

THE INCOME TAX APPELLATE TRIBUNAL

“C” Bench, Mumbai

Before Shri B.R. Baskaran (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 4464/Mum/2013 (Assessment Year 2009-10)

I.T.A. No. 6673/Mum/2013 (Assessment Year 2010-11)

DCIT/ACIT CC 15 &16 Room No. 402 Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Cineyug Media & Entertainment Pvt. Ltd. Ground Floor Eldora Apartment Juhu Church Road, Juhu Mumbai-400 049. (Respondent)
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I.T.A. No. 3926/Mum/2013 (Assessment Year 2009-10)

I.T.A. No. 6721/Mum/2013 (Assessment Year 2010-11)

I.T.A. No. 1225/Mum/2016 (Assessment Year 2011-12)

M/s. Cineyug Media & Entertainment Pvt. Ltd. Ground Floor Eldora Apartment Juhu Church Road, Juhu Mumbai-400 049. (Appellant)	Vs.	ACIT, CC 15 &16 Room No. 402 4 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN : AAACC5391H

Assessee by	Dr. K. Shivram, Shri Sashank Dundu & Shri M. Pandya
Department by	Shri H.N. Singh & Ms. Nilu Jaggi
Date of Hearing	14.12.2018
Date of Pronouncement	09.01.2019

ORDER

Per B.R. Baskaran (AM) :

All these appeals filed by the assessee and revenue are directed against the orders passed by Ld CIT(A) for assessment years 2009-10, 2010-11 and 2011-12. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is engaged in the business of event management like conducting shows/concerts/award ceremonies etc. The assessee is part of Cineyug Group. The revenue carried out search and seizure operations u/s 132 of the Act in the case of Cineyug Group on 25.11.2009. On the very same day, a survey operation u/s 133A of the Act was conducted on Kusegaon Fruits & Vegetables. The name of the assessee was changed into Cineyug Media & Entertainment P Ltd. The name of M/s Kusegaon Fruits & Vegetables was changed into M/s Kusegaon Realty P Ltd. The main promoters of Cineyug are S/s Karim Morani, Ali Morani and Mohamed Morani. M/s Kusegaon belongs to "Dynamix Balwas" group company (in short "DB Group"). The main promoters of DB group are S/Shri Vinod Goenka and Shahid Balwa.

3. During the course of search proceedings, incriminating documents relating to various events conducted by the assessee were found. The information given in the website of the assessee about the events organized by them was also collected. On collation of the details and upon comparison of the same with the entries made in the books of accounts, the AO noticed that the assessee has not accounted for certain events, claimed to have been conducted by it in its website. In some cases, the amount recorded was different from that one found in the incriminating materials. Hence in AY 2009-10, the AO made addition towards suppression of receipts to the tune of Rs.5.02 crores. We shall discuss the details thereof in the ensuing paragraphs.

4. The search operations also revealed that the assessee was part of series of payments made to M/s K TV, Chennai. During the years 2008 and 2009, a total sum of Rs.200 crores were seen paid to K TV by Cineyug, the assessee herein, whose sources were found to be DB reality group of companies. The monies were routed through M/s Dynamix and M/s Kusegaon to Cineyug, which, in turn, was paid to K TV. The analysis of the books of accounts revealed that the assessee herein, M/s Cineyug, has received a sum of Rs.206.25 crores, i.e., a sum of Rs.28.50 crores was received during the FY

2008-09 relevant to AY 2009-10 and the remaining 177.75 crores was received during the year relevant to AY 2010-11. The transfer of money had taken place in the following manner:-

- (a) M/s Dynamix Reality transferred a sum of Rs.209.251 crores to M/s Kusegaon.
- (b) M/s Kusegaon transferred Rs.206.25 crores to M/s Cineyug.
- (c) M/s Cineyug transferred Rs.200 crores to M/s K TV.

The AO further noticed that the above cited money transactions were alleged to be related to 2G spectrum Scam and the entire transactions became subject matter of criminal investigation by CBI and charge sheets have also been filed.

5. The AO also noticed that the assessee M/s Cineyug has claimed to have received funds from M/s Kusegaon towards allotment of Shares and ICD. However, the entries made in the books of accounts of M/s Kusegaon, Cineyug were showing different picture, i.e., as loans and advances. The AO has discussed the inconsistencies in a detailed manner in paragraph 17 and 18 of his order.

6. The AO noticed that the assessee herein has received a sum of Rs.28.50 crores from M/s Kusegaon and the same was used to make payment of Rs.25.00 crores to M/s K TV. The AO considered the same as transfer of money by M/s Kusegaon to M/s K TV, wherein the assessee has acted as a facilitator. Accordingly the difference amount of Rs.3.50 crores (Rs.28.50 crores (-) Rs.25.00 crores) was considered by the AO as facilitation fee received by the assessee for transfer of funds. Accordingly the AO assessed the above said amount of Rs.3.50 crores as income of the assessee.

