

M.RAMACHANDRA MURTHY  
CHARTERED ACCOUNTANT

c/c  
Flat No.303, ASHOKA SCINTILLA  
H.No.3-6-520, Opp. To Malbar Gold Show Room  
Himayathnagar Main Road,  
Hyderabad -500 029  
Tel.:040-40248935 / 36

To,  
The Appellate Dy. Commissioner (CT)  
Punjagutta Division,  
Hyderabad.

**Date:09/01/2020**

Sir,

Sub: TVAT Act, 2005 - Appeal filed in the case of M/s. Modi and Modi Constructions  
M.G. Road, Secunderabad - For the tax period from January'2014 to June'2017/VAT-  
Reg.

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Please find enclosed herewith the following appeal papers:

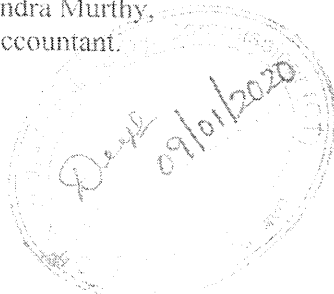
1. Form -APP 400                      2 copies.
2. Grounds of Appeal                2 copies.
3. Challan bearing No.2000015139 dt.07/01/2020 for Rs.1000/- towards  
    appeal fees.
5. Assessment order No.47202 dated 09/12/2019 passed by State Tax Officer-1 (I/c),  
    M.G. Road - S.D. Road Circle, Hyderabad (in original) along with xerox copy.
6. Copy of e-payment challan no.2000020302 dt.08/01/2020 relating to proof of payment  
    of 12.5% disputed tax.
7. Form -APP 400A
8. Form -APP 406      2 copies
9. Form -565 (Authorization).

Kindly acknowledge receipt of the above documents and post the appeal for hearing.

Thanking you,

Yours sincerely,

  
M.Ramachandra Murthy,  
Chartered Accountant.



From  
M/s. Modi & Modi Constructions,  
D.No.5-4-187/3&4, 2<sup>nd</sup> Floor, Soham Mansion,  
M.G. Road, Secunderabad – 500 003.

To,  
The Commercial Tax Officer,  
M.G. Road – S.D. Road Circle,  
Hyderabad.

Sir,

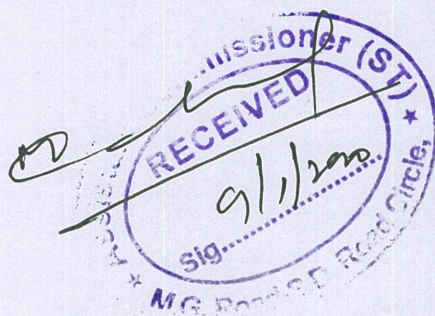
Aggrieved by the assessment order no.47202 in Form VAT 305 dated 09/12/2019 passed by the State Tax Officer-1 (I/c), M.G. Road- S.D. Road Circle, Hyderabad for the tax period January 2014 to June'2017 under the provisions of TVAT Act, 2005, we are filing appeal before the Appellate Dy. Commissioner (CT), Punjagutta Division, Hyderabad. As required by the second Proviso under Section 31(1) of the said Act, we are issuing crossed Demand Draft/e-Payment Challan for Rs.1,77,253/- towards 12.5% of the disputed tax. Please acknowledge receipt of the same.

Yours truly

for Modi & Modi Constructions



Encl.: e-Payment Challan No. 2000020302 dated 08/01/2020





**Your Tax Payment has been done successfully.**

Payment ID for future communication: 14052649 (Confirmation has been mailed you.)

E-Receipt for  
**Tax Payment**

|                         |                                            |
|-------------------------|--------------------------------------------|
| Remitter's Name         | M S MODI AND MODI CONSTRUCTIONS            |
| Customer Account Number | CYBER_TG                                   |
| Department Code         | 2303                                       |
| Challan Number          | 2000020302                                 |
| Departmental Transid    | 36200108440107                             |
| DDO Code                | 25002303017                                |
| Head of Account         | 0040001020005000000NVN                     |
| Amount                  | 1,77,253.00                                |
| Transaction Date & Time | 08-01-2020 16:26:37                        |
| Debit Account Number    | 919020031272204                            |
| Transaction Status      | SUC                                        |
| Remarks                 | VAT 305 12.5% Disputed Tax Ao.No.47202 MNM |



**Your Tax Payment has been done successfully.**

Payment ID for future communication: 13996752 (Confirmation has been mailed you.)

E-Receipt for

## Tax Payment

|                         |                                    |
|-------------------------|------------------------------------|
| Remitter's Name         | M S MODI AND MODI CONSTRUCTIONS    |
| Customer Account Number | CYBER_TG                           |
| Department Code         | 2303                               |
| Challan Number          | 2000015139                         |
| Departmental Transid    | 36200107876794                     |
| DDO Code                | 25002303017                        |
| Head of Account         | 0040001020005000000NVN             |
| Amount                  | 1,000.00                           |
| Transaction Date & Time | 07-01-2020 11:46:33                |
| Debit Account Number    | 919020031272204                    |
| Transaction Status      | SUC                                |
| Remarks                 | Appeal Fee Before ADC AO.47202 MNM |

**FORM APP 400**  
**FORM OF APPEAL UNDER SECTION 31**  
[See Rule 38(2)(a)]

1. Appeal Office Address : The Appellate Dy. Commissioner (CT)  
Punjagutta Division, Hyderabad
2. TIN/GRN : 36894097186
3. Name & Address : M/s. Modi & Modi Constructions,  
D.No.5-4-187/3&4, 2<sup>nd</sup> Floor, Soham Mansion,  
M.G. Road, Secunderabad – 500 003.
4. I wish to appeal the following decision /  
assessment received from the tax office on : 11/12/2019
5. Date of filing of appeal : /01/2020
6. Reasons for delay (if applicable enclose a  
separate sheet : Not Applicable
7. Tax Period / Tax Periods : Janaury'2014 to June'2017/VAT
8. Tax Office decision / assessment Order No. : Assessment of Value Added Tax  
in Form VAT 305 order dt.09/12/2019  
passed by State Tax Officer-1 (I/c),  
M.G. Road – S.D. Road Circle,  
Hyderabad.
9. Grounds of the appeal (use separate sheet : Separately Enclosed  
if space is insufficient
10. If turnover is disputed
  - a) Disputed turnover : NIL
  - b) Tax on the disputed turnover : Rs.14,18,019/-

If rate of tax is disputed

  - a) Turnover involved : NIL
  - b) Amount of tax disputed : NIL
11. 12.5% of the above disputed tax paid : Rs.1,77,253/-

**Note:** Any other relief claimed : Other grounds that may be urged at the  
time of hearing.

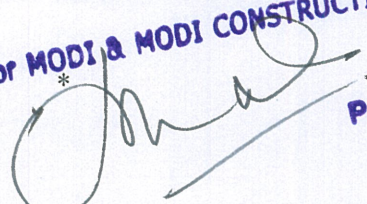
(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

|                            |   |       |
|----------------------------|---|-------|
| a)Challan / Instrument No. | : |       |
| b)Date                     | : |       |
| c)Bank / Treasury          | : | ----- |
| d)Branch Code              | : | ----- |
| e)Amount                   | : | _____ |
|                            |   | ----- |
| <b>TOTAL</b>               | : | _____ |
|                            |   | ----- |

**Declaration:**

I, \_\_\_\_\_ hereby declare that the information provided on this form to the best of my knowledge is true and accurate.

**For MODI & MODI CONSTRUCTIONS**  
  
**Partner**

Signature of the Appellant & Stamp

Date of declaration

Name :  
Designation :

Please Note: A false declaration is an offence.

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**MODI & MODI CONSTRUCTIONS,  
MG ROAD, SECUNDERABAD.**

**Jan.14 to Jun. 2017/VAT**

**Statement of facts:-**

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short Act) on the rolls of the Commercial Tax Officer, MG Road-SD Road Circle, Hyderabad and is engaged in the business of constructing and selling independent houses, flats, etc.
2. Claiming authorization from the DC, CT, Begumpet Division, the learned State Tax Officer-1, MG Road-SD Road Circle, Hyderabad (for short STO) conducted audit of the books of account of the appellant for the period from January, 2014 to June, 2017 and issued show cause notice dated 3.10.2019, followed by revised show cause notice dated 2.11.2019, proposing to levy certain tax under the Act.
3. Pursuant to such notice, appellant filed detailed objections through letter dated 4.11.2019. Relevant documents have also been produced before the STO.
4. However without properly considering the objections and documents, the learned STO passed the assessment order dated **9.12.2019** levying tax of **Rs.14,18,019**.
5. Aggrieved by such assessment proceedings, appellant prefers this appeal on the following grounds, amongst others:-

