

IN THE HIGH COURT OF DELHI AT NEW DELHI

08.09.2008

Present: Ms Prem Lata Bansal for the Appellant.

**Dr S. Narayanan with Mr I. C. Kumar
for the Respondent.**

ITA 967/2008 CONTINENTAL AIR EXPRESS P.LTD

This appeal is directed against the Tribunal's order dated 10.09.2007. The impugned order relates to the assessment year 2001-2002. It is also relevant to note that the impugned order is a composite order for two assessees - M/s Continental Carriers Pvt. Ltd and M/s Continental Air Express Pvt. Ltd (the assessee in the present case).

In the case of the assessee (M/s Continental Air Express Pvt. Ltd) it has been noted in the order of the Tribunal that the issue in the quantum appeal has been sent back for a consideration afresh by the Tribunal to the Assessing Officer.

It has been pointed out by the learned counsel for the respondent/ assessee that the present proceedings pertain to penalty under Section 271(1)(c) and are relatable to the issue of disallowance of foreign travel expenses by the Assessing Officer. He has placed before us a copy of the order passed on 05.04.2007 by the Tribunal in the quantum appeal (ITA No. 1397/Del/2005) filed by the assessee before the Tribunal. Paragraph 7 of the said order dated 05.04.2007 clearly indicates that the issue of disallowance of foreign travel expenses has been sent back to the Assessing Officer for a decision afresh after the earlier orders passed by the Assessing Officer and the CIT (Appeals) have been set aside. It was, therefore, contended by the learned counsel for the respondent that since the quantum appeal was allowed on this ground and the matter has been remanded to the Assessing Officer, the penalty proceedings arising out of the very same orders cannot survive any further. It has also been confirmed by the learned counsel for the appellant that the revenue has not preferred any appeal against the said order passed by the Tribunal on 05.04.2007 in ITA 1397/Del/2005.

We find ourselves in agreement with the submissions made by the learned

counsel for the respondent and are consequently of the view that there is no merit in this appeal. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J
September 08, 2008
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