7. Now we shall take up the appeal filed by the assessee for AY 2009-10. The first issue contested by the assessee relates to the addition of facilitation fee of Rs.3.50 crores made by the AO. The Ld CIT(A) confirmed the said addition and hence the assessee is challenging the same.

8. At the time of hearing, the Ld A.R submitted that the impugned addition has been made by the AO on the basis of allegation made in 2G spectrum scam and the charge sheets filed by CBI. He submitted that the Special Court has since relieved the assessee and its directors from all the charges. He submitted that an identical addition was made in the hands of M/s Kusegaon Realty P Ltd, from whom the assessee had received funds. When the matter reached the ITAT, the Tribunal, vide its order dated 17.04.2018 passed in ITA No.565/Mum/2016 relating to AY 2011-12 has restored the matter back to the file of the assessing officer for examining the issue afresh by duly considering the decision rendered by Special Court. The Ld A R, accordingly, prayed that this issue may also be restored to the file of the AO for examining it afresh.

9. The Ld D.R also accepted the factual aspects presented by Ld A.R on this issue. However, he submitted that Government may be filing appeals against the orders passed by Special Judge and hence the matter cannot be considered to have attained finality

10. We notice that the co ordinate bench has considered an identical issue in the case of Kusegaon Realty P Ltd (supra) and has restored the issue to the file of the AO with the following observations:-

10. We have patiently and carefully heard rival submissions, perused the materials on record as well as decisions cited before us. Before proceeding to decide the issues raised in these appeals, it is necessary to put certain facts on record. The hearing of these appeals was concluded earlier on 26.09.2017. While drafting the order it was felt that clarification on certain issues are still required. Hence, the Bench thought it appropriate to refix the appeals for fresh hearing. Subsequently, the assessee vide letter dated 22.12.2017 requested rehearing of the appeals as it wanted to bring on record the orders of ld. Special Judge, CBI, New Delhi in the trials conducted against the assessee under the [Prevention of Corruption Act](#) and [Prevention of Money Laundering Act](#), which according to the assessee will have crucial bearing on the present appeals. Thus, the appeals were refixed for hearing and finally heard on 19.01.2018. Though, the disputed issue concerning allowability of interest expenditure claimed

by the assessee on the surface appears to be a simple issue, however, on deeper scrutiny of facts and materials it is not so. Through a maze of bank transactions funds worth Rs. 200 crore have been transferred between number of entities including the assessee. As could be seen from facts on record, while filing the original return of income for the assessment year 2010-11 assessee did not declare the interest income claimed to have been received from Cineyug. Subsequently, through a revised return of income filed on 07.09.2011 assessee offered the said interest income. Further, the assessing officer has observed that in the audited balance sheet as at 31.03.2009 which was before survey, the assessee had shown unsecured loan of `31.50 crore from Dynamix Realty. However, in the audited balance sheet for assessment year 2010-11, which was prepared after survey, the unsecured loan has been reclassified as inter corporate deposit(ICD). Similarly, while in the audited balance sheet of assessment year 2009- 10 assessee has shown an amount of Rs. 28.50 crore as investment in share application money with Cineyug, in the audited balance sheet of assessment year 2010-11, the nomenclature of Rs. 28 50 has been changed to loans and advances from investments. Further, the audited balance sheet of assessee for assessment year 2010 11 shows investment in share application money with Cineyug at Rs .206.24 crores split into Rs. 06.2475 crore as equity share application money and Rs. 200 crore as 8% debenture application money. Similar inconsistencies were also pointed out by the assessing officer in respect of transfer of money between Cineyug and KTV The assessing officer also alleged that in the process of advancing/investing in share application money, ICD and debenture bonds, both, the assessee and Cineyug have violated various provisions of [Companies Act](#). Further, assessing officer has also observed, either during search or survey no proof or document was found to indicate offer of debenture by Cineyug or application made by assessee for investing in such debenture. Ultimately, though, the assessing officer assessed the amount offered by the assessee as interest income, however, he held that it is not in the nature of interest income.

11. On a careful reading of paragraph 19 to 19.3 of Commissioner (Appeals) order for assessment year 2010-11, against which the department is in appeal, it is evident, the Commissioner(Appeals) has totally overlooked and ignored the inconsistencies pointed out by the assessing officer with regard to the nature of transactions between the parties in purported violation of various provisions of [Companies Act](#). Learned Commissioner(Appeals) while allowing assessee's claim in Assessment Year 2010-11 has not at all dealt with a number of factual issues raised by the assessing officer. In as much as, while deciding assessee's appeal for Assessment Year 2011-12 the

Commissioner(Appeals) has upheld the disallowance of interest expenditure claimed by the assessee on a altogether different reasoning by changing the head of interest income shown by the assessee under the head 'income from other sources' to 'business income'. Thus, there is inconsistency even in the stand of the department with regard to the head of income.

12. Moreover, the most important factor which will have crucial bearing on the disputed issue is the fate of the cases filed by the CBI against the assessee under the *Prevention of Corruption Act* and *Prevention of Money Laundering Act*. A reading of the impugned assessment orders as well as the first appellate order for assessment year 2011-12 would leave no room for doubt that the disallowance of interest expenditure stands on the fulcrum of the allegations made by the CBI against the assessee and other persons in the charge sheet/complaint filed under the *Prevention of Money Laundering Act*, 2002 and *Prevention of Corruption Act*, 1988. However, learned Special Judge, CBI (04), New Delhi, while delivering his judgment on 21st December 2017 in C.C. no.01/2011, the case filed under the *Prevention of Corruption Act*, 1988, has acquitted the assessee from all charges leveled against it on the following observations:-

"18 1 6. Thus, the genesis of the instant case lies not so much in the actions of Sh. A. Raja but in the action/inaction of others, referred to above. There is no material on record to show that Sh. A. Raja was mother lode of conspiracy in the instant case. There is also no evidence of his no-holds-barred immersion in any wrongdoing, conspiracy or corruption.

1817. There is no evidence on the record produced before the Court indicating any criminality in the acts allegedly committed by the accused persons relating to fixation of cut-off date, manipulation of first come first-served policy, allocation of spectrum to dual technology applicants, ignoring ineligibility of STPL and Unitech group companies, non-revision of entry fee and transfer of Rs. 200 crore to Kalaignar TV (P) Limited as illegal gratification. The charge sheet of the instant case is based mainly on misreading, selective reading, non-reading and out of context reading of the official record. Further, it is based on some oral statements made by the witnesses during investigation, which the witnesses have not owned up in the witness-box. Lastly, if statements were made orally by the witnesses, the same were contrary to the official record and thus, not acceptable in law.

1818. I may add that many facts recorded in the charge sheet are factually incorrect, like Finance Secretary strongly recommending revision of entry fee, deletion of a clause of draft LOI by Sh. A. Raja, Recommendations of TRAI for revision of entry fee etc. The end result of the above discussion is that, I have absolutely no hesitation in holding that the prosecution has miserably failed to prove any charge against any of the accused, made in its well choreographed charge sheet.

1819. Accordingly, all accused are entitled to be acquitted and are acquitted."

13. Relying upon his decision in the Complaint Case filed under the [Prevention of Corruption Act, 1988](#), the learned Special Judge, CBI (04), New Delhi, also acquitted the assessee in the Complaint Case no.1/2014 filed under the [Prevention of Money Laundering Act, 2002](#), with the following observations:-

"167. Since there are no "proceeds of crime", in my humble opinion, there is no need to discuss other issues based on evidence led by the parties, as that would amount to an exercise, not only in speculation but also in futility, as the very basic fact required for constitution of an offence of money-laundering, that is, "proceeds of crime", is knocked out.

168. Accordingly, all accused are entitled to be acquitted and are acquitted."

14. Undisputedly these are recent developments much after completion of proceedings before the Departmental Authorities. None of the Departmental Authorities had the benefit of the aforesaid orders passed by the learned Special Judge, CBI (04), New Delhi, which were produced for the first time in course of appeal hearing before us. Rules of natural justice and fair play demand that the Departmental Authorities must be given an opportunity to analyze and examine the impact the orders passed by the learned Special Judge, CBI (04), New Delhi, may have on the disputed issue arising in the present appeals.

15. Therefore, regard being had to the facts discussed by us herein before and the changed scenario arising due to the orders passed by the learned Special Judge, CBI (04), New Delhi, referred to above, we are of the considered opinion that the issues raised in the present appeals are required to be restored back to the Assessing Officer for de novo adjudication after considering all incidental facts and material including the orders of the learned Special Judge, CBI (04), New Delhi.

Consistent with the view taken by the co-ordinate bench, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the assessing officer for examining it afresh as held by the co-ordinate bench.

11. The next issue urged by the assessee relates to the claim of set off of brought forward business losses and unabsorbed depreciation. The submission of the assessee is that the AO did not allow set off of brought forward business losses and unabsorbed depreciation. Hence the assessee raised a ground relating thereto in the appeal preferred before Ld CIT(A). However, the Ld CIT(A) omitted to dispose of the same and hence the assessee preferred an application u/s 154 of the Act before Ld CIT(A). According to Ld A.R, the Ld CIT(A) has not disposed of the same till date. Accordingly it is prayed that the AO may be directed to allow set off of brought forward business losses and unabsorbed depreciation.

