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Additions based on mere presumptions and surmises and on estimate basis are not sustainable, rules Mumbai Tribunal

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Background

- A search and seizure operation was conducted at the premises of M/s. Katrina Rosemary Turcotte ("taxpayer") on January 24, 2011 under Section 132 of the Income-tax Act, 1961 ("the Act").
- A similar operation was also carried out at the premises of the taxpayer's manager Ms. Sandhya Ramchandra and her agent Matrix India Entertainment Pvt. Ltd.
- Pursuant to the search and seizure operation, assessment proceedings were initiated on the taxpayer by issue of notice under Section 153A of the Act.
- In response to the notice, the taxpayer filed her return of income declaring total income of INR 9,582,109.
- The search and seizure operations resulted in recovery of certain documents based on which, the assessing officer ("AO") made some additions to the total income of the tax payer. The additions were made on account of undisclosed income, unaccounted cash receipts and unexplained expenditure.
- On appeal before the Commissioner of Income Tax (Appeals) ("CIT(A)") the taxpayer contended as under:
 - the various documents basis which the assessing officer ("AO") had made additions to her income were not found in the course of search on the taxpayer; rather they were found from third parties – from computer of taxpayer's manager/ premises of taxpayer's agent.
 - many such documents were merely quotations and not even invoices/ receipts.
- Hence the documents/information could not be relied upon/ used against the taxpayer.
- The taxpayer's manager had informed that she was not aware of the information retrieved from her computer since these related prior to her current employment while the agent had furnished an affidavit confirming that no cash payments were made to the taxpayer.
- Additionally, the taxpayer had furnished documentary evidence supporting her claims of not attending the events.
- Separate documents were also furnished supporting the claim of receiving/ making payments through cheque.
- Considering the submissions of the taxpayer and material on record, CIT(A) deleted the additions made by the AO.
- Aggrieved by the CIT(A)'s order, the department filed an appeal before the Income Tax Appellate Tribunal, Mumbai ("ITAT").

Issue before the Tribunal

- Whether additions to the total income of the taxpayer made by the AO for cash credit and unexplained expenditure basis documents unearthed during search and survey operations and subsequently deleted by CIT(A), were correct?

Ruling of the Tribunal

- In the absence of any clinching evidence demonstrating that the taxpayer had received cash payment from Matrix/ other parties, no addition can be made merely on presumption and surmises and on estimate basis.
- For making the addition on account of cash component, it was the duty of the AO to bring on record corroborative evidence to establish the fact that the entries made in the evaluation sheet were correct.
- Therefore, in the absence of any evidence brought on record, the addition was rightly deleted by the learned CIT(A).
- The decisions relied upon by the learned Authorised Representative also support the aforesaid view.
- In light of the above, the CIT(A) order was upheld and department's appeal was dismissed.

Comments

The ruling of the Mumbai ITAT resonates the very principle that before making any additions to the total income of the taxpayer on account of unaccounted cash credits / unexplained cash expenditure, AO is duty bound to support the same by bringing on record corroborative evidence.

Source:

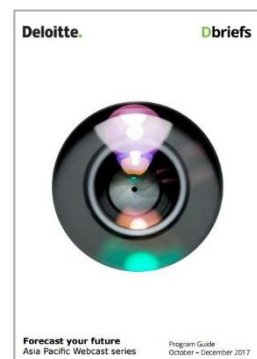
ACIT Vs. Ms. Katrina Rosemary Turcotte ITA No. 3092 to 3097/ Mum. 2015

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