

## ITAT directs AO to examine agreement with foreign agents before disallowing commission paid to them

**Summary –** The Chennai ITAT in a recent case of M. Muthukumar, (the Assessee) held that where Commissioner (Appeals) deleted disallowance made under section 40(a)(i) on account of commission payment to foreign agents considering letter of engagement with said agent filed by assessee before him, in view of fact that aforesaid letter was not made available to Assessing Officer for his comments, matter was remanded to Assessing Officer for afresh examination

### Facts

- The assessee claimed deduction of payments as commission on export sales paid to foreign agent.
- The Assessing Officer disallowed it on the ground that assessee had not deducted the TDS as envisaged in section 195.
- However, on appeal, the Commissioner allowed the claim of the assessee by observing that the foreign agents had not carried out host of marketing and referral service but only referral service. He had gone through the terms of agreements with the foreign agent and decided the issue in favour of the assessee.
- On appeal by the revenue.

### Held

- Before the Commissioner, the assessee has filed a letter of engagement with foreign agents which was not made available to Assessing Officer for his comments. It is appropriate to remit the issue back to the file of Assessing Officer to consider all the documents whatever assessee has filed before the Commissioner (Appeals) for afresh examination. Accordingly, the issue is remitted to the file of the Assessing Officer with a direction to re-consider the issue in the light of order of the Tribunal in the case of *Asstt. CIT v. Euro Leder Fashions Ltd.* [\[2015\] 64 taxmann.com 253/\[2016\] 156 ITD 208 \(Chennai - Trib.\)](#).