

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (ST),
M.G.ROAD – S.D.ROAD CIRCLE UNDER T VAT ACT, 2005

Present Smt. G.Vijaya Lakshmi

AO.No:297

TIN No.36894097186/Jan 2014- June 2017/VAT

Dated: 15-02-2023.

Sub: VAT Act 2005 – M/s Modi & Modi Constructions, Secunderabad. - Assessment completed for the period Jan 2014- June 2017- orders passed- Dealer preferred appeal before the ADC (CT) Punjagutta Division – Appeal Remanded – Show cause notice issued – Objections called for - Books produced by the dealer – Orders passed - Regarding.

- Ref: 1) DCTO-1, M.G. Road - S.D. Road Circle, Order No.47202, Dt: 09-12-2019.
2) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.223, Dt.21-02-2022.
3) Notice Dt.08-07-2022 issued to the dealer for production of Books of accounts.
4) Show cause notice dt.21-11-2022 issued by the undersigned.
5) Letter dated 01-12-2022 submitted by the dealer along with documentary evidence.

M/s. Modi & Modi Constructions, Secunderabad, is a registered dealer under VAT and on the rolls of Commercial Tax Officer, M. G. Road Circle with TIN: 36894097186. The assessee are engaged in the business of Construction of Independent Houses/ Row Houses. In the reference 1st cited their assessment under VAT Act, 2005 for the period Jan 2014- June 2017 was completed on the following under declared tax:

1. Tax on differential turnover arrived w.r.t Agreement of sale turnover : **Rs.590846-00**

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
3	2015-16	36823350	47870355	11047005	138088
4	2016-17	49492000	64339600	14847600	185595
5	2017-18 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	157559131	204826870	47267739	590846

2. Tax on turnover variation with P&L account
Total

: Rs. 827173-00

: **Rs. 14,18,019-00**

Aggrieved by the orders, the dealer has preferred an appeal before the ADC (CT) Punjagutta disputing the above levy of tax. The ADC (CT) Punjagutta has remanded the appeal vide orders passed in the 2nd cited which is extracted as under:

"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**".

In order to pass the consequential order, in the light of instructions issued by the Hon'ble ADC, the dealer has been issued a notice vide reference 3rd cited to submit documentary evidence to substantiate their claim. Being no documentary evidence submitted by the dealer a Show cause Notice dated 21-11-2022 was issued confirming the original orders as under:

1. Tax on differential turnover arrived w.r.t Agreement of sale turnover : **Rs.590846-00**

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
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	Total	157559131	204826870	47267739	590846

2. Tax on turnover variation with P&L account : Rs. 8,27,173-00
Total : **Rs. 14,18,019-00**
Less: tax paid while filing appeal : Rs. 1,77,253-00
vide challan No. 2000020302 Dt.08.01.2020
Balance : **Rs. 12,40,766-00**

In response to the above proposal, the dealer has filed a letter dated 01-12-2022 and submitted as under

"We submit that we are in receipt of the show cause notice wide TIN No. 36894097186 / Jan'2014 – Jun'2017/VAT dated 21st November 2022 proposing of demand a tax of Rs.12,40,766/- for the period from Jan'2014 to Jun' 2017. We request you to kindly consider our objection on the following grounds.

M/s. Modi and Modi Constructions has developed only one housing project on land admeasuring Ac. 6-28 Grs., forming a part of Sy. Nos. 128, 129, 133 & 136 Rampally Village, Kesaram Mandal, RR District. The building permit for

construction of the villas in the project known as Nilgiri Homes was obtained in 2007 from HMDA. The project consisted of 95 villas.

VAT was paid under composition scheme Section 4(7)(d) @ 1% or 1.25% on the value of Net Sale Consideration, for the 94 of the 95 villas irrespective of whether the sale was made before or after completion. Villa No. 13 was sold after July 2017 (GST Period).

We submit that to avoid unnecessary and protracted irrigation VAT has been paid for all the villas (Except Villa No. 13). The details of payment of VAT for 94 villas are attached herein.

The turnover declared in the books of accounts / IT returns does not match with turnover declared in VAT returns. The method adopted for IT returns is as per rules under the IT Act, wherein profit was estimated for each financial year during the course of the project and turnover was based on installments due during the year. In most cases sale deed was executed after receipt of most installments, that too in different financial years. VAT returns were filed based on VAT paid from time to time.

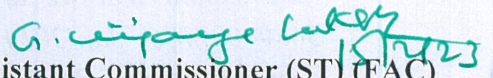
The method of adopting turnover from VAT returns and P & L account is not correct. The 5% sales during the years 2014-15 to June, 2017 have been correctly adopted in both tables of the notice. We have also paid VAT as per turnovers in books and reported in the VAT returns. The difference in the turnover of Rs.1,00,90,560/- as worked by you does not form turnover and the proposed levy of tax of Rs.,04,528/- may please be dropped.

In light of the above we request you to drop the demand for payment of shortfall in VAT. We are willing to provide any further documents that you may required".

In support of their objections made above, they have submitted statement of sale deeds concluded during the audit period along with payment particulars thereon, sample copies of Sale deeds and reconciliation statement of P & L Account Vs VAT returns.

The documentary evidence filed by dealer is verified and found no variation of turnovers with reference to turnovers reported in VAT returns are noticed. Hence the proposed tax of Rs.14,18,019/- is hereby dropped.

To,
M/s. Modi & Modi Constructions,
Address : 5-4-187, 3&4, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad – 500 003.
Mail Id: gst@modiproperties.com


Assistant Commissioner (ST) (FAC)
M.G. Road - S.D. Road Circle,
Begumpet Division, Hyderabad
Assistant Commissioner (ST), (FAC)
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad