

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAMLAL NEGI, JUDICIAL MEMBER**

**ITA Nos.2938, 2939, 2940 & 2941/M/2015
Assessment Years: 2005-06, 2006-07, 2007-08 & 2011-12**

M/s. Matrix India Entertainment Consultants Pvt. Ltd., 5, Agnelo, 1 st Floor, Khandeswari Marg, Near Mount Mary Steps, Bandra – West, Mumbai – 400 050 PAN: AACCM7659J	Vs.	Assistant Commissioner of Income Tax- 8(2), (Erstwhile Central Circle-47) 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA Nos.3208, 3209 & 3210/M/2015
Assessment Years: 2009-10, 2010-11 & 2011-12**

Assistant Commissioner of Income Tax- 8(2), (Erstwhile Central Circle-47) 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Matrix India Entertainment Consultant Pvt. Ltd., 5, Agnelo, 1 st Floor, Khandeswari Marg, Near Mount Mary Steps, Bandra (W), Mumbai – 400 050 PAN: AACCM7659J
(Appellant)		(Respondent)

**CO Nos.26, 27 & 28/M/2017
(Arising out of ITA Nos.3207, 3208 & 3209/M/2015
Assessment Year: 2008-09, 2009-10 & 2010-11**

M/s. Matrix India Entertainment Consultant Pvt. Ltd., 5, Agnelo, 1 st Floor, Khandeswari Marg, Near Mount Mary Steps, Bandra (W), Mumbai – 400 050 PAN: AACCM7659J	Vs.	Assistant Commissioner of Income Tax- 8(2), (Erstwhile Central Circle-47) 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Dr. K. Shivaram, A.R. &
Shri Rahul Hakani, A.R.

Revenue by : Shri Sandeep Raj, D.R.

Date of Hearing : 02.07.2021

Date of Pronouncement : 23.07 2021

ORDER**Per Rajesh Kumar, Accountant Member:**

The above titled cross appeals and cross objections have been preferred by the assessee and the Revenue against the orders even dated 23.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2005-06, 2006-07 & 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12.

2. We are first taking up the ITA No.2938/M/2015 A.Y. 2005-06 for adjudication.

ITA No.2938/M/2015 A.Y. 2005-06 (Assessee's appeal)

3. The grounds raised by the assessee are reproduced as under:

"1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 ought to have considered the assessment as without jurisdiction and bad in law since the order of the same was passed u/s. 153A r.w.s. 143(3) of the Act. However, the Appellant's premises were never searched u/s. 132 of the Act but only a survey was conducted u/s. 133A of the Act.

2. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.94,000/- on alleged ground of unreconciled job confirmation on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

3. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.37,851/- as unexplained expenditure on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

4. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.7,650/- as unexplained expenditure on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

5. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.40,900/- as unexplained expenditure on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

6. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.33,416/- as unexplained expenditure on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

7. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-47 erred in confirming addition of Rs.76,001/- as unexplained expenditure on the basis of some rough workings found from the backup of the computer of Ms. Sandhya Ramchandran for the period for which she was not employed with the Appellant company.

8. In view of the above, the appellant prays that the Assessing Officer be directed to not to initiate the penalty u/s 271(1)(c) of the Act.

9. The appellant prays that :

- i) Assessment order may be cancelled as being without jurisdiction and bad in law,
- ii) Addition of Rs.94,000/- may be deleted
- iii) Addition of Rs.37,851/- may be deleted
- iv) Addition of Rs.7,650/- may be deleted
- v) Addition of Rs.40,900/- may be deleted
- vi) Addition of Rs.33,416/- may be deleted
- vii) Addition of Rs.76,001/- may be deleted
- viii) Any other relief your honours may deem fit.

10. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.

4. The issue raised in the 1st ground of appeal is a jurisdictional issue challenging the order of Ld. CIT(A) on the ground of wrong upholding of the assessment order framed under section 153A read with section 143(3) of the Act by the AO by ignoring the fact that there has never been any search conducted on the assessee but a survey under section 133A of the Act was conducted.

5. The facts in brief are that a search action under section 132 of the Act was carried out at the residential and business premises of Katrina Kaif and Group concerns on 24.01.2011 by Dy.DIT(Inv.), Mumbai and during search on KK Group, several incriminating materials and documents were found and seized. The assessee is one of the persons of KK Group and but was not covered under search. However a survey was conducted on the assessee under section 133A of the Act on 24.01.2011 and statement of Shri Vivek Kamat, director of the assessee company was recorded. A notice under section 153C of the Act was issued to the assessee on 09.01.2012(wrongly mentioned as notice u/s 153A of the Act in the assessment order) which was complied with by the assessee vide letter dated 27.01.2012 submitting that return already filed for A.Y. 2005-06 declaring total income of Rs.88,23,465/- may kindly be treated as return filed in compliance to notice under section 153C of the Act. Thereafter, notice under section 142(1) dated 14.11.2012 along with questionnaire was issued which was attended by the authorized representative of the assessee from time to time. The assessee is engaged in the activity of coordinating and providing services of model and celebrities. During the course of assessment proceedings, the AO called for various details and

information which were duly furnished by the assessee and finally an assessment was framed under section 153A read with section 143(3) of the Act dated 30.03.2013 wherein after making various additions, the income was assessed at Rs.1,20,92,038/-.

6. The assessee challenged the order of AO before Ld. CIT(A) on the legal ground that assessment framed under section 153A read with section 143(3) dated 30.03.2013 is bad in law and void ab-initio as the assessment should have been made under section 153C of the Act as the assessee was not covered under search action u/s 132(1) of the Act but a survey was conducted on the assessee under section 133A of the Act on 24.01.2011. However, the Ld. CIT(A) dismissed the appeal of the assessee on this issue by stating that the ground is general in nature and required no adjudication.

7. The Ld. A.R. vehemently submitted before us that the order passed by Ld. CIT(A), upholding the assessment order which is bad in law as it is passed u/s. 153A r.w.s. 143(3) and not u/s. 153C of the Act, is wrong and against the provisions of the Act. Secondly, the ld AR submitted that there was a survey action u/s 133A of the Act on the assessee on 24.1.2011 and there was no search action on the assessee. The ld AR submitted that there was a search action on Ms Kaitrena Kaif in which some documents were reported seized and accordingly the assessee was issued notice under section 153C of the Act on 9.01.2012. The ld AR argued that once the assessee is other than the searched person and notice is issued under section 153C of the Act, then the assessment has to be framed under section 143(3) r.w.s. 153C of the Act whereas the assessment was framed

under section 153A r.w.s.143(3) of the Act and therefore the same is invalid and bad in law. The ld AR also made a without prejudice contention to the above one that the notice u/s. 153C of the Act and the consequent assessment order is bad in law. The ld AR argued that during search in case of Katrina Kaif, no incriminating material was found pertaining to the assessee as in fact none of the materials/documents seized as stated in the Panchnama belonged to the assessee. The ld counsel for the assessee further stated that statement of Katrina Kaif as recorded during search u/s 132(4) of the Act a copy of which is filed at Pg 173 to 189, no query was ever raised on any incriminating material belonging to the assessee which was found during the search action. Besides, not a single addition was made on the basis of any material found during search in case of Katrina Kaif in whose case the search was conducted. The ld AR, elaborating the provisions of section 153C of the Act, submitted that as per S.153C of the Act, the bullion, money, documents seized must belong to person other than searched person and the notice to that other person can only be issued notice u/s 153C of the Act. The ld AR submitted that before issuing notice u/s 153C of the Act to the person other than the search person, the AO of the search person has to record a satisfaction on the basis of incriminating materials that income contained in the incriminating paper belonged to the person other than the searched person and passed on the AO of the other person who also after his satisfaction, issue notice u/s 153C of the Act. The ld. AR referred to the order u/s. 7(1) i.e., response to RTI application by the assessee, wherein it is admitted by the AO that he does not possess the satisfaction

note order in case of the assessee a copy of which is filed at pg. No. 207-208 of the paper book. In view of these facts, the notice issued u/s 153C of the Act and consequent assessment order is bad in law. In defense of his arguments, the ld AR relied heavily on the following decisions:

- i) CIT vs. IBC Knowledge Park Pvt. Ltd. (2016) 385 ITR 346 (Kar.)(HC)
- ii) CIT vs. Veerprabhu Marketing Ltd. (2016) 388 ITR 574 (Cal.)(HC)
- iii) Pr CIT v. Smt. Lakshmi Singh [2017] 78 taxmann.com 207 (Kar.)(HC)
- iv) Smt. Sunita Bai [2017] 78 taxmann.com 274 (Kar.)(HC)
- v) CIT v Sinhgad Technical Education Society [2015] 378 ITR 84 (Bom.)

