

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

PRESENT SMT. Y. SUNITHA,

ADC Order No.224

Appeal No.BV/103/2019-20

Date of hearing:06-12-2021

Date of order :21-02-2022



1. Name and address of the Appellant. : M/s Paramount Builders, 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.36547131584,dt.05-12-2019, (April, 2015 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 : ₹2,10,008/-
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 Paramount Builders, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36547131584 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 05-12-2019 (A.O.No.47012) 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 2015-16 to 2017-18 (upto June, 2017) under the TVAT Act, disputing the levy of tax amounting to ₹2,10,008/-.

The 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.

Short payment of tax of Rs. 71,774: Tax of Rs. 71,774 is shown in the notice as short paid for the periods 2015-16 and 2016-17 as per the returns. In the reply dated 04-11-2019 the appellant has already stated that it has paid tax of Rs. 1,92,513 on a turnover of Rs. 1,54,01,040 during the year 2015-16. Similarly the learned STO has shown tax amount of Rs. 27,500 as paid against the actual payment of Rs. 97,275. The appellant has also filed the details of month wise payments of VAT during the years 2015-16 and 2016-17 along with the reply. However without verifying the payments made, the learned STO has confirmed the proposed tax of Rs. 71,774 as short paid. Appellant files herewith the month wise payment details for both the years as **Annexure-1**. In view of the details now filed the demand of short payment of tax of Rs. 71,774 may kindly be set aside.

Turnover variation with P&L account - Rs.11,42,625 Tax Rs. 57,131

@5%:-The following taxes have been levied:-

	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	Differenti al turnover arrived	Tax @ 5%
1	Period	30,88,125	19,45,500	11,42,625	57,131
Total Differenti al Tax	1,23,52,500	30,88,125	19,45,500	11,42,625	57,131

It has been observed in the impugned assessment order that tax has been levied on the differential amount between 'turnover liable to tax @5% 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.

It is submitted that the appellant has also explained in the reply dated 04-11-2019 that the 5% sales during the year 2016-17 have been correctly adopted in both the tables of the notice and tax was paid @5% along with the returns. The tax of Rs. 57,131 is the tax amount on the alleged differential turnover of Rs. 11,42,625 between the P&L account and the VAT returns which cannot be taken as taxable turnover as explained supra. 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. Appellant **files herewith** the reconciliation statement for the turnover of Rs. 19,45,500 and explanation of differential turnover of Rs. 11,42,625 item wise which does not form turnover as **Annexure-2**. It is therefore submitted that such levy of tax of Rs.57,131 on the differential turnover of Rs. 11,42,625 is not correct. It is therefore prayed to set aside such levy.

Differential turnover wrt sale agreements - Rs.81,103:-This tax has been levied by stating as follows:-

“The assessee neither submitted any documentary evidence as required in the show cause notice nor attended for personal hearing opportunity. Hence, in the circumstances, the under signed has left with no other except estimate the difference sale deed turnover with reference to Agreement sale turnover on best of judgment basis which is done as under.”

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	2015-16	92,75,000	1,20,57,500	27,82,500	34,781
2	2016-17	1,23,52,500	1,60,58,250	37,05,750	46,322
3	2017-18 (April '17 to June '17)	0	0	0	0
	Total	2,16,27,500	2,81,15,750	64,88,250	81,103

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.

Appellant submits that in the reply to the revised notice the appellant has clearly stated that during the notice period the majority of the receipts received by the appellant were for sale of fully completed flats to M/s Paramount Properties Pvt. Ltd. It was also replied that since all the sales during the notice period pertain to sales made after receipt of the OC, there cannot be any liability on such sales under VA, as there is no element of works contract in such sale as the sale is purely of immovable

property. It was also replied that no agreement of construction has been executed for sales during the notice period and requested to drop the proposal.

It is submitted that the building permit for construction of flats in the project known as Paramount Residency was obtained in 2006 from HMDA and was fully completed by 2009 and occupancy certificate for all the 6 blocks was obtained. The appellant has obtained occupancy certificates from Panchayat Secretary, Garama Panchayathi, Nagaram Village, Keesara Mandal, Ranga Reddy District as the project falls in Gram Panchayat. The learned STO has not accepted the occupancy certificate issued by Gram Panchayat on the ground that the occupancy certificate shall be issued by the sanctioning authority only who is the Metropolitan Commissioner, HMDA. Thus the learned DCTO treated these certificates as invalid in view of Rule 26 (a) of A.P. Building Rules, 2012.

Appellant submits that all the sales were made after receiving the OC, sale deed was executed for the entire consideration and no agreement for construction was made. The OC was issued by the Panchayat Secretary of the Gram Panchayat which is local body of the State Government. Thus the OC issued by the Panchayat Secretary is a valid certificate on par with the certificate issued by HMDA which is also a local body. Further the learned STO has also verified all the records such as agreement of sales, Sale deed and construction agreement during the course of audit which also recorded by the STO at page 2 of the assessment order. It is also submitted by the appellant that the total receipts towards sale consideration for the audit period is Rs. 1,65,48,130 and towards non-taxable receipts is Rs. 24,79,885. In spite of submission of all records as stated supra it is not justified for the learned STO to confirm the proposed levy of Tax of Rs. 81,103 on the estimated sale value based on the OCs produced which are treated as not valid and the non submission of agreements of sale (mother document). Appellant files herewith sample copies of mother agreements in (5) case and the OCs as Annexure-3. In view of the documents now filed it is prayed that the levy of tax of RS. 81,103 on the estimated sale value may be set aside.

It is submitted that if the certificate given by the Panchayat Secretary is not acceptable to the learned STO, he ought to have conducted enquiry with the Gram Panchayat and ascertained the fact. The basic burden has been discharged by the appellant and the burden shifts to the learned STO to disprove the claim of the appellant. There is neither reason nor ground to reject the certificate issued a Government Officer ie., Panchayat Secretary. The impugned levy is arbitrary and unjustifiable.

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 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 arrived at the differential turnovers and levied tax thereon at 5%. The Audit Officer also levied tax on the consideration received by the appellant stated to be relatable to sale of villas / flats after obtaining the Occupation Certificate and as such the same amounts sale of

immovable properties on the ground that the Occupancy Certificate furnished by the appellant was not issued by the competent authority by treating the same as invalid. The Audit Officer also brought to tax certain of the tax amount towards short payment.

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 further stated that the Audit Officer is not justified in treating the Occupancy Certificate produced by the appellant as invalid in as much as such certificate issued by the Gram Panchayat Secretary and the Gram Panchayat is a local body and as such the said certificate is valid one. It is further stated that even if the Audit Officer had any doubts about the said certificate, necessary enquiries would have been made necessary enquiries with the Gram Panchayat so as to ascertain the factual situation. It is also stated that had the Audit Officer provided reasonable opportunity, the appellant would have explained the same since no such proposal was made in the show cause notice issued. This claim also needs examination at the Assessing Authority's end.

It is also stated that the Audit Officer is not justified in observing that there is a short payment of tax disregarding the fact that the appellant had already discharged their tax liability in entirety and had the Audit Officer examined the same properly, there is no such short payment would arise.

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 ₹2,10,008/- 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.