

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.5862/Del/2016
निर्धारणवर्ष/Assessment Year:2012-13**

Baring Pvt. Equity Partners (India) Pvt. Ltd. A-16/9, Vasant Vihar, New Delhi.	बनाम Vs.	DCIT Circle-4(1) New Delhi.
PAN No. AACCB5013B		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri M.P. Rastogi, Adv.
राजस्वकीओरसे /Revenue by	None

सुनवाईकीतारीख/ Date of hearing:	29.01.2020
उद्घोषणाकीतारीख/Pronouncement on	29.01.2020

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

1. This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-35, New Delhi dated 01.09.2016 for Assessment Year 2012-13.
2. We have heard Ld. Counsel for assessee and perused the findings of authorities below. Ld. DR sought adjournment which is rejected being in small case.
3. On ground no. 1 & 2 assessee challenged the addition of Rs. 82,730/- on account of commission. The AO noted from AIR/26AS Information that assessee company has received commission income amounting to Rs.

82,730/- from Muthoot Securities Ltd. The assessee asked to clarify why not commission income from the said party as per 26AS be not added to the income of the assessee. The Counsel for assessee agreed for addition before AO. The AO, accordingly, made the addition because assessee agreed for the addition. The assessee challenged the addition before Ld. CIT(A), the Ld. CIT(A), however, dismissed this ground of appeal of the assessee.

4. It is well settled law that no appeal lies on agreed additions. We rely upon the judgment of Bombay High Court in the case of Jivat lal Purtapshi vs. CIT 65 ITR 261, judgment of Kerala High Court in the case of Vamadevan Bhanu vs. CIT 330 ITR 559 and judgment of Punjab & Haryana High Court in the case of Banta Singh Kartar Singh vs. CIT 125 ITR 239. Ld. Counsel for assessee submitted that the same income was offered in subsequent assessment year. However, he has not pointed out anything from the record why assessee did not make any request before AO for rectification of the order, if, he has not agreed for addition before AO. Since, assessee has not taken any step before AO for rectification of the addition, the contention of Ld. Counsel for assessee cannot be believed that Counsel for assessee did not agree for this addition before AO. The finding of fact recorded by the AO thus, admittedly not been controverted by the assessee by any evidence on record. Since, assessee agreed for addition before AO and no steps have been taken before AO in this regard,

therefore, appeal of the assessee would not be maintainable. These grounds of appeal of the assessee are, accordingly, dismissed.

5. On ground no. 3 to 5 assessee challenged the addition of Rs. 2,76,463/- on account of interest income. The AO did not make this addition in the assessment order. The assessee raised this issue before Ld. CIT(A) and requested for its exclusion as was made during the assessment proceedings. The Ld. CIT(A) noted that there is no discussion of this issue in the assessment order, therefore, this issue is covered by judgment of the Apex Court in the case of Goetze (India) Ltd. reported in 284 ITR 323. This ground was, therefore, dismissed.

6. Ld. Counsel for assessee submitted that assessee had shown the interest income on debentures on accrual basis in the return filed. He has submitted that this interest has not arisen or accrued to the assessee. Therefore, it is not taxable in assessment year under appeal.

7. Considering the submissions of the Ld. Counsel for assessee, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A). Hon'ble Delhi High Court in the case of CIT vs. Jai Parabolic Springs Ltd. 306 ITR 42 held as under:

“Held, dismissing the appeal, that there was no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arose in the matter and for the just decision of the case. There was no infirmity in the order of the Tribunal.”

8. In this judgment the Hon'ble High Court considered the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra). Since, CIT(A) is first appellate authority and has coterminous powers to that of the AO. Therefore, there was no bar on his powers to consider and entertain this issue at first appellate stage. We, therefore, set aside the order of Ld. CIT(A) and restore this issue to his file with direction to re-decide this issue on merits in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee.

9. In the result, the appeal of assessee on these grounds is allowed for statistical purposes.

10. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 29th January, 2020
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi