PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT), PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SMT. Y. SUNITHA,

INWARD
No. 504
Date 25/2/22
Sign.
MODI PROPERTIES PVT. LTD. SEC'BAD

ADC Order No.223 Date of hearing: 06-12-2021
Appeal No.BV/102/2019-20 Date of order : 21-02-2022

1.	Name and address of the Appellant.	:	M/s Modi & Modi Constructions, Hyderabad.
2.	Name & designation of the Assessing Authority.	:	Deputy Commercial Tax Officer-I, M.G.Road-S.D.Road Circle, Hyd.
3.	No.,Year & Date of order	:	TIN No.36894097186,dt.19-12-2019, (January, 2014 to June, 2017 / Tax)
4.	Date of service of order	:	11-12-2019
5.	Date of filing of appeal	:	09-01-2020
6.	Turnover determined by The Assessing Authority	:	-
7.	If turnover is disputed:		
	(a) Disputed turnover	:	-
	(b) Tax on disputed turnover	:	-
8.	If rate of tax disputed:		
	(a) Turnover involved	:	-
	(b) Amount of tax disputed	:	-
9.	Amount of relief claimed	:	₹14,18,019/-
10.	Amount of relief granted	:	REMANDED
11.	Represented by	:	Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Telangana VAT Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Modi & Modi Constructions, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36894097186 and an assessee on the rolls of the Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the assessment orders dated 09-12-2019 (A.O.No.47202) passed by the Deputy Commercial Tax Officer-I, M.G.Road Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods falling under the years 2013-14 to 2017-18 (from January, 2014 to June, 2017) under the TVAT Act, disputing the levy of tax amounting to ₹14,18,019/-.

The statement of facts and grounds of appeal filed by the appellant are extracted hereunder:

"The impugned assessment order is ex-facie illegal, unjustifiable and contrary to facts.

The learned STO ought to have properly considered the objections, documents and facts.

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-*	*0*	*0*	*0*	*0*	*0*

	03/2014)					
	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'.

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.

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.

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.

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 of sale value (Adding 30% value on Sale deed value)*	*Difference turnover arrived*	*Proposed to tax @ 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."

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.

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.

It is therefore submitted that even this levy of tax is not correct.

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."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for setting-aside of the impugned order.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the impugned orders, at the pre-assessment stage, the Audit Officer observed that on verification of the records and documentary evidenced by the appellant, it was noticed that there is a difference in the turnovers on which the appellant had paid tax at 5% under composition when compared such turnovers with the construction account receipts as per Profit & Loss Account. The appellant filed their objections. However, on an observation that the appellant had filed the documentary evidence on sample basis instead of in entirety, the Audit Officer not only confirmed the proposed levy of tax on account of differential turnovers but also estimated the sale deed value by adding 30% value on such sale deed value and arrive at the differential turnovers and levied tax thereon at 5%.

Such levy is assailed by the appellant stating that the turnovers reflected in the Profit & Loss Account are different from the actual sale turnovers reported in the monthly returns in as much as the turnovers reflected in the Profit & Loss account are for the purpose of Income Tax whereas the turnovers declared in the VAT returns are actual sale turnovers which are liable to tax under the TVAT Act and though these facts were brought to the notice, the Audit Officer failed to consider the same properly. It is also stated that if the Audit Officer desires the documentary evidence in entirety, nothing prevented it to direct the appellant to produce the same which the Audit Officer failed to do so which resulted in the appellant preventing from the same. The appellant now furnished the documentary evidence like copies of sale deeds etc., and expressed their readiness to produce the same as and when called for. Thus, this issue warrants examination at the Assessing Authority's end.

It is also stated that while issuing the show cause notice, the Audit Officer proposed to bring a tax amount of ₹3,22,645/- towards short payment of tax at page-4 of the impugned order, but, however, while considering the objections filed by the appellant and the documentary evidence towards payments already made, at page-6 accepted the credit of ₹333,024/- duly dropping the proposed tax on account of short payment, but, however, while concluding the matter, the Audit Officer not reduced such tax amount from the final demand raised which is not correct. This claim of the appellant is verified with reference to the impugned order and found reasonable.

For the reasons discussed above, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall cause examination of the issues involved herein with reference to the material already available on record with that of the documentary evidence that would be produced by the appellant and pass orders afresh in accordance with the provisions of law, after giving the appellant a reasonable opportunity to present their case. With this direction, the impugned order is set-aside on the disputed tax amounting to ₹14,18,019/- and the appeal thereon remanded.

In the end, the appeal is **REMANDED**.

APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To
The Appellants.
Copy to the Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.
Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.
Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.

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