

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMD' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No. 1258/CHD/2017
Assessment Year : 2011-12

M/s Bebo Technologies Pvt Ltd.,
#491, Phase IV,
Mohali

Vs. The DCIT,
Circle-6(1),
Mohali

PAN No. AABCB9492R

(Appellant)

(Respondent)

Appellant by : Sh. Tej Mohan Singh, Advocate
Respondent by : Sh. Manjit Singh, Sr.DR

Date of Hearing : 09.04.2018
Date of Pronouncement: 09.04.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 07.06.2017 of the Commissioner of Income Tax [hereinafter referred to as CIT(A)]-2, Chandigarh .

2. The assessee has taken the following grounds of appeal:-

1. *That the Ld. CIT(A) has erred in law as well as on facts in upholding the addition of Rs. 5,66,947/- made by applying the provisions of section 14A of the Act is arbitrary and unjustified.*
2. *That no expense whatsoever has been incurred to earn dividend income and as such invocation of section 14A read with rule 8D of the Act is misplaced, arbitrary and unjustified.*

3. *That the Ld. CIT(A) has further erred in upholding the addition of Rs. 43,302/- treating software license expenses to be in the nature of capital expense as against Revenue expense claimed by the assessee which is arbitrary and unjustified.*
4. *That the Ld. CIT(A) has further erred in upholding the charging of interest u/s 234A and 234B of the Act which is not chargeable in the facts of the case.*

3. Ground No. 1 & 2 are in relation to the disallowance made u/s 14A of the Income-tax Act, 1961 (in short 'the Act'). The Assessing officer during the assessment proceedings found that the assessee had during the year earned tax exempt income of Rs. 53.45 lacs but did not offer any disallowance incurred in earning of the aforesaid tax exempt income. On being asked to explain in this respect, the assessee could not offer any explanation as to why the disallowance should not be made u/s 14A read with Rule 8D of the I.T. Rules. He, therefore, computed the disallowance at Rs. 5,66,947/-.

4. Being aggrieved by the above aforesaid disallowance, the Assessee preferred appeal before Ld. CIT(A). It was pleaded before the CIT(A) that in fact the assessee had not incurred any expenditure in relation to the earning of tax exempt income. However, the Ld. CIT(A) observed that the expenditure for investment was made out of the common pool which also constituted interest bearing funds. He, therefore, held that Assessing officer has rightly applied Rule 8D of the I.T. Rules while computing the disallowance u/s 14A of the Act.

5. Before us, the Ld. Counsel for the assessee has submitted that Assessing officer has not recorded his satisfaction as required under the provisions of section 14A of the Act before making the aforesaid disallowance. He has further submitted that in fact entire tax exempt income was earned from investment in mutual funds which were already subjected to dividend distribution tax. That the expenditure relating to the earning of the dividend from mutual funds had already been deducted by the portfolio managers and that no separate charges were paid by the assessee to the investment manager. That all the investments were done through investment manager and that no extra expenditure was incurred by the assessee in making the aforesaid investment in mutual funds.

6. The Ld. DR, on the other hand, has relied on the findings of the lower authorities and has submitted that the disallowance has been rightly computed u/s 14A read with Rule 8D of the I.T. Rules.

7. We have considered the rival submissions. A perusal of the para 5.1 of the impugned order of the CIT(A) reveals that it has been noticed by the CIT(A) that assessee had claimed that it had not incurred any expenditure in relation to earning of the tax exempt income. As per sub section (2) of section 14A of the Act, the Assessing officer is supposed to determine the amount of expenditure in relation to the tax exempt income as prescribed method under rule 8-D, if the Assessing officer having regard to the account of the assessee is not satisfied with the correctness of the claim of the assessee in respect of the said expenditure in relation to the tax exempt income of the assessee. Further, as per the provisions of sub

section (3) the provisions of sub section (2) shall also apply in relation to the case where the assessee claimed that no expenditure has been incurred by him in relating to earning of tax exempt income. In the case in hand, apparently, the tax exempt income has been earned from investment in mutual funds. It is plea of the assessee that no expenditure has been incurred in making the aforesaid investment. Further, it has not come out on the record whether the assessee has used interest bearing funds for making the aforesaid investment and what were the available own funds / interest free funds available to the assessee as on the date of making the investment and further what were the resources for making the investment in mutual funds. Though the Ld. CIT(A) has powers co-terminus with that of Assessing officer, but he has failed to examine the claim of the assessee in this respect. In view of this, the entire issue is required to be restored to the file of the Assessing officer for examining it afresh and to pass a speaking order on this issue in accordance with law. Needless to say that the Assessing officer will give opportunity to the assessee to present its accounts and evidences and then to examine the same and decide the issue in the light of the relevant judicial pronouncements.

9. Now coming to ground No.3 of the appeal, the assessee has agitated the disallowance of expenditure of Rs. 43,302/- incurred on software license expenses. The Ld. Counsel for the assessee has brought our attention to para 6.2 of the impugned order of the CIT(A) wherein the Ld. CIT(A) has mentioned that the aforesaid expenditure was incurred to secure antivirus for mobiles and Norton antivirus for

computers and the license for the use of the aforesaid software was granted for one year only. In our view, the antivirus expenses are not of the nature of expenses to enhance the performance of the software or in any way of enduring benefit to the assessee. Antivirus software is to protect the computer / mobiles and data stored therein from the attack of malware and is essentially an expenditure in the nature of Revenue expenditure. In view of this, ground No. 3 of the appeal is allowed and the disallowance made on account of purchase of aforesaid antivirus software is hereby ordered to be deleted.

10. Ground No. 4 is relating to the charging of interest u/s 234A and 234B of the Act which is consequential in nature. Since we have restored the ground Nos. 1 & 2 of the file of the Assessing officer, the Assessing officer is also accordingly directed to decide this issue at the time of decision on the issues taken in ground Nos. 1 & 2 of the appeal.

11. Ground No.5 is general in nature and needs no adjudication.

12. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-

(B.R.R.KUMAR)

ACCOUNTANT MEMBER

Dated : 09.04.2018

Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

Sd/-

(SANJAY GARG)

JUDICIAL MEMBER

