

(2010) 05 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 2786 of 2010

R.A. Himmatsingka and through its Partner Sri Mohan
Himmatsingka

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0003

Judgement

Dipak Misra, C.J.—By this writ petition preferred under Article 226 of the Constitution of India, the Petitioner has prayed for quashment of the order dated 8.1.2010, Annexure-8, passed by the Commissioner of Income Tax-II, Patna, u/s 263 of the Income Tax Act, 1961 (for brevity "the Act") whereby the said authority has cancelled the order dated 30.3.2003 (Annexure-5) passed u/s 271(1)(c) of the Act by the Assessing Officer and directed to proceed in accordance with law.

2. Filtering the unnecessary details, the facts which are essential to be stated are that the Assessee-Petitioner is a firm engaged in the dealership of Tata Diesel vehicles servicing and the dealership of Bharat Petroleum Corporation Limited. The order of assessment was framed for the assessment year 2004-2005 and the Assessing Officer determined the tax liability at Rs. 14,47,725/- and in the course of assessment, initiated a proceeding u/s 271(1)(c) of the Act on the ground that the Assessee-Petitioner had furnished inaccurate particulars of income which came in the compartment of concealment of income. The Assessee-Petitioner preferred an appeal, being I.T.A. No. 644/A-11710/2006-07, before the Commissioner of Income Tax (Appeals)-II, Patna, who, by order dated 3.10.2007, repelled the submissions canvassed by the Assessee-Petitioner and dismissed the appeal.

3. Being grieved and dissatisfied with the aforesaid order, the Assessee-Petitioner preferred an appeal before the Income Tax Appellate Tribunal (ITAT), Patna Bench, Patna (for short, "the tribunal") and the tribunal allowed the appeal in

part vide order dated 23.3.2009.

4. Thereafter, the Assessing Officer passed, the following order:

Further the Assessee submitted that the penalty cannot be imposed for mere omission unless there is some evidence to show or some circumstances found from which it can be gathered that the omission is intentional and attributable to intention and desire on the part of the Assessee to hide or conceal the income so as to avoid the imposition of tax thereon.

I have duly considered the reply of the Assessee as well as the case records including the assessment order and considering the facts and circumstances of the case, I drop the penalty proceedings initiated in this case u/s 271(1)(c) of the I.T. Act.

5. After the said order came to be passed, the Commissioner of Income Tax issued a notice u/s 263 of the Act expressing the view that the order passed by the Assessing Officer is considered as erroneous causing prejudice to the interest of the revenue and he was required to show cause why the penalty proceedings initiated in his case u/s 271(1)(c) of the Act which has been dropped should not be cancelled and suitable direction be issued to the Assessing Officer for passing a fresh order u/s 271(1)(c) of the Act.

6. The Assessee-Petitioner filed his show cause contending, inter alia, that the Commissioner has no jurisdiction to initiate a proceeding u/s 263 of the Act as the Assessing Officer had only dropped the penalty proceeding whereas Section 263 of the Act covers in its ambit only those orders which pertain to the orders of assessment which are erroneous and prejudicial to the interest of the revenue. It was canvassed that Section 263 was only applicable to the order of assessment or re-assessment but not to an order of penalty as envisaged u/s 271(1)(c) as penalty does not form a part of the assessment. That apart, it was contended that the order passed by the Assessing Officer cannot be regarded to be erroneous and prejudicial to the interest of revenue.

7. The Commissioner, by the impugned order dated 8.1.2010, repelled the submissions holding, inter alia, that the language employed u/s 263 of the Act could not be restricted to assessment or re-assessment proceeding alone but would cover in its ambit and sweep proceeding for imposition of penalty. As far as the aspect "prejudicial to the interest of revenue" is concerned, the Commissioner opined that the order passed by the Assessing Officer dropping the penalty proceeding initiated u/s 271(1)(c) of the Act is erroneous and also prejudicial to the interest of the revenue. Being of this view, he annulled the order of the Assessing Officer dated 30.3.2009 dropping the penalty proceeding and directed him to pass a fresh order considering the entire material on record.

8. We have heard Mr. Krishna Nandan Singh, learned Senior Counsel for the Petitioner and Mr. Harshwardhan Prasad, learned Senior Standing Counsel alongwith Mrs. Archana Sinha for the revenue.

9. The two questions that emerge for consideration in this writ petition are whether the Commissioner in exercise of power u/s 263 of the Act can direct for reopening of a penal proceeding because of the language employed u/s 263 of the Act, and secondly, whether the conditions precedent to Section 263 of the Act are satisfied to justify the action.

10. To appreciate the controversy in proper perspective, it is seemly to reproduce Section 263 of the Act which reads as under:

263. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the Assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation.--For the removal of doubts, it is hereby declared that, for the purposes of this Sub-section,--

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include--

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the income tax Officer on the basis of the directions issued by the Joint Commissioner u/s 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf u/s 120;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this Sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this Sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(2) No order shall be made under Sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in Sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has

been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.--In computing the period of limitation for the purposes of Sub-section (2), the time taken in giving an opportunity to the Assessee to be reheard under the proviso to Section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

11. In this regard, we may refer with profit to the decision of the Allahabad High Court in Commissioner of Income Tax Vs. Braj Bhushan Cold Storage, wherein the Division Bench of Allahabad High Court was dealing with the reference whether the Commissioner of Income Tax u/s 263, can revise the order passed by the Income Tax Officer u/s 271(1)(c) because he had dropped the penalty proceedings alongwith other issues. The Division Bench has held thus:

Having heard Sri A.N. Mahajan, learned Standing Counsel for the Revenue, we find that it is not in dispute that the penalty proceeding has been initiated during the course of the assessment proceeding itself. However it was dropped by the assessing authority on September 28, 1984. We find that Clause (a) to Explanation 4 of Section 271(1)(c) of the Act provides that the amount of tax sought to be evaded in a case where the amount of income, in respect of which particulars have been concealed, or incomplete particulars have been furnished exceeds the total income assessed means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income. Thus, the view of the assessing authority that as the tax effect was nil the order dropping the penalty proceedings was erroneous and also prejudicial to the interests of the Revenue. The income tax Officer while dropping the penalty proceeding has not taken into consideration Clause (a) to Explanation 4 of Section 271(1)(c) of the Act. In the case of MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, the court has held that incorrect assessment of fact and incorrect application of law will satisfy the requirement of the order being erroneous. In the same category will fall the order passed without applying the principles of natural justice or without application of mind if due to an erroneous order of the income tax Officer, the Revenue is losing the tax lawfully payable by a person, it would be certainly prejudicial to the interests of the Revenue. Thus, the Tribunal was not justified in holding that the order dropping the proceeding was neither prejudicial nor against the interest of the Revenue.

12. In Addl. Commissioner of Income Tax Vs. Indian Pharmaceuticals, the Division Bench of the High Court of Madhya Pradesh was dealing with the issue whether the tribunal was justified in holding that the exercise of jurisdiction u/s 263 by the Additional Commissioner of income tax in respect of penalty action is without jurisdiction and bad in law. The Division Bench has expressed thus:

In C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, while considering the word "assessment", their Lordships of the Supreme Court observed at page 429):

A review of the provisions of Chapter-IV of the Act sufficiently discloses that the word "assessment" has been used in its widest connotation in that chapter. The title of the chapter is "Deductions and Assessment". The section which deals with assessment merely as computation of income is Section 23; but several sections deal not with computation of income, but determination of liability, machinery for imposing liability and the procedure in that behalf. Section 18A deals with advance payment of tax and imposition of penalties for failure to carry out the provisions therein. Section 23A deals with power to assess individual members of certain companies on the income deemed to have been distributed from taxable territories, Section 24B deals with collection of tax out of the estate of deceased persons, Section 25 deals with assessment in case of discontinued business, Section 25A with assessment after partition of Hindu undivided families and Sections 29, 31, 33 and 35 deal with the issue of demand notices and the filing of appeals and for reviewing assessment and Section 34 deals with assessment of incomes which have escaped assessment. The expression "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding that when by Section 44, it is declared that the partners or members of the association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income u/s 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof. Nor has the expression, "all the provisions of Chapter-IV shall so far as may be apply to such assessment" a restricted content; in terms it says that all the provisions of Chapter-IV shall apply so far as may be to assessment of firms which have discontinued their business. By Section 28, the liability to pay additional tax which is designated penalty is imposed in view of the dishonest or contumacious conduct of the Assessee. It is true that this liability arises only if the income tax Officer is satisfied about the existence of the conditions which give him jurisdiction and the quantum thereof depends upon the circumstances of the case.

