



## **Global Employer Services Alert** Harmonizing global & local perspectives

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

**Issue no:** GES/30/2017

**In this issue:**

[Background](#)

[Issue before the Tribunal](#)

[Ruling of the Tribunal](#)

[Comments](#)

[Do you know about Dbriefs?](#)

[Contacts](#)

## 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:**

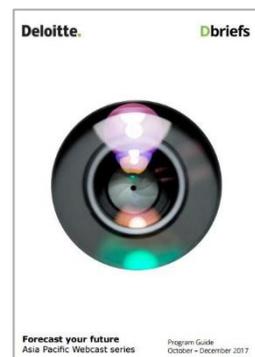
ACIT Vs. Ms. Katrina Rosemary Turcotte ITA No. 3092 to 3097/ Mum. 2015

## Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report



# Contacts

## Ahmedabad

19<sup>th</sup> Floor, Shapath - V  
SG Highway,  
Ahmedabad – 380 015.  
Tel: + 91 (079) 6682 7300  
Fax: + 91 (079) 6682 7400

## Coimbatore

Shanmugha Manram  
41, Race Course,  
Coimbatore  
Tamil Nadu - 641018  
Tel: + 91 (0422) 439 2801  
Fax: +91 (0422) 222 3615

## Kolkata

Bengal Intelligent Park Building  
Alpha, 1st floor, Block EP and GP  
Sector V, Salt Lake Electronics  
Complex,  
Kolkata - 700 091.  
Tel : + 91 (033) 6612 1000  
Fax : + 91 (033) 6612 1001

## Bangalore

Deloitte Centre, Anchorage II,  
100/2, Richmond Road,  
Bangalore 560 025.  
Tel: +91 (080) 6627 6000  
Fax: +91 (080) 6627 6010

## Delhi/Gurgaon

Building 10,  
Tower B, 7th Floor,  
DLF Cyber City,  
Gurgaon 122 002  
Tel : +91 (0124) 679 2000  
Fax : + 91 (0124) 679 2012

## Mumbai

Indiabulls Finance Centre,  
Tower 3, 28th Floor,  
Elphinstone Mill Compound,  
Senapati Bapat Marg, Elphinstone  
(W),  
Mumbai – 400013  
Tel: + 91 (022) 6185 4000  
Fax: + 91 (022) 6185 4101

## Chennai

No.52, Venkatanarayana Road,  
7th Floor, ASV N Ramana Tower,  
T-Nagar,  
Chennai 600 017.  
Tel: +91 (044) 6688 5000  
Fax: +91 (044) 6688 5050

## Hyderabad

1-8-384 and 385, 3rd Floor,  
Gowra Grand S.P.Road,  
Begumpet,  
Secunderabad – 500 003.  
Tel: +91 (040) 6603 2600  
Fax: +91 (040) 6603 2714

## Pune

706, B-Wing, 7<sup>th</sup> Floor,  
ICC Trade Tower,  
Senapati Bapat Road,  
Pune – 411 016.  
Tel: + 91 (020) 6624 4600  
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material is for internal distribution and use only among personnel of Deloitte Touche Tohmatsu Limited, its member firms, and its and their affiliates. The recipient is strictly prohibited from further circulation of this material. Any breach of this requirement may invite disciplinary action (which may include dismissal) and/or prosecution. Deloitte Touche Tohmatsu Limited, its member firms, and its and their affiliates shall not be responsible for any loss whatsoever sustained by any person who relies on this material.

© 2017 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited