made between "mineral" and "ore" in the Seventh Schedule. For example, Part-A of the Seventh Schedule refers to aluminium ore, chrome ore, nickel, sulphur and its ores. The said part of the Schedule also refers to copper, gold, lead, etc. Similarly, precious stones are also referred. Part-B refers to group of associated minerals. According to learned counsel, this is a clear indication of the recognition by Parliament that the term mineral has to be understood with reference to its similarly to another subject that would come within the term "ore".

5. There can be no dispute about the proposition that the terms used in a fiscal

legislation describing the subjects of taxation are to be normally understood in their popular sense unless the law itself indicates a different approach. Scientific and technical meanings are to be attributed to those words only when the context requires such meanings to be given. The normal rule is to give that meaning which the persons engaged in dealing with that subject-matter, attribute to that term, describing the subject. It is also true that a beneficial provision in a fiscal statute should be liberally construed to advance the purpose behind the legislation. But, in many of the cases, the problem is to find out the real purpose behind a particular provision.

6. The contention has mainly two aspects - (i) the scope of the rule of *noscitur a sociis* (ii) to what extent the relevant provisions of section 80HHC are beneficial.

7. As to the rule of *noscitur a sociis*, the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, observed, at page 614 (17 FJR 428) :

"It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."

8. In *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, , the Supreme Court held that "toilet soap" fell within the scope of the term "Soap, household and laundry" as against "soap, other sorts". While proceeding to hold that "toilet soap" is a household soap, as found in the tariff entry, for purposes of the Central Excises and Salt Act, the court observed :

"..... It is well, at the outset, to guard against confusion between the meaning and the legal effect of an expression used in a statute. Whereas the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of the statute admit of two meanings. The safer and more correct course to deal with a question of construction of statutes is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction".

9. The court attributed the meaning as understood in commercial parlance because, the relevant phrase is the one used in a fiscal law. The doctrine of

noscitur a sociis relied upon by the Revenue was rejected as inapplicable.

10. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., the Supreme Court was considering the scope of the term "sanitary fittings" in entry 26A of the Schedule to the Kerala General Sales Tax Act. The question was whether G. I. Pipes came within the purview of "water supply and sanitary fittings". The Supreme Court observed as follows (at page 62) :

"The entire expression "water supply and sanitary fittings" is one single expression and the words "Water supply... fittings" must receive colour from the immediately following words "sanitary fittings". We are, therefore, of the view that the expression "water supply..... fittings" in the context in which it occurs means such pipes or materials as are meant for use for supply of water to or in lavatories, urinals or bath-rooms of private houses or public buildings and they do not include heavy pipes which are laid underground as mains for carrying water supply from one area or place to another".

11. The Supreme Court took into consideration the context in which the terms were used, to arrive at the true scope of the relevant words and, having regard to the context, it was held that the words used in the expression, received colour from the companion words.

12. In Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, , the question was whether the word "Calcareous monumental stone or building stones of more than 2.5 specific gravity" as mentioned in tariff item No. 25.15 comes within the purview of restricted item mentioned in item No. 62. The Supreme Court pointed out that the calcareous stone mentioned has to be taken in its scientific and technical sense because the stone has been described as of an apparent specific gravity of 2.5 or more. Since a scientific description is given in the entry, the Supreme Court held that a scientific meaning should be given. Therefore, the term "marble" was also interpreted accordingly. In this connection, the following observations at page 1590 are relevant :

"There is no doubt that the general principle of interpretation of tariff entries occurring in a text (tax) statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry".

13. Again, the context in which the term "marble" was referred in the Act was

the consideration for the particular meaning given to it, as could be seen from paras 47 and 55. Because the tariff items specifically proceeded to describe the subject scientifically, the companion words were also given their scientific meaning.

14. Regarding the doctrine of *noscitur a sociis* M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda, was referred to. The court was considering the scope of the term "printing and writing paper" and "coated paper". Since the relevant words were construed in the context of a notification granting concession to small scale factories which manufacture paper with unconventional raw materials, the Supreme Court found no reason to restrict the scope of the concession. After referring to the maxim "*noscitur a sociis*" the court observed at page 762 thus :

"We entirely agree that these maxims and precedents are not to be mechanically applied; they are of assistance only in so far as they furnish guidance by compendiously summing up principles based on rules of common sense and logic".

15. "*Noscitur a sociis*", as Crawford puts it, is like other principle of construction, to be used only as an instrumentality for determining the intent of the Legislature where it is in doubt. Nowhere the principle of construction states that the mere fact that two words are use as associated words, this rule should be applied to cut down the meaning of a general word, especially where the association created by the Legislature may be for more than one reason and there may be several common characteristics in the two subjects described by the two words; in such a case, a search has to be made to find out the real reason for the association created by the Legislature before applying the rule of *noscitur a sociis*.

16. Crawford's Statutory Construction (1940 Edition) at page 325 (para 190) reads :

"In order to ascertain the meaning of any word or phrase that is ambiguous or susceptible to more than one meaning, the court may properly resort to the other words with which the ambiguous word is associated in the statute. Accordingly, if several words are connected by a complete conjunction, a presumption arises that they are of the same class, unless, of course, a contrary intention is indicated. On the other hand, the maxim "*noscitur a sociis*" is not used to be applied where the meaning of a word or phrase is clear and unambiguous. Nor is it to be used so as to render general words useless. Like all other principles of construction, it is to be used only as an instrumentality for determining the intent of the Legislature where it is in doubt".

17. The exercise of constructing an enactment should commence with a reading of it along with the natural meaning it conveys; the exercise is not to find out whether the meaning is of doubtful nature and then, proceed to solve it by applying the formula of *noscitur a sociis*. Uncertainty ambiguity should be the

natural impression on a reading of the provision and, in such a situation, the meaning of the general word may have to cut down to keep company with the word used with it.

18. It is true that section 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 where the provisions of sub-section (2) be read narrowly to limit its operation.

19. If sub-section (2) of section 80HHC also indicates a public purpose, the court cannot ignore it. The purpose behind excluding "mineral oil", "minerals and ores" from the beneficial provision of section 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 larger sense, is a beneficial provision or at any rate, advances a public purpose. Therefore, here, we are concerned with two competing beneficial provisions or policies and, in such a situation, in the absence of any strong statutory indication to the contra, the court cannot pick one provision to dominate over the other to apply the rule of beneficial construction. The golden rule of harmonious construction is the best rule to be selected in such a situation.

20. *Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay*, was cited by Sri Sarangan to contend that a beneficial provision in a taxing statute should be broadly construed.

21. The Supreme Court was construing section 15C of the Indian Income Tax Act, 1922. Since it was a provision directed towards encouraging industrialisation, the provision was liberally construed. Learned counsel relied on the observation found at page 193 of the following effect :

"The limited question is whether the assessee which has been found by the Tribunal to be a new company could be denied the benefit as visualised in section 15C (1) because of the operation of clause (i) of sub-section (2). It is a restrictive clause. It denies the benefit which is otherwise available in sub-section (1). A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. In *Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Limited Vs. Commissioner of Income Tax, Ahmedabad*, the assessee, a co-operative society, claimed that the receipt from ginning and pressing activities was exempt u/s 80 of the Income Tax Act. The question for interpretation was whether the co-operative society which carried on the business of ginning and pressing was a society engaged in "marketing" of the agricultural produce of its members. the court held that the object of section 81(1) was to encourage and promote the growth of co-operative societies and, consequently, a liberal construction must be given to the operation of that provision. And since ginning and pressing was incidental or ancillary to the activities mentioned in section 81(1), the assessee was entitled to exemption and

the proviso did not stand in his way. In Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., , it was held that the law providing for concession for tax purposes to encourage industrial activity should be liberally construed. The question before the Court was whether Strawboard could be said to fall within the expression "paper and pulp" mentioned in the Schedule relevant to the respective assessment years. The court held that since the words "paper and pulp" were mentioned in the Schedule, the intention was to refer to the paper and pulp industry and since the strawboard industry could be described as forming part of the paper industry, it was entitled to the benefit."

22. In the very decision at page 194, the Supreme Court also made the following observation which requires a consideration of the purpose behind the particular enactment, the objective it sought to achieve and the mischief it intended to control; these are not to be lost sight of. The observations are :

"Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too has to be construed as to advance the objective of the section and not to frustrate it. But that turned out to be the unintended consequence of construing the clauses literally, as was done by the High Court, for which it cannot be blamed, as the provision is susceptible of such construction if the purpose behind its enactment, the object it sought to achieve and the mischief it intended to control are not lost sight of."

23. This court had also adopted a similar approach of construing beneficial provision liberally in Commissioner of Income Tax Vs. Mahant Oil Industries Pvt. Ltd., , the Bench observed :

"Since section 32A is a beneficial provision, it should receive a liberal construction to effectuate the basic idea behind the provision. Therefore, there is no reason to restrict the meaning of the term "plant" or "machinery" used in section 32A of the Act."

24. However, it should be noted that, earlier, the Bench also pointed out that the meaning attributable to term will have to be understood with reference to the context and the purpose for which a particular provision is enacted.

25. In Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., the term "paper and pulp" was held as inclusive of strawboard. The Supreme Court held that the Schedule in the Act which refers to "paper and pulp" intended to refer to the paper and pulp industry and, therefore, the term has to be broadly construed and, in the regard, the Supreme Court referred to the Industries (Development and Regulation) Act, wherein the expression "paper and pulp" included paperboard and strawboard.

26. In the instant case, the purpose behind section 80HHC is to confer certain benefits to those who are engaged in the business of export of any goods or merchandise to which the said section applies. Certainly, the object seems to be to confer a benefit on those who earn income by exporting goods or

merchandise. This benefit is not made available to those who deal in - (i) mineral oil and (ii) minerals and ores. Earlier, the class of goods to which this provisions was not applicable as per sub-section (2)(b) was following :

" (i) agricultural primary commodities, not being produce of plantations;

(ii) mineral oil;

(iii) minerals and ores; and

(iv) such other goods or merchandise as the Central Government may, by notification in the Official Gazette, specify in this behalf."

27. The original clauses (b)(i) and (iv) were omitted with which we are not concerned.

28. The provisions as it stood during the relevant period excludes only three items from the concept of goods or merchandise, viz "mineral" "oil", "minerals" and "ores", though Mr. Sarangan would contend that minerals and ores should be read as one item, describing a common category of goods.

29. Earlier a similar provision was found in section 89A (between June 1, 1982, and March 31, 1983). But, section 89A empowered the Government to specify the "goods and merchandise" the export turnover of which was eligible to tax relief. Section 80HHC was inserted with effect from April 1, 1983. Here, the scheme of the section was altered. Certain deductions in respects of export turnover of "goods and merchandise" were provided for in the main provision, viz section 80HHC(1). However, the said benefit it taken away in respect of the "goods and merchandise" specified in clause (b) of sub-section (2).

30. Export turnover of "goods and merchandise" specified in section 80HHC(2) are not eligible to the beneficial treatment whereas, u/s 89A, specified "goods and merchandise" were eligible to the beneficial treatment.

31. The change in the scheme of section 89A, when it was re-enacted as section 80HHC indicates that earlier, "goods and merchandise" had to be specified by notification for favourable treatment, while now exclusion is statutorily provided for; the present provision describes broadly the class of goods which are not to be considered as privileged for tax relief. From the general and broad class of "goods and merchandise", two or three classes of goods are excluded or enumeration of goods for exclusion, but by reference to the particular descriptions of the class to which they belonged.

32. There is one common quality that runs through this class of goods excluded from the main beneficial provision. These goods, now have the common characteristic of being natural inorganic substances forming part of the soil; these excluded goods indicate that they from the natural wealth of the country; these " goods" are not the product of any productive activity, but are extracted or obtained from "mother earth".

33. Therefore, the question is whether the board meaning available to the term "mineral" should be ignored in preference to a narrower meaning, if any. Contextually, there is nothing to indicate that Parliament intended to confine the term "mineral" to a limited class of goods; in fact, the present scheme of sub-section (2)(b) indicates that the goods which are directly obtained from the earth and which are considered treatment then, even the doctrine of *noscitur 80HHC* is satisfied and it is unnecessary to narrow down the scope of the term "mineral".

34. Reference to section 35E is not helpful to the assessee. Deduction of expenditure incurred to obtain any "mineral" is given u/s 35E to some extent. To avail of this benefit, the mineral has to fall within the class of goods specified in the Seventh Schedule. The Seventh Schedule covers many "minerals" and "ores"; for the purpose of section 35E, some specified "ores" are also considered as "minerals". According to Mr. Sarangan, this indicates that the term "mineral" should be understood with reference to the term "ore" and one term sheds light on the other, even u/s 80HHC; "mineral" from which metal is extracted could be compared to an "Ore" and it is only such a "mineral" that is deprived of the beneficial treatment u/s 80HHC(2)(b).