**Grounds of appeal:-**

- a. The impugned assessment order is ex-facie illegal, unjustifiable and contrary to facts.
- b. The learned STO ought to have properly considered the objections, documents and facts.
- c. **Turnover variation with P&L account - Rs. Rs.3,22,645 and 5,04,528 = Rs.8,27,173:-** The following taxes have been levied:-

| Sl. No.                       | Period                    | Constructi on account receipts as per P&L | turnover liable to tax @ 5% as per P&L | Turnover liable to tax @ 5% as per VAT returns | Differentia l turnover arrived | Tax @ 5%      |
|-------------------------------|---------------------------|-------------------------------------------|----------------------------------------|------------------------------------------------|--------------------------------|---------------|
| 1                             | 2013-14 (01/2014-03/2014) | 25811540                                  | 6452885                                | 0                                              | 6452885                        | 322645        |
| <b>Total differential tax</b> |                           | 25811540                                  | 6452885                                | 0                                              | 6452885                        | <b>322645</b> |

| Sl No.                        | Period                        | Construction account receipts as per P&L | turnover liable to tax @ 5% as per P&L | Turnover liable to tax @ 5% as per VAT returns | Differential turnover arrived | Tax @ 5%      |
|-------------------------------|-------------------------------|------------------------------------------|----------------------------------------|------------------------------------------------|-------------------------------|---------------|
| 1                             | 2013-14<br>(01/2014-03/2014)  | 0                                        | 0                                      | 0                                              | 0                             | 0             |
|                               | 2014-15                       | 26007241                                 | 6501810                                | 3840588                                        | 2661222                       | 133061        |
| 1.                            | 2015-16                       | 36823350                                 | 9205838                                | 6620250                                        | 2585588                       | 129279        |
| 2.                            | 2016-17                       | 49492000                                 | 12373000                               | 9516750                                        | 2856250                       | 142813        |
| 3.                            | 2017-18<br>(Apr'17 to Jun'17) | 19425000                                 | 4856250                                | 2868750                                        | 1987500                       | 99375         |
| <b>Total differential tax</b> |                               | 131747591                                | 32936898                               | 22846338                                       | 10090560                      | <b>504528</b> |

It has been observed in the impugned assessment order that tax has been levied on the differential amount between 'construction account receipts as per P&L' and the turnover reported in the 'VAT returns'.

- d. It is submitted that no such tax on the so called differential amount is leviable. Receipts in P&L account are posted as per the Accounting Standards of ICAI based on WIP method and whereas the turnovers reported in the VAT 200 returns are the actual sale amounts. 'Turnover' for the purposes of the VAT Act is different from 'income' declared in the P&L account. The learned STO ought to have understood this concept. As and when the property is registered, tax is paid under Section 4 (7) (d) of the VAT Act.
- e. Though this status has been explained, the learned STO has not properly looked into the documents and statements. It is submitted that there is no such difference. Appellant has paid tax at the applicable rate on the entire sale consideration received during the period of assessment. This is verifiable from the registration records also.
- f. It is therefore submitted that such levy of tax of Rs.8,27,173 is not correct. It is therefore prayed to set aside such levy.
- g. **Differential turnover wrt sale agreements - Rs.5,90,846:-** This tax has been levied by stating as follows:-

| Sl.No. | Period | Sale deed value | Estimated Agreement | Difference turnover | Proposed to tax @ |
|--------|--------|-----------------|---------------------|---------------------|-------------------|
|--------|--------|-----------------|---------------------|---------------------|-------------------|

|   |                                     |                  | of sale value<br>(Adding 30%<br>value on Sale<br>deed value) | arrived         | 5% on 25%<br>difference<br>turnover |
|---|-------------------------------------|------------------|--------------------------------------------------------------|-----------------|-------------------------------------|
| 1 | 01/2014 to<br>03/2014               | 25811540         | 33555002                                                     | 7743462         | 96793                               |
| 2 | 2014-15                             | 26007241         | 33809413                                                     | 7802172         | 97527                               |
| 1 | 2015-16                             | 36823350         | 47870355                                                     | 11047005        | 138088                              |
| 2 | 2016-17                             | 49492000         | 64339600                                                     | 14847600        | 185595                              |
| 3 | 2017-18<br>(April'17 to<br>June'17) | 19425000         | 25252500                                                     | 5827500         | 72843                               |
|   | <b>Total</b>                        | <b>157559131</b> | <b>204826870</b>                                             | <b>47267739</b> | <b>590846</b>                       |

