o/c

M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

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.

*****

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.

09/01/2020

From
M/s. Modi & Modi Constructions,
D.No.5-4-187/3&4, 2nd 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

MODI & MODI CONSTNS SEC'BAD

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

...issioner (ST) RECEIVED 9/1/2020 Sig. M.G. Road S.D. Road Circle, 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, 2nd 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 if space is insufficient	: Separately Enclosed
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	:	____

TOTAL	:	

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	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 (01/2014-03/2014)	25811540	6452885	0	6452885	322645
Total differential tax		25811540	6452885	0	6452885	**322645**

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 (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 (Apr'17 to Jun'17)	19425000	4856250	2868750	1987500	99375
Total differential tax		131747591	32936898	22846338	10090560	**504528**

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 (Adding 30% value on Sale deed value)	arrived	5% on 25% difference turnover
1	01/2014 to 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 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	**157559131**	**204826870**	**47267739**	**590846**

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.

FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

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

Date	Month	Year
	01	2020

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

02	TIN	36894097186

03. Name : M/s.Modi & Modi Constructions
Address: D.No.5-4-187/3&4, 2nd 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 State Tax Officer-1 (I/c), 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	Rs.14,18,019/-
	(b) Tax disputed	Rs.14,18,019/-
	(2) Penalty / ~~Interest~~ disputed	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 D.No.5-4-187/3&4, 2nd Floor, Soham Mansion, M.G. Road, 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

Partner

Signature of the Dealer(s)

Signature of the Authorised Representatives if any