

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 1132/Mum/2017 (Assessment Year 2010-11)

Waban Software Pvt. Ltd. C/o. Oracle India Pvt. Ltd. 6 th Floor, Silver Metropolis Opp. Bimbisar Nagar Old Jay Coach Compound Western Express Highway Goregaon East Mumbai-400 063. PAN : AAACW5953D (Appellant)	Vs.	ACIT Circle 11(3)(2) Mumbai. (Respondent)
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Assessee by	Shri Bharat Raichandani & Ms. Ankita Vashistha
Department by	Shri Nishant Somaiya
Date of Hearing	16.08.2018
Date of Pronouncement	16.08.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 7.11.2016 passed by the learned CIT(A)-18, Mumbai confirming the penalty of ₹ 19.00 lakhs levied by the Assessing Officer u/s. 271(1)(c) of the I.T. Act.

2. We have heard the parties and perused the record. The Assessing Officer levied penalty on disallowance of depreciation claim of ₹ 55,37,490/- and disallowance of business expenses of ₹ 93,945/-. In the appellate proceedings, the learned CIT(A) confirmed the penalty levied by the Assessing Officer.

3. The Learned AR submitted that the assessee has challenged the disallowances made in the quantum assessment proceedings and confirmed by the learned CIT(A) by filing the appeal before the ITAT. He submitted that the Tribunal has since passed the order in the quantum assessment proceedings. He submitted that the Tribunal, vide its order dated 12.4.2017, passed in ITA

No. 2011/Mum/2014 has restored the matter relating to disallowance of depreciation to the file of the learned CIT(A) and confirmed the addition relating to disallowance of expenses.

4. We have heard learned DR and perused the record. Since the matter relating to disallowance of depreciation has been restored by the Tribunal in the quantum assessment proceedings to the file of the learned CIT(A), we are of the view that the penalty relating thereto should also be restored to the file of the first appellate authority for adjudicating the same afresh. Accordingly, we restore the issue relating to levy of penalty on the disallowance of depreciation to the file of the learned CIT(A). Penalty levied on the disallowance of expenses was not agitated before us by the assessee and hence, the same is confirmed.

5. In the result, appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order has been pronounced in the Court on 16.8.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 16/8/2018

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,

PS

Senior Private Secretary
ITAT, Mumbai