

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
**ITA No.3185/M/2016 (AY 1999-2000)**

M/s. Arch Builders & Land Developers P Ltd., B-35/36, Mangalam, Mathurdas Road, Kandivali (W), Mumbai – 400067.	बनाम/ Vs.	ITO-9(1)(1), Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AAACA6906A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Ajay R Singh & Mr. R.V. Shah
प्रत्यर्थी की ओर से/ Respondent by :	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 10.04.2017

घोषणा की तारीख /Date of Pronouncement : 21.04.2017

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 5.5.2016 is against the order of the CIT (A)-20, Mumbai dated 14.01.2016 for the assessment year 1999-2000 in connection with the penalty order of the AO u/s 271(1)(c) of the Act.

2. Referring to the facts, Ld AR submitted that the assessee claimed provision for general expenses amounting to Rs. 27.74 lakhs. In the first round of the proceedings, AO disallowed the assessee's claim and made the addition. In the first appellate proceedings, CIT (A) enhanced the assessment and estimated the income of the assessee @ 10% of the turnover. In the second appellate proceedings, the Tribunal remanded the whole issue to the file of the AO. In the second round of the assessment proceedings, AO repeated the above addition and the same was confirmed by the CIT (A) this time. Thus, the addition is now attained the finality. Further, AO initiated the penalty proceedings and levied the penalty of Rs. 9,70,924/- on the said addition of Rs. 27,74,068/-. CIT (A) confirmed the same and therefore, assessee is in appeal before the Tribunal.

3. During the proceedings before the Tribunal, Ld AR submitted that the assessee's claim of provision for expenses is a genuine claim and there is inaccuracy of particulars of income. Referring to the extent of expenditure out of the said provisions, Ld AR submitted that assessee spend Rs. 27.54 lakhs out of Rs. 27.74 lakhs (rounded of). Balance of unspent provision is offered to tax in the succeeding assessment year. According to the Ld AR, assessee disclosed every detail in the return of income and therefore, there is no case for concealment.

4. After hearing the arguments of Ld Representatives of both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before the Tribunal, I am of the opinion that it is not a fit case for levy of concealment penalty. Huge amount of litigation is evident in the multiple rounds of assessment. As such, AO has taken a view, which is different from that of that of the assessee. All the details are disclosed in the return of income. It is a settled legal proposition that some provisions created with perfection in figures can be allowed. In the instant case, assessee spent an amount of Rs. 27.54 lakhs against the provisions of Rs. 27.74 lakhs. It is very close therefore, in my considered view, the penalty levied by the AO is required to be dismissed. I order accordingly. Thus, the grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21<sup>st</sup> April, 2017.

Sd/-

**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 21.04.2017  
व.नि.स./ OKK, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**