

## **Cash payments to agents to procure raw materials covered by Rule 6DD; no sec. 40A(3) disallowance**

**Summary – The High Court Madras in a recent case of Sri Shanmuga Ginning Factory (P.) Ltd., (the Assessee) held that payments made in excess of Rs. 20,000 ginning factory to its agents for procuring cotton could not be disallowed under section 40A(3).**

### **Facts**

- The Assessing Officer noticed that some payments exceeding Rs. 20,000 were made by the assessee in cash towards purchase of raw cotton in violation of section 40A(3). The assessee claimed that the persons to whom the disputed payments made were acting as agents of the assessee in procuring the raw cotton from the growers and, therefore, such payments are covered under rule 6DD(i), the Assessing Officer did not accept the claim of the assessee and therefore, disallowed 20 per cent of the aggregate of such payment.
- On appeal, the Commissioner (Appeals) by observing either the genuineness of the transaction or the authentication of the sales tax order by the sales tax department held that the agriculture co-operative society as well as the private commission mundis to whom the assessee made payments, were acting only as agents of the assessee. He, therefore, reversed the order of the Assessing Officer.
- On appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On appeal by revenue:

### **Held**

- In respect of co-operative society, the Commissioner (Appeals) found that element of sale was not present in the transaction with the bidders as well as the agriculturists. In the absence of an element of sale in the transaction between the said society and the assessee, the contention of the assessee that the said co-operative society was acting as the agent of the assessee has to be necessarily accepted.
- On verification of return filed by the commission mundi, it was found that the credit side of the profit and loss account showed receipts from agriculturists as cotton commission receipts and receipts from bidders as merchant commission.
- The first appellate authority also found that the sales tax assessment orders supported the case of the assessee to the effect that the total turnover as per the accounts representing local sales of cotton kappas as agents of agriculturist/principals.
- On further appeal, the Tribunal further found that all those persons to whom the disputed payment made by the assessee had charged 1 per cent commission from the assessee and, therefore, such persons were acting on behalf of the assessee in the process of auction. When the factual finding in

respect of the status of those persons, concurrently, by both the appellate authorities is that those persons have acted as agents of the assessee. Therefore, it is to be held that the assessee is entitled to protection under rule 6DD(i) as the disputed payments were made only to its agents. Apart from that aspect, by going through the nature of business and transaction between the parties, an element of commercial expediency was also involved in this case. No different view can be taken as the findings rendered by the first appellate authority as well as the Tribunal are totally a finding of fact.