12. We heard the parties on this issue. The claim of the assessee is that the Ld CIT(A) has not disposed of the ground urged before him in this regard. In any case, the claim of the assessee requires factual verification. Accordingly we restore this issue also to the file of the assessing officer for examining the claim of the assessee in accordance with the law.

13. We shall now take up the appeal filed by the revenue for AY 2009-10. First issue urged by the Revenue relates to addition of Rs.223.03 lakhs made by the Assessing Officer towards suppression of income earned from various events, which were not disclosed by the assessee.

14. The Assessing Officer, upon examination of incriminating materials and also upon considering details of events organized by the assessee as mentioned in the website of the assessee, came to the conclusion that the assessee has not accounted for income from following events. The AO has tabulated the same along with the reply of the assessee:-

<i>Reference to the seized Documents</i>	<i>Particular Of the event</i>	<i>Amount in Rs</i>	<i>A Y</i>	<i>Reference to Website</i>	<i>Reply of the Assessee</i>
<i>Page 38</i>	<i>Zee Astitva (NCPA)</i>	<i>44,60,788</i>	<i>2009-10</i>	<i>30/08/2008</i>	<i>Program cancelled during the year</i>
<i>Page 39</i>	<i>Temptation Revolution</i>	<i>44,50,788</i>	<i>2009-10</i>	<i>25/10/2008</i>	<i>No such program organized</i>
<i>Page 40, 41 & 42</i>	<i>Temptation Reloaded</i>	<i>44,60,788</i>	<i>2009-10</i>	<i>21/06/2008</i>	<i>Event not happened</i>
<i>Page 40, 41 & 42</i>	<i>Zee Marathi Gaurav</i>	<i>44,60,788</i>	<i>2009-10</i>	<i>22/02/2009</i>	<i>Contract not awarded</i>
<i>Page 40, 41 & 42</i>	<i>Zee Carnival</i>	<i>44,60,788</i>	<i>2009-10</i>	<i>13/02/2009</i>	<i>No reply of the assessee</i>

Accordingly the Assessing Officer added aggregate amount of Rs. 223.03 lakhs relating to the above said five events to the total income of the assessee. The Learned CIT(A) deleted the same and hence the Revenue has filed these appeals.

15. We have heard the parties on this issue and perused the record. Before learned CIT(A), the assessee submitted that the above said events have not taken place as on 20.11.2009 (date of search) and they were under consideration as on that date. It was further submitted that identical events were held on other dates and they were conducted by group concerns only. It was submitted that the group concerns have offered income generated from the events. It was also pointed that seized paper mentioned the expression "TBF" meaning "To be finalized" against each of the events, meaning thereby, they were only at discussion stage. Accordingly it was submitted that these events did not take place as on the date of search and hence no revenue was generated there from. It was also submitted that several events are held on identical names with slight variation in other dates, which were conducted by group concerns. It was submitted that the Assessing Officer has erroneously linked certain events with the events having identical name with slight

variation. The explanations given by the assessee before Ld CIT(A) in respect of events conducted in the earlier year, are summarized below

- (a) Zee Astitva was conducted on 30.8.2008 by a group concern name M/s. Cineyug Worldwide for M/s. Zee Entertainment Enterprises Ltd.
- (b) Temptation Revolution: According to the assessee, this event was named as 'Temptation Reloaded' and it was conducted on 25.10.2008 by Cineyug Entertainment for M/s. Red Chillies International Ltd.
- (c) Temptation Reloaded:- According to assessee, the actual name of the event was 'Temptation Reloaded Dubai' and it was conducted on 21.6.2008. Said event was conducted jointly by the directors in their personal capacity for M/s. Seiker Entertainment
- (d) Zee Marathi Gaurav :- According to assessee, actual name is 'Zee Gaurav SRPF ground' and it was conducted by M/s. Cineyug Worldwide on 22.2.2009 for M/s. Zee News Limited
- (e) Zee Carnival: According to the assessee, actual name is "Zee Carnival London" and the same was conducted on 13.2.2009 by the directors in their personal capacity for M/s Red Chillies International.

16. In view of the above said explanations furnished by the assessee, the learned CIT(A) called for a remand report from the Assessing Officer. In the remand report, the Assessing Officer submitted that the assessee has failed to furnish any compelling evidence to prove that the contents of seized documents are not correct. It was also submitted that benefit of doubt with regard to contents of seized documents was duly given to the assessee accepting its explanation. Accordingly, the Assessing Officer stood by the addition made by him.

17. Since, the Assessing Officer did not examine the claim of the assessee with regard to material furnished, the learned CIT(A) directed the assessee as well as the Assessing Officer to be present before him on 19.3.2013 in order to examine factual documents furnished by the assessee in the presence of the Assessing Officer. Accordingly, the learned CIT(A) examined the documents relating to five events referred above and found that the explanations of the

assessee were factually correct. The Learned CIT(A) has observed that the Assessing Officer has also attested to the said facts in course of hearing and examination of books/documents as furnished. Accordingly, the learned CIT(A) gave a finding that the above said events were conducted by the group concerns on other dates. The document seized on the date of search, i.e., on 20.11.2009, only disclosed the events, which were yet to materialize. Accordingly, he deleted the addition of Rs. 223.03 lakhs made by the Assessing Officer.

18. We notice that the Ld CIT(A) has rendered his decision after examination of the documents in the presence of the assessing officer. The findings given by Ld CIT(A) has also been attested by the AO, meaning thereby, the AO also appears to have accepted the findings of Ld CIT(A) before Ld CIT(A). Hence, the revenue should not have grievance over the same. For the sake of convenience, we extract below operative portion of the order passed by learned CIT(A)

7.5. I have very carefully considered the matter. As regards the addition "of Rs. 2,23,03,841/-, in respect of the five events viz. Zee Astitva, Temptation Revolution, Temptation Reloaded, Zee Marathi Gaurav, Zee Carnival, it was the submission of the appellant that the events as mentioned in the seized documents were those which were under consideration as on 20.11.2009 as is evidenced by the words "TSF" (To be finalized). It was also further pointed out that the A.O against each of the said five events had wrongly correlated another event which was conducted by the group concerns of the appellant. Further, it was pointed out by the appellant, alongwith documentary evidence that the said events as conducted by the group entities had been accounted for and offered to tax by the respective concerns of the group. The said documents were remanded to the A.O with a direction to verify each and every aspect and to specifically report as to whether the facts mentioned by the appellant are correct or not. The A.O has furnished his remand report as mentioned in the pre paragraphs. With regard to the said addition I have reproduced paragraph 8 of the remand report wherein the said matter has been discussed by the A.O. From a close reading of paragraph 8 of the remand report of the A.O, it can be observed that the A.O has simply reiterated the earlier findings in the order of assessment. In other words the factual verification to be carried out as

per the directions of the CIT(A) as contained in the remand order was not complied with. In the interest of justice it was imperative that the facts and documents as presented by the appellant be physically verified in order to arrive at a decision. Taking into account the said fact, the appellant was directed to present its submissions and the relevant documents/books of account before the CIT(A) on 19.3.2013. On the said date the A.O was requested to be present, which was complied with. The submissions as made and the factual documents as furnished were physically examined in the presence of the A.O. All the aspects _as mentioned by the appellant with reference to all the five events were verified in the presence of the A.O, and it was factually seen that the contentions/submissions as made by the appellant are factually correct. The A.O has also attested to the said fact in the course of hearing and examination of the books/documents as furnished. It has been examined and seen that the group concerns had indeed conducted the events, (which were wrongly correlated by the A.O). It is also observed from the relevant seized documents that the seized documents contained the notings TBF i.e. as on 20th November 2009 the events as mentioned therein were yet to materialize. Under the said circumstances, I am unable to sustain the addition of Rs. 2,23,03,841/-; the addition is accordingly deleted.”

In view of the above, we do not find any reason to interfere with the order passed by Ld CIT(A) on this issue.

19. The next issue contested by the Revenue relates to addition of Rs. 57.26 lakhs relating to events named “Khaitan Wedding” and “Events at Indore and Jaipur”. The Assessing Officer noticed from the seized documents that the assessee has conducted events named Khaitan Wedding and also events at Indore and Jaipur. The amount mentioned in respect of those events was Rs. 50.60 lakhs and Rs. 6.66 lakhs respectively. According to AO, the above said events were also mentioned in the assessee’s website. The assessee stated before the AO that those events did not take place and hence no revenue was generated. The Assessing Officer was not satisfied with the explanations of the assessee and accordingly made an addition of Rs. 57.26 lakhs. The Learned CIT(A) deleted the same and hence the revenue has filed this appeal.

20. We have heard the parties and perused. Before learned CIT(A) the assessee submitted that the seized material relating to above events mentioned only quotation for the events. However, the assessee did not get contract for organizing those events. Accordingly, it was contended that the Assessing Officer was not justified in making addition. Hence the Learned CIT(A) called for a remand report from the Assessing Officer. In the remand report, the Assessing Officer placed his reliance on the information given in the official website and submitted that the website of the assessee disclosed that these events have been conducted by the assessee. Before the AO, the assessee filed confirmation letter obtained from Khaitan group confirming that the above said events did not take place during the A.Y. 2009-10. The Assessing Officer, however, expressed the view that the confirmation letter only mentions that the event did not take place during the year under consideration and it has failed to clarify as to whether the said event was conducted by the assessee either prior to or after A.Y. 2009 10. In response to the remand report, the assessee submitted that these events are not reflected in the website as alleged by the AO. It was further submitted that seized material clearly show that notings made therein were related to initial discussions only. The Learned CIT(A) was convinced with the explanations of the assessee and accordingly deleted the addition with following observation :-