35. We are not able to accept this submission. If the intention of Parliament was to limit the scope of section 80HHC(2)(b), by the analogy of section 35E, the statute itself would have been so awarded. The phraseology of section (1) could have been similar to that of section 35E(2) read with the Seventh Schedule. In the fact, in section 35E(2), Parliament thought it unnecessary to use the word "ore" separately, because for the purposes said provision, any goods specified in the Seventh Schedule have to be considered as a "mineral". Like a statutory definition in which the meaning of a word can be artificially expanded, the class of goods could be broadened by an elaborate catalogue enacted in a Schedule.

36. Sub-clause (ii) of section 80HHC(2) refers to "minerals and ores" and not to "mineral and ores". The term "mineral" is used in the plural, as "minerals"; this indicates its width so as to include all kinds of minerals.

37. It is true that the term "minerals" is found in the company of the word "ores" and to some extent they are capable of analogous meaning scientifically or technologically. But the analogous meaning is not confined to this limited sphere of science and technology. Even in the broader sense of being the natural wealth obtainable from the earth, both terms are analogous. Therefore, there is no occasion to restrict the meaning of the word "mineral" by finding out a narrower meaning derived from its companionship of the term "ore". The doctrine of "*noscitur a sociis*" as sought to be projected by Sri Sarangan to the instant case cannot be applied at all.

38. There are several rules governing the construction of the provisions found in a fiscal legislation. The court has to select the most relevant principle applicable to the particular legislation to aid the understanding of the meaning of the particular provision.

39. A few more decisions cited at the Bar would show, that, normally, the meaning of the term "mineral" has a wider connotation though, in the context of its user in a particular legislation, it may have a narrower meaning.

40. In Commissioner of Income Tax Vs. Ramdas and Sons, the Calcutta High Court was considering the meaning of the terms "mineral" and "ores". There is also a term "mineral ore". The Encyclopedia of Chemistry is referred at page 902 which is relevant for our purpose, it reads :

"Ores :

With some exceptions, metals are obtained from bodies of material occurring in the earth called ores. An ore is always a source of metal; the term is not applied to non-metallic substances such as clay, limestone coal etc.

Ore is defined as a mixture of minerals which may be mined and treated as a source of metal with commercial profit. A mineral is a chemical compound occurring in nature and having a definite chemical composition and properties. An ore is distinguished from a mineral in that it is an aggregate of minerals and does not have a definite chemical composition; further, in order to be an ore, the material must have commercial value as a source of metal. A mineral may or may not be of commercial value.

In a mineral the metal is in chemical combination with another element or elements. Thus, the metal contained in an ore is usually not only chemically combined, but the compound is also physically mixed with other minerals. In the case of the so-called "native" ores, the metal is in the metallic state, not in chemical combination, but is mixed with other minerals which usually are of no value as they occur in the mixture. Most gold ores are native ores, and silver, mercury, platinum and lately other metals are also found in the native state.

The valuable mineral contained in an ore is an "ore mineral". The principal component of the ore mineral, of which the ore constitutes a source and which accounts for its commercial value, designates the kind of ore such as a gold ore, iron ore, copper ore, etc. The other minerals contained in the mixtures, which ordinarily are waste material, constitutes the gangue of the ore. Extraction of the metal from the ore is a process of separation from the gangue as well as a chemical breaking down of the ore mineral.

The fact that an ore must be a commercially profitable sources of metal introduces an economic factor. The ore must contain a large enough percentage of the metal, and the metal must be contained in such form physically and chemically as to permit its extraction at a profit".

41. By and large, the above conveys the meaning of the relevant terms. Ore also is a natural mineral or a mineral mixture from which useful substances are obtained. It is also loosely used to designate anything that is mined.

42. In the World Book, volume 13 at page 566, a chunk of granite is shown as a

mineral because it is made of minerals. The term "minerals" is defined as the most common solid material found on the earth and all rocks found on the earth's surface also contain minerals.

43. In *Amar Singh Modi Lal Vs. State of Haryana and Others*, the Full Bench was considering whether brick earth is mineral in the context of the Mines and Minerals (Regulation and Development) Act, 1957. The Full Bench negated the contention of the petitioners as to the applicability of the scientific and chemical definition of the word "minerals". After referring to the contention it was observed as follows (at page 363) :

"I regret my inability to agree. It appears to me too late in the day to abandon the wider and comprehensive connotation which has always been attributed to the word "minerals" in favour of a narrow and constricted meaning therefore. This is first so because admittedly the word "minerals" is not a term of art of either chemistry, geology or mineralogy. It is a common English word which has always been judicially construed in a wide amplitude. I find no warrant for reducing it larger import to the limited confines of a chemical formula. We had repeatedly invited the counsel for the petitioners to cite any authority wherein the word "mineral" has been circumscribed by a precise scientific definition which he has canvassed. Learned counsel had to fairly concede that in no precedent such a definition or limitation has even been attempted. In fact the unanimous view of authoritative pronouncement on the point would show the large and the unconfined sense in which the word "mineral" has always been accepted and used. I would hence advert briefly to the leading English and American cases on the point in their chronological sequence. As early as 1867 Lord Romilly in *Midland Railway C. v. Checkley* [1867] 4 Eq. 19, observed :

"Upon the first point, I think there is no question. Stone is, in my opinion, clearly a mineral, and in fact everything except the mere surface, which is used for agricultural purposes; anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fire-clay, or the like, comes within the word minerals, when there is a reservation of the mines and minerals from a grant of land; every species of stone, whether marble, limestone, or iron stone, comes, in my opinion, within the same category". In *Hext v. Gill* [1872] 7 Ch App 699 , Lord Justice Mellish laid down as follows :

"Many authorities, some at law and some in equity, have been brought before us to show what is the meaning of the word "minerals". But the result of the authorities, without going through them appears to be this; that a reservation of "minerals" includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the court to give it a more limited meaning".

Lord Macnaghten in the House of Lords case already referred to in *Lord Provost and Magistrates of Glasgow v. Farie* [1888] 13 App Cas 657, said as follows :

"Now the word "minerals" undoubtedly may have a wider meaning than the word "mines". In its widest signification it probably means every inorganic substance forming part of the crust of the earth other than the layer of soil which sustains vegetable life.... Be that as it may, it has been laid down that the word "minerals" when used in a legal document or in an Act of Parliament must be understood in its widest signification, unless there is something in the context or in the nature of the case to control its meaning".

44. The Full Bench also referred to the American view as to the term "mineral". The above decision was referred to by the supreme Court in *Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others*, Mr. Sarangan referred to some of the observations made in this decision wherein it was pointed out that the word "mineral" has no fixed but contextual connotation and (at page 1589) :

".... In the context of the Mines and Minerals (Regulation and Development) Act, we have no doubt that the word "mineral" is of sufficient amplitude to include "brick-earth". As already observed by us, if the expression "minor mineral" as defined in the Act includes "ordinary clay" and "ordinary sand", there is no earthly reason why "brick-earth" should not be held to be "any other mineral" which may be declared as a "minor mineral".

45. The aforesaid Full Bench decision of the Punjab and Haryana High Court was approved. The contextual interpretation was earlier pointed out by the Supreme Court in *Bhagwan Dass Vs. State of U.P. and Others*, . However, at page 1397, the Supreme Court pointed out that :

"It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in section 3(d) and (e) of the Act of 1957 and rule 2 (5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purposes of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting", in turn, means drawing out or obtaining. A tooth is "extracted" as much as is fruit juice and as much as a mineral. Only the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

46. In *The State of Mysore Vs. Swamy Satyanand Saraswati, Religious Preacher, Raichur*, , it was held that granite is a mineral and, therefore, when land is granted for a particular purpose such as cultivation of the land, the grant would not include the grant of a right to the mineral. We have already noted that even u/s 35E of the Act, Parliament treated some of the minerals and ores under a single category of "minerals". This is a strong indication of Parliament's intention as to the manner in which it would normally describe the particular subject-

matter in case is to be confined to some of the goods only. In the absence of any such specification of the several kinds of minerals, we do not think it proper for us to limit the scope of the term, only because the said term is found along with the term "ores".

47. The terms "minerals" and "ores" usually travel together in several of the legislations and therefore it cannot be straightaway held that one of them restricts the scope of the other.

48. For the reasons stated above, we are not able to persuade ourselves to agree with the contentions of the assessee. Consequently, both the questions are answered in the affirmative, against the assessee and in favour of the Revenue.