



***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : December 6, 2006

+ ITA No 310 of 2004

COMMISSIONER OF INCOME TAX Appellant
! Through Ms. Prem Lata Bansal, Advocate

versus

\$ BRITISH AIRWAYS ... Respondent
^ Through Mr. M.S. Syali, Senior Advocate
with Mr.Saubhagya Agarwal and Mr. Aseem
Mowar, Advocates

✓ ITA No 32 of 2006

COMMISSIONER OF INCOME TAX Appellant
! Through Ms. Prem Lata Bansal, Advocate

versus

\$ BRITISH AIRWAYS ... Respondent
^ Through Mr. M.S. Syali, Senior Advocate
with Mr.Saubhagya Agarwal and Mr. Aseem
Mowar, Advocates

AND

+ ITA No 52 of 2006

COMMISSIONER OF INCOME TAX Appellant
! Through Ms. Prem Lata Bansal, Advocate

versus

\$ BRITISH AIRWAYS ... Respondent
^ Through Mr. M.S. Syali, Senior Advocate
with Mr.Saubhagya Agarwal and Mr. Aseem
Mowar, Advocates

CORAM:

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be



ORDER

1. ITA No. 310/2004 is directed against the order dated 8.10.2003 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1725 of 1999 for the Financial Year ('FY') 1989-90. By the impugned order, while dismissing the Revenue's appeal the ITAT confirmed the deletion of penalty under Section 271C on the basis of the short deduction of tax on payment of meal and conveyance allowance, as on the date of imposition of such penalty, the quantum appeal in respect of these issues had already been decided by the ITAT in favour of the assessee.

2. The other two appeals viz, ITA 32 and 52 of 2006 are directed against the impugned order dated 6.5.2005 passed by the ITAT dismissing the Revenue's appeals, ITA Nos. 3846 and 3847 of 2003, concerning the levy of penalty for the FYs 1990-91 and 1991-92.

3. The facts in brief are that for the FYs 1989-90, 1990-91 and 1991-92, the Assessing Officer ('AO') passed an order dated 10.6.1996 calculating short deduction of tax at source on the meal allowance and conveyance allowance paid by the Respondent/assessee to its cabin crew. The



22.10.1996 deleted the short deduction of tax on conveyance allowance and confirmed the short deduction of tax on meal allowance.

4. Against the said order dated 22.10.1996 both the Assessee and the Revenue filed appeals before the ITAT. By an order dated 22.7.1997, the ITAT allowed the Assessee's appeals and deleted the short deduction of tax on meal allowance for the FYs 1989-90, 1990-91 and 1991-92. The Revenue sought a reference to this High Court against this order but the reference application was dismissed by the ITAT on 24.2.1999. Thus the question of meal allowance attained finality. The Revenue's appeals before the ITAT on the question of conveyance allowance were still pending before the ITAT at this point.

5. Meanwhile, on 5.12.1997, a show cause notice was issued by the AO seeking to levy penalty on the short deduction of tax on both the meal allowance and the conveyance allowance. This was followed by an order dated 30.6.1998 levying a penalty on the assessee under Section 271C of the Act. This penalty order dated 30.6.1998 was reversed by the CIT (A) by order dated 18.1.1999. The CIT (A) held that since by order dated 22.7.1997, the ITAT had



the CIT (A), there could be no question of levying penalty on this score. Against this order 18.1.1999, the Revenue filed an Appeal being ITA No.1725 of 1999 before the ITAT. This appeal concerned the levy of penalty for the AY 1989-1990. The corresponding penalty appeals filed by the Revenue before the ITAT as regards AYs 1990-91 and 1991-92 were ITA Nos. 3846 and 3847 of 2003 respectively.

6. We now revert to the Revenue's quantum appeals on the issue of conveyance allowance, for the three AYs 1989-1990, 1990-91 and 1991-92, which were pending before the ITAT. By its common order dated 9.1.2003 the ITAT dismissed all the three Appeals of the Revenue on technical grounds. The Revenue filed a batch of appeals which were allowed by this Court on 24.8.2004. The order dated 9.1.2003 passed by the ITAT was set aside and the case was remanded to the ITAT for a fresh disposal of the issue of short deduction of tax on conveyance allowance on merits. We are informed that on remand, the ITAT again dismissed the appeals on 30.3.2006 against which the Revenue has filed appeals again in this Court. Therefore the issue of short deduction of tax on payment of conveyance allowance is pending in this Court.



Appeal (ITA No. 1725 of 1999) pertaining to AY 1989-90 holding that since by the earlier order dated 9.1.2003, the ITAT had already decided the quantum appeal in favour of the assessee, the penalty appeal of the Revenue had to be dismissed. Against this order the Revenue has filed the present appeal ITA 310 of 2004. At the first hearing on 26.7.2004, this Court framed the following substantial question of law:

“Whether the ITAT was correct in law in deleting the penalty of Rs.14,46,382 levied under Section 271C of the Income Tax Act?”

8. By its order dated 6.5.2005, the ITAT dismissed the Revenue's penalty appeals for AYs 1990-91 and 1991-92 (ITA Nos. 3846 and 3847 of 2003). Against the said order dated 6.5.2005, the other two appeals before us, ITA Nos. 32 of 2006 and 52 of 2006 have been filed by the Revenue. At the hearing on 7.7.2006 this Court directed that “the files of ITA Nos. 310/2004, 342/2003 and 280/2003 may be sent to the Court on the next date of hearing.” Further it was recorded in the said order: “Learned counsel is put to notice that ITA No. 310 of 2004 may be taken up for disposal along with this case.” That is how we are, by this order disposing of ITA No. 310 of 2004 along with the other



9. To recapitulate, the penalty has been sought to be levied on the short deduction of tax on both the meal allowance as well as the conveyance allowance. As regards the meal allowance, since the quantum issue has been decided in favour of the assessee and has attained finality, it is conceded by the learned counsel for the appellant that the Revenue is no longer challenging the impugned orders of the ITAT insofar as the penalty on the meal allowance part is concerned. The only question that remains as far as these appeals are concerned is, therefore, the validity of the levy of penalty for the short deduction of tax on conveyance allowance.

10. As regards conveyance allowance, the quantum appeals which had earlier been dismissed by the ITAT on technical grounds on 9.1.2003 have been remanded to the ITAT by this Court on 24.8.2004 and on remand have once again been dismissed by the ITAT on 30.3.2006. The said issue is stated to be now pending in this Court. The penalty appeals of the Revenue were dismissed by the ITAT by the two impugned orders dated 8.10.2003 and 6.5.2005 following the decision dated 9.1.2003 of the ITAT. Since the said order dated 9.1.2003 has already been set aside by this



the ITAT in the present penalty appeals, insofar as they concern the short deduction of tax on conveyance allowance, should also be set aside and the matters remanded to the ITAT for a fresh decision, notwithstanding that the quantum appeals on remand on this issue have already been dismissed by the ITAT on 30.3.2006.

11. We accordingly hold that as far as the penalty on short deduction of tax on meal allowance is concerned, the ITAT was justified in rejecting the Revenue's appeals and to this extent the impugned orders do not call for interference. However, as regards the penalty concerning the short deduction of tax on conveyance allowance for the AYs 1989-90, 1990-91 and 1991-92, the impugned orders dated 8.10.2003 and 6.5.2005 of the ITAT are set aside and the matters remanded to the ITAT for a fresh decision.

12. With the above directions these three appeals are disposed of.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J.

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J.