The Bombay High Court decision is confirmed by the Supreme Court in CIT vs. Sinhgad Technical Education Society Civil Appeal No. 11080 of 2017 dt. 29/8/2017. (2017) 397 ITR 344 (SC)

- vi) Skylark Build vs. ACIT (2018) 97 taxmann.com 682 (Mum.)(Trib.)

8. Thirdly, the ld counsel stated further that, in terms of the provisions of S.153A of the Act in case of completed assessment no addition can be made unless there is incriminating seized material during the search. The ld AR submitted that in the facts of present case, as is clear from panchnama, no material seized belonged to the assessee. The ld AR submitted that even otherwise nothing seized during search is even prima facie incriminating as additions were not made on the basis of anything found during the course of search in case of Katrina Kaif. Therefore the ld Counsel for the assessee make a without

prejudice argument to the above that since A.Y. 05-06 to A.Y. 09-10 are completed assessments, all additions ought to be deleted as same are not made based on any incriminating material found during search in the case of Katrina Kaif.

In view of above submissions it is prayed that Assessee appeals and cross-objections/ application under Rule 27 may be allowed and department appeals may be dismissed.

9. The ld DR, per contra, strongly rebutted the arguments of the ld AR by submitting that the assessment has been rightly framed under section 153A read with 143(3) of the Act. The Ld. D R. submitted that a search action was conducted on Katrina Kaif group and assessee also related to Katrina Kaif group though the assessee was covered under survey action under section 133A of the Act and was issued notice under section 153C of the Act. During the course of search on Katrina Kaif some incriminating material were found and seized during the search. The Ld. D.R. while drawing distinction between the section 153A and 153C submitted that both the sections are part of the same chapter and it is not made much difference if assessment is framed under section 153A instead of 153C of the Act. As regards, non recording of satisfaction the Ld D.R. submitted that it is suffice if the incriminating information is shared by the AO of the searched person under section 132(1) with the AO of the other person and no satisfaction is required to be recorded. Moreover, it has been stated by the AO in response to RTI application by the assessee that satisfaction note in case of search are not shared with the AO and therefore

not available with him. The Ld. D.R. prayed that the legal issue raised by the assessee may kindly be dismissed.

10. We have heard the rival submissions of both the parties and perused the material on record including written submissions by both the parties as placed before us including the written submissions. The undisputed facts are that a search u/s 132(1) of the Act was conducted on Katrina Kaif Group on 24.01.2011 during which some incriminating paper/documents were found and seized. Simultaneously a survey u/s 133A of the Act was conducted on the assessee on 24.01.2011. Consequent to the survey action on the assessee, a notice u/s 153C of the Act dated 09.01.2012 was issued and duly served upon the assessee a copy of which is filed at page no.17 of the paper book. Ultimately the assessment was framed u/s 143(3) r.w.s. 153A of the Act vide order dated 30.03.2013. Now the only issue before us as raised by the assessee is whether the assessment is to be framed under section 143(3) r.w.s.153C of the Act or under section 143(3) r.w.s.153A of the Act. After perusing the relevant provisions of the Act vis-à-vis the facts of the instant case, we are of the considered view that the assessment has to be framed u/s 143(3) r.w.s. 153C of the Act as there was no search on the assessee u/s 132(1) of the Act. The assessee was only covered under survey action u/s 133A of the Act on 24.01.2011. So the score the order of the AO is bad in law. Further so far as proceedings u/s 153C of the Act is concerned on the person other than the searched person, it is prerequisite that proper satisfaction is recorded by the AO of the searched person that some incriminating documents seized during search belonged to the assessee and after receiving the satisfaction by the AO of the