8.8 I have very carefully considered the matter. I have also perused copy of the seized documents referred to as pages 50-52 and page 33. With regard to Khaitan wedding, the seized document records the date as 25-27 November, 2009. The said document appears to be an estimate for the Khaitan wedding, comprising of welcome dinner, mehendi, sangeet, wedding, baraat. For the said events, as per the said document, various options have been projected such as bands with seven members, three + three troupe dancers/options for compere i.e. whether local or not, etc. have been detailed in a format also with the costing. Further, in the said seized document it is seen that the costing with respect to welcome dinner has been scored out. Thus, the document reads as suggestion for the various programmes comprised in the wedding function and the date is shown as 25th to 27th November, 2009. Since various options have been mentioned against different functions such as comparing, DJ, Kawali etc., there is merit in the contention of the appellant that the function had not

taken place and it is only a working sheet drafted as part of discussion of the various events proposed to be held for the wedding function. Further, on a reading of the remand report of the A.O on the subject, it is perceived that the A.O has only reiterated the earlier findings in the order of the assessment. However, the A.O took cognizance of the additional evidence in the form of confirmation from the Khaitan Group confirming that no marriage event has been conducted for them during A.Y 2009-10. To this, the reply of the A.O is that the assessee failed to clarify whether the event was conducted either before A.Y 2009-10 or after 2009-10; however, there is a tacit admission that such an event did not take place during the captioned year. It must also be mentioned here that the said matter was taken up for discussion in the presence of the A.O on 19.3.2013 in the course of hearing of the appeal. No further submission was put forth by the A.O other than what is stated in the remand report. From the facts as brought out on record, it is to be held that here is no evidence that the event had actually taken place. That being so, the said seized document denotes the projection for a programme that was under discussion. So also, seized documents with regard to Indore/Jaipur, is observed to be the projected estimate for stage decoration, signage, furniture etc. considering where the event is to be held, i.e. whether at Indore or Jaipur. In short, the document is a comparative study in costing considering the place of holding of the event. In the absence of any evidence to prove the contrary, I am unable to sustain the addition of Rs. 57,26,380/- as income from undisclosed sources. The addition of Rs. 57,26,380/- is hereby deleted.

21. On a perusal of the order passed by learned CIT(A), we noticed that learned CIT(A) has given a clear finding that the seized documents contained noting relating to initial discussion only. The Learned CIT(A) has also noticed that the Assessing Officer has duly considered additional evidence furnished by the assessee in the form of confirmation letter obtained from Kaitan group. The Assessing Officer has only observed that the confirmation letter did not clarify as to whether event was conducted either before or after 2009-10, meaning thereby, there was a tacit admission by the Assessing Officer that such an event did not take place during the captioned year. Accordingly the Ld CIT(A) took the view that the noting made in the seized paper was related to initial discussions only and hence no addition was called for. Accordingly, the learned CIT(A) deleted addition. We notice that learned CIT(A) has passed a reasoned order on this issue by duly considering all the evidences. The confirmation letter of M/s Khaitan furnished by the assessee, in fact, supports

the contention of the assessee. We notice that the AO did not prove the same to be false nor did he conduct any enquiry with M/s Khaitan group. The AO's only observation was that the confirmation letter talks about year under consideration only and not about either prior or subsequent year. There should not be any dispute that we are concerned with AY 2009-10 only and if the events were not held during that year, the question of assessing income in AY 2009-10 does not arise. Accordingly we are of the view that the Ld CIT(A) was justified in deleting the addition. Accordingly we uphold the order passed by him on this issue.

22. We shall now take up the appeal filed by the assessee for AY 2010-11. The first issue urged by the assessee relates to the assessment of income relating to closing ceremony of IPL-2009 event held on 24.05.2009 in Johannesburg, South Africa. The AO noticed from the seized record that the assessee has given quotation of Rs.5 82 crores (South African Currency equivalent to ZAR 1,03,16,050) to BCCI to conduct closing ceremony of IPL-2009. The assessee was awarded contract for a sum of Rs.5.50 crores. However, the assessee had declared profit of Rs.11,19,160/- from the above said event as per the details given below:-

Receipts from SVR	-	31,42,683
Expenses incurred by Cineyug		20,23,523
Net Profit		11,19,160

The assessee submitted that the IPL-2009 final event was shifted to South Africa due to ensuing elections in India. It was submitted that the closing ceremony was conducted by M/s SVR Entertainments P Ltd, a company registered in South Africa along with another company named M/s DNA Entertainment Networks P Ltd. The assessee further submitted that major work was executed by M/s DNA Entertainment Network P Ltd and a small portion was executed by M/s SVR Entertainments P Ltd, from which the assessee received payments for the work done by it.

23. The AO noticed from the seized documents that M/s SVR Entertainments P Ltd was a front company/nominee of the assessee only. He further observed that the assessee did not prove involvement of M/s DNA Entertainment Network P Ltd in the event. Accordingly he took the view that entire contract amount should be assessed in the hands of the assessee. Accordingly he computed profits from this contract as under:-

Gross Billing (restricted as per quotation)	-	Rs.5,82,85,683
Less:- Expenses	-	48,02,313
Profits from the event	-	Rs.5,34,83,370

The Ld CIT(A) also confirmed the same and hence the assessee has challenged the decision of Ld CIT(A).

24. We heard the parties on this issue and perused the record. We notice that the main contention of the assessee is that the major part of closing ceremony was conducted by M/s DNA Entertainment Network P Ltd. We notice that the AO has rejected this contention for want of evidences to his satisfaction. Further, the AO himself has accepted that the assessee was awarded contract by BCCI for a sum of Rs.5.50 crores. However, the AO has adopted the gross receipts as Rs.5.82 crores, as per the quotation submitted by the assessee, while computing profit. This action of the AO contradicts his own observation. Further the AO was of the view that M/s SVR Entertainments P Ltd is a front company/nominee of the assessee. However, the AO himself accepts that M/s SVR Entertainments P Ltd is registered in South Africa. We notice that the AO has drawn adverse inferences in this matter, mainly for want of evidences/lack of clarity and the assessee also appears to have failed to clarify the doubts of the AO. Further, we notice that the AO has allowed deduction of only Rs.48 lakhs as expenses. This appears to be very low. Under these set of facts, we are of the view that this issue requires fresh and proper examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to

the file of the AO for examining it afresh by duly considering the explanations and evidences that may be furnished by the assessee before him. We also direct the assessee to furnish all the evidences and documents that may be called for by the AO.

25. The next two issues contested by the assessee relate to disallowance of interest of Rs.12.19 crores paid by the assessee to M/s Kusegaon fruits and vegetables P Ltd (also known as Kusegaon Reality ...) and addition of facilitation fee of Rs.2.75 crores. Both these issues arise out of financial transactions entered between M/s Dynamix, M/s Kusegaon, the assessee herein and M/s K TV. In AY 2009-10, we restored the issue relating to facilitation fee to the file of the AO for examining it afresh. The result of the said examination would have bearing on these two issues in AY 2010-11. Accordingly we deem it proper to restore these two issues also to the file of the AO for examining them afresh as per the directions given in AY 2009-10. Accordingly we set aside the orders passed by Ld CIT(A) on these two issues and restore them to the file of the AO for examining them afresh as per the directions given in AY 2009-10.

26. We shall now take up the appeal filed by the revenue for AY 2010-11. The ground no.4 is related to the addition made in respect of IPL-2009. Since the Ld CIT(A) has confirmed the addition, the revenue should not have any grievance over the same. Accordingly we reject this ground. The Ground no.5 & 6 are general in nature. The remaining grounds relate to the following additions made by the AO:-

SRK Nights	-	22.69 lakhs
Jaipur Wedding	-	49.12 lakhs
King Khan Nights	-	22.69 lakhs

27. The AO noticed from the seized papers/web site of the assessee that the above said events have taken place, but the assessee did not offer the income

therefrom. Accordingly the AO added the above said amounts to the total income of the assessee. Before Ld CIT(A), the assessee contended that :-

(a) the event named Sharukh Khan Night did not take place and the seized papers were related to the quotations/initial discussions only. It was further submitted that the AO has referred to the event that occurred on an earlier occasion and linked the same with quotation papers.

(b) With regard to Jaipur wedding, it was submitted that the assessee has already offered income in the books of accounts and has also offered additional income during the course of search. It was submitted that the seized papers referred by the AO with respect to Jaipur wedding was not related to the said event.

(c) In respect of King Khan Nights, it was submitted that the said event was conducted by another concern named M/s G.S. Entertainments. To support the same, the assessee also filed a confirmation letter obtained by it from someone.

28. Hence the Ld CIT(A) remanded the matter to the AO and called for a remand report from him. The assessing officer, however, stood by the additions made. The Ld CIT(A), then, independently examined the seized documents and came to the conclusion that the submissions made by the assessee are correct. Accordingly he deleted the addition. For the sake of convenience, we extract below the operative portion of the order passed by Ld CIT(A) on this issue:-

9.2 I have very carefully considered the findings of the AO, the submissions of the appellant, the contents of the Remand Report and Rejoinder filed by the appellant. My findings with respect to the various events are as shown below:-

(i) SRK Nights (Rs. 22,69,433/-)

The A.O. has stated that as per the seized document, the said event was conducted on 30.4.2009 but is not reflected in the books of account. It is the contention of the appellant that the event "SRK Nights" mentioned in the seized material did not "take place, since it was under the planning stage. I have independently examined the matter. Pages 40, 41 and 42 of the seized document reflects the event "SRK Nights"

and the comment "Need to follow up with SNH Baber". The venue mentioned is UAE (page 185 of paper book containing written submissions). As per the seized material, this is about an event which was under planning stage, as is perceived from the terminology used "as on 6th July 2009" and "project update for Cineyug Entertainment Event". Thus the seized document is apparently an update of events as on 6th July, 2009. As per the document, it reasonably appears to be an event proposed for July, 2009, the venue being UAE. It is submitted that the said event does not appear in the website and no such event took place. This is plausible for the reason that the words "Need to follow up with Baber" appear alongside the said project. The event was evidently under planning stage. There is no evidence of the event having taken place. Hence the said addition of Rs.22,69,433/- is deleted.

(ii) Jaipur Wedding (Rs. 49,12,955/-)

As per the books of account the receipts from Jaipur show is Rs.31,68,663(page 193 of paper book). But the A.O. states that as per seized material (54 & 55) the receipt is Rs.80,81,618/-. The appellant has contended that seized documents 54 and 55 are unrelated material. I have examined the copy of the said document 54 & 55 (pages 191 and 192 of paper book). It is observed to be summary of various expenses incurred aggregating Rs. 80 81,618/-. There is no mention of Jaipur wedding in the said papers. In the Remand Report dated 4.01.2013, the A.O. himself admits that in respect of the said event the appellant had made disclosure of Rs.35,00,000/- on account of possible omission of expenses and further states that "as per seized papers page no. 54 & 55 showed total receipts of Rs.80,81,618/- which appear to be receipt from the event of wedding at Jaipur". However, on an examination of the papers 54 & 55, they are observed to be payments made for certain expenses Hence I am of the view that the addition made is not sustainable. The addition stands deleted.

(iii).....

(iv) King Khan Night - Kamala Mills (Rs. 22,69,433/-)

According to the A.O., the said event was reflected in the website to have been conducted but there is no reference to the same in the books. According to the appellant, the said event was conducted by one G.S. Entertainment and not the appellant. Further, a e-mil confirmation was filed stating to be from one Mr. Naresh Asrani to the effect that the event was not conducted by the appellant, which was taken on record as additional evidence. In the Remand proceedings, the CIT(A) directed the A.O. to cause necessary enquiries to be conducted with M/s G.S. Entertainment or Mr. Naresh Asrani and to ascertain whether the show

was conducted by the appellant or not. However this exercise was not carried out by the A.O. The A.O. has only reiterated that what has been perceived from the seized material ought to be perceived as true and genuine. I am unable to accept the said contention of the A.O when the appellant has completely denied the transaction and has also endeavored to give further evidence to support its contention that it had not conducted the event; then the burden shifts and the 'A.O. who has to necessarily discharge the burden cast on him. The A.O. has not enquired into the contention of the appellant that the event was conducted by another entity. In the absence of such an action on the part of the A.O., and that a confirmation has been placed on record, the addition of Rs.22,69,483/- cannot be sustained.

29. We have heard the parties and perused the record. We notice that the Ld CIT(A) has independently examined the seized papers and has given finding that the event named "Sharukh Khan Nights" was at the initial stage of discussions only and did not take place. In respect of Jaipur Wedding, the Ld CIT(A) has noticed that the seized papers were not related to that event. The other event named King Khan Nights was accepted as conducted by M/s G.S. Entertainments. Before us, the revenue did not file any material to contradict the findings given by Ld CIT(A). Since the Ld CIT(A) has given a finding on the above said events by duly considering the seized papers and explanations of the assessee and since the revenue could not controvert the same, we have no other option but to confirm the order passed by Ld CIT(A) on this issue.

30. We shall now take up the appeal filed by the assessee for AY 2011-12. The only issue urged by the assessee related to disallowance of interest expenses, i.e., interest paid to M/s Kusegaon Reality ... (also known as M/s Kusegaon Fruits...). This issue arises out of financial transactions entered between M/s Dynamix, M/s Kusegaon, the assessee herein and M/s K TV. In AY 2009-10, we restored the issue relating to facilitation fee to the file of the AO for examining it afresh. The result of the said examination would have bearing on this addition made in AY 2011-12. Accordingly we deem it proper to restore this issue also to the file of the AO for examining it afresh as per the directions given in AY 2009-10. Accordingly we set aside the order passed by

Ld CIT(A) on this issue and restore it to the file of the AO for examining it afresh as per the directions given in AY 2009-10.

31. In the result, both the appeals of revenue are dismissed. The appeals of the assessee are treated as allowed for statistical purposes.

Order has been pronounced in the Court on 09.1.2019.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 09/1/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

PS