These observations of their Lordships, therefore, clearly indicate that the assessment does not mean only computation of income but consideration of all facts including the liability for penalty, or, as the language of Section 271(1)(a) indicates, consideration of facts that may attract the provisions contained in that section.

13. After so stating, their Lordships proceeded to hold as follows:

Under this provision, jurisdiction is conferred on the Commissioner to call for and examine the record of any proceeding under this Act and on such examination if he finds that the order passed therein by the ITO is erroneous in so far as it is prejudicial to the interests of the revenue, he may revise the order after

following the procedure prescribed under this provision. If, therefore, the ITO during the pendency of the proceedings has omitted to take notice of facts attracting Section 271(1)(a) of the Act during the pendency of proceedings which ultimately ended in an order of assessment, the order would be erroneous and in this view of the matter, the Commissioner was right in exercising jurisdiction conferred on him u/s 263 of the Act.

Emphasis supplied

14. In Commissioner of income tax, M.P. v. Narpat Singh Malkhan Singh 1980 128 ITR 77, the Division Bench of the Madhya Pradesh High Court was dealing with the jurisdiction of the Commissioner u/s 263 of the Act as to whether the Commissioner can set aside the order passed by the Assessing Officer and direct him to initiate a penalty proceeding after the order passed by the ITO had merged with the order of the AAC Commissioner. In that context, G.P. Singh, C.J. speaking for the court opined thus:

The ITO's jurisdiction to impose penalty u/s 273(c) of the Act arises if he "in the course of any proceeding in connection with the regular assessment" is satisfied that the Assessee has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of Sub-section (3A) of Section 212. The words "in the course of any proceeding" have been the subject-matter of interpretation by the Supreme Court and it is settled that the necessary satisfaction conferring jurisdiction on the ITO to impose penalty has to be reached before the passing of the order of assessment [See Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar, and D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat, II Ahmedabad, . To put it differently, the ITO has no jurisdiction to impose penalty u/s 273 if he omits to record his satisfaction before completing the assessment. If an order of assessment is passed without recording the satisfaction that circumstances exist for imposition of penalty when such a satisfaction should have been recorded, the Commissioner can, in the exercise of his power of revision u/s 263, set aside the assessment and direct the ITO to make a fresh assessment after taking into account the circumstances which make out a case for imposition of penalty. An order of assessment which does not record the satisfaction of the ITO regarding the existence of circumstances making out a case for imposition of penalty when it is, clear that such circumstances do exist will be an order prejudicial to the interest of the revenue because, after the order of assessment, the ITO will have no jurisdiction to impose penalty. The Commissioner in such a case, in exercise of his revisional power, has to set aside the order of assessment to enable the ITO to initiate penalty proceedings. The case of Addl. Commissioner of Income Tax Vs. Indian Pharmaceuticals, is a case of this type. The difficulty in the instant case, however, is that the order of assessment passed by the ITO cannot be set aside in revision for the reason that it would result in setting aside the order of the AAC passed in appeal. It necessarily follows that it was not open to the Addl. Commissioner to set aside the assessment order passed by the ITO and to direct

him to make fresh assessment keeping in mind the provisions of Section 273(c). The Additional Commissioner could not have also directed the ITO to initiate proceeding for imposition of penalty u/s 273(c) without setting aside the order of assessment for the reason that the ITO had no jurisdiction after the order of assessment to initiate penalty proceedings as he had not recorded his satisfaction at or before the passing of the order of assessment that circumstances existed which made out a case for the initiation of penalty proceedings.