assessee(the person other than the searched person) again the AO will record his satisfaction and only then the notice u/s 2153C of the Act can be issue to the person other than the searched person and not otherwise. In the present case the assessee is a person other than the searched person. So the proceedings u/s 153C of the Act can be initiated when these pre-conditions are fulfilled otherwise the proceedings and consequent assessment would be rendered bad and invalid. We note that no such satisfaction has been recorded by the AO of the searched person on the basis of incriminating materials seized during the search as has been testified and brought out by RTI application by the assessee and response thereto by the AO that no satisfaction has been recorded by the AO of the searched person i.e. Katrina Kaif. We also note that no incriminating documents were seized during search on Kaitrina Kaif belonging to the assessee as is apparent from the punchnama prepared during search. Also during the course of recording of statement of Kaitrina Kaif not even a single query was raised on the basis of materials seized from Ms Katrina Kaif about the assessee. Under the present facts and circumstances, the contentions of the Ld. Counsel of the assessee carry weight that even if the assessment framed is presumed to be under section u/s 143(3) r.w.s. 153C of the Act, even then the assessment is bad in law as the notice has been issued with the satisfaction of the AO of the searched person. In our opinion the assessment framed by the AO is without jurisdiction and can not be sustained. The case of the assessee find supports from the decisions as discussed hereinafter:

- a) In the case of CIT vs. IBC Knowledge Park Pvt. Ltd. (2016) 385 ITR 346 (Kar.)(HC) it has been held that incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of S. 153C of the Act.
- b) In the case of CIT vs. Veerprabhu Marketing Ltd. (2016) 388 ITR 574 (Cal.)(HC) it has been held that Incriminating material is a pre-requisite before power could have been exercised under section 153C read with section 153A.
- c) In the case of Pr CIT v. Smt. Lakshmi Singh [supra], Hon'ble Karnatka High Court has held that Power under section 153C could not be invoked when no incriminating evidence was discovered during search
- d) In the case of Pr CIT v Smt. Sunita Bai [supra], the Karnatka High Court has held that Power under section 153C could not be invoked against assessee when there was no incriminating document or evidence discovered during search of third party under section 132
- e) In the case of CIT v Sinhgad Technical Education Society [supra] has approved SinhgadTechnical Education Society v ACIT (2011) 140 TTJ 233(Pune)(Trib.) wherein it has been held that loose papers found and seized from residence of President of assessee, an educational institution, indicating some 'on money' receipt during admission process did not establish co-relation document-wise with assessment years in question, notice issued under section 153C to assessee was invalid. Hence, incriminating material is sine qua non.

The Bombay High Court decision is confirmed by the Supreme Court in CIT vs. Sinhagad Technical Education Society Civil Appeal No. 11080 of 2017 dt. 29/8/2017. (2017) 397 ITR 344 (SC)

- vi) In the case of Skylark Build vs. ACIT (supra) where in it is held that recording of satisfaction in the case of the search party is a sine qua non for assuming jurisdiction for the issue of notice u/s. 153C. It is further held that even if Assessing Officer is the same, recording of satisfaction is mandatory. For coming to this conclusion, ITAT has relied upon Circular No. 24/2015 dt. 31/12/2015.

11. We also find merit in the third without prejudice argument of the ld Counsel of the assessee that A.Y. 05-06 to A.Y. 09-10 have attained finality on the date of search and were completed assessments, and therefore the additions ought to be made on the basis of seized incriminating materials during search and not otherwise. In the present case the search team has not seized any incriminating materials. Therefore we are inclined to hold that additions can not be sustained and accordingly have to be deleted as same are not made based on any incriminating material found during search in the case of Katrina.

12. In view of above facts and circumstances and decisions of various judicial forums we set aside the order of the CIT(A) and quash the assessment framed by the AO. Consequently the ground 1 is allowed in favour of the assessee.

The ground no. 1 of the assessee's appeal is allowed.

13. Since we have decided the ground raised by the assessee on legal issue there is no need to adjudicate other grounds raised by the assessee on merits.

14. The appeal of the assessee is partly allowed.

ITA Nos.2939 & 2940/M/2015 A.Ys. 2006-07 & 2007-08 ;
(Assessee's appeals);
ITA Nos.3208 & 3209/M/2015 A.Ys: 2009-10 & 2010-11
(Revenue's appeals) ;
& CO Nos.26, 27 & 28/M/2017 AY 2008-09, 2009-10 &
2010-11 (Assessee's Cos)

15. The assessee has raised the similar jurisdictional issue in ITA Nos.2939 & 2940/M/2015 for AY 2006-07, 2007-08 and Cross Objections Nos.26, 27 & 28/M/2017 for AY 2008-09 to 2010-11 raising the same jurisdictional issue as decided by us in ITA No.2938/M/2015 AY 2005-06. However the cross objections filed by the assessee are late by 33 days. So we will first deal with the issue of condonation of delay.

16. The cross objections filed by the assessee in all the three years are late by 33 days and Assessee has filed application for condonation of delay and supporting affidavit A.Y 2008-09, 2009-10, 2010-11 and prayed before the bench the delay in filing COs of 33 days may be condoned. The ld AR of the assessee further rely on the observation of the Apex Court the case of Collector, Land Acquisition V. Katiji 167 ITR 471 (SC). The ld DR on the other hand opposed the condonation of delay in filing of cross objections.

17. After hearing both the sides and perusing the records as placed before us, we find that the assessee has explained the delay in filing the cross objections by filing condonation application and affidavit explaining the delay in filing cross objections and the substantial justice and equity should prevail over technicalities. The case of the assessee find support from the above decision namely Collector, Land Acquisition V. Katiji(Supra) wherein the Hon'ble Apex Court has observed that "When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay." We are therefore inclined to condone the delay of 33 delays.

18. The assessee has also filed under Rule 27 application submitting therein that the respondent is entitled to raise an objection under Rule 27 even in respect of fresh issues. The ld AR submitted that it is not necessary that the ground should have been decided against the Respondent by the CIT(A) by relying on the decision in the case of AAP Paper Marketing Ltd. v ACIT ITA No 167/Lkw/2016 AY 11-12 dtd 28/4/17(Luck)(Trib.). The application is not being decided as we have condoned the delay in filing the cross objections.

19. The ld AR submitted that since there is no appeal of the revenue in AY 2008-09, the cross objection of the assessee for the said year becomes infructuous and accordingly may be dismissed.

20. Since we have already decided the jurisdictional issue as raised in the above ITA Nos.2939 & 2940/M/2015 for AY 2006-07, 2007-08 and Cross Objections Nos.26, 27 & 28/M/2017 for AY 2008-09 to 2010-11 in ITA No.2938/M/2015 A.Y. 2005-06. Therefore our decision in ITA No.2938/M/2015 AY 2005-06 would, mutatis mutandis, apply to these appeals and cross objections as well except CO No .26/M/2017 AY2008-09 which is being dismissed as infructuous. Consequently the appeals and two cross objections are allowed on jurisdictional issue.

21. Since we have allowed the cross objections filed for 2009-10 & 2010-11 on the jurisdictional issue, the appeal of the revenue becomes infructuous and are accordingly dismissed.

ITA No.2941/M/2015 AY 2011-12 (Assessee's appeal)

22. The issue raised in first ground of appeal is against the confirmation of addition of Rs.24,000/- by Ld. CIT(A) as undisclosed receipt from the clients on the basis of some rough workings found from the back up of the computer of Ms. Sandhya Ramachandran for the period for which she was not employed with the assessee company.

23. The facts in brief are that during the course of survey on the assessee on 24.01.2011, a statement of director of the assessee company Mr. Vivek M. Kamat was recorded and specific query was put as regards the loose papers found and in reply to question No.24 Mr. Kamat specifically mentioned that those loose papers are nothing but rough sheets which are used to record the offers from various companies and these are just scribbling pad and it is not necessary that every data recorded

in the loose sheets resulted into actual materialization of the offer. The AO, however, rejected the submission of the assessee and added Rs.24,000/- being 20% of Rs.1,20,000/- on the basis of these loose sheets which was affirmed by Ld. CIT(A).

24. After hearing both the parties and perusing the material on record, we find that seized documents do not prove that any cash is paid to Mr. Zarine Khan whose name is mentioned in the document. We also note that Mr. Zarine Khan has not been examined. Moreover Ms. Sandhya Ramachandran stated in her statement that she was not aware of the seized documents as the same pertain to the period prior to joining the employment. We find that the addition in this case is based upon surmises and conjecture and AO & ld CIT(A) have failed to bring any material on record and consequently the same can not be sustained. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition. The ground no. 1 of the assessee's appeal is allowed.

25. The 2nd ground raised by the assessee is against the confirmation of addition of Rs.5,00,000/- being 25% of Rs.25,00,000/- and also enhancing it to Rs.25,00,000/- thereby adding 100% of the undisclosed professional receipts on the basis of blackberry conversation between one Ms. Sandhya Ramachandran and unknown some third party.

26. The facts in brief are that the AO on the basis of chat in a blackberry phone of Ms. Sandhya Ramachandran came to conclusion that assessee has received Rs.25,00,000/- in cash and accordingly a show cause notice was issued as to why the

same should not be treated as professional fees in cash in the hands of the assessee. Finally, the AO added 25% on the same to the income of the assessee on the ground that assessee has not offered any explanation and therefore issue remained unexplained. Thus AO made an addition of Rs.5,00,000/- being 25% of Rs.25,00,000/- which was alleged to be paid in cash.

27. In the appellate proceedings the Ld. CIT(A) enhanced the addition by observing and holding as under:

“10.3 Vide order dated 20.03.2014 in the case of Katrina Rosemary Turcotte for A.Y.2011-12 the addition of Rs.20,00,000/- (being 80%) had been deleted by me holding the view that the entire Rs.25,00,000/- being 100% (as per seized document E1) is to be sustained in the hands of Matrix Company. Therefore, Ground of Appeal No.3 is dismissed. Thus here the addition of Rs.5,00,000/- is enhanced to Rs.25,00,000/-.”

28. After hearing both the parties and perusing the material on record, we find that this addition was also based on conjuncture and surmises. Upon perusal of the record before us we find that there is no evidence of any cash payment to Ms. Katrina Kaif or on her behalf. Even the third party who was on the chat with Ms. Sandhya Ramachandran is not known and Ms. Katrina Kaif in her statement has denied such transactions. We also note the addition in the hand of Katrina Kaif of Rs. 20,00,000/- has been deleted by ld CIT(A) and coordinate bench has upheld the order of ld CIT(A) in ITA No.3092/M/2015 A.Y. 2006-07 & ors vide order dated 11.10.2017. The operative part is reproduced as under:

“57. We heard the rival submissions and perused the material on record. Undisputedly, the seized documents on the basis of which the addition was made by the AO is a conversation between Ms. Sandhya Ramachandran and one of the clients of M/s. Matrix. Except the document containing conversation between two third parties there is no other evidence brought on record by the AO to indicate cash payment to the assessee. In fact in the course of assessment proceedings

when the assessee was confronted with the seized document she flatly denied of having received any cash from Matrix. Further, an affidavit was also filed on behalf of Matrix stating that no cash was either accepted on behalf of the assessee or paid to her. Thus, when no corroborative evidence has been brought on record indicating cash payment, merely relying upon some conversation between two third parties it cannot be concluded that the assessee has received cash payment of 20,00,000. Therefore, the addition made on pure guess work, conjecture and surmises cannot be sustained. We therefore, uphold the order of the CIT(A) on this issue. Ground raised by the Department is dismissed.”

29. Since the facts before us are materially same qua the estimation of income based upon conjectures and surmises without any evidences, we ,therefore, respectfully following the decision of the co-ordinate bench of the Tribunal set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

30. The issue raised in ground No.3 is similar to one as raised in ground No.2 with exception of variation in the amount. Therefore, our finding in ground No.2, would mutatis mutandis, apply to ground No.3 as well. Accordingly, ground No.3 is allowed.

31. Accordingly, appeal of the assessee is allowed.

ITA No.3210/M/2015 (Revenue’s appeal)

32. The issue raised in ground No.1 is against the deletion of addition of Rs.35,00,000/- by Ld. CIT(A) as made by the AO on account of undisclosed receipts.

33. During the course of assessment proceedings the AO observed on the basis of SMS and conversation in blackberry mobile back up of Ms. Sandhya Ramachandran which was found at the time of search that a professional fees of Rs.50 lakhs was collected against the issuance of bills while Rs.75 lakhs was received in cash on the account of Ms. Katrina Kaif.

Similarly Rs.75 lakhs were received against bills and Rs.1.00 Cr in cash on the account of Mr. Salman Khan. Accordingly, a show cause notice was issued to the assessee as to why the same should not be added to the income of the assessee. The assessee submitted before the AO that this was just a proposal and no cash has actually been received. However, the AO came to the conclusion that cash involvement in professional fee can not be ruled out and accordingly Rs.1,75,00,000/- was treated as unaccounted professional receipt and by applying a rate of 25%, added a sum of Rs.35,00,000/- to the income of the assessee.

