the authorities is of the determination of the fair market value of the property. Which method would be suitable to determine that value, as observed above, depends on the facts and circumstances of each case. The question of the use of that method which is favourable to the assessee or to the revenue has no bearing because it is fair market value which is to be determined and not the price which is favourable either to the assessee or the revenue. Consideration of a particular method being favourable to the assessee, therefore, would be wholly irrelevant and the Competent Authority is enjoined by law to adopt only that method which is most efficacious to determine the fair market value of the property sold.

(20) Lastly, the learned counsel for the appellant sought to attack the finding of the authorities on the ground which entirely fall within the domain of appreciation of evidence. It was contended that the report of the valuer produced by the appellant was wrongly rejected on wholly untenable reasons and the value fixed was highly excessive. We are afraid, it is not open to us to scrutinise the evidence again or to disturb the finding as to the fair market price on merits because the appeal to this Court under section 269-H is maintainable only on a question of law. It is, therefore, not open to the appellant to challenge the correctness of the fair market price assessed by the authorities below on such a ground and the contention of the learned counsel has to be overruled.

(21) In the result these appeals fail and are hereby dismissed but without any order as to costs.

G. C. Mital, J.—I agree.

N.K.S.

Before P. C. Jain, C.J. and I. S. Tiwana, J.

BABU RAM NARAIN PARSHAD,—*Appellant*

versus

SALES TAX TRIBUNAL AND ANOTHER,—*Respondent.*

Letter Patent Appeal No. 348 of 1982.

December 17, 1985.

Punjab General Sales Tax (XLVI of 1948)—Section 21—Assessment framed levying tax on the assessee—Such assessee filing appeal before the Deputy Excise and Taxation Commissioner—Said

authority remanding the case to assessing authority for redecision with a direction that a specific decision of the High Court be kept in view while disposing of the matter—Assessee filing revision before the Joint Excise and Taxation Commissioner as provided under the Act—Act meanwhile amended making the order of Deputy Excise and Taxation Commissioner appealable to Tribunal—Revision filed by the assessee before the Joint Excise and Taxation Commissioenr Transferred to tribunal in view of the amendment—Such appeal dismissed as withdrawn on the request of the assessee—Joint Ercise and Taxation Commissioner suo-moto taking up the matter and quashing the order of remand made by the Deputy Excise and Taxation Commissioner in view of the fact that the Supreme Court had over-ruled the decision referred to in the order for remand—Proceedings initiated by the Joint Excise and Taxation Commissioner—Whether without jurisdiction—Order of the Deputy Excise and Taxation Commissioner ordering remand—Whether stood merged in the order of the Tribunal.

Held, that when an order is assailed before the appellate or a revisional authority. the latter can do one of the three things, namely, (i) it may reverse the order under appeal or revision; (ii) it may modify that order and (iii) it may merely dismiss the appeal or revision and thus confirm the order without any modification, but this theory of merger of the decree of the lower court in the decree of the appellate Court applies only if the appellate court reverses, modifies or confirms the orifinal decree in its own judgment, i.t., does any of the three things on merits. This principle, however, cannot be applied when the appellate Court dismisses the appeal as withdrawn as the right to withdraw a suit, appeal or a lis, is the unquestionable right of the plaintiff or the appellant. As such the order of the Deputy Excise and Taxation Commissioner could not be said to have merged in the order of the Tribunal and as such the order of the Joint Excise and Taxation Commissioner passed as a result of the *suo*-moto proceedings is within jurisdiction.

(Paras 2 and 3)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 10th December, 1981 delivered by Hon'ble Mr. Justice M. M. Ponchhi in C.W.P. No. 288 of 1973, praying that the Lettrs Patent Appeal may kindly be accepted and the writ petition be allowed with costs.

Ashok Bhan, Senior Advocate with Ajai Mittal, Advocate, *for the Petitioner.*

G. S. Grewal, A. G. Punjab, *for the Respondent.*

JUDGMENT

I. S. Tiwna J.—

(1) This judgment disposes of two Letters Patent Appeal Nos. 348 and 349 of 1982 as these are directed against the common judgment of learned Single Judge dismissing the two writ petitions filed by the appellant firm, The appellant M/s. Babu Ram Narain Parshad, a partnership firm, was engaged in the business of crushing of oilseeds of Sarson, Toria and Til at Jullundur and was a registered dealer under the Punjab General Sales Tax Act, 1948 (for short, the Act). For the assessment years 1961-62 and 1962-63, it submitted the requisite return claiming exemption from tax on the sale proceeds of edible oils. The Assessing Authority,—*vide* two different but similar orders dated January 20, 1965 and February 28, 1965, while making observation that the dealer had claimed the above noted exemption, subjected it to tax. The firm preferred two appeals before the Deputy Excise and Taxation Commissioner who,—*vide* his two similar orders dated May 12, 1966, accepted the appeals and remained the cases with the following observation:—

> "I have heard both the parties and have gone through the assessment record. The appellant was not assessed to tax as regards the sale of Sarson oil and no demand notice was served upon him. The orders in this regard are vague and the cases are therefore remanded to the assessing authority for framing the assessment orders in proper way. While doing so, the Punjab High Court Judgment in the case of M/s. Ganga Ram Suraj Parkash may be kept in view."

The judgment of this Court referred in this order has sinre been reported as *Ganga Ram Suraj Parkash* v. *The State of Punjab* (1). The firm felt aggrieved by these orders and preferred two respective revision petitions before the Joint Excise and Taxation Commissioner. Before these could be disposed of by the said authority, the Act was amended and a provision for the appointment of a Sales Tax Tribunal was made and the orders passed by the Deputy Excise and Taxation Commissioner were made appealable to the said Tribunal. Consequently the revision filed by the firm before the Joint Excise and Taxation Commissioner were transferred to the Tribunal for disposal. On March 29, 1966, when the matter came up for hearing

(1) (1963) 14 S.T.C. 476.

before the Tribunal, the petitioner firm made a request for the dismissal of those petitions as withdrawn. The Tribunal,—*vide* its common order dated March 29, 1966, dismissed the petitions as withdrawn. Later the Joint Excise and Taxation Commissioner exercising powers under section 21 of the Act in the light of the Supreme Court judgment in *The State of Punjab* v. *M/s Sansari Mal Puran Chand* (2), overruling the judgment of this Court in *M/s. Ganga Ram Suraj Parkash* (supra), took up the matter suo moto and,—*vide* his two different but similar orders dated January 6, 1972, quashed orders of the Deputy Excise and Taxation Commissioner dated May 12, 1966, remanding the cases to the Assessing Authority. The Joint Excise and Taxation Commissioner was of the view that since the judgment in *M/s. Ganga Ram Suraj Parkash* (supra), in the light of which the cases had been remanded by the Deputy Excise and Taxation Commissioner to the Assessing Authority had been overruled, there was no necessity of sending the cases back and rather framed the final assessment himself. The appellant impugned these two orders of the Joint Excise and Taxation Commissioner before the learned Single Judge and, as already indicated, has remained unsuccessful.

(2) The solitary contention raised before us by Mr. Ashok Bhan, learned Senior Advocate for the appellant, is that the impugned orders of the Joint Excise and Taxation Commissioner passed as a result of suo moto proceedings were totally without jurisdiction as the orders of the Deputy Excise and Taxation Commissioner dated May 12, 1966, stood merged in the order of the Tribunal dated March 29, 1966 even though the Tribunal had only dismissed the petitions before it as withdrawn and with this affirmance of the impugned orders of the Deputy Excise and Taxation Commissioner by the Tribunal, the Joint Excise and Taxation Commissioner could not go into the validity of this order of the Tribunal. Having given our thoughtful consideration to this submission of the learned counsel we, however, find no merit in the same.

(3) It is no doubt true that when an order is assailed before an appellate or a revisional authority. the latter can do one of three things, namely, (i) it may reverse the order under appeal or revision; (ii) it may modify that order and (iii) it may merely dismiss the appeal or revision and thus confirm the order without any modification, but this theory of merger of the decree of the lower court in

(2) (1969) 21 S.T.C. 91.

the decree of the appellate Court applies only if the appellate Court reverses, modifies or confirms the original decree in its own judgment, i.e., does any of the three things on merits. To our mind, this principle cannot be applied when the appellate Corut dismisses the appeal as withdrawn as we are of the opinion that to withdraw a suit, appeal or a lis, is the unquestionable right of the plaintiff or the appellant. The effect of a petition dismissed simpliciter or as withdrawn has been considered by a Division Bench of the Delhi High Court in *Ashoka Marketing Ltd.* v. *B. L. Gupta and another* (3). This is what has been opined:—

> "Whatever may be the stage at which the petition is withdrawn, the effect of the order dismissing the petition depends upon the order passed by the Court or the tribunal and not the stage of its withdrawal. The Court or the tribunal would be free to dismiss the petition on merits. If the order were simply "dismissed" then it would be a dismissal on merits. If the order does not give reasons, the order may not act as res judicata on the principle underlying the decision of the Supreme Court in *Daryao* v. *The State of U.P.* (4). But nevertheless it would be a final order which is appealable on the principle of *Ramesh* v. *Gendalal* (5). But if the Court chooses not to decide the merits and expressly passes the order dismissed as withdrawn", the order is neither res judicata nor final. No appeal lies from it. On the contrary, a fresh petition would be maintainable in the absence of a provision like Order XXIII, Rule 1, Civil Procedure Code."

We fully agree with this enunciation of law and thus repel the above noted contention of the learned counsel.

(4) For the reasons recorded above, these appeals fail and are dismissed but with no order as to costs.

H.S.B.

(3) 1975 Lah. I.C. 1715.
(4) (1982) 1 S.C.R. 574.
(5) A.I.R. 1966 S.C. 1445.