15. In Commissioner of Income Tax Vs. Sara Enterprises, , the Division Bench of the Madras High Court was dealing with the questions with reference to Section 256(1) of the income tax Act, 1961, whether, on the facts and in the circumstances of the case and having regard to the provisions of Section 263 read with Section 275 of the income tax Act, 1961, the Appellate Tribunal was justified in cancelling the order passed by the Commissioner of income tax u/s 263 of the income tax Act, 1961 and whether the bar of limitation contained u/s 275 of the income tax Act, 1961, would attenuate or curtail the powers of the Commissioner of income tax, vested in him u/s 263 of the said Act. In the said case, the income tax Officer, during the course of the assessment proceeding, initiated penalty proceedings u/s 271(1)(c) of the Act. Subsequently, the income tax Officer dropped the penalty proceedings. The Commissioner of income tax (Administration), on scrutiny of the order passed by the income tax Officer, came to the conclusion that the order passed by the concerned income tax Officer in dropping the penalty proceedings was erroneous and prejudicial to the interest of the revenue.

16. In this regard, we may fruitfully refer to (2008) 113 ITD 72 wherein a Division Bench of the Delhi High Court dealing with the exercise of power u/s 263 of the Act had directed the Assessing Officer to revise the order dropping the penalty proceedings. At that juncture, in that context, the Bench held that the order of the Assessing Officer was cryptic, but it did not deal with the jurisdiction of the Commissioner to remit the matter u/s 263 of the Act.

17. The said order passed by the Delhi High Court in Toyota Motor Corporation (supra) came to be assailed before the Apex Court in Toyota Motor Corporation Vs. Commnr. of Income Tax, As is evincible, in the said case, the proceedings u/s 271C read with Section 274 were dropped. The Commissioner initiated revision proceeding u/s 263 and directed the Assessing Officer to revise the order passed by him. The tribunal came to the conclusion that the penalty proceedings were not dropped casually by the Assessing Officer. The Revenue moved the High Court wherein an opinion was expressed that the appellate tribunal could not have substituted its own reasons which were not required to be recorded by the Assessing Officer and remanded the matter to the Assessing Officer to decide the matter in terms of the order passed by the Commissioner u/s 263 of the Act. The Assessee went before the Apex Court wherein their Lordships took note of the fact situation and held thus:

We do not think it necessary to interfere at this stage. It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects including the materials, if any, already placed by the Assessee, and pass a reasoned order.

18. The Apex Court in *Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd.*, has held that the circumstances under which an amendment was brought to Section 271(1)(c)(iii) to mean that the said provision was intended to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or minus figure. Their Lordships opined that even during the period between April 1, 1976 and April 1, 2003, the position was that penalty was leviable even in a case where the addition of concealed income reduces the returned loss. This view was expressed by holding that the Explanation 4 to Section 271(1)(c)(iii) regarding the imposition of penalty even if the returned income is a loss is clarificatory and not substantive.

19. In this context, we must note a few decisions which have taken a different view. In *Addl. Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D'costa*, a Division Bench of Delhi High Court was dealing with the questions, whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the Additional Commissioner could not pass an order u/s 263 relating to penalties and whether, on the facts and in the circumstances of the case, the Tribunal was right in modifying the order of the Additional Commissioner passed u/s 263 setting aside the assessments in question and in that context the court has held as follows:

The only question before us is whether the Tribunal was right in revoking the order of the Addl. Commissioner in so far as it pertains to the question of penalties under Sections 271(1)(a) and 273(b). Here, we find ourselves in complete agreement with the view taken by the Tribunal. It is well established that proceedings for the levy of a penalty whether u/s 271(1)(a) or u/s 273(b) are proceedings independent of and separate from the assessment proceedings. Though the expression "assessment" is used in the Act with different meanings in different contexts, so far as Section 263 is concerned, it refers to a particular proceeding that is being considered by the assessment proceedings and the assessment order to expand the scope of these proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by the Commissioner. There is no identity between the assessment proceedings and the penalty proceedings; the latter are separate proceedings, that may, in some cases, follow as a consequence of the assessment proceedings. As the Tribunal has pointed out, though it is usual for the ITO to record in the assessment order that penalty proceedings are being initiated, this is more a matter of convenience than of legal requirement. All that the law requires, so far as the penalty proceedings are concerned, is that they should be

initiated in the course of the proceedings for assessment. It is sufficient if there is some record somewhere, even apart from the assessment order itself, that the ITO has recorded his satisfaction that the Assessee is guilty of concealment of other default for which penalty action is called for. Indeed, in certain cases it is possible for the ITO to issue a penalty notice or initiate penalty proceedings even long before the assessment is completed though the actual penalty order cannot be passed until the assessment is finalized. We, therefore, agree with the view taken by the Tribunal that the penalty proceedings do not form part of the assessment proceedings and that the failure of the ITO to record in the assessment order his satisfaction or the lack of it in regard to the levability of penalty cannot be said to be a factor vitiating the assessment order in any respect. An assessment cannot be said to be erroneous or prejudicial to the interest of the revenue because of the failure of the ITO to record his opinion about the levability of penalty in the case. We, therefore, answer the first question referred to us in the affirmative and in favour of the Assessee.

20. In Addl. The Additional Commissioner of Income Tax, New Delhi Vs. Achal Kumar Jain, the question that arose for consideration was whether on the facts and in the circumstances of the case, the tribunal was legally correct in vacating the Additional Commissioner of income tax's direction to the income tax Officer to initiate penalty proceedings under Sections 271(1)(a) and 273 of the income tax Act, 1961. Their Lordships referred to the decisions in Indian Pharmaceuticals (supra); Addl. Addl. Commissioner of Income Tax Vs. Kantilal Jain, Addl. Commissioner of Wealth Tax Vs. Nathoolal Balaram, ; C.A. Abraham (supra); Bhikaji Dadabhai & Co. (supra); Commissioner of Income Tax Vs. Narpat Singh Malkhan Singh, and placing reliance on the decision in Addl. Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D'costa, expressed the view as follows:

Under Section 263, as above noticed, the Commissioner can call for the record of any proceeding under the Act. In the present case he does so. He calls for the record pertaining to the assessment proceedings. He examines them, which he is empowered to do. He considers the order of assessment passed therein. He finds that the facts pertaining to the late filing of the return and non-filing of estimate of advance tax have not been considered. The provisions of Sections 271(1)(a) and 273 of the Act have not been invoked. Does this make the order of assessment erroneous and prejudicial to the interests of Revenue? The answer will depend on whether the penalty proceedings are part of the assessment proceedings? Is it essential for the ITO to record his satisfaction or direction to issue a notice u/s 271 as a part of the assessment order? We think not. Such a recording of satisfaction or a direction is not an integral part of the assessment order that a failure to do so would render it erroneous.

The ITO's jurisdiction to impose penalty u/s 271(1)(a) arises only if he is satisfied "in the course of any proceedings under this Act" that the return has either not been furnished or furnished late, without reasonable cause. Similar is the situation with regard to the filing of estimate of advance tax and Section 273

uses the words "in the course of any proceedings in connection with regular assessment".

The Supreme Court has dealt with this aspect of the matter in *Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar*, and *D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat, II Ahmedabad*, and held that the necessary satisfaction of the ITO which gives him jurisdiction to impose the penalty has to be arrived at before the passing of the assessment order.

Though it is true that the satisfaction of the ITO, before the conclusion of the assessment proceedings, is the condition precedent for an exercise of the jurisdiction to impose penalty, the non-expression of such a satisfaction in the assessment order cannot invalidate it. It is well established that proceedings for the levy of penalty are independent and separate from assessment proceedings.