34. In the appellate proceedings, the Ld. CIT(A) deleted the addition by observing and holding as under:

“9.3 I have carefully perused the above. It is seen that the Dhaka performance has definitely materialized but it is through another agent i.e. ATN Records Ltd. The income received of Rs.60,00,000/- for Katrina Rosemary Turcotte vide cheque by the appellant company of Rs.1.60 crores (appellant Rs.1 crore & Katrina Rosemary Turcotte Rs.60 lakhs) has also been offered as its income for A.Y.2011-12 by Katrina Rosemary Turcotte in her individual return. The noting made of the said performance by the appellant regarding its clients is a noting only which did not materialize. Cheque payment of Rs.1.60 crores which had been received for Dhaka event is also duly reflected in books of accounts of the appellant company. Therefore, Ground of Appeal No.2 is allowed and Rs.35,00,000/- is deleted.”

35. After hearing both the parties and perusing the material on record, we find that the corresponding addition made in the hand of Ms. Katrina Kaif was already deleted by Ld. CIT(A) and affirmed by the coordinate bench. We note that these receipts were in respect of Bangladesh, Dhaka performance and the coordinate bench of the Tribunal while deleting the addition has observed and held as under:

“73. We have heard rival submissions and perused the material on the assessment order it is very much clear that during Matrix a loose paper was found containing details of certain transactions both in cheque and in cash. However, when the loose

was confronted to the Director of M/s. Matrix India Entertainment P. Ltd. during survey, he had categorically stated that it was only in the nature of an offer received from some party but it has not been accepted. Similarly, when such evidence was confronted to Ms. Sandhya Ramachandran she also denied of knowing any such cash transaction and also stated that the event in Dhaka did not materialize through them. Though it may be a fact that the Dhaka event did take place in February, 2011, but as stated by the assessee it was through another agency, M/s. ATN Records Ltd. and not through M/s. Matrix India Entertainment P. Ltd. Therefore there is no material in the possession of the AO to demonstrate that the assessee has received any amount in cash from M/s. Matrix India Entertainment P. Ltd. For Dhaka event. On the contrary, the evidences on record do indicate, though, the assessee appeared in the Dhaka event conducted through M/s. ATN Records Ltd., however, she has received her fees fully in cheque and has offered it as income in the relevant assessment year. As no material has been brought before us by the Revenue to controvert the aforesaid facts we are inclined to affirm the order of the CIT(A) on this issue by dismissing the ground raised by the Revenue.”

36. In the present case also the revenue could not bring any materials on records to controvert findings of the 1d CIT(A). Since the facts before us are similar to ones as decided by the coordinate bench in the case of Katrina Kaif as discussed hereinabove. We, therefore, respectfully following the decision of the co-ordinate bench of the Tribunal uphold the order of Ld. CIT(A). Accordingly, ground No.1 is dismissed.

37. The issue raised in ground No.2 is against the deletion of addition of Rs.5,52,05,923/- by Ld. CIT(A) as made by the AO on the basis of entries in the loose papers seized.

38. The facts in brief are that the addition was made on the basis of laptop backup of employee Ms Sandhya Ramchandran being Annexure “G” which was a evaluation sheet for AY 06-07. On the basis of Annexure G-5 which pertain to A.Y. 2006-2007, AO came to the conclusion that percentage of unaccounted cash income is 27% of cheque income during the AY 2006-07. Accordingly the AO extrapolated the income in the instant year

by applying 27% to current AY 11-12 turnover of Rs 1,02,23,31,906/- and held that the estimated cash income for AY 11-12 would be Rs 27,60,29,615/- . The AO calculated the assessee share being 20%, an addition of Rs 5,52,05,923/- was made in the assessment framed.

39. In the appellate proceedings, the ld CIT(A) deleted the addition by observing and upholding that addition as made by the AO is based upon the presumptions, assumptions and extrapolation and there was no materials before the AO. The ld CIT(A) called for a remand report from the AO and AO clearly stated that the income was extrapolated on the basis AY 2006-07. The ld CIT(A) recorded a finding that AO estimated the cash receipts @ 27% of the cheques receipts without any basis and thus deleted the addition.