The learned STO observed as follows in relation to the above levy of tax:-

“While issuing the show cause notice dt. 03-10-2019 the dealer was requested to produce all original Agreements of sale for verification for the audit period since the same were produced in sample basis at the time of audit. But as the dealer was failed to produce the same a revised show cause notice dt. 02-11-2019 was issued estimating the difference turnover between Agreement of sale and Sale deed turnovers adding 30% value on Sale deed value as under.”

- h. It is submitted that the STO has seen all the documents including the agreements at the time of audit. In the event of conduct of such field audit of all the books of account and the documents, there is no basis for making any estimate. Further it amounted to double levy in as much as the learned STO levied tax on the differential amount between P&L figure and the VAT 200 declared figure and has also levied tax on the estimated receipts.
- i. It is reiterated that the appellant has paid tax on the entire consideration received for the sale of all villas etc. There is no basis for such estimate. No tax shall be levied on mere presumptions and surmises.
- j. It is therefore submitted that even this levy of tax is not correct.
- k. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order and allow the appeal.

For MODI & MODI CONSTRUCTIONS  
  
 Partner  
 APPELLANT.

**APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX**

[Under Section 31(2) &amp; 33(6)] [See Rule 39(1) ]

Date Month Year

01. Appeal Office Address:  
To,  
The Appellate Deputy Commissioner (CT)  
Punjagutta Division,  
Hyderabad

|  |    |      |
|--|----|------|
|  | 01 | 2020 |
|--|----|------|

|    |     |             |
|----|-----|-------------|
| 02 | TIN | 36894097186 |
|----|-----|-------------|

03. Name : M/s.Modi & Modi Constructions  
Address: D.No.5-4-187/3&4, 2<sup>nd</sup> Floor,  
Soham Mansion, M.G. Road,  
Secunderabad – 500 003

|     |                                                                                     |                                                                                                                                                        |
|-----|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04. | Tax period                                                                          | January'2014 to June'2017/VAT                                                                                                                          |
| 05. | Authority passing the order or proceeding disputed.                                 | Assessment of Value Added Tax in Form VAT 305 order dt.09/12/2019 passed by<br>State Tax Officer-1 (I/c),<br>M.G. Road-S.D. Road Circle, Secunderabad. |
| 06  | Date on which the order or proceeding was Communicated.                             | 11/12/2019                                                                                                                                             |
| 07. | (1) (a) Tax assessed<br><br>(b) Tax disputed<br><br>(2) Penalty / Interest disputed | Rs.14,18,019/-<br><br>Rs.14,18,019/-<br><br>NIL                                                                                                        |
| 08  | Amount for which stay is being sought                                               | Rs.14,18,019/-                                                                                                                                         |
| 09. | Address to which the communications may be sent to the applicant.                   | M/s. Modi & Modi Constructions<br>D.No.5-4-187/3&4, 2 <sup>nd</sup> Floor,<br>Soham Mansion, M.G. Road,<br>Secunderabad – 500.003.                     |

**For MODI & MODI CONSTRUCTIONS**  
**Partner**

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

## 10. GROUNDS OF STAY

- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.
- 4.) The appellant has already paid 12.5% of disputed tax for the purpose of admission of the appeal and hence it is requested grant stay on the balance disputed tax till the disposal of the appeal.
- 5.) In this regard the appellant relied on the latest decision of the Hon'ble Supreme Court in a case wherein the Hon'ble Court dismissed the SLP filed against the order of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada Vs. Sri Dedeepriya Paints in Diary No.11711 of 2019 dt.22/04/2019.

The Honourable High Court of Andhra Pradesh & Telangana in its decision in WP No.20922 of 2018 dated 22.06.2018 in the case of Sri Dedeepriya Paints Vs Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada held as follows:-

“When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal”.

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed tax of Rs.14,18,019/- pending disposal of the appeal.

### VERIFICATION

I \_\_\_\_\_ applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the \_\_\_\_\_ day of January'2020

For MODI & MODI CONSTRUCTIONS  
\*  
Signature of the Dealer(s)  
Partner

Signature of the Authorised Representatives if any