Therefore, if the ITO fails to record his satisfaction with regard to penalty before completing the assessment or in the assessment order, when on the facts it is patent that such a satisfaction should exist, it will not make the assessment order erroneous and prejudicial to the Revenue. The Commissioner's jurisdiction in the present case is confined to the assessment order/proceedings and he can revise an order, should he find any error which results in a prejudice to the Revenue. u/s 263 he can set aside the order of the ITO and direct him to make a fresh assessment in accordance with law.

21. After so holding, their Lordships concurred with the view expressed in *J.K.D" Costa*'s and proceeded to state that the Commissioner is entitled to bring within his scope and deal with penalty proceedings and orders (which are admittedly connected but distinct) while calling for and examining the record of the assessment proceedings and orders.

22. In *P.C. Puri Vs. Commissioner of Income Tax, Delhi-II*, it has been held that an assessment cannot be said to be prejudicial to the interest of revenue because of the failure of the I.T.O. to record his opinion about the levability of the penalty as penalty proceedings do not form a part of the assessment proceedings.

23. In *Commissioner of Income Tax Vs. Keshrimal Parasmal*, the High Court of Rajasthan has held thus:

Thus, the position boils down to this that the view taken in *Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D"costa*, has been confirmed by the Supreme Court and according to this case, the Commissioner of income tax is not entitled to set aside the assessment order passed by the income tax Officer on the ground that there was no mention of initiation of penalty proceedings in the assessment order and the Commissioner of income tax in the proceedings u/s 263 of the Act cannot direct the income tax Officer to make fresh assessment to initiate penalty proceedings. As the position stands concluded and settled by the Supreme Court, the question which is now sought to be referred by the Commissioner of income

tax cannot be said to be a substantial question of law arising out of the Tribunal's order. It is only a question of academic nature.

In this view of the matter, it cannot be said that the decision of the Tribunal rejecting the reference application by its order dated August 12, 1983, is incorrect.

24. In Surendra Prasad Singh and Others Vs. Commissioner of Income Tax, , the Gauhati High Court concurred with the view taken by the Delhi High Court in J.K.D "Costa case (supra).

25. In Commissioner of Income Tax Vs. Linotype and Machinery Ltd., the Calcutta High Court also followed the view rendered in J.K.D" Costa (supra) and Surendra Prasad Singh and Ors. (supra).

26. On a perusal of the aforesaid decisions, it is luculent that there are divergent views. The hub of the matter is whether the words used in Section 263 of the Act would include dropping of a penalty proceeding that has been initiated at the time of framing of the assessment. On a studied scrutiny of Section 263 of the Act, it is perceptible that the said provision empowers the Commissioner of income tax, inter alia, to call for and scrutinize the record of any proceeding under the Act and, if necessary, to revise any order passed therein if he considers that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

27. Two facets that are required to be taken note of are that it may be "any order" and the same might be one passed by the Assessing Officer "in any proceeding" under the Act. As has been held in Narpat Singh Malkhan Singh (supra) that the words "in the course of any proceeding" has a wide connotation. The High Court of H. H. RAJDADI SMT. BADAN KANWAR MEDICAL TRUST Vs. COMMISSIONER OF WEALTH-TAX., has held that recording of the words "proceedings are dropped" amounted to an order and such order can be revised by the Commissioner of income tax even if the same has not been communicated to the Assessee. Thus, Section 263 would take within its ambit and sweep even the orders whereby either proceedings are dropped and proceedings are filed. In New Jagat Textile Mills Pvt. Ltd. Vs. Commissioner of Income Tax, it has been observed that the settled legal position is that even if the proceedings are dropped and terminated or filed, any such noting would amount to an order and it would be open to the revenue to initiate re-assessment proceedings or revisional proceedings upon the necessary conditions being fulfilled in the exercise of jurisdiction under one or the other provision.

28. Thus, in essence, the initial words of Section 263 "any proceedings" under the Act are of immense signification. Secondly, Section 263 which uses the words "any order passed therein" by the Assessing Officer also has its importance. It is also seen from Section 263 that the said provision uses the words "pass such order thereon as the circumstances of the case justify, including.....". The word, "proceedings" hence, we are dispos