40. We have heard the rival contentions and perused the materials on records. We note that the AO made the addition on the basis of evaluation sheets prepared by the ex-employee. We further note that ex- employee was not admittedly examined by the revenue. Hence, said document cannot be relied upon. It is nothing but a Dumb document. Besides, extrapolation is based upon A.Y. 2006-07 and there is no basis for estimation in the current year or corroborative evidences brought on record by the department to support its allegation of cash payments. We note that during the appellate proceedings the ld CIT(A) called for a remand report from the AO and the AO has also confirmed in his remand report dated 9.3.2015 that there was no evidence for cash income and entire addition was on the basis of estimation ad extrapolation. We note that seized material has been

discussed in detail by the coordinate bench in the case of Katrina at para 74 wherein it was held that said document does not prove that cash was paid to Katrina and thus revenue appeal on said ground was dismissed. It was held that AO has not brought on record any clinching evidences to prove that cash was paid. Thus, the order of CIT(A) which is in conformity with the observations of the coordinate bench in the case of Katrina Kaif deserved to be confirmed. The observations of Ld. CIT(DR) in his written submissions with respect to the Annexures do not survive in view of decision of this co-ordinate bench in the case of Katrina Kaif. The learned CIT (DR) has relied on following decisions to justify estimation / extrapolation which were distinguished by the counsel of the assessee as under:

a)Shri Surinder Kumar v. CIT (Appeal nos. 389 and 390 of 2009) (P&H)(HC) / [2012] 340 ITR 173 (Punjab & Haryana)(HC)-This decision is not applicable as there was corroborative material and also it does not pertain to estimation of another assessment year.

b)CST vs. H.M. Esufali H M Abdulai (1973) SCC (2) 137 (SC) / [1973] 90 ITR 271 (SC)-The issue was relating to estimation for same year and not other Assessment Years. Hence, this decision is not applicable.

c)Gopal Lal Bhadraka vs. DCIT (2012) 346 ITR 106 (AP)(HC)-The issue decided by said decision was on material found post search in case of person searched which is not the issue in the present case.

d) CIT vs. C L Khatri (2006) 282 ITR 97 (MP)(HC)-This decision is in favour of Assessee. It holds, there cannot be estimation for other years.

e)CIT vs. Chetan Das Lachman Das 25 Taxmann.com 227 (Delhi)(HC) / [2012] 211 Taxman 61 (Delhi)-In this case order of ITAT was set-aside and restored back to ITAT. In this case incriminating material was found during search which is not the fact in the present case. The High Court accepted that there was corroborative evidence whereas in present case, it is held in case of Katrina that there was corroborative evidence.

41. Thus, all the above decisions are not applicable in the facts of the present case as the seized material is unreliable without any corroborative evidences and as already held by the Coordinate bench in the case Katrina Kaif the said material does not prove the allegation of the revenue that cash was paid to Katrina. In following cases it is held that estimation cannot be made for a different assessment year in respect of which there is no incriminating material namely CIT-1 v Jayaben Ratilal Sorathia (2014) 222 Taxman 64(Guj.) (Trib.) (Mag), Uday C Tamhankar v DCIT (2015) 174 TTJ 151(Mum)(Trib.), Dr M.K.E Memon (2008) 248 ITR 310 (Bom)(HC). Besides in the case .In Mehta Parikh & Co v CIT (1956) 30 ITR 181(SC), it is held that an Affidavit is valid unless proven false. The Supreme Court in Comman Cause v UOI [2017] [2017] 394 ITR 220 (SC) (Pg. No. 140-148) was dealing with incriminating materials in form of random sheets and loose papers, computer prints, hard disk,

pen drives etc. which were found during search. It was held that entries in loose papers/ sheets are irrelevant and inadmissible as evidence. Such loose papers are not “books of account” and the entries therein are not sufficient to charge a person with liability. Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is incumbent upon the person relying upon those entries to prove that they are in accordance with facts. The Bombay High Court in CIT v Devesh Agarwal [2017] 81 taxmann.com 257 (Bom)(HC) (Pg. No. 105-106) has held that no addition can be made on the basis of presumptions, surmises and conjectures. In view of these facts and the decisions as stated above, we are inclined to uphold the order passed by the Id CIT(A) on this issue. The ground no. 2 is allowed.

44. In the result the appeals for 2005-06, 2006-07, 2007-08 & 2011-12 and cross objections of the assessee for AY 2009-10 & 2010-11 are allowed while cross objection of the assessee for 2008-09 and appeals of the revenue for 2009-10, 2010-11 & 2011-12 are dismissed.

Order pronounced in the open court on 23.07.2021.

**Sd/-
(Ramlal Negi)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 23.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.